

# Race, Crime, and Justice: Definitions and Context

## LEARNING OUTCOMES

- Explain what mass incarceration is and how it impacts race in the United States today.
- Summarize the connection between racialized mass incarceration and strides toward racial justice in the United States.
- Define terms key to understanding race, crime, and justice in the United States.
- Demonstrate how race and crime are socially constructed.

## KEY TERMS

- mass incarceration
- coloniality
- sovereign force
- state power
- knowledge production
- premature death
- social construction
- white supremacy

White nationalist protesters in the United States marched through the streets with torches, wantonly inflicting violence and even death when a member charged the group. As they marched, they chanted, “Blood and Soil,” a Nazi slogan. One protester plowed into a group of counterprotesters, hurting at least twenty people and killing one. Racial taunts, shoving, and fighting led the governor to declare a state of emergency and the National Guard to descend upon the city. The president of the country refused to condemn the violence and instead noted that “bad dudes” on “both sides” were to blame for the violence. He further sided with the protesters, declaring monuments to white supremacy “beautiful” and part of the “history and culture” of the United States. No, this is not sometime in the 1800s or even the 1960s but August 2017, when white nationalists amassed to protest the removal of a statue that commemorated the slaveholding southern United States in Charlottesville, North Carolina.

You might ask why we would open a book titled *Race and Crime* with a discussion of white nationalist violence and its resurgence in the United States. Seventy years ago, though, this question might not have been asked. One of the first “wars on crime” in the 1940s sought not to fight drugs or gangs, as we often declare today, but to define

crime as white racial violence and the criminal justice system as the responsible state institution for protecting the nation against these acts (Murakawa 2014). For reformers in the 1940s, the events in Charlottesville would have had everything to do with race and crime.

The events in Charlottesville themselves, though, might have seemed odd to reformers in the post-WWII era. At the end of the 1940s, the United States was embarking on an era where the traditional structures of race-based exclusion—such as explicit racial segregation in housing and schools—would be eroded and ultimately overturned. Over the next two decades, Supreme Court decisions would mandate protections for those most disenfranchised, especially in the criminal court, by providing state-funded attorneys for poor people and requiring Fourth Amendment protections against the actions of local (not just federal) police. And in 1964, the nation would pass the Civil Rights Act, which explicitly prohibited racial discrimination. This time would be remembered as a period when the civil rights movement made extraordinary inroads in exposing and changing the systems of white supremacy that marked the pre-civil rights era. For the reformers in the 1940s seeking to define the criminal justice system as the foremost institution in the fight against racial hatred and violence, the events in 2017 in Charlottesville would not have seemed likely.

With the passage of the Civil Rights Act, affirmative action remedies in the 1970s and 1980s, and the election of Barack Obama as president in 2008, many today were even poised to declare the ascendance of the “postracial” moment in the United States. The *New York Times* headline the day after the election proclaimed “Obama Elected President as Racial Barrier Falls.” *Time* magazine asserted that his election signaled that “the economy is trumping race” and that “worried white voters [were] turning toward Obama.”

Yet, only a little over eight years separate the events in Charlottesville from the election of Obama. Arguably, Obama’s election was generations in coming—starting with the first moments of the civil rights movement (and likely earlier). Could something with that amount of historical significance really change in just eight short years? Could the events of today really be such a backlash to Obama’s election that the prior half century of racial justice work would be obliterated? Could we really have gone so quickly from a postracial future to the resurgence of a violent, white supremacist past? Or is something else going on?

We argue that something else is going on, and this something else is found within the criminal justice system. By examining the institutions of criminal justice, we reveal how and why the criminal justice system emerged as the paramount institution of racial governance in the United States. We also explore why this happened at a time when reformers might not have expected it, and when many were primed to declare the past few decades as the ascendance of a postracial future.

## POSTRACISM AND MASS INCARCERATION

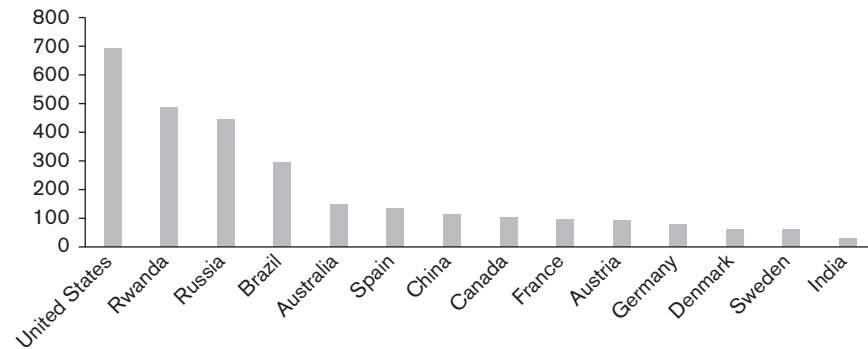
Let's consider a critical transformation in the criminal justice system that happened at the same time as the postracial future was being built. For an entire century prior to the civil rights movement, the rate of incarceration was nearly constant (Cahalan 1986). And while black and brown communities were certainly recipients of undue criminal justice attention, policing, and violent force, whites routinely made up the majority of people in prison (Cahalan 1986; Johnson, Dobrzanska, and Palla 2005). With this historical background, we might have expected the criminal justice system to be the exemplar institution of the postracial era, emerging out of the civil rights moment in the 1960s as a model of racial equality, justice, and fairness. Something else happened, though.

### Mass Incarceration

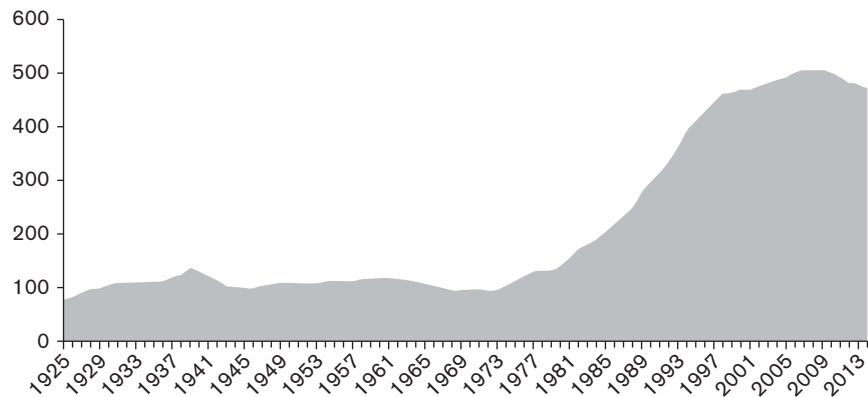
That something else is what is often called **mass incarceration**. Mass incarceration is defined by David Garland (2001, 1) as “a rate of imprisonment . . . that is markedly above the historical and comparative norm” for a given society. With mass incarceration, imprisonment “ceases to be the incarceration of individual offenders and becomes the systematic imprisonment of whole groups of the population.”

Today, 25 percent of the world's total prisoners are held in the United States, though it has just 5 percent of the global population (Sentencing Project 2015). Its rate of incarceration is far above any comparable nation, with almost 700 people incarcerated per 100,000 residents (see figure 1.1). The next highest rate among OECD countries is Chile's 256 per 100,000. (The Organization for Economic Cooperation and Development, begun by the United States, Canada, and European countries in the 1960s, includes thirty-five nations.) Among all the countries in the world, the United States remains the leader, with Rwanda coming in second with 492 people incarcerated per 100,000 (Sentencing Project 2015). Indeed, the United States incarcerates more people than the top thirty-five European countries combined! And the United States' incarceration rate does not include the 360,000 people incarcerated in immigrant detention facilities in 2016 (Detention Watch Network 2018).

This level of incarceration is unprecedented compared not only to other countries but also in the history of incarceration in the United States. Figure 1.2 shows the *rate* of incarceration, or how many people are incarcerated relative to the total population, in this case, per 100,000 people. Just like the total number of people incarcerated, the rate of incarceration also substantially increased and demonstrated that even with population increases, incarceration in the 1980s was both historically unprecedented and drastic. Between 1900 (when reliable national record keeping began) and the 1970s, the rate of incarceration including jails was also relatively constant, averaging around 100



**Figure 1.1** International rates of imprisonment, per 100,000 residents. Source: Data from Sentencing Project, *Trends in U.S. Corrections*, 2015.



**Figure 1.2** State and federal imprisonment rate (excluding jails) in the United States per 100,000, 1925–2014. Sources: E. Ann Carson and Daniela Golinelli, *Prisoners in 2012: Trends in Admissions and Releases, 1991–2012*, Bureau of Justice Statistics Bulletin (Washington, DC: U.S. Department of Justice, December 2013 [revised September 2014]); Danielle Kaeble, Lauren Glaze, Anastasios Tsoutis, and Todd Minton, *Correction Populations in the United States, 2014*, Bureau of Justice Statistics Bulletin (Washington, DC: U.S. Department of Justice, December 2015 [revised January 2016]), [www.bjs.gov/content/pub/pdf/cpus14.pdf](http://www.bjs.gov/content/pub/pdf/cpus14.pdf); Margaret Warner Cahalan and Lee Anne Parsons, *Historical Corrections Statistics in the United States, 1850–1984*, NCJ-102529 (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, December 1986), [www.bjs.gov/content/pub/pdf/hcsus5084.pdf](http://www.bjs.gov/content/pub/pdf/hcsus5084.pdf).

per 100,000. Yet, after the 1970s, this rose to a global high of 755 per 100,000 in 2008 (the peak) and about 693 per 100,000 today.

The current U.S. rates of incarceration are certainly unprecedented, unparalleled, and anomalous. Yet measures of incarceration do not reveal the entire story. As incarceration rates rose, so did probation and parole. Today, over

6 million people are under some sort of criminal justice supervision—a number that shows just how widespread and entrenched the mass incarceration complex is in U.S. society.

### **Race and Mass Incarceration**

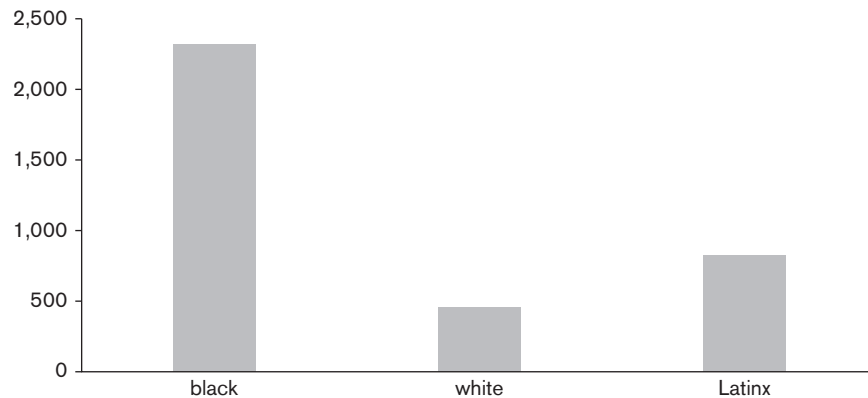
The term *mass incarceration* suggests a widespread application, yet mass incarceration is not widely applied, and it does not apply to an amorphous, nonracialized conception of society. In a country that is over 77 percent white, more than 60 percent of people in jail and prison are persons of color. In 2013, whites made up just 34.3 percent of the prison population, while black people made up 37.4 percent and Latinxs 22.3 percent (Sentencing Project 2015). The chance of incarceration for a black person is six times that of a white person, and Latinxs are 2.3 times more likely to be incarcerated than whites (Sentencing Project 2015).

At the height of mass incarceration, among every 100,000 residents, almost 2,300 black people were incarcerated and almost 1,100 Latinxs, compared to just over 320 whites. In 2016, 274 whites per 100,000 were incarcerated, compared to almost six times more blacks at 1,608, and over three times as many Latinxs at 856 per 100,000 (see figure 1.3). Among every 100,000 male U.S. residents, 2,724 black men are incarcerated, 1,091 Latino men, and just 465 white men. For white women, just 53 in every 100,000 are incarcerated, compared to 64 in 100,000 Latinas, and 109 in 100,000 black women. Today, one in three black people and one in seven Latinxs are under some sort of criminal justice supervision, but only one in twenty-three whites! Indeed, in some cities, such as Baltimore, Milwaukee, and Washington DC, the rate of criminal justice supervision for black men is one in two (Mauer 2006). And this increase in incarceration, probation, and parole for black people and Latinxs happened at a time when the postracial moment was seemingly building in other areas of the country.

### **Incarceration and the (Racialized) Life Experience**

There is no doubt that the management of crime today plays a significant, if not defining, role in creating the racial experience (Cole 2000). The most commonly cited incarceration statistics provide just a glimpse of one aspect of the carceral complex that is directed at black and brown communities (Mauer 2006). It fails to include the effects of living in a hyperpoliced community or among unregulated criminal markets or under a general pattern of suspicion, distrust, and extraordinary attention—not just violence—directed at one's community (Chesney-Lind and Mauer 2003; Travis and Waul 2003).

Bird's-eye views of incarceration statistics fail to convey how incarceration has become a normal part of the life course for some groups (Petit and Western 2004). For example, while white men have a one-in-seventeen chance of being incarcerated in their lifetimes, Latino men have a one-in-six chance and black



**Figure 1.3** Rates of incarceration (including prison and jails) by race and ethnicity, per 100,000. Source: E. Ann Carson, 2018. *Prisoners in 2016*, US Department of Justice, Bureau of Justice Statistics, table 6. [www.bjs.gov/content/pub/pdf/p16.pdf](http://www.bjs.gov/content/pub/pdf/p16.pdf).

men have a one-in-three chance (Mauer 2006). For black men ages 30–34, the age group with the most concentrated incarceration, 6,412 men per 100,000 are incarcerated. For Latinos in that age bracket, the rate is 2,457; for whites, it's just 1,111 (Carson 2015).

### Postracial? The Case of Crime

When viewed from the vantage point of racial gains, the emergence of racialized mass incarceration seems anomalous. Many might not suspect that racial disparity would pervade a government institution as thoroughly as it has done in the criminal justice system. To the extent that race did emerge as a defining feature, we might expect that this could be easily corrected by appeal to the law or through court cases, congressional lobbying, or some other remediation. Yet, there has been no comprehensive reform package, congressional action, or presidential mandate to end racialized mass incarceration. Even in the era of plateauing incarceration rates, racial disproportionalities in the incarceration experience remain trenchant.

How can this be, particularly when so many see such strides being made in racial justice? The answer to this question is the subject of this book. Robert Allen (2005) has argued that two strategies developed simultaneously to maintain white racial power in the wake of the civil rights movement: (1) a mechanism of inclusion that permitted the development of a black and nonwhite intermediary class consisting of professionals and bureaucrats and (2) the expansion of the punitive state to target and continue the subjugation and oppression of a nonwhite disenfranchised populace.

While the number of black elected officials has increased from a few hundred in the early 1960s to around 10,000 today, black politicians hold only 2 percent of the total number of elected offices in the United States (Brown-Dean et al. 2015). The disparity is especially stark next to numbers of people incarcerated and suppressed by the criminal justice system cited earlier in this chapter (Allen 2005). The election of Obama and the gains of the civil rights movement were certainly significant, but they were set amid a larger expansion of political disenfranchisement due to the effects of criminalization. Thus, political gains by the black middle class have been relatively insignificant compared to the much larger, often hidden processes by which black and brown communities became embedded within the criminal justice system.

This book tells the story of how the criminal justice system became the newest institution managing racial governance in the United States. The criminal justice system is part of a broader legacy of state institutions—from slavery to Jim Crow—through which race has been created, reproduced, and managed. This book tells how this happened and explains why we should not be entirely shocked by the events in Charlottesville in 2017. Instead, we argue, Charlottesville represents an extreme example of what has been one of the most continuous trends in the history of the United States—white racial domination. Though Charlottesville is considered extreme and unrepresentative of the U.S. populace, it is connected to the ways that white racial structures are sublimated through the institutions of everyday life. Even while many—including whites—work toward a postracial future, the policies, practices, and assumptions underwriting state institutions reflect this racialized worldview.

This happened even though the policies and structures of state institutions, including the justice system, are formally race neutral. This race neutrality, however, is not divorced from the broader social context, and thus the race-defined ways we think about crime are baked into the ways policies are implemented, even in the seemingly postracial era. To demonstrate, let's consider how the criminalization of race happens through the emergence today of seemingly race-neutral, "objective," and "rational" approaches to policing.

## **POSTRACIAL POLICING: COMPSTAT AND THE CRIMINALIZATION OF RACE**

Criminology and criminal justice practice today take a seemingly much more objective and scientific approach to the study of crime than in generations past. Police, for instance, have embraced forms of policing based on statistical models and evidence-based practices. This, we might hope, more evenly distributes policing across the population, reflecting an even distribution of criminal activity across racial lines (Hagan and Foster 2004; Beckett and Sasson 2007).

Yet, even one of the most celebrated and seemingly objective, rational approaches to policing was embedded in a racialized imagination of the world.

One widely known example of this new form of policing is COMPSTAT, which was developed in New York (McDonald and Greenberg 2002; Smith and Bratton 2001). COMPSTAT stands for “compare statistics” and is a police management practice of using statistical information to identify “hot spots” of crime and then targeting enforcement accordingly. Prior to COMPSTAT, policing was riddled with examples of racially discriminatory policing, and police regularly used force to subjugate and oppress communities of color, some of which we describe in subsequent chapters. COMPSTAT was intended to allow police to focus on areas where they were most needed. As a result, police embarked on a new model of policing based on crime rates and their distribution over urban areas.

With COMPSTAT, authorities could identify hot-spot neighborhoods where crime concentrated (Braga and Bond 2008). This move made policing more “rational” and less tied to stereotypes and subjective assumptions considered a product of earlier models of policing. This also moved policing into what many considered a color-blind or postracial era, where police are deployed strategically in response to crime rates and not because of the racial threat of a particular community.

COMPSTAT, for many, is an achievement of the values of democracy, equality, and justice in policing. Yet, the data used to produce crime maps in COMPSTAT is not reflective of objective rates of crime. The data in COMPSTAT is based primarily on *reports* of crime to the police, not on actual crime taking place. Thus, the data is in actuality a measure of *police activity*, not of crime.

Consider how the data is compiled. COMPSTAT does examine all reports of crime, but most crime is reported to the police in one of two ways. The first way is when people call the police to report a crime. This leaves out the many crimes that go undetected or unreported. Measures of crime victimization show the actual crime rate is almost three times higher than measures of police activity indicate (Beckett and Sasson 2007). COMPSTAT data primarily focuses on crime that happens in public places—those hot spots of criminal activity. Much crime, however, happens behind closed doors, in private spaces. These types of crimes are least likely to be reported. For instance, if a person is assaulted in public by an unknown assailant, the person is likely to call the police. However, if the person is assaulted by a loved one in their home, there is a good chance that the person will not call the police. Data plotted on crime maps thus overrepresents crimes people are more likely to report to the police—that is, crimes committed by strangers—but these are the crimes we are least likely to be victimized by (e.g., Bachman and Saltzman 1994).

The second source of reports of crime is from police patrolling and making arrests as a result of their surveillance. Police patrols, however, are not evenly distributed across a jurisdiction. Consider this question: where in an urban



area are police most likely to be found, outside of police stations? Most people would suggest a neighborhood that likely is poor and less white; few would respond with a predominantly white, wealthy neighborhood. It would be quite strange to find regular police patrols in these neighborhoods. But police don't encounter crime on patrol in neighborhoods they aren't surveilling, so crime in wealthier, whiter neighborhoods often goes undetected. Consequently, *where* police patrol largely determines who gets targeted, surveilled, and arrested—and thus, which places end up in police data. COMPSTAT thus has a circular effect: increased police activity in a neighborhood results in higher rates of crime which then justifies further policing in those same places.

New York's COMPSTAT is often seen as a rational and objective source of evidence for police activity, yet this evidence also reinforces a racially disparate experience of criminal justice agencies. A notable recent example was the use of "stop and frisk." Stop and frisk was developed as part of the COMPSTAT crackdown on crime and was used extensively by the New York Police Department to stop and search almost anyone. The intention was to combat weapons and drug crimes, but relying on COMPSTAT data, the police focused their efforts on "high-crime neighborhoods"—where the population was more likely to be black or brown and lower income (Ward 2014).

With COMPSTAT and other criminological technologies, the "objective" or "rational" coding of space thus hides deeply contextual, relational, and embedded forms of knowledge. What is "objective" is actually the result of highly mediated processes—such as determining what constitutes crime, what types of crime are the most deserving of attention, and how to respond to crime. These processes all have important consequences for who gets policed, how they get policed, and why they get policed. Without a doubt, COMPSTAT is considerably more sophisticated and often based on much larger and different types of data than earlier policing efforts. Yet, the result is the same—the deployment of police in the very same communities and against the very same individuals that have historically borne the brunt of policing.

The story of COMPSTAT is a microcosm of the story we tell in this book about race and crime. It's a story that considers how good intentions, racial redress, and an entire national history predicated on equality and liberty result in centuries of racial subjugation. Thus, even though criminal justice agencies embraced newly emerging scientific techniques of crime investigation, the problem of racialized mass incarceration continued. Indeed, we argue that what we see when we look at criminal justice is not the workings of a fundamentally just but somewhat flawed criminal justice system in need of reform. Rather, it is the effect of the systematic equation of race and crime and the criminalization of race in the United States, a history that began several centuries ago.

The cause is not racist police, nor other racist criminal justice officials, but rather the ways in which the narratives of white racial domination have been

sublimated into structures and institutions. Narratives of white racial domination were explicitly demonstrated in Charlottesville, but they can also be found in the institutions that make up our everyday lives, from the school to the economy to the criminal justice system. This began when race was invented in the era of colonialism and continues to shape how we address crime and justice today.

## CRIMINALIZING RACE: COLONIALISM, RACE, AND CRIME

Colonialism may seem an odd place to start a textbook on the intersections between race and crime, especially as the supposed date of “discovery” of the Americas in 1492 was almost five centuries ago. Many likely see colonialism as far removed from contemporary politics of race and crime. Yet the origins of colonialism are critical for understanding the emergence, ascendance, and continuation of race in society today.

### Coloniality

Racial inequalities today are the result of practices that began in the colonial era and make up what we call **coloniality**. This term, coined by Aníbal Quijano (2000), refers to the processes by which colonial-era mechanisms of power were subsumed and integrated into the social order. Coloniality has been described as the “darker side of modernity,” where “human lives became expendable to the benefit of increasing wealth, and such expendability was justified by the naturalisation of the racial ranking of human beings” (Mignolo 2007, 41). Coloniality consists of two dominant practices: (1) violent geographical appropriation of resources, places, and people and (2) racial and patriarchal knowledge production.

### Sovereign Force

Colonialism was ultimately a geographical project—centered on the conquest, acquisition, and shaping of space, place, and people. Closely linked to the idea of colonial conquest is the notion of sovereign force. *Sovereignty* refers to the power of a ruler over land and territory. In a monarchy, the king is sovereign and holds sway over the land, while in a democracy, the people’s rule is sovereign. **Sovereign force** refers to the process by which rulers use instruments of violence—conquest, war, and even the criminal justice system—to rule over others. In colonial conquest, sovereign force meant the violent appropriation of people and places for the health, wealth, and continued domination of the sovereign. In this book, we will examine how sovereign force—or what we will call more simply **state power**—is used to protect the health, wealth, and