SPECIAL ISSUE
Challenging Racism From Past to Present

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Founding a New Nation at the Expense of Enslaved People

by Jodi L. Miller

The Declaration of Independence, written by Thomas Jefferson in 1776, states that "all men are created equal" and "endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

At the time these words were written, more than 500,000 enslaved people were part of what would become the United States of America. The institution of slavery had been part of the fabric of the colonies for more than 150 years, since 1619 when the first Africans were forcibly brought to this country. Jefferson, in fact, owned more than 600 slaves on his Virginia plantation. So, where did Jefferson's words leave enslaved people as the new country was forging its identity—one that supposedly valued liberty and freedom above all else?

The missing paragraph

The Declaration of Independence was essentially a list of grievances from the colonists to the King of England. In the document's original draft, Jefferson included a paragraph about slavery, blaming the King for bringing the institution to the colonies. The deleted passage, in part, stated:

"He [King George] has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere or to incur miserable death in their transportation thither [there]."

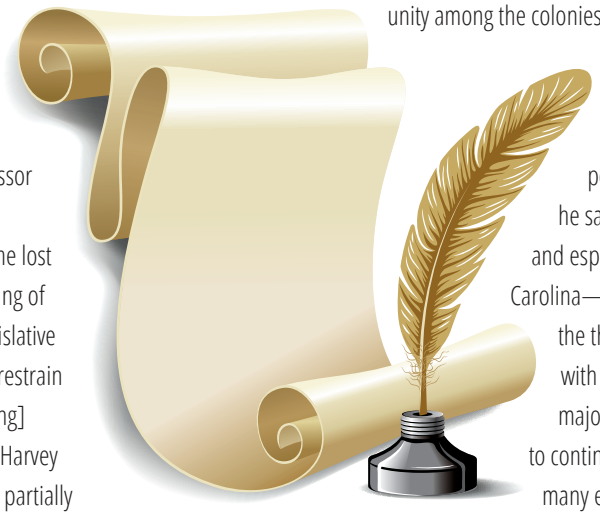
Why didn't the passage make it into the final version of the Declaration of Independence? According to Sean Harvey, a history professor at Seton Hall University who teaches courses on colonial America, the American Revolution, and the Civil War, it was cut because blaming the British King for American slavery was unconvincing.

"Slavery was legal in every British colony and colonists profited from slavery, none more than Virginians," Professor Harvey says.

Another part of the lost passage accused the King of "suppressing every legislative attempt to prohibit or restrain this execrable [appalling] commerce." Professor Harvey notes that the line was partially true in that King George did prevent Virginia from effectively banning the slave trade in the colony. However, it wasn't the whole story.

"Virginia's effort to ban the slave trade was also in the economic interest of elite Virginian enslavers who expected to be able to sell unwanted enslaved people from a naturally growing population to ambitious farmers in the west," Professor Harvey says.

Professor Harvey also notes that another reason for deleting the passage was to maintain unity among the colonies.



"Drawing attention to the slave trade was potentially divisive," he says. "Georgia and especially South Carolina—the only one of the thirteen colonies with an enslaved majority—sought to continue to import as many enslaved people as

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possible and would not consent to any criticism of the Atlantic slave trade. People in Northern colonies, on the other hand, increasingly criticized the Atlantic slave trade; but also knew that those colonies [the North] had played a leading role in, and profited from, that brutal commerce."

Indeed, according to the Library of Congress, in his "Notes of Proceedings in Congress," Jefferson himself wrote, "The clause too, reprobating the enslaving of the inhabitants of Africa, was struck out in complaisance to South Carolina & Georgia, who had never attempted to restrain the importation of slaves, and who on the contrary still wished to continue it. Our Northern brethren also I believe felt a little tender under those censures; for tho' their people have very few slaves themselves, yet they had been pretty considerable carriers of them to others."

Willing to fight for their freedom

The deleted paragraph of the Declaration of Independence also contained an accusation that the King was "now exciting those very people [the enslaved] to rise in arms among us, and to purchase that liberty of which he has deprived them, by murdering the people on whom he has obtruded [imposed] them: thus paying off former crimes committed against the Liberties of one people, with crimes which he urges them to commit against the lives of another." These lines refer to the Dunmore Proclamation, a 1775 decree made by the Earl of Dunmore, who served as the Royal Governor of the Virginia colony at the time. The proclamation offered freedom to enslaved men who would take up arms against their enslavers [the colonists] by joining the British army.

According to some estimates, anywhere between 800 and 2,000 enslaved men answered that initial call and formed what would become known as "Lord Dunmore's Ethiopian Regiment," with the words "Liberty to Slaves" featured on their uniforms. Although the regiment suffered an outbreak of smallpox, the British sailed for England in 1776 with approximately 300 formerly enslaved men on board. Estimates are that approximately 100,000 enslaved men escaped slavery by fighting for the British throughout the Revolutionary War.

In an op-ed for *The Washington Post*, historian Woody Holton wrote that the British army kept their promise to the formerly enslaved.

"Starting in 1783, ... more than 3,000 formerly enslaved Blacks resettled in Nova Scotia," Professor Holton wrote. "Many of the freed people found work in the province's thriving logging industry, but they suffered continuous abuses from whites, and in 1792, more than 1,200 of them accepted a British offer to resettle once again, this time in the new British colony of Sierra Leone on the West African coast."

A British case turns the tide of revolution

In 1772, an important English lawsuit—*Somerset v. Stewart* may have turned the tide of the American Revolution. The case involved James Somerset, an enslaved man who was purchased in Boston by Charles Stewart. In 1769, Stewart returned to England, bringing Somerset with him. In 1771, Somerset escaped and was recaptured. Stewart had Somerset imprisoned on a ship bound for Jamaica, ordering him to be sold to a plantation there. Somerset had been baptized while in England and his godparents intervened on his behalf bringing the case to the English Court of King's bench, which was asked to determine whether an enslaved person on English soil was protected from being forcibly removed from the country.

In 1772, William Murray, also known as Lord Mansfield, who presided over the case, issued a ruling stating, "The state of slavery is of such a nature that it is incapable of being introduced on any reasons, moral or political, but only by positive law [meaning authorized by the state] ..." Essentially, Lord Mansfield said that Somerset had to go free because England had passed no **statute** (positive law) authorizing slavery. The decision caused some confusion as to whether it had abolished slavery in England. In a later 1785 case, Lord Mansfield said that his decision in Somerset only decided that a slave could not be forcibly removed from England without consent. England would formally abolish slavery in 1834 with the Slavery Abolition Act.

The *Somerset* decision was felt in the colonies. Although Professor Harvey doesn't believe the decision was a major cause of the American

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Revolution, he says it provides important context for the transformation of the colonists from just resisting Parliament's authority into a movement for independence, especially in the southern colonies, some of which were reluctant to take up arms against England.

"On one hand, the very fact that Lord Mansfield's ruling applied specifically to England and did nothing to alter the legal status of slavery in the colonies added yet another example of the British government insisting on the legal difference between England and the colonies, which angered many patriots," Professor Harvey says. "On the other hand, the perceived significance of the decision far outstripped the narrowness of the ruling. Especially important, knowledge of the ruling circulated among the enslaved in North America, inspiring efforts of some to free themselves and reach England, which the *Somerset* decision legally defined as a place of freedom."

Professor Harvey says that the *Somerset* decision may also have contributed to a wave of efforts by enslaved people to organize collective resistance.

"Enslaved people recognized that colonial rulers were divided—opponents of imperial [British] authority versus its supporters—and they associated colonists with enslavement and the royal government with the possibility of freedom," he says. "Those dynamics came to a head in the fevered response to Dunmore's Proclamation in late 1775. It pushed many Virginians to support independence."

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No Slavery in the North — A Morally Satisfying Myth

For the most part, slavery is thought of as a Southern institution, with the North distancing itself from culpability or complicity. The truth is that all states benefited in various ways from the institution of slavery.

"For northern trading hubs like New York and Rhode Island, the institution of slavery directly influenced their economies and the wealth and power of many of their leading residents," according to the American Civil War Museum.

Anne Farrow, co-author of the book *Complicity: How the North Promoted, Prolonged, and Profited from Slavery*, told National Public Radio (NPR) that at its height, the enslaved population in the North reached more than 40,000 and that the port of Rhode Island was the epicenter of the slave trade in the North.

"Of the documented slaving voyages that left from the American Colonies and went to Africa, Rhode Islanders were at the helm of almost 90% of them," Farrow told NPR. "Coastal Rhode Island—Bristol, Newport, the cities in between—were so heavily involved in the slaving trade they were also bringing many people back to Rhode Island to do work."

Believing the myth

Sean Harvey, a history professor at Seton Hall University who teaches courses on colonial America, the American Revolution and the Civil War, says "Most Americans continue to think of enslavement as a 'Southern' practice. Yet, slavery was legally established in each of 'the thirteen colonies' and, though at the time of the Constitutional Convention only about 4% of the population of the states north of Maryland was enslaved, that number was much higher in specific regions."

One of those regions, Professor Harvey notes, was New York City and the surrounding areas, including northeastern New Jersey. Approximately 15% of the population in that region was enslaved. According to U.S. Census numbers, New Jersey reached its highest number of enslaved people—12,422—in 1800, with the most—2,825—in Bergen County.

New Jersey was, in fact, the last Northern state to abolish slavery. New Jersey's gradual emancipation law stipulated "Every child born of a slave...after the fourth of July (1804) ... shall be free but shall remain the servant of the owner of his or her mother... until the age of 21 for women and 25 for men." The law, passed on February 15, 1804, made no provision to free those already enslaved. According to the Equal Justice Initiative, a nonprofit organization that provides representation to the wrongly convicted, the New Jersey law actually delayed the end of slavery in the state for decades.

"After the American Revolution, enslavement gradually disappeared from states north of Maryland," Professor Harvey says, "and nowhere more gradually than in New Jersey, where some people remained legally enslaved until the eve of the Civil War."

New Jersey also initially rejected ratification of the 13th Amendment in 1865. It was the last Northern state to ratify the amendment on January 23, 1886.

"Over the first few decades of the 19th century, changing economic interests, religious ideas, and activism fueled the growth of antislavery, not necessarily abolitionist, sentiment, in the northern states," Professor Harvey says. "In the aftermath of the Civil War, many of those outside the South celebrated the role of ancestors and others in opposing the expansion of enslavement—casting enslavement itself as Southern. Ultimately, it was, and remains, a morally satisfying myth for people outside the South," he said. *—Jodi L. Miller*

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Making compromises

In addition to being an influence on the Revolutionary War, slavery played a part in the country's founding documents—not just the Declaration of Independence, but also the U.S. Constitution. The issue was very much present at the Constitutional Convention, held in Philadelphia in 1787.

The word "slavery" did not appear in the U.S. Constitution until the 13th Amendment, which abolished the institution, was **ratified** in December 1865. In 1787, when the Founding Fathers gathered at the Constitutional Convention in Philadelphia to rewrite the Articles of Confederation, which would eventually produce the U.S. Constitution, they deliberately left out the word.

In fact, according to Constitutional Convention records, James Madison, a slaveholder himself, said it would be "wrong to admit in the Constitution the idea that there could be property in men." While the word may not appear in what the Founding Fathers wrote, slavery is clearly referred to indirectly in the U.S. Constitution in at least three places.

The first and most hotly debated is the three-fifths clause (Article I, Section 2). It states, "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons." The "other persons" referred to are enslaved persons.

With this section, the framers were hashing out how representation in the U.S. House of Representatives would be determined and decided it would be by population. The higher population a state had, the more representation, and therefore, the more power it would have in the House. The South, wanting to increase its population, advocated for counting enslaved people among its population numbers. The North only wanted to count free persons or citizens. The opposing views created a heated debate.

Professor Harvey explains that the three-fifths ratio compromise was one that James Madison had proposed years earlier when the Articles of Confederation were written. The proposal resurfaced at the Convention in Philadelphia. Essentially, Professor Harvey says, it was supposed to balance the interests of states with large numbers of enslaved people and states with much smaller numbers of enslaved people.

"Ultimately, fear of the lower Southern states refusing to join the union under the Constitution convinced Northern delegates to agree to the three-fifths ratio," Professor Harvey says.

In Article 1, Section 9 of the U.S. Constitution, the framers tackled the Atlantic slave trade, though those words are never used. Essentially, it says that the federal government would not interfere in the slave trade until 1808.

In a 2015 op-ed that appeared in *The New York Times*, Sean Wilentz, a history professor at Princeton University, noted that the Southern states at the Constitutional Convention wanted slavery enshrined in the U.S. Constitution as a national institution. After much debate, the delegates compromised, agreeing to leave the issue up to the states.

"The proslavery delegates desperately wanted the Constitution to bar the national government from regulating the Atlantic slave trade, believing it would be an enormous blow against slavery," Professor Wilentz wrote. "The first draft of the Constitution acceded to their bluster. But antislavery Northerners erupted in protest and proposed that the new government have the power not only to regulate the trade but also to abolish it after 1800. The proslavery men, over Madison's furious objection, got the date extended to 1808."

Finally, Article 4, Section 2 of the U.S. Constitution is referred to as the fugitive slave clause. Again, the text never uses the word slave. It states, "No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."

According to Professor Wilentz, "The clause was a measure of slavery's defensiveness, prompted by then landmark Northern gradual **emancipation** laws, and was so passively worded that enforcement was left to nobody, certainly not the federal government. Antislavery Northerners further refined the wording to ensure it did not recognize slaves as property."

In the end, the Founding Fathers and the framers of the U.S. Constitution prioritized the unity of the country over the abolishment of slavery. The compromises made in 1787, however, only delayed the reckoning over the institution for another 73 years. •

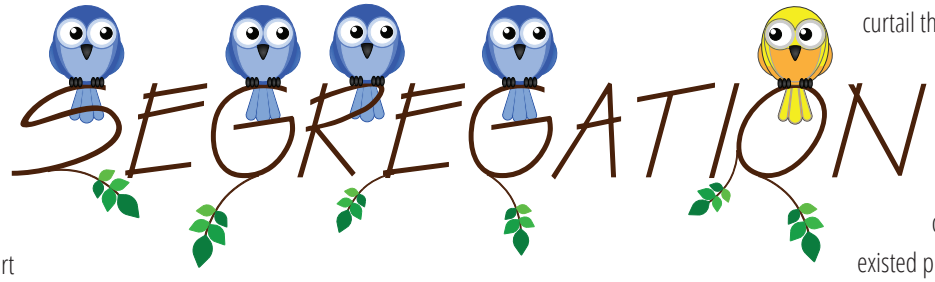
1. Why do you think the framers wanted to keep the word "slavery" out of the U.S. Constitution? Explain your answer.
2. What do you think about the compromises made on slavery at the Constitutional Convention?
3. Read the sidebar *No Slavery in the North —A Morally Satisfying Myth* on page three. What do you think about New Jersey's relationship with slavery? Did it surprise you? Why do you think it's not widely known that there were enslaved in the North? Explain your answer.

Freedom Gives Way to Segregation *by Suzi Morales*

The Thirteenth Amendment to the U.S. Constitution, ratified in December 1865, abolished slavery in the United States. While the amendment indicated progress, it was also during this time period that legal segregation was ushered in as new laws were used to oppress and assert control over the formerly enslaved. Those laws would last for more than 100 years.

A step forward and several steps back

In the 1800s, African Americans made very little progress in stopping segregation. The Civil Rights Act of 1875, signed into law in March of that year, made segregation in schools, churches, and public transportation illegal as "to citizens of every race and color, regardless of any previous condition of servitude." However, in 1883, the U.S. Supreme Court **overturned** the law in a group of cases known as the Civil Rights Cases. The Court ruled that the Civil Rights Act of 1875 was unconstitutional because the federal government did not have the power to regulate private, non-governmental actors like hotel and theater owners.



In the 1896 case of *Plessy v. Ferguson*, the U.S. Supreme Court upheld a Louisiana law—the Separate Car Act—requiring separate railroad cars for Black and white passengers. The Louisiana law is where the phrase "separate but equal" comes from, although the actual wording in the law required railroads to provide "equal but separate accommodations for the white, and colored, races."

Homer Plessy, who was seven-eighths white, but technically Black under Louisiana law, was recruited by a civil rights group that wanted to overturn the law. Plessy took a seat in the whites-only car on a Louisiana train. When he refused to vacate his seat, he was arrested. His attorneys argued that the Separate Car Act violated the U.S. Constitution's Thirteenth and Fourteenth Amendments.

The Court's **majority opinion** in *Plessy* stated, "We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it."

In the Court's lone dissent, Justice John Marshall Harlan wrote, "I am of the opinion that the statute of Louisiana is inconsistent with the personal liberties of citizens, white and black, in that State, and hostile to both the spirit and the letter of the Constitution of the United States."

Origins of segregation

After the Civil War in the South, where slavery had been a way of life for more than two centuries, people had to decide on a replacement for slavery to organize society, according to James Goodman, an African Studies professor at Rutgers University.

Southern state legislatures passed what are known as Black Codes. According to the National Constitution Center, "Although often professing to respect the equality and civil rights of the newly **emancipated**, in reality most Black Codes were specifically designed to curtail the economic, political, and social freedom of African Americans, and through a combination of private and public efforts, restore much of the slave system that had existed prior to the war."

Vagrancy laws, which essentially criminalized being out of work, were central to Black Codes. For example, Mississippi—the first state to enact a Black Code—had a vagrancy **statute** that said "...all freedmen, free negroes and **mulattoes** in this State, over the age of eighteen years...with no lawful employment or business...shall be deemed vagrants...."

The Thirteenth Amendment abolished slavery; however, there is a **caveat** in the amendment that makes an exception in the case of "punishment for a crime whereof the party shall have been duly convicted." That loophole allowed convict leasing to flourish. Convict leasing was a practice where prisons or jails provided convicts to private parties, like plantations, or corporations, for "lease." For example, a conviction for vagrancy via the Black Codes could send Black men to prison where they would be used as unpaid labor, essentially being "re-enslaved."

Black Codes morphed into "Jim Crow" laws, which reinforced segregation. The laws were named after a negative stereotype of a Black man that originated from an 1830s minstrel routine called "Jump Jim Crow." The Jim Crow character was portrayed as clumsy and dim-witted, and it became a common insult for Black people.

De Jure versus *de facto* segregation

There are two types of segregation—*de jure* and *de facto*. De jure segregation is so-called "legal segregation." According to Professor Goodman, this means "the laws that make a distinction between what white people could do and what Black people could do." Professor Goodman notes that state laws prohibiting Black and white people from marrying each other is an example of a *de jure* segregation law.

In addition, *de jure* segregation forced Black people to attend separate schools and churches, use public bathrooms marked "for colored only" and sit in the rear of a bus. Professor Goodman says *de jure* segregation laws restricted Black people's access to everything from playgrounds and drinking fountains to courts

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and voting. He also notes that segregation was not only taking place in the South. Professor Goodman says that resistance to **integration** was just as strong in the North.

In 1954, the U.S. Supreme Court issued a ruling in *Brown v. Board of Education of Topeka, Kansas*. The *Brown* case combined five lawsuits against school districts in Kansas, South Carolina, Delaware, Virginia and the District of Columbia, alleging that separate school systems for Black students and white students were unequal and violated the 14th Amendment's Equal Protection Clause. The Court ruled that the Equal Protection Clause does not allow government entities to make

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Fighting to End Segregation with Civil Disobedience

Civil Disobedience is the refusal to obey government demands or laws and accepting the consequences of those actions—such as arrest or punishment—with no resistance. It was the cornerstone of the civil rights movement beginning in the mid-1950s, and led by Dr. Martin Luther King Jr., who preached non-violence.

The goal of civil disobedience is to effect change through protest or disruption, and not wait passively for change to come. To that end, the civil rights movement used sit-ins, boycotts, and marches to bring attention to unjust segregation laws.

"All segregation **statutes** are unjust because segregation distorts the soul and damages the personality," Dr. King wrote in a 1963 letter to Southern white religious leaders who had issued a public statement questioning his tactics in ending segregation. "It gives the segregator a false sense of superiority and the segregated a false sense of inferiority."

Montgomery bus boycott

In an act of civil disobedience on December 1, 1955, Rosa Parks refused to give up her seat on a Montgomery, Alabama bus to a white man. She was arrested. What came next was a boycott of the Montgomery bus system that would last 381 days. At the time, African Americans comprised 45% of Montgomery's population and 75% of the customers that rode the buses. According to some estimates, the boycott cost the city of Montgomery $3,000 per day or more than $1 million.

The boycott paid off. In November 1956, with the case of *Browder v. Gayle*, the U.S. Supreme Court ruled that bus segregation violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The Montgomery bus boycott ended in December 1956.

Greensboro sit-ins

In February 1960, four African American students from North Carolina Agricultural and Technical State University sat at a whites-only lunch counter at a Woolworth's store in Greensboro, North Carolina, on a Monday and politely asked for service. They were refused. The next day, 29 students from the college did the same thing with the same result. The protest grew each day. By Saturday, 1,400 students—Black and white—were participating in the protest, which had spread to other lunch counters in Greensboro. Some students sat at counters waiting for service, while others picketed outside the stores.

According to the North Carolina History Project, "Crowds of white men began appearing at lunch counters to harass the protesters, often by spitting, uttering abusive language, and throwing eggs."

The sit-ins were at least partially successful. By the end of February 1960, some lunch counters had **integrated**, while other stores elected to close their lunch counters to avoid protest, according to the North Carolina History Project.

Waiting for change

Dr. King wrote that letter to religious leaders from a jail cell in Birmingham, Alabama after he was arrested for participating in a nonviolent demonstration. In their criticisms of Dr. King's methods, those leaders encouraged him and his followers "to wait," which Dr. King addressed in his letter.

"We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed," Dr. King wrote. "Frankly, I have never yet engaged in a direct-action movement that was 'well timed' according to the timetable of those who have not suffered unduly from the disease of segregation. For years now I have heard the word 'wait.' It rings in the ear of every Negro with a piercing familiarity. This 'wait' has almost always meant 'never.'

Later in the letter, Dr. King wrote, "The nations of Asia and Africa are moving with jet-like speed toward the goal of political independence, and we still creep at horse-and-buggy pace toward the gaining of a cup of coffee at a lunch counter. I guess it is easy for those who have never felt the stinging darts of segregation to say 'wait.'"

—Jodi L. Miller

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distinctions between individuals. In other words, everyone needs to be treated the same regardless of race.

In its unanimous ruling, the Court said, "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

While the Court's ruling made *de jur*e segregation in schools illegal, change was slow to come. According to the Library of Congress, schools in the South would not be **integrated** until many years after the Court's ruling.

After the *Brown* decision, other gains against segregation followed. The 1964 Civil Rights Act, passed by Congress and signed into law by President Lyndon Johnson, prohibited discrimination on the basis of race, color, religion, sex, or national origin. In the 1960 case of *Boynton v. Virginia*, the U.S. Supreme Court desegregated interstate transportation terminals like bus stations. All those gains, Professor Goodman points out, only targeted *de jure* segregation.

"All the discrimination doesn't just disappear," notes Professor Goodman who says that *de facto* segregation is a way to segregate without laws, meaning that people are segregated into separate areas by fact rather than by law or policy. Even today, Professor Goodman says there is *de facto* segregation in schools due to discrimination in housing.

"Everything follows from where people live," says Professor Goodman. "That is, if people are living in racially divided neighborhoods, that will also affect where children go to school."

Professor Goodman says the way to fight segregation is to realize that it isn't just about individual prejudice but recognizing the systems that have been put in place to further racial discrimination. •

1. After the U.S. Supreme Court declared that segregation was unconstitutional, Professor Goodman points out, "discrimination doesn't just disappear," meaning it didn't change the way white Southerners felt about African Americans. Is there something the Court could have done to help change the way these people thought? Explain your answer.
2. Read the sidebar *Fighting to End Segregation with Civil Disobedience* on page six. What do you think about the tactics used in the civil rights movement? How do those tactics hold up today? Explain your answer.

Danger for African Americans When the Sun Goes Down

by Phyllis Raybin Emert

Instead of welcoming signs at the city limits of small-town America in the late 19th and 20th centuries, there were warnings. A sign in one Connecticut town read, "Whites Only Within City Limits After Dark."

Other signs across the country were more forceful, often using foul language and racial slurs. "[Racial slur], God Help You If the Sun Ever Sets on You Here!" was one of the more hateful examples. Towns that contained these signs were referred to as sundown towns. The wording on the signs varied in each town, but the warning was clear—no African Americans after dark.

The late sociologist and historian James W. Loewen, who wrote *Sundown Towns – A Hidden Dimension of American Racism* and is considered the foremost expert on the subject, estimated that the number of sundown towns in his home state of Illinois alone was 507—"two-thirds of all the towns in the state." Across the country, from 1890 until around 1968, sundown towns numbered in the thousands. Not all of them had warning signs, although Loewen found evidence of 150 such signs in 31 states. What all these towns did have in common is that they were all-white.

In his book, first published in 2005 and then updated in 2018, Loewen defines a sundown town as "any organized **jurisdiction** that for decades kept African Americans or other groups from living in it and was thus 'all-white' on purpose." Loewen explained that all-white is in quotes because some towns allowed for one African American household and some white households had live-in Black servants; however, these would still be considered sundown towns.

In addition, Loewen notes in his book that sundown towns excluded other marginalized groups, including Asian Americans, Native Americans, Mexican Americans and Jewish people. While Loewen tracked sundown towns from coast to coast, they were actually most prevalent in the Northeast, Midwest and Northwest parts of the United States.

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Origins of sundown towns

Bruce S. Morgan, president of the New Brunswick Area chapter of the NAACP (National Association for the Advancement of Colored People), says that sundown towns actually date back to colonial days and were originally formed to maintain community control.

"They legitimized discrimination, allowing communities to exclude anyone identified as different," Morgan says. "They evolved into towns discriminating along strict racial/ethnic lines."

As more African American families left the South to escape racial violence and pursue economic opportunities during what is known as the Great Migration (from approximately 1910 to 1970), the number of sundown towns increased. According to BlackPast.org, an online encyclopedia developed by an historian and professor at the University of Washington which provides information about African American history, "many sundown towns used discriminatory housing **covenants** to ensure no non-white person would be allowed to purchase or rent a home."

For example, in New England restrictive covenants began to appear in property deeds as early as 1905, according to the New England Historical Society. One such covenant stated, "No portion of these premises shall ever be sold to or occupied by anyone other than members of the white or Caucasian race." These covenants made an exception for "live-in servants."

According to the Oregon Historical Society, although the citizens of Oregon opposed slavery, they also opposed living alongside African Americans. Oregon, which achieved statehood in 1859, enshrined an exclusion clause into its state constitution prohibiting African Americans from being in the state, owning property or making contracts. This effectively made Oregon a "whites-only" state. While the Oregon Historical Society says that the "exclusion clause was not generally enforced, it had the intended effect of discouraging Black settlers." The 1860 U.S. Census reported that Oregon had 128 African American residents out of a total population of 52,465. To this day, the population of Oregon is just 3.36% Black, according to the U.S. Census. In comparison, New Jersey's population is 15.4% Black—nationwide the Black population is 13.6%.

Some sundown towns promoted their racism as a feature of living in the town, according to BlackPast.org. The website references an Oklahoma town that promoted itself in the 1940s with postcards that read, "A Good Place to Live...No Negroes." Similarly, in an effort to tempt potential home buyers, an Arkansas town advertised, "Cool Summers, Mild Winters, No Blizzards, No Negroes."

In 1968 the federal government took steps to prohibit discrimination. Title VIII of the Civil Rights Act (the Fair Housing Act) "prohibit[ed] racial discrimination in the sale, rental, and financing of housing." The US Supreme Court case of *Jones v. Mayer*, also in 1968, "required that all housing, with no exception, [be] open without regard to race...as a matter of legal right." The legislation, however, took decades to be implemented across the country.

Driven out by force

In the past, white mobs have used violence and intimidation to drive out African Americans, as well as other marginalized communities. In 1902, *The New York Times* ran a story about the last African American being driven out of Decatur, Indiana. The article stated, "About a month ago a mob of fifty men drove out all the negroes who were then making that city their home." An item from the *Fort Wayne News Sentinel* in 1919 reported on a petition brought by 328 residents asking the mayor of Huntington, Indiana to "deport" its negro population.

"There has been a very long history of whites seizing property and towns owned, populated and developed by Blacks as well as **Indigenous** people," says Morgan. "Justice for the victims has remained elusive. Courts have ignored the evidence." He adds that there was no justice or **reparations** to Black victims of numerous riots and massacres across the country.

Elliot Jaspin, a Pulitzer Prize winning journalist, has written about this topic. In an interview with History News Network, Jaspin recounted that as early as 1864 until at least 1923 white Americans engaged in campaigns to drive out the Black population in their towns.

"The white community would issue an ultimatum to Blacks that they would have to leave within a certain amount of time—usually measured in hours—or they would be killed," said Jaspin.

According to Jaspin, these incidents occurred in both the North and South, and in at least 12 cases left whole counties empty of Black residents. One such case occurred in Forsyth County, Georgia where 1,100 Black residents were driven from their homes in 1912. Eventually 98% of the African American population in the county would be driven out. Forced to abandon their homes, most Black residents left with nothing, specifically no compensation for their property, which in some cases encompassed hundreds of acres.

Patrick Phillips, who wrote the book Blood at the Root, which chronicles the events in Forsyth County, explained in a National Public Radio (NPR) interview that the remaining members of Forsyth County employed what is known as "adverse possession," a common law in some states that allows people to obtain abandoned properties.

"Over the years that followed, a lot of white citizens simply went down to the county courthouse, started paying taxes on a lot that abutted their own which had previously been owned by a Black property owner," Phillips said. "After seven years, they could apply for title to the land."

Today, the land in Forsyth County has increased

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Sundown CONTINUED FROM PAGE EIGHT

in value tremendously and is one of the most affluent counties in Georgia. It remains mostly white at 72.6%, with 4.9% of its residents being African American.

What about your town?

A database of known sundown towns across the country was comprised by Loewen and is hosted and maintained by Tougaloo College in Mississippi on their History and Social Justice website. The database lists 31 New Jersey towns that were considered sundown towns. For example, Seaside Park was once a for-whites-only resort town.

"Unfortunately, not facing the past leaves many sundown town practices in place. Sundown police forces, in addition to being all-white, may still be viewed by themselves and other residents as a city's first line of defense against Black interlopers," Loewen writes in the preface to his book. "As a result, they engage in DWB ("Driving While Black") policing, targeting Black motorists for minor infractions like failing to signal turns. They then subject Black drivers and their passengers to uncomfortable questions as to what they are doing in town."

In fact, Ferguson, MO, the site of riots after Michael Brown, an unarmed Black man, was killed by a white police officer, was a sundown town between 1940 to 1960.

In his book Loewen recommends a three-step process "to help sundown towns transcend their pasts and end second-generation sundown town issues." Those steps are: 1. admit it (We did this.); 2. apologize (It was wrong, and we apologize.); and 3. renounce (And we don't do it anymore.).

One notorious sundown town—Martinsville, Indiana—is making an attempt to do that. In 1968, Carol Jenkins, a 21-year-old African American woman from a neighboring town, was stabbed to death with a screwdriver on Martinsville's main street because she was there after dark, selling encyclopedias. In 2017, city officials dedicated a memorial to her that sits at the entrance to Martinsville's city hall.

At the dedication ceremony, Martinsville's mayor said, "On behalf of the Martinsville community, we are profoundly sorry for what happened to Carol and for the pain and sadness and grief that followed her family and friends. Her tragic death makes no more sense today than it did nearly 50 years ago."

"It's very important for people to know their entire history—good and bad. Studying their past opens a window enabling them to see what has failed," Morgan says. "Having these issues out in the open allows for an open discussion so diversity, conversations, and understanding can take place." •

1. In the article, James W. Loewen talks about "second-generation sundown town issues," with the events of Ferguson, MO as an example. What other "second-generation sundown town issues" do Black people face today?
2. What do you think of Loewen's three-step process to help sundown towns come to grips with their history? What other steps can be taken to change people's attitudes toward their African American neighbors?
3. What do you think of "adverse possession," which was used to claim property from Black property owners in Forsyth County, GA?

Citizen's Arrest Laws Trace Origins to Slavery

by Phyllis Raybin Emert and Jodi L. Miller

Have you ever heard the phrase "I'm making a citizen's arrest?" Citizen's arrest laws date back to 13th century England. They were a way of helping local sheriffs enforce the law because often they couldn't get to the crime scene for hours or even days.

Forty states, including New Jersey, still have some form of citizen's arrest laws on the books; however, the language of these statutes varies from state to state. For example, New Jersey's law states "A citizen has the right to arrest without a **warrant** where it appears that a crime had actually been committed, and that there was probable or reasonable cause to fairly suspect the person arrested to be guilty."

With law enforcement more accessible—especially with the advent of 911—it leaves many to wonder why citizen's arrest laws still exist and point to their racist origins.

For example, Ahmaud Arbery, a 25-year-old African American jogger in Georgia, was killed by two white men—a father and son—in February 2020. The men thought he was

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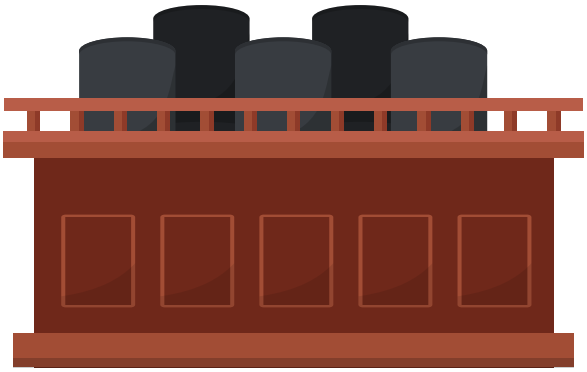
Citizen's Arrest CONTINUED FROM PAGE NINE

a burglar though they did not witness him committing any crime. The shooting was videotaped by a third white man, and all three were eventually charged with felony murder.

The defendants in the case cited Georgia's 1863 Citizen's Arrest Law as their defense. At the time, Georgia's law stated, "A private person may arrest an offender if the offense is committed in his presence or within his immediate knowledge. If the offense is a felony and the offender is escaping or attempting to escape, a private person may arrest him upon reasonable and probable grounds of suspicion."



The jury was not swayed by the defense's argument. In November 2021, all three men were convicted on **felony** murder charges, as well as other charges. The state of Georgia sentenced the father and son to life in prison with no possibility of parole, while the man that shot the video was sentenced to life with the possibility of parole after 30 years. In February 2022, a federal jury convicted all three of hate crimes and violating Arbery's civil rights by targeting him because he was Black. On the federal conviction, the son was sentenced to life plus 10 years, the father was sentenced to life plus seven years and the man who shot the video was sentenced to 35 years.

In May 2021, the state of Georgia **repealed** its 1863 Citizen's Arrest Law, passing a new version of the law. Georgia's new citizen's arrest law mandates that citizens "shall not use force which is intended or likely to cause great bodily harm or death but may use reasonable force to the extent he or she reasonably believes necessary to detain an individual."

Making a citizen's arrest

Ira P. Robbins, a professor at American University Washington College of Law wrote an academic paper in 2016 on this subject titled *Vilifying the Vigilante: A Narrowed Scope of the Citizen's Arrest*. Professor Robbins told *The New York Times*, "A member of the public doesn't know—and likely cannot understand—the nuances of citizen's arrest, particularly when it comes to the use of deadly force. That's why it's so dangerous for people to take the law into their own hands."

Bruce Morgan, president of the New Brunswick Area chapter of the NAACP (National Association for the Advancement of Colored People), says, "Citizen's arrest laws have, for a long time, been conducted under the guise of the average Joe Citizen 'aiding the police,' when, in truth, it's been citizens acting as the police."

An article in the *Harvard Political Review* connects citizen's arrest laws to slavery. The article explains that when citizen's arrest laws came to the colonies, they "became a convenient legal pretext for the persecution of the enslaved population." The article points out that during that time enforcing the **subjugation** of the enslaved was thought of as a public responsibility. It also connects citizen's arrest laws to "volunteer militias which gave way to formal slave patrols." Those slave patrols, according to the article, morphed into the "organized American police forces" we have today.

Joseph Margulies, a professor at Cornell Law School, told the Pennsylvania Capital-Star that citizen's arrest laws "derive from a racist past," advising that they were "slave-catching laws for slaves who attempted to flee."

Watching the neighborhood

In his paper, Professor Robbins takes issue with neighborhood watch groups that "are functioning as police officers without the requisite training that police receive." He points to the example of George Zimmerman fatally shooting 17-year-old Trayvon Martin in February 2012.

"George Zimmerman is a contemporary example of a neighborhood watch group member taking the law into his own hands," Professor Robbins wrote. "Despite instructions from a police dispatcher to refrain from following Trayvon Martin, he continued to pursue the unarmed teenager, eventually killing Martin."

Zimmerman, who served as the neighborhood watch coordinator in his gated community, was charged with **second degree murder** and **manslaughter**. In July 2013, a Florida jury **acquitted** Zimmerman of all charges. The U.S. Department of Justice investigated the case for three years but did not bring civil rights charges against him.

Professor Robbins advocates for drastically limiting the scope of citizen's arrest laws, confining it to three exceptions. He devised model legislation, called The Anti-Vigilante Act, which would allow shopkeepers to detain shoplifters, private security guards to do the same, and allow police officers to arrest suspects outside of their jurisdiction when they are in hot pursuit. So far, no state has implemented Professor Robbins' model legislation. •

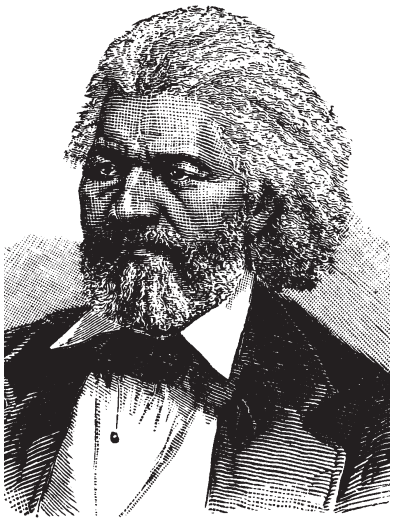
1. Do you think citizen's arrests laws are still needed? Explain your answer.
2. What would your model legislation to curtail citizen's arrest laws look like? Would you provide more exceptions or less than Professor Robbins' legislation? How would you address the enduring racial component of these laws? Explain your answer.

Struggle to Protect African American Voting Rights Continues

by Maria Wood

When the first federal elections were held in the United States only white men who owned property could vote. Since then, the franchise has been expanded three times through the 15th, 19th, and 26th amendments to the U.S. Constitution.

Frederick Douglass, the famous African American abolitionist, recognized the importance of having access to the ballot box. Shortly after the Civil War ended, he said, "Slavery is not abolished until the Black man has the ballot." After the 14th Amendment, which would give the formerly enslaved birthright citizenship, was proposed in 1866, Douglass said, "Without the vote, my citizenship is but an empty name."



In February 1870, the states ratified the 15th Amendment, which stated, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." To be clear, the amendment referred to the right of Black men to vote. Women would not have that right until the 19th Amendment was ratified in 1920.

After the 15th Amendment was passed, there was a period, during the Reconstruction Era (1865-1877), when many Black men were elected to office. According to History Makers, a research and educational institution focused on African American history, during the Reconstruction Era, more than 1,500 African Americans were elected to various local, state and national political office in the former Confederate states, including seven who were elected as U.S. senators or congressmen.

White Southerners, however, pushed back and devised ways to hold onto control in the South, conspiring to end Reconstruction by making a deal to support the election of Rutherford B. Hayes as President of the United State in exchange for the withdrawal of federal authority in the South. With no federal oversight in the region, by 1877 control of the South fell back into the hands of white men and Reconstruction ended. As a result, by 1905, African American men, for the most part, had been **disenfranchised** in every Southern state. In addition, the last African American elected to the U.S. Congress was forced out in 1901.

The backlash begins

Soon after the passage of the 15th Amendment, Southern states instituted voting laws that were designed to disenfranchise Black voters. For example, grandfather clauses stated that if you had the right to vote before 1867 or had a "lineal descendant" (in other words a grandfather) who had the right to vote, you would be exempt from "educational, property or tax requirements for voting." The freedmen only had the right to vote since the 15th Amendment's adoption in 1870.

In addition, literacy tests, **poll taxes**, and outright intimidation blocked African Americans from exercising their right to vote. Jon M. Greenbaum, chief counsel and senior deputy director for the Lawyers' Committee for Civil Rights under Law, a civil rights organization, points to the desire for white people to maintain power in Southern states along with racism for the enactment of those restrictive voting laws. After the Civil War, the plantation system, which the South's economy had relied on, ended, he says. So, in the late 1800s, there were more Black people than white people in the South.

"If all those Black people are able to vote, they're going to be determinative about who gets elected," Greenbaum says. "And that was a real threat. You combine that with racial **animus** toward Black people and you can see the reasons why in the later 1800s, there were these attempts to undermine the 15th Amendment and to effectively take the right to vote away from Black people, especially in the South."

The states justified those laws by contending all people were impacted equally. But the laws effectively made it more difficult for Black people to vote. For example, in order to vote, some states charged residents a poll tax. White people could afford the poll tax, while Black people generally could not. While poll taxes are mostly associated with Southern states, some Northern and Western states—California, Connecticut, Maine, Massachusetts, Minnesota, New Hampshire, Ohio, Pennsylvania, Vermont, Rhode Island, and Wisconsin—had them as well.

In addition, several states instituted literacy tests. Although everyone had to take the literacy test, African Americans faced a tougher challenge because at the time they may not have had the same education as white people, says Penny Venetis, a professor at Rutgers Law School in Newark and an expert in civil rights law.

"Officials could say, everybody had to do it, it's a basic requirement of citizenship, but the impact was greater on the African American community," Professor Venetis explains. "Voting is how we exercise political power. If you dilute one group's political voice, they can't participate in democracy."

The courts for decades upheld those restrictions—"legitimizing that which was illegitimate," Greenbaum says. By the 1950s, the fight for expanded voting rights for African Americans began.

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Civil Rights Act of 1957

In 1957, President Dwight D. Eisenhower signed into law the Civil Rights Act of 1957, the first major civil rights legislation since the Reconstruction Era. It gave the U.S. Department of Justice (DOJ) the power to prosecute any violation of voting rights.

Advocates launched a series of demonstrations in the early 1960s to push for civil rights, including access to the ballot box. One of those marches took place on March 7, 1965, when John Lewis, who later became a U.S. congressman representing Georgia's 5th congressional district, led marchers across the Edmund Pettus Bridge in Selma, Alabama. The marchers were met with brutal force by state troopers in an event later termed "Bloody Sunday." The sight of troopers beating peaceful demonstrators shocked the nation and spurred public opinion in favor of racial justice.

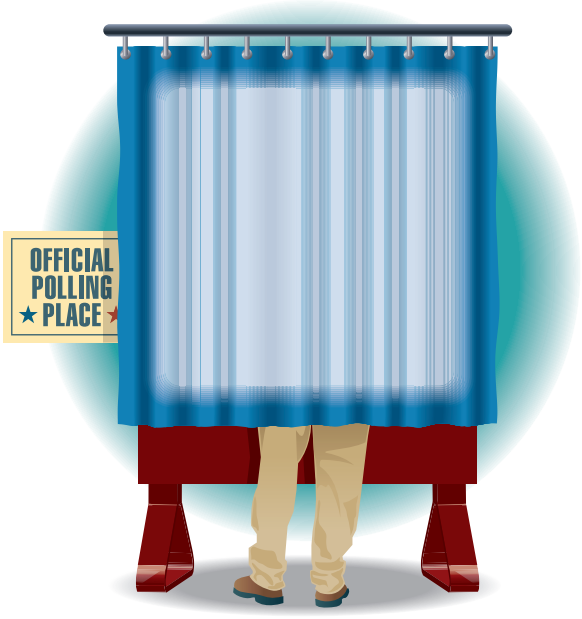
"You had extraordinary measures Black people in the South and others took to fight, and in some cases die, for the right to vote," Greenbaum says. "It took a period of decades to dismantle the disenfranchisement laws. Many Black people in the South went their entire lives never able to exercise their right to vote."

Voting Rights Act of 1965

Out of that long struggle came the landmark Voting Rights Act (VRA) of 1965. Signed by then President Lyndon Johnson in a ceremony witnessed by Rev. Martin Luther King Jr., the act outlawed literacy tests and gave the federal government the power to oversee voter registration in states where fewer than 50 percent of the non-white population was registered to vote.

Section 5 of the VRA, known as the **"preclearance"** provision, mandated that the DOJ or a federal district court review and approve any changes in voting laws in states with a history of voting practices that unfairly blocked African Americans from the ballot box. Section 4 of the VRA set out a formula to decide which states were subject to preclearance.

According to the DOJ's Civil Rights Division, the original states covered by preclearance were the entire states of Alabama, Georgia, Louisiana, Mississippi, South Carolina and Virginia, as well as parts of North Carolina. Between 1968 and 1972, the entire states of Alaska, Arizona and Texas were added, as well as parts of California, Florida, Michigan, New York and South Dakota.



The same year the VRA was signed into law, the 24th Amendment to the U.S. Constitution was **ratified**. The amendment banned poll taxes for federal elections. With the 1966 case of *Harper v. Virginia Board of Elections,* the U.S. Supreme Court further ruled that poll taxes in all elections—federal, state, or local—are unconstitutional.

The VRA significantly increased African American voter registration. For example, according to the American Civil Liberties Union, in Mississippi, the percentage of African Americans registered to vote rose from 6.7% in 1964 to 59.8% by 1967.

Along comes *Shelby v. Holder*

Since it became law in 1965, the VRA was reauthorized, with some amendments, five times—in 1970, 1975, 1982, 1992 and 2006. According to the Congressional Research Service, on all those occasions, "the House and Senate agreed that unique federal action was necessary to protect voting rights for racial minorities and members of certain language-minority groups."

In 2013, the U.S. Supreme Court ruled on a case that dealt with Section 5 of the VRA. The suit began in 2010, when Shelby County in Alabama filed a suit contending Section 5's preclearance provision was unconstitutional. In *Shelby v. Holder* the Court ruled that the formula used to determine which states fell under Section 5 preclearance was outdated.

Writing for the majority, Chief Justice John Roberts said the preclearance standards set in 1965 no longer apply. "The formula captures States by reference to literacy tests and low voter registration and turnout in the 1960s and early 1970s," Roberts wrote. "But such tests have been banned nationwide for over 40 years. And voter registration and turnout numbers in the covered States have risen dramatically in the years since. Racial disparity in those numbers was compelling evidence justifying the preclearance remedy and the coverage formula. There is no longer such a disparity."

Almost immediately after the *Shelby* decision, some Southern states began proposing more restrictive voter registration laws, Greenbaum recalls. For example, Texas announced it would go forward with stricter voter ID laws that had previously been blocked under Section 5 of the VRA, he notes.

While the Court's decision didn't strike down Section 5, it invalidated the coverage formula from Section 4, which made Section 5 unenforceable. In addition, the Court left Section 2 of the VRA intact. Section 2 of the act contains a nationwide prohibition on voting qualifications based on race, color, or language-minority status.

The Court also left open the possibility that Congress could come up with a new preclearance formula. In August 2021, the U.S. House of Representatives passed the John Lewis Voting Rights Advancement Act, which would update the

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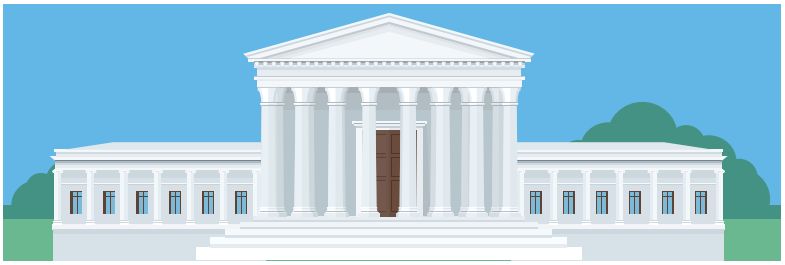


formula to identify states that could be subject to preclearance. To become law, the Act needs to pass in the U.S. Senate as well. So far, it hasn't been brought to the Senate floor for a vote.

Relying on Section 2 of VRA

In 2021, the U.S. Supreme Court made another important voting rights decision. In *Brnovich v. Democratic National Committee (DNC)*, the Court ruled on two Arizona voting regulations. One regulation required residents to vote in-person on Election Day. The other made it a felony for anyone other than a family member, caregiver, election official, or postal worker to collect an early ballot. Under Section 2 of the VRA, the DNC filed suit against Arizona, claiming the regulations harmed the state's Black, Native American, and Hispanic voters.

Section 2 of the VRA was amended in 1982 to strengthen oversight and prosecution of voting practices that "tend to enhance the opportunity for discrimination against the minority group." The U.S. Supreme Court ruled Arizona's regulations didn't violate Section 2 of the VRA, as neither regulation made it harder for minorities to vote and that Arizona's voting system was "equally open" to all.

Professor Venetis says the *Brnovich* ruling echoes the justification for discriminatory voting laws used to circumvent the 15th Amendment following the Civil War. As long as there was no obvious intent to disenfranchise, then the law could be considered legal even if the real-life impact hindered African American voters.

"Showing intent to disenfranchise is very difficult to do," Professor Venetis says.

Greenbaum predicts filing voting discrimination suits under Section 2 of the VRA will be more difficult after the *Brnovich* ruling.

"The ruling suggests if a state starts restricting a particular mechanism of voting that Black voters were more likely to use than white voters that might be okay," Greenbaum says. "It flies in the face of the intent of Section 2 to ban jurisdictions using mechanisms related to the right to vote that make it more difficult for people to vote." •

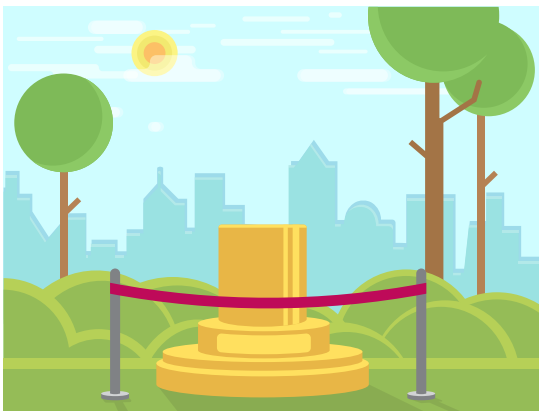
1. Why do you think throughout history such extreme efforts have been taken to suppress African American's ability to vote?
2. In the *Shelby* decision, Chief Justice Roberts wrote that there is no longer a racial disparity in voting as there was in the past. Do you agree or disagree with his assessment? Explain your answer.

What Story Do Confederate Monuments Tell? *by Jodi L. Miller*

The debate over whether Confederate monuments and other testaments to the Confederacy merit a place in public spaces continues. Some believe that these monuments are simply a celebration of Southern heritage, while others see them as a sign of oppression and hate.

In 2015, after nine members of a Black church in Charleston were killed by a white supremacist, the Southern Poverty Law Center (SPLC), a non-profit organization that monitors hate groups, started collecting data on public Confederate displays. In the aftermath of the attack, photos surfaced of the shooter holding the Confederate battle flag, which prompted debates over the removal of the flag, which at the time still flew over the South Carolina Statehouse. Eventually, the debate expanded to the removal of Confederate monuments and memorials.

Over the years, SPLC has identified more than 2,600 memorials to the Confederacy around the country. For their purposes, "memorial" includes monuments and statues, as well as public schools, cities, counties or military bases named after Confederate icons. In addition, Arkansas, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee and Texas celebrate at least one Confederate holiday.



Timing is everything

Supporters of Confederate monuments argue that it is "heritage not hate" that drives pride in the Confederacy and support for these monuments. That argument, however, contradicts the timing of the creation and installation of most of these monuments, which wasn't immediately following

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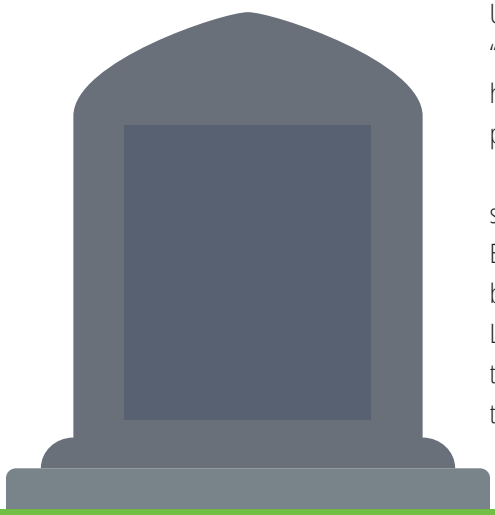
the Civil War. According to SPLC, there are two periods when the creation of Confederate memorials spiked—the early 1900s when Jim Crow Era laws, which **disenfranchised** Black Americans, were being enforced and then again in the 1950s and 60s during the civil rights movement. Jim Crow laws, primarily instituted in the South after the Civil War, enforced racial **segregation** on the state and local level.

According to Donnetrice Allison, Ph.D., a professor of Africana Studies at Stockton University, the installation of Confederate monuments was calculated and meant to send a message to Black Americans.

"It was a way to reassert their dominance and control," Dr. Allison says. "The reality is that had things gone the way they were supposed to after the Civil War, Confederate generals would have been prosecuted for treason, lost their land and their power."

What actually happened is that then President Andrew Johnson issued pardons to many Confederates and gave them back their land instead of using it to pay **reparations** to newly freed Black Americans.

"President Johnson handed them [Confederates] back the power to continue to terrorize Black people," Dr. Allison says. "As part of this process of terrorizing Black people and 'putting them in their place,' they erected large monuments in celebration of the very leaders who sought to keep Black people enslaved."



Jane Dailey, an associate professor of history at the University of Chicago, told National Public Radio (NPR), "I think it's important to understand that one of the meanings of these monuments when they're put up, is to try to settle the meaning of the war."

For example, a monument erected in South Carolina in 1902 reads, in part: "The world shall yet decide, in truth's clear, far-off light, that the soldiers who wore the gray, and died with Lee, were in the right."

In a *New York Times* op-ed, Eric Foner, a history professor at Columbia University, noted that historical monuments represent "an expression of power" and "an indication of who has the power to choose how history is remembered in public places."

"If the issue were simply heritage, why are there no statutes of Lt. Gen. James Longstreet, one of Gen. Robert E. Lee's key lieutenants?," Professor Foner wrote. "Not because of poor generalship; indeed, Longstreet warned Lee against undertaking Pickett's Charge, which ended the battle of Gettysburg. Longstreet's crime came after the Civil War: He endorsed Black male **suffrage**...

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National Monuments Honor Emmett Till and Start of the Civil Rights Movement

There are more than 100 national monuments across the country that are protected by the National Park Service. In July 2023, President Joseph Biden declared three sites as national monuments in honor of Emmett Till and his mother Mamie Till-Mobley.

A 14-year-old Black teenager from Chicago, Till was visiting relatives in Mississippi when he was killed in 1955 by two white men. The men claimed Till had whistled at a white woman.

Till's death, along with his mother's efforts after his death, inspired the Civil Rights Movement. For example, Till-Mobley insisted on an open casket at her son's funeral even though his remains could only be identified by a silver ring on his finger. "They had to see what I had seen," she wrote in her memoir. "Let the people see what they did to my boy."

Till-Mobley granted permission to publish photos of Emmett's body, and she continued to tell her son's story, visiting more than 30 cities before her death in 2003.

According to the proclamation, read by President Biden on July 25, 2023, which would have been Emmett Till's 82nd birthday, the national monument consists of three sites in two states—Illinois and Mississippi. The sites include the Chicago church where Till's funeral was held—more than 250,000 mourners paid their respects over four days. The other two sites in Mississippi include the surrounding area where his body was pulled from the Tallahatchie River, and the Mississippi courthouse where the two men were tried and **acquitted** of Till's murder by an all-white jury. The men later admitted that they had killed Till.

At the signing ceremony, President Biden talked about the importance of learning history with nothing hidden.

"We should know everything; the good, the bad, the truth of who we are as a nation," President Biden said. "We can't just choose to learn what we want to know. We have to learn what we should know." *—Jodi L. Miller*

Monuments CONTINUED FROM PAGE FOURTEEN

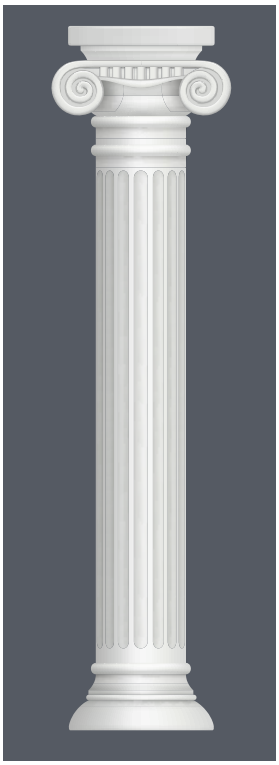
Longstreet is not a symbol of white supremacy; therefore, he was largely ineligible for commemoration by those who long controlled public memory in the South."

Lost Cause

It is said that the winners of a war are the ones that write the history of that war. In the case of the Civil War, the South was able to seize the narrative, reframing it as a Southern "noble cause," giving rise to The Lost Cause myth.

The Lost Cause narrative, among other things, reframed the Civil War in the context of state's rights, with the South's rebellion a reaction to Northern aggression. In fact, there are still many places in the South that don't mention the Civil War, referring to it as the War of Northern Aggression or the War Between the States. In the South's view, the war was about **sovereignty** and the Southern way of life. The problem with that narrative is that the "Southern way of life" included the defense and support of slavery.

According to SPLC, monuments to the Confederacy can be found in Washington, DC and 31 states—not just in the 11 states that seceded from the Union. Why would Northern states like New York and Massachusetts, as well as a western state like California erect monuments to the Confederacy?



"This varies according to the timing of the monument and the circumstances of its construction. But in general, it's because the myth of the 'Lost Cause' and a South that was about chivalry and rural romanticism took hold on a national level," says James Grossman, executive director of the American Historical Association in Washington, DC and a history professor at the University of Chicago. "The Confederacy became a noble cause; the Civil War a tragic event rather than the war of liberation that it actually was."

Dr. Allison says historically there is no clear indication that the North tried to fight the Southern reinterpretation of history or the myth of The Lost Cause.

"This is likely due to the fact that President Johnson was only interested in reunification, and the key to reunification, for him, was making concessions with Southern whites," Dr. Allison says.

Teaching the children

No group promoted the Lost Cause myth more than the United Daughters of the Confederacy (UDC), a heritage group founded in 1894. According to a *Washington Post* investigation, the UDC was responsible for erecting more than 700 Confederate memorials across the country. In addition, the UDC provided Southern schools with **catechisms** that students were required to learn all promoting the Lost Cause myth, which included, among other things, the false narrative that the enslaved were happy and their owners were benevolent.

"By targeting the region's middle- to upper-class children, they [the UDC] ensured an army of future teachers and leaders would carry forward and defend their message for decades to come," Daniel L. Fountain, a history professor at Meredith College who was raised in the South and taught these catechisms as a child, wrote in an op-ed for *The Washington Post*. "Embedding their version of Confederate history into the sacred spaces of Southern society (the home, cemeteries, churches, city squares, street names, colleges and schools) made erasing it physically difficult and personally painful."

With its **propaganda** efforts the UDC shaped how generations of Southern white people understood the Civil War.

Professor Fountain wrote, "At times, the contradictions between what I was taught as a child and what I discovered as a college student left me with intellectual whiplash and feeling saddened or even betrayed."

State protection

Seven states—Alabama, Arkansas, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee—have preservation laws that protect Confederate monuments from removal.

Passed in 2017, Alabama's Memorial Preservation Act, which prohibits the removal of monuments located on public property that are more than 40 years old, was challenged in 2019. Birmingham officials wanted to remove a 52-foot-tall statue that was erected in 1905 to honor Confederate veterans. At the time, the city's mayor pointed out that Birmingham was not even a city during the Civil War. The state of Alabama sued the city of Birmingham under the Act.

In January 2019, an Alabama circuit court decided in favor of the city, ruling that the Act was **ambiguous** and infringed on the free speech rights of Birmingham's residents, who are 70% Black. In November 2019, the Alabama Supreme Court **reversed** that decision. In a 9-0 decision, the state's highest court ruled that the city of Birmingham violated state law.

In a press statement after the court's ruling, the city's director of communications said, "We are carefully reviewing the opinion to determine our next step, but clearly the citizens of Birmingham should have the final decision about what happens with monuments on Birmingham city grounds."

Following protests in 2020, the Birmingham City Council had the monument removed. The Alabama Attorney General sued the city again for violating the Alabama Memorial Preservation Act. The city had to pay a $25,000 fine, which the mayor of Birmingham said was "much more affordable than the cost of continued unrest in the city."

One Southern town's fight

In New Orleans, leaders had been trying to remove several Confederate

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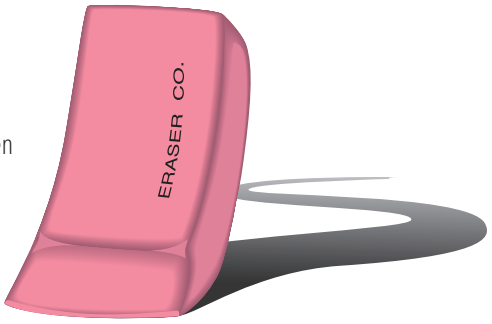
Monuments CONTINUED FROM PAGE FIFTEEN

monuments since 1981 with little support and no success. Motivated by the 2015 church shooting in South Carolina, the effort began anew. In December 2015, the New Orleans City Council voted 6 to 1 to remove four Confederate memorials. Preservation groups, including the Sons of Confederate Veterans, attempted to block the removal, but in January 2016 a federal judge dismissed those attempts. In March 2017, a U.S. appeals court ruled the monuments could come down.

In an impassioned speech delivered before the removal, then New Orleans Mayor Mitch Landrieu explained how New Orleans was America's largest slave market, where hundreds of thousands of people were sold into slavery.

"America was the place where nearly 4,000 of our fellow citizens were **lynched**...where the courts enshrined 'separate but equal'; where Freedom riders coming to New Orleans were beaten to a bloody pulp. So, when people say to me that the monuments in question are history, well what I just described is real history as well..." Mayor Landrieu said. "And it immediately begs the questions, why there are no slave ship monuments, no prominent markers on public land to remember the lynchings or the slave blocks; nothing to remember this long chapter of our lives; the pain, the sacrifice, the shame...So for those self-appointed defenders of history and the monuments, they are eerily silent on what amounts to this historical **malfeasance**, a lie by omission. There is a difference between remembrance of history and reverence of it."

Erasing history



Proponents of saving Confederate monuments often use the argument that to remove these monuments is to erase history, and if you remove them, it is a slippery slope leading to the removal of other historical figures such as Thomas Jefferson and George Washington, who were both slaveholders. Historians take issue with the comparison of Confederate soldiers and generals to the Founding Fathers.

Professor Grossman points out that Washington and Jefferson have monuments to them based on genuine accomplishments, whereas the monuments to Confederate heroes are honoring people for their roles in the creation and defense of the Confederacy.

"There is not honor in that; there are no accomplishments," Professor Grossman says. "Yes, Washington and Jefferson are flawed heroes, and should be called to account by history for being slaveholders. But they also accomplished great things worthy of honor. To commit treason on behalf of the right of some human beings to own other human beings is not an accomplishment."

As to the accusation that removing Confederate monuments is erasing history, Dr. Allison disagrees.

"Putting them up in the first place was an attempt to erase history," Dr. Allison says. "They were erected to rewrite history and romanticize the South and its leaders, who were actually guilty of treason and terror."

According to SPLC data, as of April 2023, 482 Confederate memorials have been removed, relocated, or renamed. •

1. In the article, Professor Grossman makes the case that Thomas Jefferson and George Washington, even though they were slaveholders, should not be compared to Confederate icons. Do you agree or disagree with his argument. Explain your answer.
2. The former mayor of New Orleans said, "There is a difference between remembrance of history and reverence of it." What do you think he meant by that? Explain your answer.

Taking Affirmative Action *by Sylvia Mendoza*

In 1960, a report from the U.S. Labor Department found that Black workers on average made 60% less than white workers. In 1961, President John F. Kennedy took action, issuing Executive Order 10925, which prohibited government contractors from discriminating on the basis of race.

The order stated: "The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin."

This was the first time the term "affirmative action" was used. The term was coined by Hobart Taylor Jr. who was serving as the Executive Vice Chairman of President Kennedy's Committee on Equal Employment Opportunities, the precursor to the Equal Employment Opportunity Commission (EEOC). In an interview for the John F. Kennedy Library, Taylor, who was the first African American to head a presidential commission, recalled that when he received the original draft of the executive order, it stated only that employers needed to "take action." In addition to other changes, Taylor inserted the word "affirmative."

In a 1977 statement, the U.S. Commission on Civil Rights defined affirmative action as "any measure, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from recurring in the future."

In 1965, President Lyndon Johnson issued Executive Order 11246, which strengthened President Kennedy's order. The Johnson administration amended its order again in 1967 to include sex on the list of attributes that could not be discriminated against.

According to reporting by *The Washington Post*, affirmative action had its intended consequence—African Americans made wage gains during the decade from 1969 to 1979 and the number of Black people enrolling in higher education increased 83% by 1970.

Affirmative action in employment

Marilynn Schuyler, a former vice president and regional director for the American Association for Access, Equity, and Diversity (AAAED)—formerly

known as the American Association for Affirmative Action—says sometimes policies take time to work.

"Some people would say affirmative action is being done to correct years of historic disadvantages, which is partially true, but I would argue we know that women and racial minorities are still facing challenges on a day-to-day basis," says Schuyler, who has been working in the affirmative action compliance field since 1988.

Affirmative action has been challenged many times in the courts. In 1979, the first case made its way to the U.S. Supreme Court. In *United Steel Workers of America, AFL-CIO v. Weber* the Court ruled race-conscious affirmative action efforts designed to eliminate a conspicuous racial imbalance in an employer's workforce resulting from past discrimination are permissible if they are temporary and do not violate the rights of white employees.

In the 1986 case of *Local 128 of the Sheet Metal Workers' International Association v. EEOC*, the U.S. Supreme Court **upheld** a judicially-ordered 29% "**minority** membership admission goal" for a union that had intentionally discriminated against minorities. The case confirmed that courts may order race-conscious relief to correct and prevent future discrimination. With the 1989 case of *City of Richmond v. J.A. Croson Co.*, the U.S. Supreme Court struck down Richmond's minority contracting program as unconstitutional. The program gave preference to minority-owned businesses when awarding municipal contracts. In its ruling, the Court stated that a state or local affirmative action program should support a "compelling interest" and be "narrowly tailored."

Affirmative action in education

By the 1970s the concept of affirmative action was being applied in higher education. The U.S. Supreme Court has weighed in on affirmative action in higher education a number of times, the first being the 1978 landmark case of *Bakke v. Regents of the University of California*. In that case, an applicant to the school's medical program, Allan Bakke, claimed the university unfairly rejected his application based on a quota system that set aside a fixed number of seats—16 out of 100—for minority students. In its *Bakke* decision, the Court upheld the use of race as one factor in choosing among qualified applicants for admission; however, it also ruled that the medical school's use of a quota system was unlawful.

The U.S. Supreme Court ruled on two important affirmative action in higher education cases in 2003—*Gratz v. Bollinger* and *Grutter v. Bollinger*. In *Gratz*, the Court ruled that the University of Michigan used racial preferences in its undergraduate admissions policy, which relied on a formulaic point system for people in various racial groups. The Court said the system was not "narrowly tailored" and therefore it was struck down. In *Grutter*, the Court upheld the University of Michigan Law School's admissions policy citing the "compelling interest and educational benefits that flow from a

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Affirmative Action CONTINUED FROM PAGE SEVENTEEN

diverse student body." In that case, the Court stated that the law school's use of race in its admissions was "narrowly tailored."

In 2023, the U.S. Supreme Court heard two separate affirmative action cases—one against Harvard University and one against the University of North Carolina (UNC). Both lawsuits were brought by Students for Fair Admissions (SFFA), a non-profit group that seeks equity in higher education admittance. SFFA asked the Court to prohibit the consideration of race in college admissions.

In its rulings, the Court struck down Harvard's and UNC's race-conscious admission policies as unconstitutional. The Court acknowledged permitting race-based college admissions programs in *Bakke*, as well as *Grutter*, but noted those initiatives were allowed

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Before Affirmative Action, There was Reconstruction

While the term "affirmative action" may not have been coined until 1961, the concept was embodied in the Reconstruction Era (1865-1877), the period after the Civil War when Congress passed measures to help the four million people across the nation who were formerly enslaved. One such measure was the establishment in 1865 of the Bureau of Refugees, Freedmen and Abandoned Lands, usually referred to simply as the Freedmen's Bureau.

Arguing for the need of such a bureau from the floor of the U.S. Senate in 1864, Senator Charles Sumner of Massachusetts said, "The curse of slavery is still upon them. Call it charity or duty, it is sacred as humanity."

In another speech before Congress, Senator Lyman Trumbull of Illinois implored members of the Southern states to be "as zealous and active in the passage of laws and the inauguration of measures to elevate, develop and improve the Negro as they have hitherto been to enslave and degrade him."

The arguments against any type of legislation to help the newly freed echo the arguments today against affirmative action, which is that any legislation or program that only benefits Blacks to the exclusion of white people is unconstitutional. For example, Representative Nelson Taylor of New York, arguing against the Freedmen's Bureau in 1866, said, "This, sir, is what I call class legislation — legislation for a particular class of the Blacks to the exclusion of all whites. Such partial legislation, it seems to me to be in opposition to the plain spirit pervading nearly every section of the Constitution that congressional legislation should in its operation affect all alike."

Ultimately, the Freedmen's Bureau was established, but not before a compromise was reached that allowed the legislation to benefit poor white people as well. Still, the Bureau mostly helped formerly enslaved people to establish schools, purchase land, locate family members, legalize marriages and assisted in contracts between the freedmen and employers. One of its greatest successes was the establishment of Historically Black Colleges and Universities (HBCUs), including Howard University and Morehouse College.

A president weighs in

Other Reconstruction legislation, such as the Civil Rights Act of 1866, the first federal civil rights bill in our nation's history, met with similar objections. The Act stated that the newly freed were entitled to basic rights of citizenship.

When he vetoed the Act, President Andrew Johnson said, "In all our history, in all our experience as a people living under Federal and State law, no such system as that contemplated by the details of this bill has ever before been proposed or adopted. They establish for the security of the colored race safeguards which go infinitely beyond any that the General Government has ever provided for the white race. In fact, the distinction of race and color is by the bill made to operate in favor of the colored and against the white race."

In response, Senator Trumbull said, "Never before in the history of this Government have nearly four million people been emancipated from the most abject and degrading slavery ever imposed upon human beings...Can we not provide for those among us who have been held in bondage all their lives, who have never been permitted to earn one dollar for themselves..."

Eventually, Congress passed the Civil Rights Act of 1866, as well as other Reconstruction Era legislation, over President Johnson's **veto**. *—Jodi L. Miller*

Affirmative Action CONTINUED FROM PAGE EIGHTEEN

under narrow restrictions. Neither Harvard's nor UNC's admissions programs operate under such narrow restrictions, the Court ruled. And while both schools use race-based evaluations to achieve "commendable" goals—idea exchange and leadership training, among others—those goals are too vague to truly measure, Chief Justice John G. Roberts Jr. wrote in the Court's **majority opinion**.

"Many universities for too long...have concluded, wrongly, that the touchstone of an individual's identity is not challenges bested, skills built, or lessons learned but the color of their skin. Our constitutional history does not tolerate that choice," Chief Justice Roberts wrote.

The Court determined that Harvard and UNC use race in a negative manner for admission purposes through stereotyping and deliberately avoiding minority underrepresentation. Such efforts, consequently, ensure that "race will always be relevant...and the ultimate goal of eliminating race as a criterion will never be achieved," the Court ruled.

After the Court's 2023 affirmative action in higher education ruling, many thought it would affect employment hiring practices as well. Charlotte A. Burrows, chair of the EEOC in the Biden administration, told *The New York Times* that the decision "does not address employer efforts to foster diverse and inclusive work forces or to engage the talents of all qualified workers, regardless of their background."

> "If you don't have a diverse student body, you won't have diversity in applicants, and you're not going to get diversity in employment. Equity benefits everybody."

Future of affirmative action

Schuyler believes that affirmative action can still form a vital foundation for equity—connecting education and employment.

"Limited access to education affects economics," says Schuyler. "If you don't have a diverse student body, you won't have diversity in applicants, and you're not going to get diversity in employment. Equity benefits everybody."

Today, the concept of "affirmative action" has morphed into diversity equity and inclusion (DEI) programs with the goal of achieving equality and equity in employment. Whether these programs can stand up to constitutional scrutiny may be for the courts to decide.

"The key is whether, whatever the name, there is a racial or gender preference for members of historically discriminated against groups," says Charles A. Sullivan, a professor at Seton Hall Law School who teaches courses in employment discrimination.

Professor Sullivan says that prior U.S. Supreme Court decisions stipulate that temporary racial and gender preferences are allowed "as long as the rights of white workers are not unduly hindered."

Some think affirmative action is no longer necessary and society should be "colorblind." In 1987, then U.S. Supreme Court Justice Thurgood Marshall, the first African American to be appointed to the Court, serving from 1967 to 1991, gave a speech on the topic of affirmative action to a gathering of federal judges. In the speech Justice Marshall spoke of a "colorblind society" but noted that it was an aspirational goal and "given the position from which America began, we still have a very long way to go."

"What recent statements in opposition to affirmative action do not consider, in my judgment, is the fundamental importance of eradicating the consequences of discrimination which are so visible throughout our society, and the basic injustice which is done by imposing all the costs of those lingering consequences upon those who have traditionally been the victims," he said.

Justice Marshall ended his speech by saying, "The goal of a true democracy such as ours, explained simply, is that any baby born in these United States, even if he is born to the blackest, most illiterate, most unprivileged Negro in Mississippi, is, merely by being born and drawing his first breath in this democracy, endowed with the exact same rights as a child born to a Rockefeller. Of course, it's not true. Of course, it never will be true. But I challenge anybody to tell me that it isn't the type of goal we should try to get to as fast as we can." •

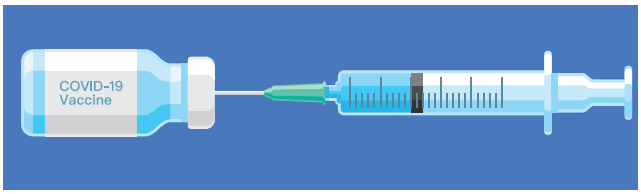
1. Is it reasonable to use race and gender to improve diversity in employment and education? Explain your answer.
2. With challenges to affirmative action policies on the rise, what other ways do you think an employer or educational institution can achieve the goal of a diverse work force or student body?
3. In 1987, Justice Thurgood Marshall spoke of a colorblind society as an aspirational goal that we haven't achieved yet. Do you think a colorblind society is possible or desirable? Explain your answer.

African Americans and the Medical Profession: A History of Distrust

by Jodi L. Miller

Black people were 1.1 times more likely than their white counterparts to contract Covid-19, 2.8 times more likely to be hospitalized because of it, and two times more likely to die from the disease, according to Centers for Disease Control (CDC) data compiled from March 2020 through October 2021. Still, a Pew Research report released in December 2020 revealed that only 42% of Black Americans were inclined to get vaccinated, compared to 63% of the Hispanic population and 61% of whites.

The RAND Corporation, an American nonprofit think tank, conducted a survey of Black Americans in late 2020 to determine the cause of their reluctance to be vaccinated against Covid. One of the key findings of the survey was that "Black Americans attribute their mistrust of vaccines in general and Covid-19 vaccines in particular to systemic racism, including discrimination and mistreatment in health care as well as by the government."



The Black community's reluctance is understandable once you recognize the way that the government has historically treated the African American population in relation to health care dating back to **emancipation** and even before. In his 2011 book, *Sick From Freedom*, Jim Downs, a historian and history professor at Gettysburg College, writes that at least one quarter of the four million formerly enslaved became sick or died between 1862 and 1870. More than 60,000 formerly enslaved people died from an outbreak of smallpox that began in Washington, DC and spread throughout the South. The formerly enslaved were not welcome at white hospitals or treated by white doctors, and there weren't many African American doctors at that time. In his book, Professor Downs writes that the newly freed slaves were "the first advocates of a federal health care system."

Ignoring the pain

Dr. James Marion Sims is considered the "Father of Modern **Gynecology**" because of surgical advances he pioneered and a medical device he invented, which is still in use today. There are monuments to him in South Carolina, Alabama and in New York City's Central Park. The inscription on the South Carolina monument reads: "The first surgeon of the ages in ministry of women, treating alike empress and slave."

That's not exactly true. He did treat an empress from France; however, he didn't treat enslaved women. Instead, he experimented on them without their consent or the benefit of **anesthesia**, according to a 1993 article in the *Journal of Medical Ethics*. Titled "The medical ethics of the 'Father of Gynecology', Dr. J. Marion Sims," the article noted the doctor experimented on seven enslaved women from 1845 to 1849, but just three of the women's names—Lucy, Anarcha and Betsey—are known.

Vanessa Northington Gamble, a physician, medical historian, and professor of American Studies at George Washington University explained in a 2017 National Public Radio (NPR) interview that the enslaved women all had a condition that sometimes occurs after a difficult childbirth. The condition, if not corrected, makes it impossible to have more children, Dr. Gamble said, and it would also be difficult for them to continue working.

"These women were property. These women could not consent," Dr. Gamble told NPR. "These women also had value to the slaveholders for production and reproduction—how much work they could do in the field, how many enslaved children they could produce."

According to the *Journal of Medical Ethics* article, Dr. Sims' first operation was performed on Lucy. "The surgery lasted for an hour and Lucy endured excruciating pain...She must have felt extreme humiliation as twelve doctors observed the operation," the article stated.

"There was a belief at the time that Black people did not feel pain in the same way. They were not vulnerable to pain, especially Black women," Dr. Gamble told NPR.

That perception endures to this day, according to a 2016 study conducted by researchers at the University of Virginia and published in *Proceedings of the National Academy of Sciences*, a peer-reviewed scientific journal. The study revealed that many medical school students, particularly those who are white, believe there are biological differences between Black and white people and that Blacks feel less pain. The study revealed that because of this misinformed belief "Black Americans are systematically undertreated for pain relative to white Americans."

In a 2007 study, published in the *Journal of the National Medical Association*, physicians were asked to rate how much pain their patients were experiencing. "Physicians were more likely to underestimate the pain of Black patients relative to nonblack patients." The study addressed the origins of these beliefs.

"Beliefs that Blacks and whites are fundamentally and biologically different have been prevalent in various forms for centuries," the study states. "In the United States, these beliefs were championed by scientists, physicians, and slave owners alike to justify slavery and the inhumane treatment of Black men and women in medical research."

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Distrust CONTINUED FROM PAGE TWENTY

As for Dr. Sims, having perfected his surgical technique, after performing 30 surgeries on Anaracha alone, he moved to New York and opened a women's hospital in 1855. There, he would treat white women with the same condition, although those women would be given the benefit of anesthesia. Despite Dr. Sims' accomplishments, as Dr. Gamble told NPR, "The foundations of modern Gynecology are based on the body and the pain of enslaved Black women."

Tuskegee experiment

Perhaps no incident sowed more distrust among the African American community toward the medical profession than the "Tuskegee Study of Untreated Syphilis in the Negro Male," an experiment conducted by the U.S. Public Health Service and Alabama's Tuskegee Institute beginning in 1932. According to the CDC, the study involved 600 Black men, 399 of whom had syphilis, an infectious, sexually transmitted disease. The other 201 men were used as a control group. According to the Tuskegee University's website, which describes the study in detail, the participants were poor and **illiterate** sharecroppers who were enticed with the prospect of "medical exams, meals on examination days, free treatment for minor ailments and guarantees that provisions would be made after their deaths in terms of burial **stipends** paid to their survivors." The website states: "The men were offered what most Negroes could only dream of in terms of medical care and survivors' insurance."

The patients were told that they were being treated for "bad blood," which described a number of ailments including syphilis, fatigue and anemia. Even when penicillin was deemed effective in treating syphilis and became the standard cure in 1947, the medicine was withheld for members of the study, which went on for 40 years. It ended in 1972 after the Associated Press exposed the true purpose of the study, which was to track the arc of the disease to its conclusion. By that time, many men from the study had died or gone blind from non-treatment of the disease. In addition, these men had infected their wives, girlfriends and in some cases their children, who were born with the disease.

After the study was exposed, congressional hearings were held and an advisory panel, comprised of medical professionals and healthcare administrators, was appointed to examine the study. The panel issued a report in October 1972, finding that the study was "ethically unjustified." While the panel determined that the men were not coerced into participating in the study, they were also not offered what is known as "informed consent," something all scientific studies now require because of what happened with the Tuskegee study.

Informed consent is permission granted from the patient with the full knowledge of possible risks and consequences of participation. For example, the men in the study never knew the specific name of the study or its purpose. They were never told the possible consequences of non-treatment of the disease or the impact on their wives, girlfriends, and future children. In addition, the panel's investigation concluded that when penicillin became available as a treatment, the participants should have been offered the antibiotic and the opportunity to quit the study.

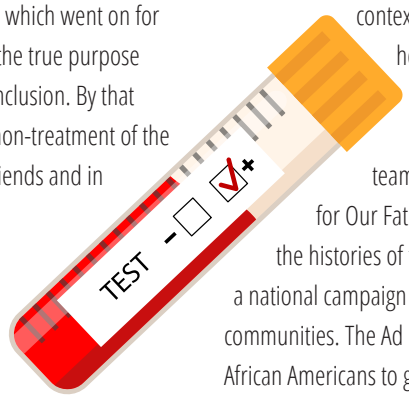
In 1973, a class action lawsuit was filed on behalf of the men in the study, as well as their families. A settlement of nearly $10 million was reached. In addition to the monetary settlement, the U.S. government agreed to provide free medical and burial services to the survivors of the study and their wives, widows and children.

Hesitant to trust

In a May 1996 White House ceremony, former President William Clinton issued a formal apology to the surviving participants of the Tuskegee experiment, as well as to their families and the families of the deceased. Still, the damage done by this experiment eroded trust in the government and health care systems for the Black community and in part explains Covid-19 vaccine hesitancy in that community.

"Few families escaped the study. Everyone here knows someone who was in the study," Omar Neal, a former Tuskegee mayor, told *The New York Times*. Three of Neal's relatives were participants in the study, and he wavered on getting the vaccine. "And the betrayal—because that is what the study was—is often conjured whenever people are questioning something related to mistrusting medicine or science."

Dr. Rueben C. Warren, director of the National Center for Bioethics in Research and Health Care at Tuskegee University, told *The New York Times*, "The questions being asked about the vaccine should be understood in the larger context of historic inequities in health care," Dr. Warren said. "The hope, of course, is they finally decide to get the vaccine."



In the summer of 2021, the Ad Council, a nonprofit organization that produces public service announcements, teamed up with the Black Coalition Against Covid, and Voices for Our Fathers Legacy Foundation, an organization that preserves the histories of the men who took part in the Tuskegee study, to create a national campaign aimed at reducing vaccine hesitancy among Black communities. The Ad Council created a short documentary that encouraged African Americans to get the Covid-19 vaccine but first confronted the horrors of the Tuskegee study head on, including the false narrative that the men were intentionally injected with syphilis, which was not true.

"We don't want the horror of that study to be used as the reason why people do not get the vaccine to protect themselves," Amy Haggins Pack, a retired nurse whose great uncle was one of the men in the study and who co-chairs the Voices for Our Fathers Legacy Foundation, says in the documentary. "Our ancestors were denied treatment. This is the opposite. The vaccine is available for everyone. We want people to take it to protect themselves and others."

Dr. Reed Tuckson, co-founder of the Black Coalition Against Covid, points out in the video that as a result of the Tuskegee study reforms were made to

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how scientific research is conducted, including the creation of institutional review boards. Carmen Head Thornton, with the American Academy of Child and Adolescent Psychiatry, whose grandfather was part of the study, notes in the film that informed consent became the standard, not just for clinical trials, but also whenever someone has a medical procedure.

It seems that national campaigns like this influenced Covid vaccine numbers. According to a study conducted by researchers at Ohio State University College of Public Health and published in the *Journal of the American Medical Association* in January 2022, vaccine hesitancy decreased more rapidly among the Black community compared to other ethnic communities.

"We tend to assume that this mistrust of the health care system and of health care innovations like vaccines—that's based in a history of racism and systematic mistreatment of Black populations by American health organizations—is something that can't be moved and that there is nothing we can do about it," the study's lead author told *U.S. News & World Report*. "Clearly that is not true." •

1. According to the article, there are monuments to Dr. Sims for his contributions to Gynecology. How do you think the contributions of Lucy, Anarcha and Betsey should be recognized?
2. The article mentions a documentary that was produced to alleviate medical mistrust from the Black community. What else could be done to address the problem? What can medical professionals do to inspire trust from this community? Explain your answer.

From Environmental Racism to Environmental Justice

by Erin Flynn Jay and Jodi L. Miller

Can the environment be racist? While the environment may not be racist, government rules and policies, put in place decades ago, have perpetuated what is known as environmental racism.

The Environmental Protection Agency (EPA) defines environmental racism as "the disproportionate impact of environmental hazards on people of color. It is a form of systemic racism that occurs when corporate or government decisions intentionally disadvantage minority communities, such as by exposing them to toxic waste sites or industrical facilities."

The term "environmental racism" was coined in 1982 by Dr. Ben Chavis, an environmental activist who was leading protests to stop the illegal dumping of toxic waste in Warren County, North Carolina, an area that was 60% Black at the time.

Higher levels of air pollution

According to EPA data, a Black child is twice as likely as a white child to be hospitalized for asthma due to air pollution. In addition, according to a 2021 Clean Air Task Force study, African Americans are exposed to 38% more air pollution than white Americans and Black Americans are 75% more likely to live in a community near a factory.

In 1987, the United Church of Christ's Commission for Racial Justice released a report titled "Toxic Wastes and Race in the United States." It was the first major study to address environmental racism. The study found that across the nation race was "the most significant among variables tested in association with the location of commercial hazardous waste facilities." More than 15 million Black Americans, the study showed, lived in communities "with one or more uncontrolled toxic waste site."

In his book, *The Color of Law: A Forgotten History of How Our Government Segregated America*, author Richard Rothstein, a researcher with the Economic Policy Institute, noted that zoning laws had two purposes.

"One face, developed in part to evade a prohibition on racially explicit zoning, attempted to keep African Americans out of white neighborhoods by making it difficult for lower-income families, large numbers of whom were African Americans, to live in expensive white neighborhoods," Rothstein writes. "The other attempted to protect white neighborhoods from deterioration by ensuring that few industrial or

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environmetally unsafe businesses could locate in them. Prohibited in this fashion, polluting industry had no option but to locate near African American residences."

A 2020 article in *The New York Times Magazine* describes a large refinery built on 1,300 acres of land in South Philadelphia's Grays Ferry district. The article notes that South Philadelphia was redlined in 1934. Redlining was a practice instituted by the federal Home Owners' Loan Corporation, which created color-coded maps that assessed what U.S. neighborhoods were deemed worthy of investment—in other words where mortgages would be granted. The coding system went from green, which were the "best" neighborhoods, to red, which were labeled "hazardous." The majority of Black neighborhoods were coded red.

"You can't understand environmental racism without understanding the legacy and the history of residential segregation, which created the disinvestment that has happened in communities in Philadelphia like Grays Ferry for decades," Sharrelle Barber, a research professor of epidemiology and biostatistics at Drexel University's Dornsife School of Public Health, told *The New York Times Magazine*.

An EPA study published in 2018 shows that low-income neighborhoods have 35% higher levels of air pollution compared to higher-income communities. The EPA report also shows that facilities emitting air pollutants are disproportionately located in low-income and African American communities.

"Greater attention needs to be paid to the long-standing racial injustices that exist because of little or no enforcement of environmental protections," says Ayesha Bell Hardaway, a professor with Case Western Reserve University School of Law in Cleveland and director of its Social Justice Institute. "That lack of enforcement means that Black children are more likely to suffer from lead poisoning, that Black manufacturing workers disproportionately make up those sickened with industrial-related diseases, and that Black property owners carry the weight of low or no home equity due to the presence of **blighted** commercial factories and buildings in their neighborhoods."

Are highways racist?

In 1956, the Federal Aid Highway Act was signed into law. It allocated $26 billion to construct 41,000 miles of interstate highways that would connect the country from one end to the other. According to the U.S. Transportation Department, more than 475,000 households and one million people were displaced nationwide to make way for these highways. The families that were displaced by highway projects were overwhelmingly Black and poor.

Today, according to data from the National Air Toxic Assessment, 49 million Americans live within a mile of a highway and face increased health risks from traffic pollution, including increased cancer risk and higher asthma rates.

"The passage of the Federal-Aid Highway Act of 1956...buoyed both highway construction and the destruction of Black communities. Often under the guise of 'slum removal,' federal and state officials purposely targeted Black communities to make way for massive highway projects," Deborah N. Archer, a professor at New York University School of Law and Co-Faculty Director of the Center on Race, Inequality, and the Law, wrote in a 2020 *Vanderbilt Law Review* article. "In states around the country, highways disproportionately displaced Black households and cut the heart and soul out of thriving Black communities as homes, churches, schools, and businesses were destroyed."

Highways may not be racist but the plans of where to construct the highways were. For example, Robert Moses, an urban planner and public official, said in a 1954 statement submitted to the President's Advisory Committee on a National Highway Program that the expressways "must go right through cities and not around them." Most of those cities were where Black communities existed.

Sometimes the planners went out of their way to burden Black communities. For example, in *The Color of Law*, Rothstein notes that Florida's I-95 highway could have utilized the route of an abandoned railway that would have limited the displacement of thousands of people. Officials decided to build the highway directly through Overtown, a district of Miami, which was a thriving African American community. When the highway was completed in the mid 1960s, the community of 40,000 African Americans was reduced to 8,000.

"In Camden, New Jersey, an interstate highway destroyed some 3,000 low-income housing units from 1963 to 1967," Rothstein writes. "A report by the New Jersey State Attorney General's office concluded: 'It is obvious from a glance at the...transit plans that an attempt is being made to eliminate the Negro and Puerto Rican ghetto areas by building highways that benefit white suburbanites, facilitating their movement from the suburbs to work and back.'"

In an interview with National Public Radio (NPR), Professor Archer maintains that some Black communities were able to stave off highway expansion. She points to resistance in New York, New Orleans and Washington, D.C. as examples of success.

"But I think it's important to point out the most successful efforts to stop the highways were not those that focused on racial justice or those that were put in place to protect Black communities," Professor Archer told NPR. "The people who were

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most successful were the ones that focused on environmental justice and protecting parks and their communities in that way."

Make way for environmental justice

The EPA defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."

In 1978, the first lawsuit to challenge environmental racism using civil rights laws was brought against the health departments of Houston, Harris County and the state of Texas. The case—*Bean v. Southwestern Waste Management, Inc.*—alleged that locating a municipal landfill in Whispering Pines, a predominantly middle-class Black neighborhood constituted discrimination. Linda McKeever Bullard brought the lawsuit and asked her husband, a sociology professor at Texas Southern University to map out the locations of landfills, solid-waste facilities and incinerators in the city.

Professor Robert Bullard and his students took on the project and discovered that despite African Americans making up only 25% of Houston's population at the time, all five municipal dumps, six of eight city-operated garbage incinerators and three of four private landfills were located in the city's Black communities.

"What the data showed was a pattern of racist decisions over years and years by city officials," Professor Bullard told *The New York Times Magazine*. "In the case of Whispering Pines, it was the height of disrespect compounded by the fact that the landfill was 1,300 feet from a high school in a Black school district and with at least a half-dozen elementary schools in a two-mile radius. It gets hot in Houston. How can kids learn if they're smelling garbage? That's the kind of racism that permeated that particular case."

The **plaintiffs** lost their case; however, the environmental justice movement was born. Today, Professor Bullard is considered the father of environmental justice and has written 18 books on the subject, including the first book written on

environmental racisim—*Dumping in Dixie: Race, Class and Environmental Quality*. He serves on the White House Environmental Justice Advisory Council and served in the Clinton administration as well.

In 1994, President Bill Clinton issued an executive order stating: "In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin."

"They [federal agencies] have to make sure they are not producing harm by encouraging or perpetuating discriminatory practices and behaviors," says Dr. Yohuru Williams, founding director of the Racial Justice Initiative at the University of St. Thomas.

Dr. Williams notes that environmental justice often involves strategies centered around Title VI because "if you receive federal funding, then you have to comply with the dictates of [Title VI], which means that you can't support anything that perpetuates discriminatory practice or you lose those federal funds."

In January 2023, the Biden administration announced the allocation of $100 million for environmental justice grants for "underserved and overburdened communities across the country" and created the Office of Environmental Justice within the EPA to evaluate the projects applying for grants.

In March 2024 the U.S. Department of Transportation announced the Reconnecting Communities Pilot Program and the Neighborhood Access and Equity Program, which is intended to address the communities that were destroyed by highways. The administration allocated $3.3 billion to fund projects that would "restore and reconnect communities that have been harmed, isolated, and cut off from opportunity by transportation infrastructure." •

1. The article includes several examples of environmental racism. Select one example or select an example of your own and describe in detail how it affects people individually and as a community.
2. Refer to the definition in the article for environmental justice provided by the Environmental Protection Agency. What issues do you think fall under environmental justice? Select an issue not covered in the article and explain in detail why you think it qualifies as an environmental justice issue.

Racial Wealth Gap Bars American Dream for Some *by Jodi L. Miller*

Home ownership is the pinnacle of the American dream. Owning a home provides a basis to accrue wealth and a home is an investment that can be passed down through generations.

While the American dream is attainable for some, it is not a reality for everyone. That disparity has led to a racial wealth gap. As Dr. Andre M. Perry, a senior fellow with the Brookings Institution, a Washington, D.C. think tank, explains, the racial wealth gap began during slavery when enslaved people were denied wages for their labor. The gap continued throughout the Jim Crow era (1877-1964), which enforced legal **segregation**. During this time, Black Americans were denied government benefits and subsidies that their white counterparts enjoyed.

"There was a long-standing history of anti-Black policies that prohibited or thwarted wealth creation among Black people, and so it was government policy ultimately that created a wealth gap through slavery," says Dr. Perry, who is an economics professor and an expert on race and structural inequality.

"After **emancipation**, proposals to provide former slaves with land so they could survive economically were largely defeated," Lisa Camner McKay writes in *How the Racial Wealth Gap Has Evolved—and Why It Persists*, an article published by the Federal Reserve Bank of Minneapolis. "Thus in 1870, the wealth gap between Black and white Americans was a staggering 23 to 1. That's equivalent to just $4 of wealth for Black Americans for every $100 for white Americans."

During Reconstruction—the period after the Civil War from 1865 to 1877—African Americans made some progress toward equality with the passage of what are known as the Reconstruction Amendments. These amendments—the 13th, 14th and 15th amendments to the U.S. Constitution—abolished slavery, provided citizenship to the formerly enslaved and gave Black American men the right to vote.

Reconstruction was supposed to begin to make up for the hundreds of years of slavery and the injustice that formerly enslaved people were forced to endure. White Southerners, however, forced the end of Reconstruction with what is known as the Compromise of 1877. Rutherford B. Hayes needed the support of Florida, South Carolina and Louisiana to win the presidency in 1876. In exchange for that support, he agreed to withdraw all federal troops from the South. The troops had been installed in the South during Reconstruction to keep the peace and protect the rights of the formerly enslaved.

President Hayes made good on his promise and Reconstruction ended in 1877. Dr. Perry contends that had Reconstruction lasted "and followed through in terms of providing Black citizens the economic footing to thrive" the racial wealth gap would not be so wide today.

"There might be a wealth gap," Dr. Perry says, "but nowhere near what it is now."

Building wealth

Wealth is defined as the difference between assets and liabilities. An asset is something of value that is owned such as a home or land. A liability is something that is owed such as an unpaid bill or outstanding loan. According to the U.S. Federal Reserve, in 2022, the typical white family had six times as much wealth as the typical Black family. In 2022, the median wealth among white families was $285,000, compared to $44,900 for Black families.

When the opportunity to own a home is denied, the opportunity to build wealth is also denied. Dr. Perry explains that Jim Crow, racism, and disparities in how government programs were distributed, including the New Deal in 1933, compounded upon each other to exclude Black Americans from the opportunities that the rest of the country benefitted from. He points out that when a family has less wealth, there are less discretionary resources to invest in things like higher education or a business, or other assets that could grow wealth.

"To put it plainly, if your grandfather was denied the opportunity to own a home, the grandchildren will more than likely have to take out student loans, have less resources to start a business, and have less resources to put a down payment on a home," Dr. Perry says. "People don't get those intergenerational wealth transfers. So federal, state, and local policies created the wealth gap. Discrimination furthered it, and because wealth begets wealth, those systems perpetuate themselves as a result."

According to McKay's Federal Reserve Bank article, white Americans hold 84% of total U.S. wealth while making up 60% of the population. Black Americans hold 4% of U.S. wealth and make up 13% of the population. "Put another way," McKay writes, "the wealth of the richest 400 Americans is approximately equal to that of 43 million Black Americans."

Writing it in red

Owning a home has been historically harder for Black families through

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many discriminatory practices including redlining. From 1935 to 1940, the federal Home Owners' Loan Corporation created color-coded maps that assessed what U.S. neighborhoods were to be deemed credit-worthy, or in other words, worth the investment of granting a mortgage. According to the coding system, neighborhoods coded in green were labeled "best," while those coded in blue were "still desirable" and yellow "still declining." The majority of Black neighborhoods were coded in red and labeled "hazardous."

"The federally backed Home Owners' Loan Corporation drew red lines around predominantly Black neighborhoods, deeming them generally unfit for various federal investments and insurance," Dr. Perry says. "That prohibited many Black people from purchasing homes and gaining the wealth that the green-lined areas would receive."

According to a 2022 report published by the National Community Reinvestment Coalition, more than eight million people still live in formerly redlined communities. "The inequities of residential segregation, cemented in place by redlining, persist in lower home values, higher rates of poverty, and greater vacancy and abandonment," the report states.

Another form of discrimination that prevented Black Americans from owning a home was racial **covenants**, also called restrictive covenants. A restrictive covenant was language included in the deed to a home that specifically excluded certain people from purchasing that property. The practice began in the early 1920s, and it primarily focused on Black Americans.

In his 2017 book *The Color of Law: A Forgotten History of How Our Government Segregated America*, author Richard Rothstein, a researcher with the Economic Policy Institute, wrote, "As early as the nineteenth century, deeds in Brookline, Massachusetts, forbade resale of property to "any negro or native of Ireland." A 1925 covenant on a Northern New Jersey property stated: "...no part of said premises shall be used for...any structure other than a dwelling for people of the Caucasian Race."

These covenants prevented Black

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When Getting Ahead Brought Violence

In 1921, the Black community of Greenwood, a district of Tulsa, Oklahoma founded in 1906, was thriving. Known as Black Wall Street because of its prosperity, the district contained approximately 10,000 residents. According to the Oklahoma Historical Society, the community "had it all," with every business imaginable, including nightclubs, hotels, cafes, newspapers, clothing stores, movie theaters, doctors' and lawyers' offices, grocery stores, beauty salons, shoeshine shops, and much more.

That prosperity ended when a white mob, numbering nearly 1,000 men, including police officers, set upon the Greenwood district, and carried out one of the worst attacks of racial violence in U.S. history, commonly known as the Tulsa Massacre. The mob was angry over the alleged assault of Sarah Page, a white woman aged 17, by a Black man, Dick Rowland, aged 19.

In a riot that began on May 31, 1921, and would last for 18 hours into the next day, the mob killed Greenwood residents, looted businesses and then set them on fire, eventually burning all 35 blocks of the district to the ground, including 23 churches. Historians estimate that when all was said and done 300 people were killed, 1,200 homes were destroyed and 8,000 people were left homeless. A report released in 2001 by the 1921 Race Riot Commission, now known as the 1921 Race Massacre Commission, estimated that the damage to property in Greenwood was approximately $1.8 million, which would be around $27 million today.

After the riot, a grand jury blamed the Black men that had gone to the jail to protect Rowland from being **lynched** for "instigating" the destruction that followed. Rowland was eventually **exonerated** of the charges against him but the damage to Black Wall Street had been done. None of the members of the white mob were ever charged with a crime and the survivors received no compensation for the loss of their loved ones or the economic losses they suffered.

Survivors' quest for justice

In 2020, the three last known survivors of the Tulsa Massacre testified before a House of Representatives subcommittee that was considering reparations to survivors and descendants of the massacre.

During the hearing, Lessie Benningfield Randle testified remotely. Randle was six at the time of the massacre and 106 when she testified. She recounted running outside her house past dead bodies, noting that she still sees the images in her mind 100 years later.

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Americans from purchasing, leasing or even occupying these properties. In 1948, the U.S. Supreme Court ruled that restrictive covenants were unenforceable; however, they were not banned until the Fair Housing Act of 1968. There are no exact numbers for how many restrictive covenants existed nationwide; however, a 2019 report published by the Federal Reserve Bank of Philadelphia identified 4,000 instances in Philadelphia alone where a racial covenant was included in a deed. The language of these covenants still exists in the fine print of many deeds to this day.

Different form of redlining

Today, according to Dr. Perry, instead of redlining, Black Americans are being discriminated against via appraisal bias, which is when Black homes are undervalued. Before a house is sold, the sellers have their home appraised to determine its value. A 2020 Brookings Institution study found that because of biased appraisals, homes in Black neighborhoods are devalued by approximately $48,000. The overall cost of these devaluations, according to Brookings, is approximately $162 billion. The devaluation of a property can mean the delay or cancellation of a transaction, meaning that the contract on the sale of a house doesn't go through.

In 2022, the Federal Housing Finance Agency released 47 million appraisal reports. Two sociologists who study racial inequality in American cities analyzed the data and found a "widespread practice in the home appraisal industry to give higher values to homes where the occupants are white, and devalue them if the owners are people of color," according to their report.

"The appraisal system is supposed to be our checks and balances, because it's supposed to show us how much a home is worth. But we've created a system that starts with racism, based on who lives in an area," Dr. Junia Howell, a sociology professor at the University of Chicago and one of the researchers told *The New York Times*. "And who lives in what area is always connected to our racial hierarchy. So where white people live, those homes are

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"My community was beautiful and was filled with happy and successful Black people. Then everything changed. It was like a war," Randle testified. "White men with guns came and destroyed my community. We couldn't understand why. What did we do to them? We didn't understand. We were just living. But they came, and they destroyed everything."

Another survivor, Viola Fletcher, who was seven years old at the time of the massacre, also testified at the hearing. She relayed how bombs were dropped on the community, saying, "I still hear the airplanes flying overhead. I hear the screams. I have lived through the massacre every day. Our country may forget this history, but I cannot."

Fletcher went on to say in her testimony, "The neighborhood I fell asleep in that night was rich—not just in terms of wealth, but in culture, community, heritage, and my family had a beautiful home. Within a few hours, all that was gone."

In an op-ed for *The New York Times*, Victor Luckerson, a journalist and the author of *Built from the Fire: The Epic Story of Tulsa's Greenwood District, America's Black Wall Street*, wrote that Tulsa's city leaders acknowledge "the horror of the race massacre while punting responsibility for the moral and economic debt it has wrought. But what these leaders fail to acknowledge is that the institutions they helm played an active role in halting Greenwood's progress after the massacre. The mob burned Greenwood, and the courts fanned the flames when they refused to punish the attackers or offer redress to hundreds of newly destitute Tulsans who believed the law should be on their side."

In July 2023, a Tulsa County district judge dismissed the 2020 lawsuit brought by Fletcher, Randle and the estate of Hughes Van Ellis, another survivor who died at the age of 102. In August 2023, the Oklahoma Supreme Court agreed to hear the survivors' challenge to the dismissal of their case and oral arguments were heard in April 2024. In June 2024, the Oklahoma Supreme Court **affirmed** the lower court's dismissal of the survivor's lawsuit.

The court's ruling stated, "The continuing blight alleged within the Greenwood community born out of the Massacre implicates generational-societal inequities that can only be resolved by policymakers—not the courts."

"People in positions of power, many just like you, have told us to wait. Others have told us it's too late," Randle testified at the 2021 congressional hearing. "It seems that justice in America is always so slow, or not possible for Black people. And we are made to feel crazy just for asking for things to be made right." *—Jodi L. Miller*

Gap CONTINUED FROM PAGE TWENTY-SEVEN

always valued for more."

A 2022 *New York Times* article relayed the story of a Black couple in Baltimore—Nathan Connolly and his wife Shani Mott, both professors at Johns Hopkins University. After a white appraiser gave their house a value of $472,000 in 2021, the couple conducted an experiment. They removed family photos, posters and books from their home and asked a white friend to stand in for them when the appraiser came. That appraiser, unaware a Black family lived in the home, gave the property a value of $750,000.

So, can the wealth gap be closed? Dr. Perry says that for the gap to close some type of restorative policy would need to be put in place.

"There's no way to close a gap without direct investment towards the people who've been harmed by discrimination," Dr. Perry says. "Oftentimes we talk about **reparations** for slavery. But you can make claims for reparations for housing discrimination, for education discrimination, and in other areas." •

1. According to Dr. Perry, federal state, and local policies, in other words, our government created the racial wealth gap. He suggests that a restorative policy could help close it. If you were in charge of deciding how to close the racial wealth gap, what would you propose? Explain your answer.
2. What do you think of redlining and restrictive covenants? Explain how these practices contributed to the racial wealth gap.
3. Read the sidebar *When Getting Ahead Brought Violence* on page twenty-six. The article mentions that the members of the mob that destroyed the Greenwood district were never held accountable by the courts. What do you think should have been done at the time to heal the harm and rebuild "Black Wall Street?" Knowing nothing was done, what could or should still be done today? Explain your answer.

Tackling Racism in Sports *by Emily Pecot*

The sports world may appear more integrated than other career paths, but Black athletes face racial inequity as well.

In the aftermath of the Civil War, Black athletes thrived in some sports, but none more so than in horse racing, which is America's oldest sport, dating back to the early 1700s. In fact, 13 of the 15 jockeys that competed in the first Kentucky Derby, held in 1875, were Black. The winning jockey that first year was Oliver Lewis, a Black man born into slavery in 1856, who rode a horse named Aristides to victory. In the Derby's first 28 years, 15 of the winning jockeys were African American.

In a piece that ran on a Louisville, KY television station, Chris Goodlett, the Kentucky Derby Museum's Director of Curatorial and Education Affairs, said it was only natural that African American men would excel in horse racing.

"The South was a plantation economy, and those plantations were largely run by African Americans," Goodlett said. "They were taking care of the horses, they were training the horses, and they were riding the horses."

Goodlett revealed, "As racing became more of a business, there were intentional methods on behalf of those in charge of racing to not license African American jockeys or give fewer licenses to African American jockeys."

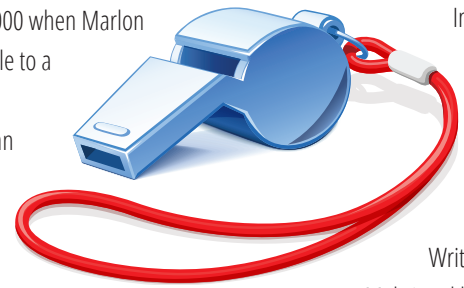
Intimidation also played a part in the decline of Black jockeys. Goodlett noted that white jockeys would run Black jockeys and the horses they were riding into the rails of the track, endangering both horse and rider. Owners were less likely to sign Black jockeys because of that, Goodlett said.

Black jockeys were eventually banned from racetracks across the country, including Churchill Downs, where the Kentucky Derby is run. In 1921, the last Black jockey rode in the Derby and there would not be another until 2000 when Marlon St. Julien rode the horse Curule to a seventh-place finish.

Contemporary equestrian historians are working to illuminate the legacy of African Americans in horse racing. African Cemetery #2 in Lexington, KY, for example, has so far documented more than 150 Black racing professionals laid to rest in the cemetery between 1894 and the 1930s.

Black leadership and the Rooney Rule

While there are many Black players on the football field, there are few in leadership roles, such as head coaches or general managers. The 2020 Racial and Gender Report Card from the Institute for Diversity and Ethics in Sports (TIDES) states that 69% of National Football League (NFL) players are people of color, but only 35% of leadership positions are held by non-whites.



In 2002, a report titled "Black Coaches in the National Football League: Superior Performances, Inferior Opportunities," brought this issue to the forefront. Written by labor attorney Cyrus Mehri and lawyer Johnnie Cochran, who gained notoriety during the 1995 O.J. Simpson

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trial, the report called attention to the "dismal record of minority hiring" of head coaches in the NFL. It also noted that since the NFL began in 1920, over 400 head coaches had been hired but only six were African American.

The NFL sought to rectify the disparities outlined in the report by adopting the Rooney Rule in 2003. Named after the owner of the Pittsburgh Steelers, Dan Rooney, who was chairman of the football owner's committee on diversity, the rule required teams to interview at least one person of color to fill coaching vacancies or the team would be fined $200,000 and could also potentially lose draft picks. After the rule was implemented, two Black coaches were hired in 2004 to fill seven vacancies.

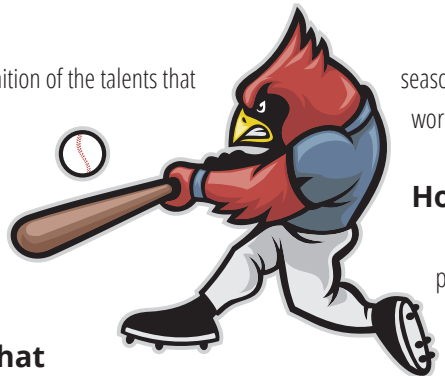
In 2019, the Global Sport Institute at Arizona State University, along with the Paul Robeson Research Center for Innovative Academic & Athletic Prowess at the University of Central Florida, looked at the NFL's hiring patterns across a 10-season window—the 2009-2010 season to the 2018-2019 season. Their analysis showed that "while most coaches from 2009 to 2019 were former players, and most players have been men of color, the vast majority of coaches were white." In the 2018-2019 NFL season, 18 coaches were fired—15 were Black. So far, the Detroit Lions is the only team to be fined under the Rooney Rule and no team has lost draft picks for a violation.

In 2022, Brian Flores, a former head coach for the Miami Dolphins, filed a federal lawsuit against the NFL, the New York Giants, the Denver Broncos and the Dolphins, alleging racial discrimination and claiming that the Rooney Rule was not working, calling it a "well-intentioned failure."

Flores' lawsuit claims "the numbers of Black Head Coaches, Coordinators and Quarterback Coaches are not even close to being reflective of the number of Black athletes on the field," which is evidence that the rule is not working.

In addition, the lawsuit states, "The Rooney Rule is also not working because management is not doing the interviews in good-faith, and it therefore creates a stigma that interviews of Black candidates are only being done to comply with the Rooney Rule rather than in recognition of the talents that the Black candidates possess."

At press time, the Flores lawsuit was still pending.



An athlete that made change

Through the years, Black athletes have continually worked to improve their sports, usually at great cost to themselves. For example, when baseball players affirm their free agency and go on to garner multi-million-dollar contracts, they can thank Curtis Flood, a centerfielder for the St. Louis Cardinals, who signed with the team in 1958.

At that time, Major League Baseball (MLB) contracts contained what is known as a reserve clause. That clause bound a player to a team for as long as the team—not the player—desired. The player could be traded, sold, or released, but the player himself could not initiate any moves on his own.

In 1969, the Cardinals traded Flood to the Philadelphia Phillies. He immediately wrote to MLB's commissioner saying, "I do not feel that I am a piece of property to be bought and sold irrespective of my wishes." His request not to be traded was denied.

Flood contended that the trade violated his "basic rights as a citizen" and was "inconsistent with the laws of the United States." He sued Major League Baseball, and his case eventually went to the U.S. Supreme Court.

In the 1972 case of *Flood v. Kuhn*, the Court sided with MLB, preserving its reserve clause. Although he lost his case, Flood set the wheels in motion for professional athletes. In 1975, MLB adopted free agency, which said that when a player's contract with a team expires, he is eligible to sign with another team. The National Basketball Association and the NFL would eventually follow suit and offer free agency to its players as well.

The MLB's decision, however, came too late for Flood. After the Court's ruling, Flood went back to baseball but was never the same after sitting out season after season waiting for the case to work its way through the courts.

Honoring athletes

While racism in the sports world persists, efforts to highlight disparities and rectify institutional racism in sports are making inroads. Continued pressure by athletes, historians, and the public are incrementally leveling the playing field and honoring the legacy of Black athletes.

For example, in June 2024, the governing body of the MLB recognized the legacy of players who played from 1920 to 1948 in the Negro Leagues. The MLB incorporated Negro League statistics into the MLB's numbers and posthumously inducted some Negro League players into the National Hall of Fame.

This move from the MLB shook up the stats and put Josh Gibson of the Negro League's Homestead Greys ahead of Ty Cobb who played with the Detroit Tigers (1905-1926) and the Kansas City Royals (1927-1928). Gibson's lifetime batting average of .372 edged out Cobb's .367. The process of combining stats began in December 2020 when the MLB first announced it would be making the change.

At the time, MLB Commissioner Robert Manfred said, "All of us who love baseball have long known that the Negro Leagues produced many of our game's finest players, innovations and triumphs against the backdrop of injustice." •

1. Were you surprised by the dominance African Americans showed in horse racing? Why do you think they were pushed out?
2. What do you think of the NFL's Rooney Rule? Do you think the rule is working as it was intended? If yes, explain how. If you think it's not working as intended, what else could sports teams do to create more diversity in coaching and leadership positions?

The Discriminatory Consequences of America's War on Drugs

by Michael Barbella

At a press conference in 1971 President Richard M. Nixon declared that drug abuse was "public enemy number one" in the United States.

"In order to fight and defeat this enemy it is necessary to wage a new all-out offensive," President Nixon said. The militaristic theme was kept up throughout the speech. President Nixon also talked about the "prevention of new addicts, and the rehabilitation of those who are addicted," however, the media picked up on the war theme and the "war on drugs" was born. Headlines the next day, such as one from the Chicago Tribune—Nixon Declares War on Narcotics in US—echoed the theme.

The Nixon administration increased federal funding for anti-drug education, drug abuse treatment, rehabilitation, and enforcement. It also created new government agencies, including the Special Action Office for Drug Abuse Prevention and the Drug Enforcement Administration (DEA). The Nixon administration proposed strict punishments for drug-related crimes, including mandatory prison sentences.

Under the administration of President Jimmy Carter, who was an advocate for decriminalizing marijuana, also known as cannabis, the tide on the "war on drugs" turned for a bit. In a 1977 message to Congress, President Carter said, "Penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself." As a result, 11 states decriminalized marijuana possession even though it remained classified federally as Schedule I drug, which is the most restrictive drug category, on par with heroin.

The "war on drugs" was amplified during President Ronald Reagan's administration, which appropriated $1.7 billion toward the drug war effort. President Reagan also signed into law the 1986 Anti-Drug Abuse Act, which established 29 new mandatory minimum sentences for drug offenses, including marijuana possession. A mandatory minimum sentence is one that is imposed automatically with no leeway for a judge to take a defendant's individual situation into account when it comes to sentencing.

Racial lines drawn

The 1986 Anti-Drug Abuse Act was criticized for its racist undertones, as it promoted disproportionate cocaine sentencing guidelines for crack cocaine and powder cocaine even though it is the same drug. The Act created longer prison sentences for anyone convicted of using crack cocaine, and shorter sentences for anyone convicted of using powder cocaine. For example, a person who had five grams of crack cocaine in their possession would trigger a five-year prison sentence. A person would need to be in possession of 500 grams of powder cocaine to trigger the same sentence, a 100-to-1 ratio. Similarly, possession of 5,000 grams of powder cocaine and 50 grams of crack cocaine commanded the same 10-year prison sentence.

A 2006 American Civil Liberties Union (ACLU) report looked back at the consequences of 20 years of the Anti-Drug Abuse Act. The report revealed that while African Americans were at a disadvantage before the more stringent sentencing guidelines took effect, the disparity was worsened after the Act's passage. The average federal drug sentence for African Americans before the 1986 law was 11% higher than for whites. By 1990, the disparity had risen to 49%, according to the ACLU report.

"There is good evidence that the war on drugs has had a disproportionate impact in Black and Brown communities, even though rates of drug use are no higher among those communities than in white communities," says Thea Johnson, a professor at Rutgers Law School in Camden who is an expert in criminal procedure. "The drug laws themselves are discriminatory. For decades, crack, which was more common in Black communities, was punished more harshly than powder cocaine, which was more common in white communities, even though they are the same drug."

Focus on treatment, not jail

In 2010, the Fair Sentencing Act (FSA) was signed into law. The FSA reduced the penalties for crack cocaine offenses, producing an 18-to-1 crack-to-powder drug quantity ratio. In addition, the FSA eliminated mandatory minimum sentences for simple possession.

"There is still a disparity in sentencing between crimes involving crack and powder cocaine, but it is smaller," says Professor Johnson. "There is no logical reason to have any disparity between the crimes involving one versus the other. Further, the enforcement of all drug laws has fallen much more harshly on communities of color, even though the rates of committing the offenses is no different from white communities."

The disparity has resulted in greater incarceration rates for Black Americans. African Americans make up 13% of the U.S. population but account for 37% of those incarcerated, according to the Prison Policy Initiative, an independent research and advocacy organization examining mass incarceration and how it undermines the nation's welfare.

"One major problem at the federal level has been the sentencing guidelines," says Jonathan Hafetz, a professor at Seton Hall Law School and a

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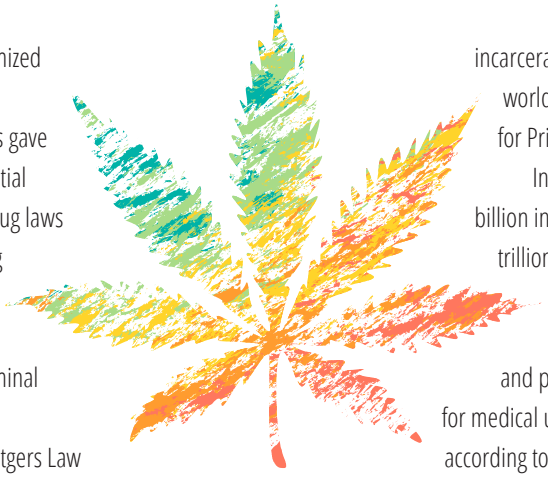
constitutional law expert. "While the guidelines minimized judicial discretion, which has the potential to lead to harsher treatment of Black defendants, the guidelines gave far more power to prosecutors and created the potential for significantly longer sentences for everyone. The drug laws need to be modified so the focus for non-violent drug crimes is on treatment, not lengthy jail terms. More funding needs to go into prevention and community service, and there needs to be overall criminal justice reform to reduce incarceration."



Todd. R. Clear, a criminal justice professor at Rutgers Law School in Newark, supports ending drug-related prison terms altogether.

"We should eliminate incarceration as a legal option for drug-related crime, legalize most substances and regulate their use, and provide treatment as a part of all health insurance services," Professor Clear says. "We should expunge criminal records for drug crimes so that they do not follow a person for a lifetime. We have learned that treating drug abuse as a public health problem and dealing with drug markets through regulation, while far from perfect, has much less problematic outcomes than the current 'war' mentality."

According to Ndjuoh MehChu, a professor at Seton Hall Law School who teaches civil rights law, the war on drugs should have never happened.

"Punishment is no answer to addiction. Countless lives and communities have been destroyed and millions of tax dollars squandered on the assumption that punishment can do the work of treatment and rehabilitation," Professor MehChu says. "A more sensible approach—as we have seen unfold with the opioid crisis for reasons that further speak to the racial dimensions of the war on drugs—recognizes that drug addiction is a public health crisis."

Tide changing

The Prison Policy Institute estimates that one in five people—some 20%—are incarcerated in the U.S. on drug charges. In addition, the U.S. has the largest incarceration rate worldwide despite being only 5% of the world's population, according to the International Centre for Prison Studies.

In 2023, NBC News reported that the U.S. spent $39 billion in 2022 to fight the war on drugs and more than a trillion dollars on the fight since it began in 1971.

There is some evidence that the tide might be shifting in the drug war, at least for marijuana use and possession. As of 2023, marijuana has been legalized for medical use in 38 states and for recreational use in 24 states, according to the National Conference of State Legislatures. Marijuana remains illegal at the federal level; however, that may be changing.

In May 2024, the U.S. Justice Department proposed a rulemaking change to move marijuana from a Schedule I drug to a Schedule III drug. According to the Drug Enforcement Administration, a Schedule III drug is one "with moderate to low potential for physical and psychological dependence." This is the first step in the process necessary to reschedule a controlled substance. It will be followed by a notice to the public, an opportunity for the public to comment, as well as an administrative hearing. •

1. How did the "war on drugs" disproportionately impact people of color?
2. Based on the information in the article, do you think the "war on drugs" has been a success or failure? Explain your answer.
3. What do you think the impact would be if, as Professor Clear suggests in the article, there was a focus on decriminalization of drugs and treatment of addiction? Explain your answer.

Glossary

acquitted — cleared of a criminal offense. **affirm** — to uphold, approve or confirm. **ambiguous** — unclear. **anesthesia** — administration of drugs or gases so that a patient is not sensitive to pain during a surgical procedure. **animus** — hostile feeling or animosity. **blighted** — decayed or ruined. **caveat** — a condition or limitation. **catechisms** — a summary of religious doctrine in the form of questions and answers. **civil disobedience** — refusal to comply with certain laws as a peaceful form of protest. **covenant** — a formal agreement or promise, usually included in a contract or deed, to do or not do a particular act. **disenfranchise** — to deprive of a privilege or right (i.e., the right to vote). **emancipated** — liberated. **emancipation** — the release from slavery. **exonerate** — to acquit or free from blame. **felony** — a serious criminal offense usually punished by imprisonment of more than one year. **franchise** — a constitutional right reserved to the people, for example, the right to vote. **Gynecology** — branch of medicine that deals with the functions and diseases specific to women and girls, especially those affecting the reproductive system. **illiterate** — unable to read or write. **Indigenous** — native to the land. **integrated** — something that has been made available equally to all races. **integration**—when diverse individuals or groups are brought together in society as equals. **jurisdiction** — authority to interpret or apply the law. **lynched** — to murder by mob action, usually by hanging. **majority opinion** — a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues. **malfeasance** — wrongdoing especially by a public official. **manslaughter**—unlawful killing of a human being without premeditation. **minority** — a non-dominant race within a group. **mulatto** — a person of mixed race with one Black parent and one white parent. **overturn** — in the law, to void a prior legal precedent. **plaintiff** — in a civil action, the person or persons bringing the lawsuit against another person or entity. **poll tax** — a voting fee, which was used to disenfranchise Black voters. **preclearance** — the process of seeking approval from the U.S. Department of Justice for changes related to voting. **propaganda** — information, especially of a biased or misleading nature, used to promote or publicize a particular political cause or point of view. **ratified** — approved or endorsed. **reparations** — financial compensation. **repealed** — revoked. A law (or amendment) that is repealed has been withdrawn or cancelled and is no longer a law. **reverse** — to void or change a decision by a lower court. **second degree murder**—typically murder with malicious intent but not premeditated. **segregation** — the policy of separating people from society by race or social class. **sovereignty** — the ultimate supreme power in a state or nation. **statute** — a particular law established by a legislative branch of government. **stipends** — a fixed regular sum paid as a salary or allowance. **subjugation** — the action of bringing someone or something under domination or control. **suffrage** — the right to vote. **treason** — the offense of attempting to overthrow the government. **unalienable** — not transferable to another or not capable of being taken away or denied. **upheld** — supported; kept the same. **vagrancy** — not having a permanent job or home. **veto** — to refuse approval or passage of a bill that has been approved by a legislative body. The executive branch of government has the power to veto, but that power may be overridden with enough support. **warrant** — a written document from a judge authorizing anything from a search to an arrest to the obligation to pay a fine.