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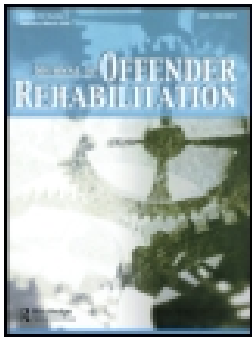
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African Americans and punishment for crime: A critique of mainstream and neoliberal discourses

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ABSTRACT
Understandings of punishment within the criminological enterprise have failed to capture the nuances associated with experiencing punishment. Moreover, mainstream academic discourses are inherently anachronistic in their conclusions on punishment, thus leaving significant gaps to be filled. One such gap is that of racialized history. This article attempts to make sense of punishment discourses (past and present) by situating them in their proper context. We argue that punishment, in particular for Blacks, is ideological and longstanding. Moreover, we posit that the prolonged punishment of Blacks is hypermanifested in contemporary society via neoliberal logics that have increasingly disabled race as a central focal point in punishment discourses (in both political and academic contexts). We use established literature to bolster arguments and conclude with suggestions for future research.

Introduction

A little over 40 years ago, African Americans were not disproportionately accounted in the incarcerated population (Western, 2006). However, according to Western (2006) the carceral reality of Blacks behind bars today is one that should demand attention. For instance, in his groundbreaking study *Punishment and Inequality in America* he accentuated that, "Black men are eight times more likely to be incarcerated than Whites and large racial disparities can be seen for all age groups and at different levels of education" (p. 16). Moreover, he found that in the last 20 years of the 20th century, incarceration rates climbed, and the effects of such growth has had a devastating effect on Blacks, in particular. The effects are especially prominent in areas that are traditionally hidden or silenced in academic discourses. For example, as Western accurately concluded, the mass incarceration of Black males has hindered growth in the Black family insofar that it has rendered many families dysfunctional overnight. Black men, as a result of their mass incarceration, have been rendered unreliable and unsuitable for

marriage. From a gender perspective, this also has devastating effects on their would-be partners whom are likely Black women. This shift in the racial carceral state has led to single-parent homes, disproportionately lead by Black women, and toward the feminization of poverty in groups with high concentrations of incarceration. Western associated these changes with the shifting logics of the carceral state, which he posited is a backlash against rights won (and ensuing growth) during the Freedom Movement(s) of the 60s and 70s.

Moreover, Western (2006) also found discrepancies among groups with regard to education as well. With the devastating effects of the school-to-prison pipeline, and its insidious campaign to push students out of schools, he concluded that in the 80s the likelihood of Black dropouts being jailed increased fourfold when compared to those who graduated college; however, in the 2000s this disparity grew to nearly 10 times the likelihood for Blacks. Thus, incarceration tends to impact those whom are educationally deficient, likely because of the school-to-prison pipeline—a process that is disproportionately attracted to Blacks. But to what extent do the aforementioned figures represent a kind of violence against the Black community, and to what extent do they reinforce unjust social hierarchies?

In fact, the system's obsession with physical harm against Black bodies dates back to slavery (Muhammad, 2010). We argue that to fully comprehend punishment discourses, one must be privy to historical roots of punishment to gain a better understanding of contemporary variations that differentializes justice. We posit that the persistent punishment of Black bodies is due to an institutional inclination toward an ideology of disproportionate Black punishment (IDBP). Thus, this article will critically examine punishment within the intersectional reality of Blackness. It is argued that current conceptions regarding punishment are too closely aligned with so-called democratic constructs that are inconsistent with the plight and experience of Blacks. Moreover, the general inattention on behalf of society regarding the material effects of punishment supposes that most people are content or hold the perception that there are not any problems with the system. However, any supposition or belief based on the notion that punishment is equal, we argue, is unfounded and inconsistent with clear-cut qualitative differences regarding punishment outcomes, particularly in the case of Blacks (Muhammad, 2010; Tonry, 2010). In fact, Blackness as a construction of criminality has served to relegate Blacks into a permanent state of coerced authoritarianism—also a reality inconsistent with democracy but nevertheless a lived reality for Blacks (Muhammad, 2010). Moreover, the Black experience regarding punishment sits far beyond the confines of democratic treatment and it should be analyzed as such. However, such an analysis, as we note later, runs counter to dominant understandings of punishment imperatives, as many mainstream works omits the importance of group differences in lieu

of rational choice or individualized concepts that lacks nuance. Nevertheless, IDBP, which is rooted in historical and contemporary significance, requires a nuanced and deeply complicated understanding of punishment as an ideological weapon of the ruling class against subordinated classes.

Neoliberal penology and colorblindness

According to an NBC/WSJ poll following the verdict in the trial of George Zimmerman, many Whites, for example, believed that the United States was a colorblind society (NBC/WSJ, 2013; also see, Wise, 2010). Despite this poll, the Black penal reality has not changed dramatically. Besides, under President Barack Obama, some high-profile, racially intense, police-involved, and vigilante shootings occurred; the first of these being the death of Trayvon Martin. Some Americans chastised President Obama (2012) during a Rose Garden speech for sympathizing slightly with Trayvon Martin for saying, "If I had a son he'd look like Trayvon." The condemnation of President Obama for stating the obvious is hardly a sign of postracialism. The reoccurrence of Black deaths by state agents and vigilantes without justice continues to serve as evidence of institutional racism within the United States. Because race has been suppressed within many public policy discourses, the prolonging presence of institutional racism can operate below the radar. Some scholars have articulated that contemporary injustices are products within the veil of neoliberalism (Soss, Fording, & Schram, 2011; Wacquant, 2009).

The "War on Drugs" brought forth the age of mass incarceration (Alexander, 2010), which gave birth to neoliberal penality. Neoliberalism is best understood by the transferring of the public sphere into the hands of private entities. This transformation has been most radical with the commercialization of punishment (Garland, 2001; Schept, 2015). As a result, corrections have increasingly become privatized, therefore making human bodies commodities for capitalists (see, e.g., Herivel & Wright, 2007; Price, 2006; Price & Morris, 2012). The transfer of corrections into the hands of capitalists has created a high demand for prisoners. This high demand is satisfied with the disproportionate mass incarceration of minorities, the poor, and, increasingly, the undocumented too.

Moreover, leading punishment scholars (of past and present) have consistently analyzed punishment within race-neutral contexts. For example, Garland (2012) and Morris (1988) have consistently understood punishment discourses via legalistic frameworks, thus rejecting the role of racism within the administration of punishment. Such scholars are likely not to make much about group differences that cannot be explained by anything other than race. While they are likely to point to rates of violent crime within minority neighborhoods (and perhaps they should) as explanations for punishment disparities they fail to include other contexts such as institutional racism

and the toleration of poverty and inequality as correlates to the very crime they are identifying. One cannot assume that race holds no weight in a society highly stratified by race (among other factors). Morris (1988) for example, opined that such factors are beyond the control of justice professionals. However, such a statement is counter to reality—that, in fact, those who operate within the justice system often harbor their biases, bigotries, racisms, and perceptions of others while on the job. Those who work within the justice system are also members of a highly racialized society and are not somehow excluded from the social impediments that exist within the broader social structure. However, most important, Cleave's (2016) ethnographic account painfully refocused the scholarly discussion toward more qualitative and micro understandings of how racism and stereotypes are incorporated into punishment outcomes. Thus qualitative differences in the ways in which punishment is administered is painfully lacking within criminological discourses regarding punishment, and has thus contributed to a colorblind ethos that has omitted lived experiences.

Through rational choice ideology race has become a hidden variable in the ways in which the criminal justice system operates. Nevertheless, the logic of rational choice is swiftly justified in the broader public consciousness as punishment has become synonymous with democracy. Freedom is defined by being free from the prison. Neoliberalism has afforded institutional racism a veil behind which to hide by hyperindividualizing crime. Even the criminological enterprise has been infected by neoliberal ideology, which has turned the discipline into a hyperempirical haven for applied neoliberal logics (Chan, 2000; Walters, 2003; Winlow & Hall, 2012; Young, 2011). Neoliberal criminology has transformed the criminological enterprise into one of applied inquiry. As a result, the need for efficiency and actuarial justice has been emphasized, as the sociological and political contexts have been sidelined (Hudson, 1993). The risk society has become a new platform upon which policy is investigated and enacted (Hudson, 2004). These paradigmatic shifts have allowed institutional racism to flourish in the criminal justice system.

This new neoliberal justice is at best an intense version of the crime control model. Packer's (1968) models of criminal justice (crime control vs. due process) serve as a keen explanatory framework within which to make sense of neoliberal penology in the age of colorblindness. Relying on rational choice ideology, crime control proponents can usher punitive measures through the policymaking process with relatively no opposition. While the crime control model has been mostly associated with the right and due process with the left (Miller, 1973), since the 1980s both parties have embraced crime control ideology (Alexander, 2010). Crime control suggests that swift justice and cutting cost is the best way in which to respond to crime. As a result, race is lost within an ideological framework that only sees the criminal act. While omitting the role of social, economic, and racial inequality (and other

inequalities), root causes of crime are no longer part of the crime problem. Through this framework, the criminal justice system perpetuates more injustice than it does justice, and it does so virtually in silence. Criminals are subsequently blamed for the very structural impediments that led them to crime in the first place. This framework of individual blameworthiness revolutionizes IDBP in the 21st century, as the private agency has become the sole cause of crime as opposed to a more holistic scientific approach that includes macro contexts. Examining crime as if it occurs in a vacuum, however, does nothing to get rid of crime. In fact, it creates a self-perpetuating cycle of manufactured criminality that results in IDBP. Moreover, since rehabilitation is a long lost concept in the age of neoliberal penality, the focus within the administration of justice is based solely on punishment, preferably from the private industry. Thus, postmodern justice rests on the precipice between democracy and commercialized justice.

Deprivation as a sign of democracy

Since Black inclusion into the franchise after the Freedom Movement(s) of the 1960s, oppression and racially biased criminal justice practices are no longer seen as a problem of state oppression. While the 1960s and 1970s brought about radical paradigmatic changes within both state practices and the criminological enterprise, this momentum was vigorously countered by the conservative revolution of the 1980s (Dekeseredy, 2011; Hudson, 1993). The conservative revolution brought with it the advent of administrative criminology, which was staunchly rooted in rational choice ideology. Rational choice ideology sees crime as a hypermicro circumstance. Thus, the macro context is heavily discounted and in contemporary scholarship increasingly omitted from the criminological enterprise (Walters, 2003). Under these circumstances, institutional racism and other social ills are no longer factors concerning why individuals commit crime nor are they factors in the state's response to crime. Moreover, administrative criminology posits that efficiency, actuarialism, and managerialism are the best routes toward addressing crime problems (Walters, 2003). It is alleged that the three aforementioned focus points are "cost-effective," which therefore brings about a more just and fiscally conservative criminal justice system.

However, what is least mentioned is the permanence of deprivation that ensued as a result of the conservative revolution. Efficiency, actuarialism, and managerialism are not necessarily about the preservation of human dignity, but rather about the ends—or the symbolism of fighting crime. Sykes (1971) wrote about the pains of imprisonment cementing the idea that the sole purpose of incarceration is deprivation. He articulated that the prison engaged in the following deprivations: liberty, goods and services, heterosexual relationships, and autonomy. While Sykes focused exclusively

on prison environments, we wage that the deprivations mentioned above exceed beyond confinement. For this article, we focus on deprivation of liberty, goods and services, autonomy, and security. It is important to note that while rational choice ideology dominates the justice system today, these deprivations are considered democratic even though they are staunchly antidemocratic tactics masquerading as justice.

The loss of liberty not only has a disproportionate impact on Blacks concerning imprisonment (Tonry, 2010), but it continues in de *facto* and *de jure* fashion (Alexander, 2010) once they are released from prison. The loss of liberty comes with limited movement and access within society (an added punishment). As a result of making the "rational choice" to engage in criminal activity, many Blacks are no longer able to exercise full U.S. citizenship and are instead relegated to second-class citizenship (Alexander, 2010) beyond the margins of society. Such actions are based within IDBP. While eliminating crime is important, crime has been hyperpoliticized by politicians looking to play into divisive racial politics. Using crime as a political platform has ensured White voters for Republicans and Democrats alike (Alexander, 2010; Lerman & Weaver, 2014; Murakawa, 2014; Perkinson, 2010; Tonry, 2010) and has been a tactic against the gains won by Blacks in the 1960s. By employing these maneuvers, politicians can appeal to White fears without overtly supporting racism. Nevertheless, through these practices IDBP ensues, as the ideological aspirations of White supremacy are upheld to the detriment of Blacks. The Southern Strategy was one such tactic used by Republicans that relied on racist stereotypes and media to garner White votes (Alexander, 2010; Tonry, 2010). These strategies have consequently created a culture of fear where policies are no longer produced with empirical consensus (see, e.g., Glassner, 2010; Simon, 2007; Walker, 2015).

Moreover, deprivation of goods and services are equally detrimental to Blacks. Sykes (1971) describes goods and services as access to legitimate healthcare, food, and proper room and board. However, *de jure* and *de facto* policies outside of the prison have ensured that such punishments continue even after having been incarcerated. Exprisoners, a group within which Blacks are disproportionately associated, are barred from an assortment of social services that would guarantee them access to health care, food, and shelter (Alexander, 2010; Travis, 2005). Consequently, denial of these services often leads to weak community efficacy and poor family structure that results in entire communities being disenfranchised and annexed from mainstream society (Clear, 2007). While mainstream criminology does not forthrightly conceptualize these "collateral consequences" as punishment, their impact is qualitatively punitive. Without material accumulation, families are disabled from being productive citizens and exprisoners are likely to return to crime (Travis, 2005).

The deprivation of security as spoken by Sykes (1971) underscores the extent to which the prisoner no longer has control over his faculties,

surroundings, or ability to associate themselves with positive entities. The deprivation of security plays out in society as a collateral consequence via the lack of mental faculties exprisoners face as a result of having to deal with subjective citizenship. This deprivation is tied to goods and services partly because if one is not able to obtain employment, they thereby lack security and the ability to feel secure. Lack of security induces one into states of insecurity that often drives exprisoners back to crime, drug addiction, and other self-mutilating activities (Travis, 2005). Through this deprivation, exprisoners are forever associated with the criminal label that more than ensures their exclusion from mainstream society (Alexander, 2010). The deprivation of autonomy manifests in the lack of self-determination, a most prized human right. As a result, exprisoners are forced into a cycle of constant criminality even after incarceration, a function that disproportionately affects Blacks (Alexander, 2010; Mauer, 2006; Tonry, 2010; Western, 2006).

Continuous disproportionate deprivation of Blacks beyond incarceration more than confirms the presence of IDBP. Identifiers of IDBP in contemporary society are overtly similar to past practices and outcomes of justice. For example, during slavery, Blacks were forced to live and operate within a punishment bubble. Blacks had no rights and slave owners had the power to punish and even kill Blacks with complete impunity (Berry, 1994; Friedman, 1993). Similarly, constitutional racial history has shown that the ideological underpinnings of law from slavery through Jim Crow have always been against the human rights and dignity of Blacks (Berry, 1994; Browne-Marshall, 2013; Fehrenbacher, 1981). It could be argued that the same ideological underpinnings are at play today, as Blacks are still living within a punishment bubble where they are more likely than other racial groups to be punished harshly (Tonry, 2010; Alexander, 2010) albeit under qualitatively different punishment practices.

The sentencing literature has long shown racial disparities in sentencing. For instance some research has shown that the cultural organizational factors have an impact on court decision making processes (Ulmer & Johnson, 2004). Meanwhile others have looked at race and age as factors that lead to stiffer punishment (Spohn & Holleran, 2000; Steffensmeier, Ulmer, & Kramer, 1998; Moore & Padavic, 2010), and some looked directly at race and ethnicity (Johnson, Stewart, Pickett, & Gertz, 2011; Kutateladze, Andiloro, Johnson, & Spohn, 2014).

Steffensmeier, Ulmer, and Kramer (1998) looked at "the cost of being young, Black and male." They analyzed sentencing data in Pennsylvania from 1989–1992 and found that young Black males are sentenced much harsher than any other group. While analyzing age groups they found that race was more salient for younger offenders than for those who were older. Moreover, they also found that while results were gendered—that, in fact, harsher

punishment was reserved for males while females were less affected by stiffer sentences.

Furthermore, adding to the body of knowledge on sentencing and in the tradition of the aforementioned study, Spohn and Holleran (2000) replicated the Pennsylvania study by examining sentence outcomes in three large urban jurisdictions. Like the prior study, they found that young Black (and Hispanic) males face a greater likelihood of incarceration when compared to middle-age White males. In addition, they also found that young Black (and Hispanic) males are significantly more likely to be sentenced to prison when compared to working White males. They concluded that those who inhabit characteristic of "young Black male" are likely to face a "punishment penalty."

Johnson, Stewart, Pickett, and Gertz (2011) focused on ethnic threat while analyzing a nationally represented sample of U.S. residents regarding public support in using ethnic characteristics in sentencing. They found support for ethnic threat concluding that ethnic threats are strong deciders for public support regarding the use of ethnic characteristics in punishment. Such findings are consistent with Blalock's (1967) contentions regarding the hyper use of social control as a control mechanism against rising minority populations. Blumer (1958) predicted the same outcome but did so within political and economic power contexts. Blumer accentuated that as subordinate groups gain power the dominant group will respond in ways that constrict the ability of the subordinate group to rise above their subordinate social economic location. Thus, in this context, the results from Johnson et al. (2011) make perfect sense within a society where there is an established order based on race (among other factors) that (sub)consciously contribute to punishment disparities, namely against those of color. Wang and Mears (2010) found similar results analyzing data from the Bureau of Justice Statistics' State Court Processing Statistics program. They found that racial threat contributed to a greater likelihood of receiving a prison sentence when negative perceptions against minority groups were high; however, they did not find much difference among offense types.

Punishment disparities could also be explained via courtroom work group perception as well, which is inevitably tied to broader stereotypes within society. For a deeper discussion regarding the ways in which the courtroom work group utilizes such perceptions, Cleave (2016) in her book, *Crook County: Racism and Injustice in America's Largest Criminal Court,* delivered a trailblazing ethnographic account of brutal conscious racism within Cook County's court system. Cleave's work indicated that, in some micro contexts, the presence and execution of racism and stereotypes in court decision processes may be much greater than some may believe. She found that at every level of the court processing experience defendants of color, particularly Blacks, faced egregious unjust treatment from the staff (from court-assigned

law enforcement to the judges). Such treatment also expanded into the parking garages, hallways, elevators, and other spaces that are typically omitted from courtroom studies.

The presence of IDBP is notoriously cemented in the ways in which the death penalty is practiced in the United States. While other areas of punishment (i.e., police brutality, indeterminate and determinate sentencing, fines, and others) are equally convincing, the death penalty represents the depth at which Black bodies are vigorously and inhumanely selected for punishment. Moreover, execution is one such power the state has that is most extreme in nature. The inclination to send Blacks to death at disproportionate rates is inextricably tied to racism. For example, research has purported that White racists are likely to support tougher correctional policies when the crime is related to race (Beckett & Sasson, 2003). Research has also reported that Whites are likely to view stereotypically Blacks and Hispanics as intrinsically prone to violence (Harris, 1977), and a host of other empirical studies exclusively focusing on Blacks reported the same contention (Devine, 1989; Trawalter, Todd, Baird, & Richeson, 2008; Wood & Chesser, 1994). Such beliefs are influential on many U.S. citizens who are called for jury duty and has been a tool of White privilege within the administration of justice for decades (see, e.g., Butler, 1995, 2009).

In addition, even when controlling for nonracial extralegal factors that may influence sentencing, defendants accused of murdering White victims are likely to be sentenced to death than those accused of killing Blacks (Baldus, Pulaski, & Woodworth, 1983; Baldus, Woodworth, & Pulaski, 1985, 1990, 1994; Baldus, Woodworth, Zuckerman, Weiner, & Broffitt, 1998; U.S. General Accounting Office, 1990). Research has also explored phenotypical features and found that those who appear to have Black physical traits are likely to be perceived as criminal (Eberhardt, Davies, Purdie-Vaughns, & Johnson, 2006; Eberhardt, Goff, Purdie, & Davies, 2004) and, therefore, deserving of death (Eberhardt et al., 2006). Moreover, according to the Death Penalty Information Center (2016) out of all of the 377 persons exonerated from death row via DNA, 31% were White, 61% Black, 7% Latinx, and 1% Asian. Such statistics shows the extent to which institutional racial disparities are still prevalent.

Girgenti (2015) using data from the Capital Jury Project investigated whether race and gender was associated with the likelihood of receiving a death sentence and whether or not the "White female victim effect" exists. Her results showed that victims' race accounted for the most significant factor regarding death sentences. Moreover, she wrote, "[a] hierarchy of 'deathworthiness' emerges from the data in which defendants who murder White females are the most likely to receive a death sentence, closely followed by those who kill White males, then Black females, and finally Black males" (p. 323). The hierarchy of deathworthiness as explained by Girgenti, illuminates some of the suppositions posited by Black Lives Matter regarding the

dehumanization of Black bodies. Thus, a brief survey of literature concerning the death penalty shows the extent to which racial stereotypes are (sub)consciously used to convict and execute Blacks (Blair, Judd, & Fallman, 2004; Eberhardt et al., 2006; Maddox, 2004; Maddox & Gray, 2002, 2004). Nevertheless, because these racialized practices affect Blacks, and have for decades, we argue that they form the basis of IDBP.

The ideology of disproportionate anti-black punishment

The mistreatment of Blacks via technologies of punishment dates back to slavery (Berry, 1994; Friedman, 1993). For instance, Lawrence-McIntyre (1993) posited that mistreatment of Black bodies at the hands of the state began as far back as 1790, and thus argued that its legacy manifests in contemporary processes of punishment. Some earlier forms of punishment, of course, include slavery, but also the convict leasing system (invented after slavery) that revolutionized the way in which Blacks could be controlled in a pluralistic free society (see also Blackmon, 2008; Oshinsky, 1996) While some scholars have chosen to focus on historical components (Curtin, 2000; Muhammad, 2010), and they should, it should be noted that contemporary scholars have analyzed the use of punishment against Black bodies and have determined that punishment is still a practice disproportionately used against Blacks (Barker, 2009; Mauer, 2006; Richey-Mann, 1993; Russell-Brown, 2009; Soss et al., 2011; Tonry, 2010, 1996; Wacquant, 2009; Walker, Spohn, & Delone, 2012). However, lacking throughout much of the literature are explanations explaining the persistence of disproportionate anti-Black punishment. Thus, we purport that this punishment is based on a hegemonic and ideological aspiration to control Blacks, and that the outcomes of such power serves to privilege Whites. Moreover, this argument is consistent with Wilson's (1991) groundbreaking text that analyzed among other issues, the dynamics of White domination over Blacks. Wilson (1991) articulated that in order to maintain White supremacy, the dominant group must engage in tactics that continue to relegate their targets to the margins, thus his suppositions are consistent with current punishment tactics (i.e., felon disenfranchisement, mass incarceration, and others). Discursively, this distinct form of social control has survived through periods of so-called democratic progression (i.e., Freedom Movement[s] of the 1960s and the election of President Barack Obama) and other social changes that have inevitably led to the Black Lives Matter movement. The Black Lives Matter movement came about in the wake of Trayvon Martin's death as a voice against police shootings of Blacks. The movement serves as a blatant reminder that the system is still undemocratic.

To further comprehend this phenomenon, we consider labeling this distinct form of punishment as IDBP. IDBP underscores the extent to which punishment against Blacks is intentional. IDBP is tied to what Feagin (2000)

labeled the White racial frame. He accentuated that the frame is a mechanism of social control that maintains White supremacy to the detriment of minorities. The five most important features of the frame are: "racial stereotypes; racial narratives and interpretations; racial images and language accents; racialized emotions; and inclinations to discriminate" (p. 60). The reach of the frame extends into all facets of society, including but not limited to, politics, education, finance, justice, housing, employment, health, and other major social institutions that have some relevance to the governance of social structures. Within the context of IDBP, the frame influences punishment and the administration of justice. For example, since Blacks are disproportionately policed, they are also more likely to face punishment. Therefore, through overpolicing and disproportionate punishment the frame can effectuate control over Black bodies. Moreover, various examples of the frame acting within the administration of justice are overwhelmingly ridden within the biased media apparatuses of society (see, e.g., Robinson, 2011; Russell-Brown, 2009). These examples typically use racial stereotypes to depict criminals and victims (ibid). Blacks are quintessential criminals while White women are victims (Russell-Brown, 2009). Nevertheless, these images are consciously and unconsciously driven into the psyche of most Whites and even minorities thereby justifying injustices (e.g., Eric Garner, Rakia Boyd, and others) that occur against Black bodies.

Thus, racism infused into stereotypes that play out within the administration of justice is indeed ideological and often genuinely believed falsehoods. Because infused racism and stereotypes are prevalent at all stages of the criminal justice system (Alexander, 2010; Long, Long, Leon, & Weston, 1975; Richey-Mann, 1993), mainly because of discretion, Georges-Abeyie (1990) coined the theory *petit apartheid* (see also Milovanovic & Russell, 2001). Georges-Abeyie (1990) argued that discretionary discriminatory acts (positive or negative) on behalf of actors within the criminal and juvenile justice systems act as impediments toward achieving real justice. He emphasized that these acts are *de jure, de facto,* and that they depend on one's social distance (race, ethnicity, culture, sex, age, class, etc.) between themselves and the accused. While this theory has been marginalized throughout much of the literature, contemporary evidence of racial disparity and differential treatment (Alexander, 2010; Cleave, 2016; Tonry, 2010) appear to confirm Georges-Abeyie's arguments, therefore, giving credence to IDPB.

Conclusion

While overt pre-1960s racism within punishment discourses is no longer prevalent in the United States, this article argues that IDBP is a reality that has persevered from slavery through today. Future research should address the persistence of disproportionate Black punishment and its changing

methodologies, and how they relate to economic, and social structures. The new and well deserved social contract that Blacks won after contested battles during the 1960s is slowly slipping toward obsolescence, as the criminal justice system is demoting Black citizenship to levels similar to the Jim Crow era. Neoliberal penality and criminology has obliterated racism and historical inquiry from criminological and policy dialogues leaving serious gaps to be filled. Collateral consequences have become continued lifelong punishments that can only be understood within the context of IDBP. Thus, this article provides a conceptual framework within which to make better sense of prolonged Black punishment within the age of neoliberal penality and colorblindness.

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