

# Violence, Criminalization & Punitive Excess

*Bruce Western & Sukyi McMahon*

**H**ow can police, courts, and prisons in the United States be transformed to eliminate mass incarceration and produce a new kind of community safety that strengthens social bonds and reckons with a history of racial injustice? Over the last three years, from 2018 to 2021, the Justice Lab at Columbia University hosted a series of meetings for the Square One Project. Square One brings together leading scholars, community advocates, policy-makers, and practitioners to consider the question of justice in America.

This issue of *Daedalus* includes essays from two of the Square One roundtable meetings. The first, “Examining Criminalization, Punitive Excess, and the Courts in the United States: Implications for Justice Policy and Practice,” was held in partnership with Merritt College in Oakland, California, in the spring of 2019. The second, “Examining Violence in the United States: Implications for Justice Policy and Practice,” was cohosted by the Damon J. Keith Center for Civil Rights at Wayne State University in Detroit, Michigan, in the fall of 2019. At each roundtable, a diverse group of twenty-five to thirty experts from academia, advocacy, and the justice system worked to develop ideas, generate writing and research,<sup>1</sup> and design policies to build a new model of justice that helps heal the wounds of racism and poverty that lie at the heart of much of the contemporary criminal justice system.

We have brought the essays together here in the hope of contributing to a new kind of conversation about how communities can be safe: safe from the interpersonal violence that roils America’s most disinvested and impoverished neighborhoods, and safe from the state violence of aggressive policing and overincarceration. We begin with the topic of violence that provides the context for many developments in U.S. criminal justice policy before examining how conduct comes to be criminalized, the role of the courts, and punishment.

**A**merican history is marked by collective and political violence. Kellie Carter Jackson, in her contribution to this volume, “The Story of Violence in America,” looks to violent events to track social change and identify

turning points in history. Jackson argues that the historic meaning of violence has depended on who is deploying it, and who is victimized. The violence committed by white men has often been interpreted as necessary or heroic. Upstart violence by oppressed people, from John Brown to the Black Panthers, on the other hand, is seen to threaten the social order and thus demands state repression.

Paul Butler's essay "The Problem of State Violence" takes on the challenge of reckoning with structural violence and the overt state violence inherent in policing and incarceration. Butler asks to what extent is the state itself responsible for the harm it causes, how has it attempted to and succeeded in doing this, and to what degree is anti-Blackness an obstacle to controlling state violence. The essay considers what harm reduction programs might look like, and the state's role in mounting such efforts either alone or in partnership with community organizations. Efforts to reduce the harms of state violence might also be mounted entirely by local communities, without state involvement.

Challenging the usual criminal justice perspective, Daniel Webster explores a public health perspective on gun violence. In "Public Health Approaches to Reducing Community Gun Violence," Webster reviews gun policy initiatives that have significantly reduced gun violence in the United States. Although news narratives suggest that the growth of gun ownership has caused enormous violence, Webster focuses on data-driven public health efforts that aim to increase safety and health, address risky behaviors, and reform systems. Webster shows that rigorous licensing, street outreach directed at those who are at greatest risk of being shot and of shooting others, and reducing concentrated poverty and urban blight have all successfully reduced gun violence around the country.

Much of the serious interpersonal violence that comes to be labeled as "the crime problem" in America revolves around firearms. David Hureau describes the central significance of guns to violence in "Seeing Guns to See Urban Violence: Racial Inequality & Neighborhood Context." Hureau argues that guns are central to understanding racial inequalities in neighborhood violence. Guns in low-income neighborhoods of color are not a measure of criminality. Instead, they are *mechanisms* of lethality that become accessible and sometimes desired in contexts of poverty and racial exclusion where safety is elusive and police are unreliable defenders of the well-being of Black youth. Gun policy is likewise a marker of racial injustice, made outside the neighborhoods that bear the brunt of gun violence, and threatening harsh penalties for Black but not white America.

History is lived as the succession of generations through families and communities. Micere Keels writes about the lived experience of violence, discussing how trauma echoes over the life course and is passed from one generation to the next. Her essay, "Developmental & Ecological Perspective on the Intergenerational Transmission of Trauma & Violence," considers how growing up with a prevalent and chronic lack of safety changes brain chemistry, behavior, and subjective

experience. Her analysis suggests points of prevention and intervention for the intergenerational transmission of unhealed trauma and violence. For Keels, the response to violence should go beyond the punishment of offending to attend to the harms of victimization.

Criminal justice policy-makers generally focus on young men as perpetrators of harm. Beth Richie, in “The Effects of Violence on Communities: The Violence Matrix as a Tool for Advancing More Just Policies,” shifts this convention, examining victimization and the harms experienced by African American women. The violent victimization of Black women provides a case study of the failings of conventional criminal justice policies. Richie proposes a conceptual matrix for understanding the factors that influence violent victimization of African American women. Such a matrix forms the basis for a justice policy that acknowledges the intersectional nature of violence that is both racialized and gendered.

Barbara Jones explores these issues in her essay “Faces of the Aftermath of Visible & Invisible Violence & Loss: Radical Resiliency of Justice & Healing.” Drawing from her own experience as a community dispute resolution specialist who is also a survivor of a homicide that took the life of her child, Jones suggests that the healing process is not linear and prescriptive but begins with confronting harm. This powerful essay describes a restorative justice process that offers a pathway to victims of crime, rather than a process of punishment for those that have harmed others. The pathway taken by those who have been victimized supports the repair from violence and aims to prevent the risk of violence for others.

American violence often happens in a context of racial exclusion and deep economic disadvantage. Police, courts, and prisons are charged with the work of responding to interpersonal violence, but they too are part of a landscape that includes centuries of white supremacy and a harsh kind of poverty that is largely unknown in other developed economies. Over the last four decades, the U.S. incarceration rate has grown dramatically. Aggressive – and often deadly – police tactics have been deployed in poor neighborhoods and communities of color. The essays in this section consider the history of criminalization, punitive excess, and the courts in the United States. The authors consider how criminalization is applied on the ground, and its implications for current practice and the politics of reform. They analyze the political drivers and the consequences of punitive excess and its codification as public policy. Finally, the authors turn to the future of policy and practice with an overview of efforts in reconciliation and remedies, and the value foundations for a new, radically less-punitive kind of justice.

Criminalization is the process by which conduct becomes classified by authorities as criminal and thus deserving of punishment. Khalil Gibran Muhammad considers the history of criminalization in his essay, “The Foundational Lawlessness of the Law Itself: Racial Criminalization & the Punitive Roots of Punishment

in America.” In a sweeping historical discussion, Muhammad shows how defining “criminals” and punishing them has been closely connected to the projects of white settlement, maintaining white supremacy after emancipation, and quelling the prospect of full Black citizenship in the wake of the civil rights movement. “The criminal justice system has been producing racism, inequality, and insecurity; it could not (and cannot) fix itself,” he concludes.

This historical examination is followed by Jennifer Chacón’s essay, “Criminal Law & Migration Control: Recent History & Future Possibilities.” Chacón goes beyond the usual discussion of criminal justice to consider how immigration and immigrants have been rendered as suspect and threatening, and deserving of punishment. The essay describes the connections of immigration enforcement to crime control policies and practices at all levels of government. Advocacy, the law, and social mobilization also provide room for resistance that has protected residents from unjust detainments, deportations, and removals.

Most of the essays in this issue document the close connections between crime, criminal justice, and racial injustice. Nicole Gonzalez Van Cleve, in “Due Process & the Theater of Racial Degradation: The Evolving Notion of Pretrial Punishment in the Criminal Courts,” underlines the leading role of culture that saturates criminal justice agencies and courts in particular. Relying on fieldwork in a criminal court in Chicago, Van Cleve describes what she calls *racial degradation ceremonies* in which court discretion, used by mostly white courtroom professionals, is often dehumanizing both for defendants navigating the court process and for family and friends. The essay confronts the resistance to cultural change in the courts and suggests how accountability and oversight might be developed.

In “Recognition, Repair & the Reconstruction of ‘Square One,’” Geoff Ward asks us to take account of the history of criminalization and punitive excess and the ways these are deployed by the state, and to grapple with the daunting undertaking of reimagining and reorganizing justice in order to reconstruct society. The essay recounts a history punctuated by missed opportunities to achieve transformative justice and the need for reparative interventions to break the cycle of injustice and achieve a new “square one.”

The final essay in the collection, Jonathan Simon’s “Knowing What We Want: A Decent Society, A Civilized System of Justice & A Condition of Dignity,” offers a three-part values-based framework for reshaping society, so we do not miss the present opportunity for reckoning and repair. Simon nominates human dignity as a central value that can guide criminal justice reform. He proposes that through 1) a body of laws that restores a decent society and 2) efforts to civilize our justice and security systems, we can produce “a condition of dignity” in our justice system.

Taken together, these essays show how violence, criminalization, and punitive excess have been shaped by the deep contours of racial inequality and poverty in America. Just as violence has been closely connected to the marginalization of

low-income Black and brown communities, the public policy response is deeply racialized as well. Because the process of criminalization has overwhelmingly presumed punishment as the appropriate response, interpersonal violence in communities has been met with the state violence of policing and incarceration. None of this history has contributed substantially to promoting racial justice or reducing poverty. Indeed, much of the evidence in this volume indicates that criminal justice policy has sustained racial exclusion and added to the harsh conditions of American poverty. Meeting community violence with state violence in a way that deepens the divisions of race and class is one of the distinctive ways in which racism and economic injustice operate in American society.

This collection demands that we imagine a different kind of public safety that relies not on police and prisons, but on a rich community life that has eliminated racism, poverty, and their myriad accompanying social problems. Many of the solutions will lie well beyond the boundaries of the criminal justice system. Indeed, many solutions will lie beyond public policy, grounded in the social bonds and networks of families and neighborhood life. Much of the work for this reimagined safety is already being done in communities around the country. And these efforts share, as the essays in this issue suggest, a common commitment to the values of healing, reconciliation, and human dignity.

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#### ABOUT THE AUTHORS

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#### ENDNOTES

- <sup>1</sup> *Du Bois Review* 16 (1) (2019): 177–277, <https://www.cambridge.org/core/journals/du-bois-review-social-science-research-on-race/issue/EBE868A4DF8F6C4986365CC783AD95E7>.