

ASSESSING THE ROLES OF RACE AND PROFIT IN THE MASS INCARCERATION OF BLACK PEOPLE IN AMERICA

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“And in the final analysis, a riot is the language of the unheard. And what is it that America has failed to hear? It has failed to hear that the plight of the Negro poor has worsened over the last few years. It has failed to hear that the promises of freedom and justice have not been met. And it has failed to hear that large segments of white society are more concerned about tranquility and the status quo than about justice, equality, and humanity. So in a real sense, our nation’s summer’s riots are caused by our nation’s winters of delay. And as long as America postpones justice, we stand in the position of having these recurrences of violence and riots over and over again.”

—Martin Luther King Jr, *The Other America*,
a speech delivered on April 14 1967,
at Stanford University.

Abstract: Shortly after the alleged discovery of America and its vast expanse of land waiting to be cultivated with cash crops using cheap human labor, millions of Africans fell victims and were kidnapped to work as slaves in American plantations for about four centuries. Even though it has been over 150 years since the official abolition of slavery in America, the effects of the 400 years of enslavement continue to reverberate: irrespective of the blackletter rights protecting Black people from injustices, the deep racist structures typically decrease the potency of these rights, and thus perpetuate oppression. This article assesses the roles being played by race and profit in the administration of criminal justice: it deems the systemic oppression of Black people as a humanitarian crisis and seeks to ascertain this by interpreting the attitudes of the various key players in the American Criminal Justice System, the majoritarian population, mainstream media, and Corporate America: it challenges some entrenched racist practices suspected to be the umbilical cord that links Black people in America with mass incarceration.

Keywords: Black people, racism, oppression, violence, police brutality, prison, bail-bond premiums, mass incarceration, mainstream media, protests.

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reporting? 3.1.4. Support from white supremacists? 3.1.5. George Floyd's death: a mirror-image of police brutality in America. 4. THE ROLE OF PROFIT IN MASS BLACK INCARCERATION. 4.1. Reimagining the 13th Amendment: the slave plantations rose from the ashes to become the American prisons. 4.2. The cash bail system. 4.3. Who own the stocks of the prison and bail-bond corporations? 5. CONCLUSION: PROTESTS YIELD MORE AND BETTER RIGHTS.

1. INTRODUCTION: WHAT DOES HISTORY TELL US?

By definition, economic resources are scarce and finite, and the satisfaction of basic needs including to finance warfare in protection of territories partly motivated fifteenth century European adventurers to travel the globe in search of capital. In relation to the African experience, one of the earliest episodes of cross continental trades was underscored in the economic transactions between Africans and the Portuguese, when the latter arrived in West Africa sometime in 1471 to source for gold and other resources.¹ However, in respect of trade, the scale of unfair exchange between the Portuguese and Africans paled into insignificance when compared to the more brutal experience following the 'discovery' of America by Christopher Columbus and his men in 1492.² The vast expanse of land in America awaiting cultivation with cash crops required extremely cheap human labor:³ this could not be satisfied by sole use of the Indentured White servants from Europe⁴ or the Native Americans who proved quite difficult to subdue owing to their thorough familiarity with the terrain and adaptability of the environment which gave them more immunity against the diseases compared to their European counterparts.

After some years of experiments with the Native Americans, it became clearer to the European adventurers that kidnapping Africans especially those in the western region was more likely to offer a reliable assurance of labor supply at the scale that was needed to cultivate sugarcanes, tobacco, cotton, etc., on the vast space of land: Africans unlike the Native Americans were thus unfamiliar with the American terrain, and owing to the long distance as well, found it impossible to escape back to Africa. Also, based on their tropical positionality, West Africans were already experienced farmers and were thought to have the exact skills needed to cultivate cash crops in America. Biased historians might say that the 400 years of kidnapping Africans to America was in the context of trade on the basis that Africans had the mental and age capacities to decide what exactly was profitable or beneficial to them: thus the alleged preference of rum, mirror, combs, and other items

¹ Felipe Fernández-Armesto, 'Exploration and Navigation' in: Hamish Scott (ed), *The Oxford Handbook of Early Modern European History, 1350 - 1750: Volume II: Cultures and Power* (Oxford University Press, 2015), p.177.

² *Ibid*, p.187.

³ *Ibid*, p.178.

⁴ David W. Galenson, 'White Servitude and the Growth of Black Slavery in Colonial America' (1981) 41(1) *The Journal of Economic History*, pp. 39-47.

⁵ Stanley Alpern, 'What Africans Got for Their Slaves: A Master List of European Trade Goods' (1995) 22, *History in Africa*, 5-43, p.6.

of exchange over their own loved ones without accompanying threats or use of force is challenged to be factually inaccurate.⁵

Historical narratives that portrayed early European trades with the invaded Africans as fair, on the basis that the latter reasonably acted in their best interests resemble the justifications that are littered in Francisco de Vitoria's writings which justified the lootings of Columbus and the brutality against the Native Americans:⁶ international law bears the birth marks of invasions of peoples by early European adventurers, such as Columbus and his men, who traveled the globe under state sponsorships to aggressively acquire capital. As explicated by Sven Beckert, 'slavery was the expropriation of indigenous peoples, imperial expansion, armed trade, and the assertion of sovereignty over people and land by entrepreneurs at its core.'⁷ Thus, Beckert's thesis (which this paper also agrees with) disagrees with imperial concepts such as *terra nullius* and other types of brutal practices which became the bedrock of customary international law: these practices were used to justify the invasions of the Native Americans and Africans who were forced to allow the European adventurers to 'trade' with them, since resistance from the local population was regularly deemed an act of war which justified the use of force to subdue the people, take their resources and treat them as prisoners of war (slaves). All these arguably debunk the concept of trade in the context of slavery.⁸

Slavery was hereditary,⁹ and if one was enslaved, the servitude survived into their offspring. Slaves were not taught to read and write, and given their cultural and language diversity, there was initially no common language of communication available to air grievances, let alone organize any meaningful resistance or revolution: enslaved mothers tried to teach their offspring their original language from Africa, but these only produced more diversity among the enslaved people who initially relied mainly on sign language for communication. Thus it took nearly two centuries into the Slave Trade before new generations of the enslaved Black people could begin to organically learn English vernaculars based on their observations and hearing of their masters' discussions or instructions, and it is therefore not surprising that the first major uprising was the Stono Rebellion in 1739:¹⁰ evidently, this was possible due to a common language of the planners and participants of the protests in successfully organizing and executing their plans. This particular achievement in 1739, set the ball rolling for other revolutions that finally crystallized to freedom and liberty in 1865.

⁶ Christopher Columbus, 'Letter of Columbus on the First Voyage', in Cecil Jane (ed. and trans.), *The Four Voyages of Columbus* (New York: Dover, 1988), I, p. 1 (expressing gratitude to Queen Isabella and assuring that he had taken possession of the 'discovered' territory without any resistance).

⁷ Sven Beckert, *Empire of Cotton: A New History of Global Capitalism* (Penguin, 2014), p. xv.

⁸ Anthony Anghie, *Sovereignty, Imperialism and International Law* (Cambridge University Press, 2005) pp. 19-23.

⁹ Arnold M. Jones, 'Slavery in the Ancient World' (1956) 9(2) *The Economic History Review* 185, at p.198.

¹⁰ Edward A. Pearson, 'A Countryside Full of Flames': A Reconsideration of the Stono Rebellion and Slave Rebelliousness in the Early Eighteenth-century South Carolina Low Country, Slavery & Abolition' (1996) 17(2) *A Journal of Slave and Post Slave Studies*, pp. 22-50.

Michael Mullin, *Africa in America: Slave Acculturation and Resistance in the American South and the British Caribbean* (University of Illinois Press, 1995) pp.1736-1831.

Biased historians typically present the abolition of slavery as being the idealistic product of international law championed by William Wilberforce and his friends. However, in deference to Marxism, legal rules are hardly products of idealism but of those emanating from class struggles and a system's experiments with the factors of production. Thus a Marxist perspective¹¹ to abolition which is similar to that of Eric Williams in his classical text of *Capitalism and Slavery*,¹² could assist in challenging the mainstream narrative on two main accounts. First, the enslaved people did not enjoy the brutal experience and evidently revolted in many subtle ways regardless of the consequences which often were capital punishments by their owners.¹³

Yet notwithstanding the zero tolerance of slave masters and their constant machinations to dim the sight of their slaves toward appreciating the enshrined concepts of human rights, the subtle resistances eventually accumulated into major uprisings: the Stono Rebellion, New York City Conspiracy of 1741, Gabriel's Conspiracy of 1800, German Coast Uprising of 1811, Nat Turner's Rebellion of 1831, etc.: all these made it significantly uncomfortable and unsustainable for the slave masters to continue their brutality and oppression against the enslaved people.¹⁴ Second, as hinted earlier, one of the motivations of the state-sponsored voyages in aggressive search of capital across the globe was to help finance the expensive wars that characterized the history of Europe for several centuries, which partially gave rise to the Treaty of Westphalia in 1648: wars, annexations of territories and enslavement of prisoners of war were common experiences that unsettled the minds of rulers and their subjects, and in order not to appear vulnerable to surrounding enemies, it was important to showcase wealth, military might, and technology, a sort of *ex ante* warnings to potential enemies.

Perhaps, it was this type of hostile environment, sometimes lasting for centuries at an unbroken stretch as observed by BS Chimni¹⁵ that motivated state-sponsored science and technology researches: one piece of a newly discovered technology gave the nation a military or an economic upper hand against its neighbors. The Industrial Revolution in the eighteenth century was born out of this frantic race to the top, and the use of machines to produce goods and services at a much faster rate meant that economically, it continuously yielded lesser profits to charter and use slaves to perform what machines could do better.¹⁶ The decrease in demand for slaves meant that Slave Trade became incapable of financing the months of expeditions on the High Sea: this became the entry point for the abolition of slavery, which accords more with a Marxist explanation than the idealistic account that

¹¹ Ernest Mandel, *Introduction to Marxism* (Pluto Press, 1982) ch. 14.

¹² Eric Williams, *Capitalism and Slavery* (University of North Carolina Press, 1944), 11.

¹³ cf. Mandel (n 11) at 146.

¹⁴ Wim Klooster, 'Slave Revolts, Royal Justice, and a Ubiquitous Rumor in the Age of Revolutions' (2014) 71(3) *The William and Mary Quarterly* 401-424.

¹⁵ BS Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (Cambridge University Press, 2nd edn, 2017), p. 486.

¹⁶ Barbara L. Solow, "Capitalism and Slavery in the Very Long Run," (1987) 17 *Journal of Interdisciplinary History* 732; Joseph E. Inikori, 'Market Structure and the Profits of the British Atlantic Trade in the Late Eighteenth Century' (1981) 41 *Journal of Economic History* 745-76.

favors international law, religious conviction and the moral altruism of Wilberforce and his friends.¹⁷

Within America, one of the factors that contributed to the abolition of slavery was the political and economic divide of the southern and northern parts: the former had richer land resources and profited enormously from the workhorse of slavery unlike their northern counterpart. Britain also benefitted enormously from Slave Trade, although abolished it in 1807, long before America did in 1865.¹⁸ However, following the outcome of the War of 1812 in which the Thirteen British colonies in the South had united to resist the British oppression and rule: the latter, renowned for its naval and shipping power during this period, and backed morally by its own abolition of slavery in 1833, took steps to curtail America's rising power which was propelled by Slave Trade via the cultivation of cash crops on its vast expanse of land. Internally as well, the North and South tensions continued to brew, resulting eventually to the Civil War between 1861-1865. It is not therefore surprising that President Abraham Lincoln who ran for presidency in 1860 on pro-abolition manifestoes, won. By this time, and in search of freedom, many of the slaves in the South started to escape to the North to join the latter's military, which ultimately boosted their overall military strength. Lincoln's winning further triggered the South to secede and fight the Civil War, and by 1863, Lincoln abolished slavery which was the workhorse of the South; although this did not take practical effects until 1865 following the birth of the Thirteenth Amendment: i.e., the abolition of slavery in America.

The essence of the forgoing historical analysis is twofold: to concretely establish or reemphasize that slavery in America was exclusively motivated by profit: the South cultivating a vast expanse of land with cheap human labor, an envious condition that later annoyed both external enemies (Britain) and internal enemies (the North). Also in deference to the profit argument, the emergence and use of machines to produce more goods and services in order to sell at competitive prices and make more profit, meant that chartering and maintaining slaves were no longer profitable. The rest of the paper argues how and why Black people in America are entangled in this profit and race narratives which reverberate in the criminal justice system and how they are perpetuated through the occlusion of non-mainstream accounts.¹⁹

1.1. The aim of writing and the underlying questions

This paper aims at raising consciousness among the American public and observers interested in the concepts of human rights, relating more specifically to the deep structures

¹⁷ For further thoughts on how agitations of marginalized peoples typically result into emancipation as opposed to interventions from international law, see BS Chimni, 'International Law Scholarship in Post-colonial India: Coping with Dualism' (2010) 23(1) *Leiden Journal of International Law* 23, p. 23.

¹⁸ Kenneth Morgan, *Slavery, Atlantic Trade and the British Economy, 1660-1800* (Cambridge University Press, 2000), pp. 29-35, 47-50.

¹⁹ See generally, Edwin Baker, *Media, Markets and Democracy* (Cambridge University Press, 2002) pp. 63-95; Michael O'Rielly, 'Defending Capitalism in Communications' *Federal Communications Commission* (February 12 2016). Available at <https://www.fcc.gov/news-events/blog/2016/02/12/defending-capitalism-communications>

of racism in America and how these have unfairly shaped the culture which often emasculates or obscures the visibility of casual or external observers to the problem.²⁰ In the paper's view, part of the reason America's acts of racism often go unnoticed or unchallenged hinges on its heavy investments in mass media communications, often seeking to protect the economic and political interests of those who control the American wealth.²¹ The paper also observes that Black people are systemically marginalized and oppressed, incarcerated *en masse*, and all these obstruct their collective progress while at the same time oiling the economic interests of those who profit from their incarceration.

The paper keeps the role of profit in American culture throughout the analysis to enable the reader understand how legal rules and interpretations of same in America are often created to protect capital and interests of the majoritarian population while the Black people functionally remain items of commodity that generate wealth in American prisons, reechoing the experiences of their ancestors in the American slave plantations. Yet the core aim of the observations and analysis is to show that historically, no marginalized and brutalized people have enjoyed the experience: the profits of counter-resistance which are often not documented by biased historians, show that protests and agitations are the tested means of acquiring rights or better rights, which this paper argues are hardly the byproducts of idealism but realism.

The following questions provide guidance to the inquiries undertaken in this paper. They seek to know:

A. Whether the American police enjoy any form of support from white supremacists (individuals and corporations) in the brutality, arrest, and the mass incarceration of Black people: in truth, could it said that the majoritarian population oppose acts of violence and theft which are the labels unilaterally assigned to Black people in the context of their resistance and protests against systemic oppression? (the "Role of Race"),²² and;

B. Whether some individuals, policemen, congressmen, judges, and key officials in the criminal justice system, somehow make profit from the mass incarceration of Black people, either as shareholders of the bail-bond and prison corporations or as direct recipients of bribes (including lobbying or financial contributions for political campaigns) from the controlling shareholders and managers of American corporations? (the "Role of Profit").²³

1.2. Justification for the choice of questions

Based on keen observations of the mainstream media and everyday life in America, the paper develops at least two questions that undeniably underline the Black people's experiences in America.²⁴ The questions help the reader reflect on the racist treatments

²⁰ cf. Baker (n 19) at pp. 245-276.

²¹ *Ibid.*

²² See Floyd Weatherspoon, 'Racial Injustice in the Criminal Justice System', in: *African-American Males and the U.S. Justice System of Marginalization: A National Tragedy* (New York: Palgrave Macmillan, 2014) pp. 17-18.

²³ See generally, Tera Herival and Paul Wright, *Prison Nation: the Warehousing of America's Poor* (Routledge, 2003).

against Black people which constantly manifest in many shapes and forms including police brutality and mass incarceration. In effect, the questions seek to understand why the ‘Black body’ in America has become a metaphor for oppression, hate, violence, and even poverty.

If answers to the questions are attempted from the top or unfairly analyzed to suit biased interests of the majoritarian population, the outcome is likely to suggest that Black people in America are troublemakers and criminally minded individuals judging from the statistics of imprisonment:²⁵ this perspective currently appears to be mainstream based on the data that constantly swells itself owing largely to the deep racist structures. However, if the questions are approached from history, and how protection of economic interests has always culminated into unfair legal rules, their interpretation and enforcements, one realizes that what is seen as a violent behavior of a Black person is often their resistance against oppressions, chiseled deeply in the justice and economic systems, which continue to keep them at the periphery since the fifteenth century.²⁶ In any event, the paper observes that the alleged bad behavior or acts of violence ascribed to Black people by the mainstream narrative, pale into insignificance when compared with America’s violence and theft of resources around the globe.

2. THE OBSERVATIONS FROM WHICH THE QUESTIONS EMERGED

2.1. First observation: the near-impotence of blackletter rights

Keeping in mind the historical circumstances surrounding the existence of Black people in America, this paper attempts a sketch of events between 1865 i.e., the Thirteenth Amendment to the American Constitution which was the first time Black people came in contact with the concepts of human rights, and the contemporary times. The paper observes that President Lincoln’s winning in 1860 which signaled an economic destruction of the South, and the eventual commencement of the Civil War, helped to finally trigger the abolition of slavery. For the Southerners whose economy depended largely on slavery, the abolition was a bad news and up till today the umbilical cord linking the economic interests of the South (America) and the exploitation, as well as the emancipation struggles of Black people remains to be fully severed. In the interim, this condition could help offer explanations as to why racial discriminations, judicial biases, and police brutality still reverberate in the justice and economic systems irrespective of black-letter rights to the contrary.²⁷

²⁴ On the predominant types of experience of Black males in America: cf. Floyd Weatherspoon (n 22) pp. 3-7.

²⁵ *Ibid*, p.9. Also see NAACP, ‘Criminal Justice Fact Sheet’. Available at <<https://www.naacp.org/criminal-justice-fact-sheet/>>

²⁶ cf. Floyd Weatherspoon (n 22) p. 91.

²⁷ Andrea Orr, ‘Economic Policy Institute Why Do Black Men Earn Less?’ (March 3, 2011). Available at: <http://www.epi.org/publication/why-do_black_men_earn_less/>

For instance, following the Thirteenth Amendment, the Fourteenth Amendment in 1868 granted citizenship to the formerly enslaved people and ‘equal protection of the law’, and the Fifteenth Amendment in 1870 granted Black people the right to vote. However, all these rights were functionally defeated by the machinations of the American criminal justice system at that time which grappled hard with the concepts of racial equality. American judges readily found ways to bypass the black-letter rights through various rules of statutory interpretations: even after three decades of abolition, in 1896, the Court in *Plessy v Ferguson*²⁸ ruled that racial segregation in schools was indeed not a violation of the Fourteenth Amendment’s Equal Protection Clause.

The paper observes that even though the Thirteenth to Fifteenth Amendments had enshrined concepts of human rights which purportedly benefitted Black people, functionally these rights were defeated by the deep structural racism that took centuries to crystallize: between 1865 to 1954 (*Brown v Board of Education of Topeka*)²⁹ and 1964 (the Civil Rights Act), a period of 100 years endured, and was characterized with strong agitations for racial equality by Black people. Even though the situation for Black people in the contemporary America has arguably³⁰ improved compared to the previous centuries, one persistent experience for them remains the weakness of blackletter rights and the deliberate reliance on legal gaps and rules of interpretation to occasion injustice when a Black person is interacting with the criminal justice system compared to their White American counterparts.

2.2. Second observation: police brutality of Black people is a superstructure

From a cause and effect analysis, police brutality of Black people in America is only the end product of the underlying deep structures of racism that took centuries to establish: thus in probing incidents of brutality it is important not to lose sight of the historical underpinnings. From observations, the frequency as well as the inhuman styles through which police brutality manifest are indicative of its solid taproots in American (mainstream) culture: for instance, the regular excuse furnished to exonerate policemen who extra judicially kill Black people: that they were just ‘a few bad apples’ in the system who do not represent the ideals of the police force.³¹ Needless to say that police brutality or misconduct is not a recent phenomenon in the American culture and experience, and

²⁸ 163 U.S. 537 (1896).

²⁹ 347 U.S. 483 (1954).

³⁰ However, see a study by the U.S. Glass Ceiling Commission, reporting that: ‘African-American men are stereotypically perceived as lazy/undisciplined/ always late/fail to pay their taxes/unqualified but protected by affirmative action/violent/confrontational/emotional/hostile/aggressive/unpredictable/ unable to handle stressful situations/threatening/demanding/militant/loud/ and less intelligent than other racial or ethnic groups.’ See U.S. Census Bureau, Statistical Abstract of the United States (2012). Available at: <<http://www.census.gov/population/www/socfemp/school.html>>

³¹ On the ‘bad apple’ defense, see Chiraag Bains, ‘A Few Bad Apples’: How the Narrative of Isolated Misconduct Distorts Civil Rights Doctrine’ (2018) 91(1) *Indiana Law Journal* 29, 30-35; Michael C. Dorf, ‘Iqbal and Bad Apples’ (2010) 14 *Lewis & Clark Law Review* 217, pp. 218–19; Damien S. Donnelly-Cole, ‘Note, Not Just a Few Bad Apples: The Prosecution of Collective Violence’ (2006) 5 *Washington University Global Studies Law Review* 159, pp. 78–85.

already bothered the Supreme Court as far back as *Boyd v United States*.³² But in deference to history which has earlier been analyzed, one realizes that the American wealth is inextricably linked to oppressive subjugations with the excessive use of force and arms: a cultural practice of slave patrollers³³ that has reincarnated as police brutality.³⁴ Before the twenty-first century, knowing the existence and scale of police brutality in America was only possible through print materials which were largely written and censored by those who defer largely to the protection of capital.³⁵ In fact, as of the Civil Rights movement in 1964, even though video cameras were already in existence and helped to capture the government's excessive force, using water cannons, police dogs, live arms, thick wooden batons, etc., to dispel and quell peaceful protests against racial inequality; those videos only started to surface in the last two decades for global consumption following the advent of the Internet, YouTube, and other social media platforms. What this shows in large part is that the global consciousness of police brutality in America and the appreciation of its inhuman scale were only made possible by the Internet: perhaps this could assist non-Black communities appreciate the alarming scale of the brutal experiences of Black people in America since the past 500 years.

Yet irrespective of the emergence of the Internet, Virtual Private Network, Smart Phones, etc., which help to showcase the oppressive tactics of the American government and its law enforcement agencies almost as they occur, the reactionary supports of some Americans (white supremacists) against racial equality and the mainstream media are informative, and indicative of the fact that police brutality is indeed the window through which the machinations of the American system against Black people find actual expressions: perhaps this further helps to explain why police brutality, irrespective of its obvious conflicts with the concepts of human rights, rule of law and democracy (which the American government professes to defend), has not been meaningfully addressed.

As earlier argued, part of what nourishes police brutality in America is the tacit support from white supremacists and the American mainstream media: arguably, the latter are owned largely by White Americans and have often been used to control narrative which precisely aims at shaping the consciousness and thoughts of the American people.³⁶ Since it has been established above that police brutality has been an integral part of doing business and making profits in America, this could explain why the mainstream media which are largely owned by big businesses and rich Americans report mainly to protect the economic interests of their financiers instead of the human rights protection of Black

³² The American Supreme Court had already addressed against issues of police brutality more than 130 years ago in *Boyd v United States* (1886) 116 U.S. 616, 630, regarding “the indefeasible right of personal security, personal liberty and private property.”

³³ K. B. Turner, David Giacomassi & Margaret Vandiver, ‘Ignoring the Past: Coverage of Slavery and Slave Patrols in Criminal Justice Texts’ (2006) 17(1) *Journal of Criminal Justice Education*, 181-195, 185.

³⁴ cf. Sven Beckert (n 7), p. xv.

³⁵ cf. Baker (n 19) at pp. 63-95.

³⁶ Mary B. Oliver, ‘Portrayals of Crime, Race, and Aggression in “reality-based” Police Shows: A Content Analysis’ (1994) 38(2) *Journal of Broadcasting & Electronic Media*, pp. 179-192.

people, the denial of which, in fact, helps ensure the maximization of profit.³⁷ Again, from the perspective of profit, it is not therefore surprising that the mainstream media reporting on a police person's wrongful arrest and extra-judicial killing of a Black person irrelevantly focus on the deceased person's records, such as preexisting health conditions, any past criminal act, family life, etc., instead of reporting or commenting on the actual facts of the homicide.³⁸

Self-evidently, this prevalent red-herring approach of focusing on irrelevancies is typically designed to forcefully impress on the public's (sub)consciousness that the deceased somewhat deserved their death. As Bryan Adamson observed,³⁹ biased media reporting could also help in shaping the thought and decisions of the jury who are drawn from the public and majorly from the White American community: it is not therefore surprising that in the key police brutality cases analyzed below, the jury, regardless of the compelling evidence of wrongful arrests and killing of the deceased Black persons, ruled that there was no triable offence and consequently exonerated the accused police officers. In line with Cynthia Lee's view, this overwhelming amount of support for the police translates into a carte blanche for more brutality of Black people, an upfront assurance by the criminal justice system on the inherent lack of consequences for current or future acts of brutality.⁴⁰

2.3. Third observation: the majoritarian attempt to seek equity and justice with unclean hands

Historically, or imagined from the Marxist standpoint, human rights are simply the byproducts of the constant class struggles between the powerful and the weak, between the haves and the have-nots, and between those who profit from a status quo and those who suffer from it.⁴¹ The outcome of the balancing and rebalancing of struggles give birth to rights in the Hohfeldian sense.⁴² In the case of Black people in America, the various human rights starting from the Thirteenth Amendment have emerged through class struggles, and each acquired right, of course reduces the wealth of those who previously profited from the denial of that particular right and its associated privileges.

³⁷ Paul Klite, Robert A. Bardwell, Jason Salzman, 'Local TV News: Getting away with Murder' (1997) 2(2) *Harvard International Journal of Press/Politics* 102-112, at p.103 (citing how profit plays a role in American news reporting).

³⁸ Travis L. Dixon, 'Black Criminals and White Officers: The Effects of Racially Misrepresenting Law Breakers and Law Defenders on Television News' (2007) 10(2) *Media Psychology*, pp. 270-291.

³⁹ Bryan Adamson, 'Thugs, Crooks, and Rebellious Negroes: Racist and Racialized Media Coverage of Michael Brown and the Ferguson Demonstrations' (2016) 32 *Harvard Journal on Racial & Ethnic Justice* 189, p. 193.

⁴⁰ Cynthia Lee, 'A New Approach to Voire Dire to Racial Bias' (2015) 5 *UC Irvine Law Review* 843, pp. 843-847, 860-867 (discussing issues of implicit bias in mass media and among members of the jury in the American criminal courtrooms).

⁴¹ Karl Marx, *Capital: A Critique of Political Economy* (New York: International Publishers, 1967), I: 361 ('slavery is just as much the pivot of bourgeois industry as machinery, credits etc. Without slavery you have no cotton; without cotton you have no modern industry.').

⁴² Thomas D. Perry, 'Paradigm of Philosophy: Hohfeld on Legal Rights' (1977) 14(1) *American Philosophical Quarterly*, 41-50.

Indeed, struggles for a better set of rights are normally works-in-progress: the fact they encounter oppositions is indicative that they are legitimate and beneficial struggles: this explains why Black protesters in America are derogatorily labelled as ‘thugs’, ‘crooks’, and ‘looters’ by the mainstream media or majoritarian population toward discouraging or desecrating their agitations as well as paving way for the brutal use of force in quelling their protests.⁴³ From observations, during each protest, many white supremacists in America adamantly insist that what they see is not a peaceful protest, and that while they may accommodate agitations for rights or airing of grievances, engaging in ‘non-peaceful’ protests will be unacceptable and thus resisted.⁴⁴ Even though it is ridiculous for an oppressive system to unilaterally determine how the oppressed ought to exactly react against its oppression at any given time, majority of the Black protests are peaceful and emanate from the heinous acts of injustices and neglect of the criminal justice system to treat Black people as their White counterparts: a neglect that could fairly be interpreted as a quasi-endorsement of police brutality, as the cases below, show.⁴⁵ The paper further observes the hypocrisy that is largely resident in the majoritarian criticisms of Black protests, and links the hypocrisy to the protection of economic interests. However, to create the façade of a legitimate intervention based on the protection of lives and property, as well as conduct the popular hymn of ‘Law and Order’, the American government being already experienced in oppression knows exactly how to artificially create justifiable grounds for military intervention, by paving ways for a ‘hijack’ of Black protests through control of the narrative or instigating white supremacist groups to obstruct the protests.⁴⁶ Irrespective of these domestic machinations, the unfair critique and designation of Black protests as ‘barbaric’ is also rooted in hypocrisy being that the accusers are not realistically opposed to acts of barbarism, violence and thuggery, which deeply characterize America’s looting of assets from around the globe starting from the Slave Trade to acts of thuggery in Vietnam, Iraq, Afghanistan, and Libya.⁴⁷

Unbiased researchers have been able to unearth America’s true motives for the twenty-first century invasions of other countries and linked them with the crude oil resources those invaded countries have in abundance.⁴⁸ Just like its domestic tactics of accusing Black people for being ‘barbaric’ and thus proceeding to clamp down on them, it uses similar tactics to justify its loots abroad by first accusing and designating the leaders of those invaded nations as ‘dictators’ and ‘oppressors’ of their own people, in order to trigger Article 51 of the United Nations Charter and consequently invade them on grounds

⁴³ cf. Bryan Adamson (n 39), pp. 191-193.

⁴⁴ *Ibid*, pp. 211, 237.

⁴⁵ This observation is similar to Martin Luther King’s observation that ‘a riot is the language of the unheard’: Martin L. King, Jr ‘The Other America’ March 14 1968. Available at <<http://www.gphistorical.org/mlk/mlkspeech/>>

⁴⁶ Jenny Jarvie and Richard Read, ‘Amid Chaos, some Black Activists say the Message has been hijacked’ *The Los Angeles Times* (May 30 2020). Available at <<https://www.latimes.com/world-nation/story/2020-05-30/have-the-sprawling-protests-against-police-brutality-spiraled-out-of-control>>

⁴⁷ Raymond Hinnebusch, ‘The US Invasion of Iraq: Explanations and Implications (2007) 16(3) *Critique: Critical Middle Eastern Studies*, pp. 209–228.

⁴⁸ *Ibid*, p. 212.

of humanitarian interventions.⁴⁹ The looted resources are brought back home by Corporate America and owned largely (80%) by the majoritarian population, constituting largely the White Americans (76.5%)⁵⁰ most of who ironically claim to oppose acts of violence and looting in the context of Black protests, even though America's violence and theft of the resources abroad often see the reduction of some parts of the invaded countries into rubbles, and destruction of their economic and political structures including the internal displacement of people.⁵¹

None of these acts of violence, wrongful killings, and theft of resources abroad have attracted visible condemnation and protests on the streets of America by the majoritarian population, and the inconceivably low level of interest to criticize the government invariably endorses the accuracy of the observation that the unfair criticisms against Black protests by the majoritarian population gear toward the protection of economic interests and status quo, and do not reflect any sincere conviction that the protests are inconsistent with human rights, rules of democracy, or any just law in America.⁵² In any case, based on the hierarchy of rights, the inalienable struggles to protect one's own life and their loved ones from a systemic destruction are morally superior to those undertaken to protect properties that were largely obtained through unfair means: thus seeking equity and justice towards the protection of property ought to be undertaken with clean hands.

3. ANALYSIS OF THE QUESTIONS AND OBSERVATIONS THROUGH THE LENSES OF RACE & PROFIT

3.1. Does race play a role in the administration of criminal justice?

3.1.1. What do the statistical data say?

Data show that although Black people in America make up 13.4 % of the total population,⁵³ they are 2.5 % more likely to be murdered by the police than are their White counterparts.⁵⁴ Although police brutality of Black people is widespread in America, some states have been observed to be the flag bearers: e.g., California, Florida and Texas rank

⁴⁹ Thomas Yoxall, 'Iraq and Article 51: A Correct Use of Limited Authority' (1991) 25 (4) *The International Lawyer*, pp. 967-94.

⁵⁰ United States Census Bureau, 'Population Estimates' (July 1 2019). Available at: <<https://www.census.gov/quickfacts/fact/table/US/PST045219>>

⁵¹ UNHCR, *The State of the World's Refugees 2000: Fifty Years of Humanitarian Action* (Geneva: United Nations, 2000), 314; Alessandro Monsutti, "The Transnational Turn in Migration Studies and the Afghan Social Networks," in Dawn Chatty and Bill Finlayson (eds.), *Dispossession and Displacement: Forced Migration in the Middle East and North Africa* (Oxford University Press, 2010), 47; Ashley Jackson, "The Cost of War Afghan Experiences of Conflict, 1978–2009," *Oxfam International* (November 2009). Available at <https://www-cdn.oxfam.org/s3fspublic/file_attachments/afghanistan-the-cost-of-war_14.pdf>

⁵² Marcus Cunliffe, *Chattel Slavery and Wage Slavery: The Anglo-American Context, 1830-1860* (Athens: University of Georgia Press, 1979).

⁵³ United States Census Bureau, 'Black or African American Population in the United States' (2019) <<https://www.census.gov/quickfacts/fact/table/US/IPE120218>>

⁵⁴ Wesley Lowery, 'More Whites killed by Police, but Blacks 2.5 Times More Likely to be Killed' *Chicago Tribune* (11 July 2016) <<https://www.chicagotribune.com/nation-world/ct-police-shootings-race-20160711-story.html>>

as top states where police officers have disproportionately killed Black people.⁵⁵ Even in states that majorly have White population, e.g., Utah, where the population of Black people is estimated to be 1.06% of the total population,⁵⁶ data collected over an unbroken period of seven years show that the wrongful killings of Black people by the police constituted 10 % of the total killings, a clearly disproportionate rate which shows that Black people there are about 9.21 times more likely to be killed by the police compared to their White counterparts.⁵⁷

Similarly, in Minnesota where George Floyd was killed by a police officer, Black people there are nearly four times more likely to be killed by the police, and comprise of 20 % of those killed despite being only 5 % of the total population.⁵⁸ In Washington D.C, the American state capital, the Black people constitute about 50 % of the total population, and comprised of 88 % of the total police killings, which is a discrepancy of about 38 %.⁵⁹ In Rhode Island, the discrepancy rate was about 44 %.⁶⁰ And about “99 percent of all officers involved in all police killings had no criminal charges pressed against them.”⁶¹ The above data are only indicative of the existence of the problem: it is fair to assume that some incidents of police extra judicial killings are never reported or even known, or only known exclusively from the bias reporting of the mainstream media.⁶² In the past when the streets and highways did not have circuit camera televisions, obtaining video evidence of police brutality was difficult and depended heavily on the one-sided account of the police which always narrowed to the typical accusations that the Black victim was at the relevant time resisting arrest, fleeing from the scene of crime or was simply being ‘disrespectful’ to the police.⁶³

The above data offer crucial insights that help underline that in nearly all the incidents of wrongful killings of Black people, the accused officers were White persons, and just like Darren Wilson,⁶⁴ and George Zimmerman,⁶⁵ etc., were not convicted, perhaps due to the dominance of White Americans in the criminal justice system as Wright, *et al*

⁵⁵ Mohammed Haddad, ‘Mapping US Police Killings of Black Americans’ *Aljazeera* (31 May 2020) <<https://www.aljazeera.com/indepth/interactive/2020/05/mapping-police-killings-black-americans-200531105741757.html>>; see generally, Williams C. Ihome, ‘Systemic Racism, Police Brutality of Black People in America and the Use of Violence in Quelling Peaceful Protests in America’ (2020) 15(2) *Age of Human Rights Journal*, 224-262.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² cf. Bryan Adamson (n 39), at p. 191.

⁶³ *Ibid.*

⁶⁴ See Jon Swaine, et al, ‘Grand Jury Decline to Charge Darren Wilson for Killing Michael Brown’ *The Guardian* (November 25 2014). Available at <<https://www.theguardian.com/us-news/2014/nov/24/ferguson-police-darren-wilson-michael-brown-no-charges>>

⁶⁵ Cynthia Lee, ‘Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society’ (2013) 91 *North Carolina Law Review* 1557, p. 1590.

similarly observed.⁶⁶ Viewed from the theory of Reasonable Suspicion of Bias as Wright, *et al*, have helped to advance, there is hardly any sufficient reason to doubt that race is a critical determining factor in the American criminal justice system.⁶⁷ Thus, the impetus given by the 99% chance of being exonerated after a wrongful killing of a Black person manifests in the ugly style of arrest, tackling down, tasing, choking, and killing of unarmed Black victims as were witnessed in the deaths of Eric Garner and George Floyd. Below, the paper further x-rays the nature of support received by the police following a suspected act of murder of a Black person by a White police officer.

3.1.2. *Are some prosecutors and forensic experts compromised?*

Crimes are deemed to be committed against the State, and it is the State that brings a formal charge against an accused person through its public prosecutors. Nearly two centuries ago, Chief Justice Shaw in *Commonwealth v Webster*, provided clarity regarding burden of proof.⁶⁸ The standard of proof in a criminal case is the requirement on the prosecutor to prove its case beyond a reasonable doubt. Normally this safeguard is used to protect individuals from being whimsically accused of crimes and consequently thrown into prison: it is a product of good conscience and morality resting on the presumption that a system will be better off in freeing 99 guilty persons than to punish an innocent person. As advanced *In Re Winship*,⁶⁹ the United States' Fifth Amendment, and of course, every mature criminal justice system has enshrined this as the right to be presumed innocent until proved guilty following a due process of law. For the Black victims of police brutality in America, this constitutional right or safeguard is practically nonexistent and was hardly afforded to them.

Thus in America, the requirement to 'prove beyond a reasonable doubt' has been used as a weapon to subvert justice for Black victims of police brutality: even in obvious cases with compelling eyewitness accounts or video evidence, most prosecutors seemed to have deliberately refused to gather sufficient evidence that can satisfy the criminal standard of proof, enough to incriminate an accused police officer who had wrongfully killed a Black person. Technically, this leads to the 99 % acquittal rate as the publicly available data show. The prosecutors, who are also members of the police force tend to unfairly protect their own: this could be due to their selfish desire to protect a current or future interest in the police force, or simply obeying the wishes of highly placed/rich individuals: wrongful arrests which often lead to the murdering of a resisting Black person are the preliminary stages of ensuring their incarceration which ultimately sustains the wealth of the bail-bond and prison corporations.

⁶⁶ Ronald F. Wright, Kami Chavis, Gregory S. Parks, 'The Jury Sunshine Project: Jury Selection Data as a Political Issue' (vol. 2018) no. 4, *University of Illinois Law Review* 1407-1442, pp.1435-1441 (discussing issues of race in jury selections).

⁶⁷ *Ibid*.

⁶⁸ *Commonwealth v. Webster*, 59 Mass. 295, 320 (1850). Available at <<http://masscases.com/cases/sjc/59/59mass295.html>>

⁶⁹ *In re Winship*, 397 U.S. 358 (1970). Available at <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0397_0358_ZO.html>

Apart from the support shown by prosecutors, coroners and medical examiners who visit crime scenes to collect and test evidence in laboratories have often reasonably shown the capability of manipulating results to suit the narrow interests of the overall police force: in 99 % of the cases, the unilaterally processed ‘scientific’ evidence is used in court to exonerate the accused police officers.⁷⁰ In the past, when the public relied exclusively on the verdict of the forensic experts, not much could be done after their evidence was announced in favor of the accused police officer: it was largely thought that science had spoken and the cause of death was not intentional homicide but due to some internal disease the Black person suffered. Agitations of unfairness especially by eyewitnesses started to brew and gain momentum: the witnesses, especially the loved ones of the diseased persons who were present at the scene of crime were certain that the exonerating pieces of evidence were manipulated.⁷¹ Not even the Eggshell Skull rule,⁷² or the rule of thumb that if a matter is self-evident, it requires no further evidence, operated sufficiently to discredit the verdicts of state medical examiners towards incriminating officers who used excessive force to choke a non-resisting (Eric Garner) or cuffed Black person (George Floyd) until they were dead: the centuries-long of negative and racist stereotypical images against Black people typically helped and still help to justify or exonerate police officers.⁷³

However, with the emergence of the Internet and circuit camera televisions which help to capture and record street events, shocking videos of police brutality regularly surge through the Internet and circulate widely on the social media. Even the execution of George Floyd, which was witnessed live by the world, the Hennepin County Medical Examiner’s Office Autopsy Report⁷⁴ concluded that Mr. Floyd had ‘no life-threatening injuries to his face, neck, laryngeal and chest wall...and that “arteriosclerotic and hypertensive heart disease; fentanyl intoxication; and recent methamphetamine use”

⁷⁰ Research findings show that a lot of medical examiners have been pressured by their superiors and by other external forces to change their autopsy reports. For a complete report, see Judy Melinek, et al, ‘National Association of Medical Examiners Position Paper: Medical Examiners, Coroner, and Forensic Pathologist Independence’ ME Independence Position Paper, *National Association of Medical Examiners* (2013). Available at <https://name.memberclicks.net/assets/docs/00df032d-ccab-48f8-9415-5c27f173cda6.pdf>.

⁷¹ See generally, Williams R. Oliver, ‘The effect of threat of litigation on forensic pathologist diagnostic decision making’ (2011) 32(4) *American Journal of Forensic Medical Pathology*, 383-386; Scott Luzi, et al., ‘Medical Examiners’ Independence Is Vital for the Health of the American Legal System’ (2013) 3(1) *Academic Forensic Pathology*, pp. 84-92.

⁷² See Robert A. Mikos, ‘Eggshell’ Victims, Private Precautions, and the Societal Benefits of Shifting Crime’ (2006) 105 (2) *Michigan Law Review* 307-349, at pp. 310, 321-336.

⁷³ Darron T. Smith, *Images of Black Males in Popular Media, Black Voices*, March 14, 2013, available at <http://www.huffingtonpost.com/darron-t-smith-phd/black-men-media-b-2844990.html>; Ronald E. Hall, ‘Clowns, Buffoons, and Gladiators: Media Portrayals of the African-American Man’ (1993) 1 *Journal of Men’s Studies* 239, pp. 242-243 (describing how the mainstream media portray Black people); Charles M. Madigan, ‘Racial Stereotyping: An Old, Virulent Virus’ *Chicago Tribune* (13 May, 1992) at 1C (discussing how the mainstream assist in perpetuating the stereotype that Black people are prone to committing crimes).

⁷⁴ See the Hennepin County Medical Examiner’s Office Autopsy Report on George Floyd. Available at: <https://www.hennepin.us/-/media/hennepinus/residents/public-safety/documents/floyd-autopsy-6-3-20.pdf>

contributed to his death, as if to partially excuse Derek Chauvin who from every reasonable indication could be said to have killed Floyd intentionally. From antecedents, it will not be too surprising if Chauvin is exonerated on the basis of the state-connected autopsy report.⁷⁵

The manner in which Floyd's death was handled (i.e., the usual media accusations as well as the attitude of the Medical Examiners) has caused unbiased observers to rethink the soundness of the excuses furnished by the police departments as well as the forensic reports of medical examiners in previous killings of Black people, in order to achieve a clearer sight and interpretation of the events: e.g., ascertaining the existence of economic and political interests in the wrongful arrests and incarceration of Black people.⁷⁶ An official investigation by Ostrom, *et al*, for the US Department of Justice, found that "the average incarceration rate for Blacks is 1,547 per 100,000 population, while the average for Whites is 188 per 100,000 - the incarceration rate for Blacks is approximately 8 times higher than for Whites. On the surface, these numbers raise the specter of discrimination."⁷⁷ Discovery of the hidden economic interest in the wrongful arrests of Black people also explains why they are often framed-up in order to be charged with the highest possible offence, thus signaling a corrupt judge working for the common economic agenda of mass incarceration to unleash the highest possible punishment. For example, the brutal experience of Alfred Chestnut, Andrew Stewart and Ransom Watkins (the Maryland Trio) who were wrongfully accused of killing a 14-year old boy and consequently imprisoned in 1984, but released after 36 years of imprisonment on grounds of innocence.⁷⁸ A similar experience befell Ricky Jackson who was wrongfully accused, received a death sentence, and imprisoned for 39 years until he was exonerated following a witness' recantation, citing that the police had pressured him to bear the false witness.⁷⁹ Robert Jones who was wrongfully accused of killing a White woman (Julie Stott) served a period of 23 years until he was released in 2015 even after another man was proven to have committed the offence.⁸⁰ And so on.

⁷⁵ cf. (n 70), the report of the National Association of Medical Examiners.

⁷⁶ Adam Liptak, 'Black Defendants Get Longer Sentences from Republican-Appointed Judges, Study Finds' *The New York Times* (May 8 2018). Available at <https://www.nytimes.com/2018/05/28/us/politics/black-defendants-women-prison-terms-study.html>

⁷⁷ Charles W. Ostrom, Brian J. Ostrom, Matthew Kleiman, 'Judges and Discrimination: Assessing the Theory and Practice of Criminal Sentencing' (February, 2004), p.5. Available at <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/judges-and-discrimination-assessing-theory-and-practice-criminal>>

⁷⁸ BBC, 'Mayland Trio Set Free After Being Jailed for 36 Years' *BBC News* (26 November 2019) <<https://www.bbc.com/news/world-us-canada-50557396>>

⁷⁹ Philip Sherwell, 'America's Longest Serving Innocent Prisoner Receives \$1 million for 39 Years in Jail' *The Telegraph* (15 March 2015) <<https://www.telegraph.co.uk/news/worldnews/northamerica/usa/11485165/Americas-longest-serving-innocent-prisoner-receives-1m-for-39-years-in-jail.html>>; See National Registry of Exonerations, 'Ricky Jackson' (5 November 2020) <<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4553>>

⁸⁰ Aleem Maqbool, Robert Jones Locked-up for 23 years when the real killer had already been jailed' *BBC News*, <<https://www.bbc.co.uk/news/resources/idt-5ad914e1-afed-4e0d-b7ab-754bf3d0b1e6>>

3.1.3. *Biased mainstream news reporting?*

Needless to say, the mainstream media in America are largely owned by the majoritarian (White) population, and media corporations in their artificial personhood can only carry out the wishes of their majority shareholders.⁸¹ Corporate directors in deference to company law rules, corporate by-laws and practices also owe their corporations a set of fiduciary duties which require performance of activities that enhance the corporate interests, objects, and value. In the circumstance, part of enhancing the corporate value is of course to ensure that news reports are not directly or indirectly inimical to the economic or political interests of the majority shareholders. In relation to Black protests which are often feared to be the entry point of destroying properties, the mainstream media seeking to protect the economic interests of the majoritarian population from which demographic their majority shareholders are mainly drawn, unfairly report about the events of police wrongful killings in order to prevent *ex ante*, any protests that might erupt to unsettle or damage properties.⁸²

The unfair or bias reporting manifests in various forms, involving sometimes the presentation of pixelated pictures of police brutality, or extremely short videos of the events in a fast and haphazard motion, etc., all of which are insufficient for viewers to make any reasonable interpretation of what happened. Also, the mainstream media are reputed for their red-herring tactics aimed precisely at sowing strong seeds of doubt in the minds of the public and jury toward exonerating the accused police officers: they achieve this by digging and presenting irrelevant pieces of information, such as any of the deceased past criminal record, family life, health, mugshots, etc., just to show that the victim's death was not such a bad loss, especially when the elegant photographs of the police murder suspect are littered in juxtaposition toward suggesting their reasonability and higher value status. Incidentally, all these tactics and machinations of the mainstream media weigh heavily on the mind of the jury⁸³ who hand in exonerating verdicts in 99 % of the time.

3.1.4. *Support from white supremacists?*

The American culture is built on the concept of 'White Privilege':⁸⁴ as Thomas Jefferson unapologetically put it, the 'blacks are inferior to the whites in the endowments

⁸¹ See Richard Hatcher, "Mass Media and the Black Community" (1973) 5(1) *The Black Scholar*, 2–10; Kate Vinton, 'These 15 Billionaires Own America's News Media Companies' *Forbes* (1 June 2016). Available at <<https://www.forbes.com/sites/katevinton/2016/06/01/these-15-billionaires-own-americas-news-media-companies/?sh=430103a6660a>> ; Howard French, 'The Enduring Whiteness of American Media' *The Guardian* (25 May 2016). Available at <https://www.theguardian.com/world/2016/may/25/enduring-whiteness-of-american-journalism>>

⁸² cf. Bryan Adamson (n 39), pp. 205-207.

⁸³ See Jeffrey Fagan & Bernard E. Harcourt, 'Fact Sheet: Questions and Answers for Columbia Law School Students About Grand Juries, *Columbia Law School* (November 26, 2014). Available at: <<https://www.law.columbia.edu/news/archive/fact-sheet-michael-brown-case>>

⁸⁴ Sylvia A. Law, 'White Privilege and Affirmative Action' (1999) 32(3) *Akron Law Review* <<https://www.uakron.edu/dotAsset/726850.pdf>>; Peggy McIntosh, 'White Privilege: Unpacking the Invisible Knapsack' *Independent School* (Winter 1990) <<https://www.racialequitytools.org/resourcefiles/mcintosh.pdf>>

both of body and mind.’⁸⁵ This racist statement of Jefferson clearly shows that his statement in the second paragraph of the Declaration of Independence in 1776 that ‘all men are created equal; that they are endowed by their Creator with certain inalienable rights,’ did not imagine Black people in America who were still enslaved at that time. Admittedly, Jefferson was an influential figure in American history for many reasons, but his racist writings continue to have effect even in contemporary times. In the contemporary justice system in America, Black people are hardly given the benefit of the doubt (presumption of innocence) unlike their White counterparts who enjoy this as part of the White Privilege. For example, the Central Park Five case in 1989 shocked the conscience of the world regarding the manner of false accusations and manipulation of evidence to suit the mainstream narrative or to accomplish the economic interest of private prisons seeking for long term prisoners. Interestingly at least, the victims were later exonerated on grounds of innocence after serving more than a decade in prison. During this time, Donald Trump spent \$85,000 to advertise in the media, calling for the death of the accused Black persons and stating emphatically that he ‘hated’ them.⁸⁶

As gruesome as the Central Five story, it still looked like a little improvement compared to the brutal fate George Stinney was forcibly made to embrace in 1944: a 14-year Black boy that was wrongfully accused of murdering two White girls in South Carolina and dumping their bodies inside a ditch. He was hastily tried, found guilty and executed by electrocution. He was exonerated post mortem in 2014 by Judge Carmen Mullen, 70 years after he was murdered by the State owing largely to his race.⁸⁷ White Privilege entails that the privileged person is aware of its enjoyment, which manifests through the unfair engagement of the law or police against Black people. For instance in May 2020, Christian Cooper, a Black man, was lucky to escape a potential death or prison sentence while watching birds at the Central Park, where a White woman had dialed 911 and falsely cried out or reported that she ‘was being threatened and harassed by an African American man’, Mr. Cooper.⁸⁸

In American history, White American women have been reasonably accused of weaponizing their tears and using them to unfairly trigger off the law enforcement

⁸⁵ Thomas Jefferson, *Notes on the State of Virginia* (Chapel Hill: University of North Carolina Press, 1954) (Original work published in 1787), p. 143. See Nicholas E. Magnis, ‘Thomas Jefferson and Slavery’ (1999) 29(4) *Journal of Black Studies* 491-509, at pp.491, 494, 496, 501.

⁸⁶ BBC, ‘Central Park Five: The True Story Behind When They See Us’ *BBC News* (12 June 2019) <<https://www.bbc.com/news/newsbeat-48609693>> (Donald Trump while commenting on the case, said: “I want to hate these murderers and I always will. I am not looking to psychoanalyse or understand them, I am looking to punish them.” Irrespective of their exoneration on grounds of innocence, Trump has refused to apologize for his false accusations which likely overshadowed the justice system and goaded them towards the wrongful convictions.

⁸⁷ Loulla-Mae Eleftheriou-Smith, ‘George Stinney Jr: Black 14-year-old Boy Exonerated 70 Years After He Was Executed’ *Independent* (18 December 2014) <<https://www.independent.co.uk/news/world/americas/george-stinney-jr-black-14-year-old-boy-exonerated-70-years-after-he-was-executed-9932429.html>>

⁸⁸ Terina Allen, ‘3 Things Amy Cooper Did in Central Park to Damage Her Reputation and Career’ *Forbes* (29 May 2020) <<https://www.forbes.com/sites/terinaallen/2020/05/29/3-things-amy-cooper-did-in-central-park-that-destroyed-her-life/#6abe2ba76198>>

agents toward acting irrationally against Black people and other minorities:⁸⁹ owing to this effective use of privilege, it was not therefore surprising that Amy Cooper dialed 911 and pretended she was crying while informing with the effective choice of words that a Black man had ‘harassed’ and ‘threatened’ her, and that her life was in critical danger, thus leaving the law enforcement to stereotypically assume and erroneously interpret many criminal possibilities. Based on American history, one can safely conclude that Mr. Cooper did not go to prison or get killed in the circumstance owing largely to the video record which went viral on the Internet to quickly exonerate him: it should thus be underlined that Mr. Cooper’s ‘luck’ would have more likely been nonexistent in the non-digital or Internet era.

Another wrongful act by the police which contributes or leads to incessant wrongful arrests and incarceration of Black people in America is racial profiling, culminating into the frequent stopping and frisking on no reasonable grounds.⁹⁰ This experience is largely absent among White Americans, many of whom acknowledge it or express enormous doubts on the rough experiences of Black with the police, generally due to their own lack of such experiences. There are reliable accounts that the American policemen are rewarded based on the number of traffic tickets they are able to issue or the number of arrests they are able to make: this incentivizes them to target Americans whom they believe have no power to challenge them and whose mainstream image is infinitely elastic to accommodate any criminal allegations, i.e., the Black people and other minorities.⁹¹

In *Whren v United States*,⁹² the US Supreme Court empowered police officers to deem any traffic violation as a reasonable basis to stop and frisk motorists. This decision has been abused by the American police: there have been several instances where the police flagged down Black motorists for no reason and hoped that they could find or implant incriminating evidence to justify their being frisked or arrested *ex post facto*: other times they persistently and derogatorily question them, hoping to annoy and then escalate the matter to the point an arrest or calling for a back-up becomes justified even if it is on

⁸⁹ Motwani M. Accapadi, ‘When White Women Cry: How White Women’s Tears Oppress Women of Color’ (2007) 26(2) *College Student Affairs Journal*, pp. 208-215. Available at: <<https://files.eric.ed.gov/fulltext/EJ899418.pdf>>; Ruby Hamad, ‘Crying shame: The Power Of White Women’s Tears’ *The Sydney Morning Herald* (1 September 2019) <<https://www.smh.com.au/entertainment/books/crying-shame-the-power-of-white-women-s-tears-20190820-p52iy7.html>>

⁹⁰ For a comprehensive assessment of police stop and frisk practices in America, see Ngozi C. Kamalu, ‘African Americans and racial profiling by U.S Law Enforcement: An Analysis Of Police Traffic Stops and Searches of Motorists in Nebraska, 2002 – 2007’ (2016) 9(1) *African Journal of Criminology and Justice Studies*, 187, https://www.umes.edu/uploadedFiles/_WEBSITES/AJCJS/Content/VOL9.%20KAMALU%20%20FINAL.pdf ; A Deborah Ramirez, et al, ‘Resource Guide on Racial Profiling Data Collection Systems A Resource Guide on Racial Profiling Data Collection Systems U.S. Department of Justice Promising Practices and Lessons Learned’ *US Department of Justice* (November 2000). Available at <https://www.ojp.gov/pdffiles1/bja/184768.pdf>

⁹¹ Sara Wallace, ‘NJ Police Targeted Black and Latino Neighborhoods to Fulfill Ticket Quotas, Cops Say’ *NBC News* (13 February 2020) < <https://www.nbcnewyork.com/investigations/nj-police-targeted-black-and-latino-neighborhoods-to-fulfill-ticket-quotas-cops-say/2289221/>>

⁹² 517 U.S. 806 (1996).

a flimsy ground such as resisting an arrest, even when not under arrest.⁹³ The American police being the reincarnate of slave patrollers and masters are typically put off by a confident Black person who refuses to address them with undue respect and obey their non-constitutional commands: in that case they largely imagine such Black person as an errant slave, whose insistence on human rights treatment in the circumstance is interpreted as being ‘disrespectful’ and thus deserving of immediate arrest and punishment, reechoing the type of treatment meted on slaves who disrespected their masters during the slavery era.

As earlier stated, Black people in America officially came in contact with the concepts of human rights in the Thirteenth Amendment in 1865, i.e., 76 years after the First and Second Amendments’ rights were respectively enacted in 1789 and 1791. What this explains is that the agitators of the right to freedom of expression (including protests) and the right to bear arms unlikely imagined that Black people will someday become beneficiaries as well. This could help explain why Black protests, no matter how peaceful, are easily characterized as riots, peace disturbances, rebellion, looting spree, etc., enough to trigger the police (equivalent of former slave owners) to come down heavily with excessive force in quelling the ‘riots’.⁹⁴ As Payne and Correll found in their study, a pictorial depiction of violence, theft and thuggery hangs loosely on the majoritarian/American public’s subconscious mind when a Black person is seen bearing arms,⁹⁵ or walking peacefully (interpreted as ‘wandering’) on the streets: many times, some White women in certain neighborhoods (now nicknamed as ‘Karens’)⁹⁶ dialed 911 to report their discovery of a Black person in their neighborhood: in the last analysis such call could lead to an attempted wrongful arrest, resistance of it, and shooting of the Black victim, who is often blamed post mortem for not allowing himself to be wrongfully arrested, and possibly incarcerated.

White Americans constitute about 80% of the entire police force and about 76.4% of the entire American population: it is not therefore surprising that some symbiotic relationship or a sort of mutual understanding exists to the effect that a significant number of White people are treated gently and given benefit of the doubt by the police, while the

⁹³ Meagan Flynn, ‘US Officer Pulled Random People Over and Planted Meth Inside Their Cars, Causing Them to Lose Their Freedom, Their Children, Their Marriages’ *Independent* (12 July 2019) <<https://www.independent.co.uk/news/world/americas/police-us-planted-evidence-meth-marijuana-cars-florida-zachary-a9001961.html>>; David A. Harris, ‘Driving While Black: Racial Profiling on Our Nation’s Highways’ *An American Civil Liberties Union Special Report* (June 1999) Available at: <<https://www.aclu.org/report/driving-while-black-racial-profiling-our-nations-highways>>

⁹⁴ Jackie Smith, John D. McCarthy, Clark McPhail and Boguslaw Augustyn, ‘From Protest to Agenda Building: Description Bias in Media Coverage of Protest Events in Washington, DC’ (2001) 79(4) *Social Forces*, 1397-1423, at p.1415.

⁹⁵ Keith Payne, and Joshua Correll, ‘Race, weapons, and the perception of threat’ (2020) 62 *Advances in Experimental Social Psychology*, p 5: “In response times, guns (but not tools) are identified faster when paired with a black prime than a white prime. In error rates, harmless items are mistaken for guns more frequently when paired with a black prime than a white prime. Guns are mistaken for harmless objects more frequently when paired with a white face.”

⁹⁶ Cady Lang, ‘How the ‘Karen Meme’ Confronts the Violent History of White Womanhood’ *TIME* (6 July 2020) <<https://time.com/5857023/karen-meme-history-meaning/>>

former ensure that they do not criticize the police or support any effort that seeks to uncover suspected heinous acts that might lead to their incrimination, trial and imprisonment. An example of this symbiosis can be established in reminiscence of the aftermath of the wrongful killing of Sean Bell in 2006 by the New York Police Department officers, wherein Michael Bloomberg, mayor of the New York City at the time, rationalized and tried to justify the killing by emphatically declaring that he ‘[k]new that the officers on the scene had reason to believe an altercation involving a firearm was about to happen and were trying to stop it.’⁹⁷ The officers involved were not convicted despite the overwhelming eyewitness accounts that corroborated their lack of total innocence in the circumstance.

The Bloomberg’s type of favor is often reciprocated as well by the police: e.g., intentionally failing to arrest the killers of Ahmaud Arbery, until after 74 days following Twitter and Facebook outcries:⁹⁸ based on American history, it is not insensible to say that the delay in arrest would never have been possible if Mr. Arbery was a White person, and if the murder suspects were Black. Neither would it be debatable on whether it was justifiable or not if a Black policeman in America were to break into homes without warrants to shoot down White people resting or sleeping in their homes. Yet these were the brutal experiences of the late Atatiana Jefferson,⁹⁹ Botham Jean,¹⁰⁰ Breonna Taylor,¹⁰¹ etc., without any meaningful justice. However, when Tremaine Wilbourn killed a White policeman in the heat of passion, there was no difficulty in understanding it as murder and the entire criminal justice system ensured that a life sentence was given, with even the ridiculous possibility of ‘serving an additional 38 years after death’.¹⁰² In truth, the lack or insufficient experiences of police brutality by the majoritarian population makes it difficult to appreciate the bitter experiences of Black people, let alone empathize or protest on their behalf against these heinous incidents.

In contrast to the forgoing Black experiences, in June 2015, Dylann Roof walked into Emmanuel African Methodist Episcopal Church and murdered nine Black

⁹⁷ Julian Borger, ‘New York on Edge as Police Kill Unarmed Man in Hail of 50 Bullets on His Wedding Day’ *The Guardian* (7 November 2006) <<https://www.theguardian.com/world/2006/nov/27/usa.julianborger>>

⁹⁸ Janelle Griffith, ‘Ahmaud Arbery Shooting: A Timeline of the Case’ *NBC News* (12 May 2020) <<https://www.nbcnews.com/news/us-news/ahmaud-arbery-shooting-timeline-case-n1204306>>

⁹⁹ Erik Ortiz, ‘Forth Worth Police Officer Who Fatally Shot Atatiana Jefferson Indicted on Murder Charge’ *NBC News* (21 December 2019) <<https://www.nbcnews.com/news/us-news/fort-worth-police-officer-who-fatally-shot-atatiana-jefferson-indicted-n1105916>>

¹⁰⁰ Tom Dart, ‘Amber Guyger Guilty of Murdering Black Neighbor Botham Jean in His Own Home’ *The Guardian* (1 October 2019) <<https://www.theguardian.com/us-news/2019/oct/01/amber-guyger-texas-dallas-jury-botham-jean>>

¹⁰¹ Victoria Albert, ‘911 Call from Breonna Taylor’s Shooting Death Released: ‘Somebody Kicked in the Door and Shot My Girlfriend’” *CBS News* (29 May 2020) <<https://www.cbsnews.com/news/breonna-taylor-kenneth-walker-911-call-police-shooting/>>

¹⁰² ‘Tremaine Wilbourn was sentenced to an additional 38 years on top of a life sentence for killing a Memphis Police Officer Sean Bolton’: Linda Moore, ‘Tremaine Wilbourn Gets 38 Years Added to Life Sentence in Slaying of MPD Officer Sean Bolton’ *Commercial Appeal* (17 December 2018) <<https://www.commercialappeal.com/story/news/2018/12/17/memphis-police-killing-tremaine-wilbourn-gets-38-years-added-life-sentence/2281111002/>>

worshippers during their routine bible study.¹⁰³ It was sad to see how race affected the actions and treatments by the police and mainstream media which exceptionally underline their racist hypocrisies. On one hand, the mainstream media largely reported that Mr. Roof was mentally unsound, was a ‘sweet and quiet kid, had no friend and was basically acting alone’:¹⁰⁴ the focus on his alleged deteriorated mental health was of course an old trick calculated at ensuring a mitigation of his offence. The regular defense of mental incapacity when a White criminal suspect is involved somehow tries to reinforce Thomas Jefferson’s claim of racial superiority: as if to say that such a heinous crime was incapable of being committed by a White American if not for their deteriorated mental health. Sadly, in the mainstream media, the lack of mental capacity defense is hardly available for Black criminal suspects.

The police on the other hand, treated Mr. Roof (the murder suspect) with enormous respect and care, including buying him a hamburger and drink. A similar act of kindness was shown to another White murder suspect, Mr. Sebastian Arzadon, who was given water to drink while sitting, and had his wound carefully dressed by some attentive paramedics. In October 2020, Caitlyn Pye, a 17-year White girl was sentenced to four years in a juvenile detention center after she apologized in court for her failed plot to kill the Black worshippers at Bethel African Methodist Episcopal Church.¹⁰⁵ On March 16 2021, Robert Aaron Long, 21 years old, engaged in a mass shooting that killed eight people in Atlanta. He was arrested without being shot. In a press conference, the Cherokee County Sheriff’s Office Capt. Jay Baker described that the shooter was frustrated and perhaps had a ‘bad day’.¹⁰⁶ Interestingly, the media and police did not describe him as a thug or crook.

Meanwhile, in June 2018, Dayonn Davis, a Black boy who was 15 years old at the time he was accused of stealing a pair of shoes, was tried as an adult and given 5 years in prison irrespective of his apologies in court and the lack of any prior criminal records.¹⁰⁷ Undeniably, race is a critical factor in the American criminal justice system, and the forgoing incidents only constitute a small percentage of the race motivated arrests and

¹⁰³ Glenn Smith, Jennifer Berry Hawes and Abigail Darlington, ‘Dylann Roof Says He Chose Charleston, Emanuel AME for Massacre Because They Were Historic, Meaningful’ *The Post and Courier* (9 December 2016) <https://www.postandcourier.com/church_shooting/dylann-roof-says-he-chose-charleston-emanuel-ame-for-massacre-because-they-were-historic-meaningful/article_6fab532c-be05-11e6-ab05-575a173993ee.html>

¹⁰⁴ See Oliver Laughland et al., ‘Charleston Killings Leave US Reckoning with Race and Guns amid ‘Broken Peace’ *The Guardian* (18 June, 2015) <<http://www.theguardian.com/world/2015/jun/18/charleston-south-carolina-church-shooting-race-gun-violence>>

¹⁰⁵ Haven Orecchio-Egresitz, ‘A 17-year-old White Supremacist Apologized for Her Plot to Attack a Black Georgia Church and was Sentenced to Juvenile Detention’ *Business Insider* (23 October 2020) <<https://www.businessinsider.in/international/news/a-17-year-old-white-supremacist-apologized-for-her-plot-to-attack-a-black-georgia-church-and-was-sentenced-to-juvenile-detention/articleshow/78833398.cms>>

¹⁰⁶ Meryl Kornfield and Hannah Knowles, ‘Captain who said spa shootings suspect had ‘bad day’ no longer a spokesman on case, official says’ *Washington Post* (March 19 2021). Available at <<https://www.washingtonpost.com/nation/2021/03/17/jay-baker-bad-day/>>

¹⁰⁷ CBS, ‘Georgia Teen Gets 5 Years in Prison for Shoe Robbery’ *CBS News* (1 June 2018) <<https://www.cbsnews.com/news/georgia-teen-gets-5-years-in-prison-for-shoe-robbery/>>

extra judicial killings of Black people in America. In the next section, the paper discusses how George Floyd was extra judicially killed by Derek Chauvin in May 2020 and how the mass media's reports had colorations of racial biases.

3.1.5. George Floyd's death: a mirror-image of police brutality in America

On May 25 2020, the world witnessed the horrific execution of Mr. Floyd by Derek Chauvin, who knelt heavily at the back of Floyd's neck for about 9 minutes. Floyd was suspected for using a fake \$20 bill, and throughout his arrest by the police he was cooperative and did not unreasonably resist as he was alleged to have done: the street circuit cameras confirm this. In any case, owing to the presumption of innocence, the punishment for forgery under American law is not an extra judicial killing of the suspect. Floyd's death summarizes a lot of racial issues in the American criminal justice system. First, given the type of gun-aided power being wielded by the police in today's America, this paper compares or equates them with the slave owners in the 15th to 19th century era who used brute force to subdue or murder enslaved Black people. Mr. Chauvin's style of execution helped observers to achieve a time travel into history, to appreciate one of the lynching styles the slave masters used in murdering their enslaved people.

Second, the lack of positive emotions both on the part of Mr. Chauvin and his other colleagues at the scene who helped to pin Floyd on the tarmac as well as warded off those who attempted to intervene, is reminiscent of the total lack of positive emotions that characterized the murdering of Black people during the slavery period. Third, the onlookers at the scene of crime who attempted to intervene, even though larger in number, could not save Floyd, just like in the era of slavery whereby the pleas and subtle interventions of onlookers were hardly sufficient in changing a slave master's decision if he was bent on killing a slave - his property.

Fourth, the protests emanating from Floyd's death helped observers to achieve historical flashbacks regarding the occasional rebellions of slaves following a killing of their loved ones: the Stono Rebellion and others being resistances against accumulated acts of oppression, which were of course subdued with heavy force and arms, just like America's Commander-in-Chief, Donald Trump, proposed to use military force to clamp down on the Black protesters whom he designated as 'thugs' and 'looters'. Undeniably, it is now common knowledge that being Black in America constitutes a bundle of disadvantages and negative stereotypes especially when interacting with the criminal justice system: the forgoing cases are just a few records of the numerous acts of oppression and injustice that are still ongoing.

4. THE ROLE OF PROFIT IN MASS BLACK INCARCERATION

4.1. Reimagining the 13th Amendment: the slave plantations rose from the ashes to become the American prisons

As earlier stated, after 400 years of enslavement and following the constant agitations of the enslaved Black people to be free, President Abraham Lincoln helped to trigger the abolition of slavery, chiseled in the Thirteenth Amendment which abolished

involuntary servitude except in the context of punishment. Because slave labor was unpaid,¹⁰⁸ the newly freed slaves did not have any savings or real estate property to fend for themselves: this functionally returned them to serve their former masters almost under similar gruesome conditions as were in the pre-abolition era. Thus, functionally, the freedom was significantly rendered useless in the absence of corresponding rights to own land and cultivate food: as Martin Luther King Jr put it, “[B]lack people were let to pull themselves up by their own bootstraps.”¹⁰⁹ It was not long before the ‘loophole’ in the Thirteenth Amendment began to manifest in ugly ways against Black people. Its punishment clause which exempts involuntary servitude was, and is being used to functionally achieve the financial gains of slavery: the conversion of a large number of Black people into money-making stocks. Laura Appleman provides a thorough account on the role of profit in mass incarceration. In the 1980s, under the pretext that prisons were becoming overcrowded and no longer efficiently managed by the government, part of management was ceded to private corporations which angled to profit largely from the huge budget.¹¹⁰ The annual prison budget in America is estimated to be over \$182 billion: this sum, which is more than the gross domestic products of many countries, fuels and nourishes the massive appetite of the American corporate prisons in being too creative toward having a sufficient piece of the budget. Based on America’s antecedents of deferring largely to capitalism, it is reasonable to believe that the successful lobbying of lawmakers was integral in the ceding of prison management to corporations. Today, two multibillion dollar private prison corporations, namely CoreCivic (formerly the Corrections Corporation of America),¹¹¹ and GEO Group,¹¹² with more than \$3.7 billion and \$4.3 billion of total worth, respectively partner with the government in providing prison services. The stocks of these two corporations are also traded on the New York Stock Exchange.

As corporations exist to primarily make profits for their shareholders following the Shareholder Primacy doctrine,¹¹³ the drive for profit by these corporations has trickled down to further corrupt the American criminal justice system, using it to unduly acquire a large number of Black people for profit. Apparently, prison management is significantly profitable considering that \$36,000 is annually budgeted for each prisoner by the government, while it has been reported several times that the average sum expended

¹⁰⁸ Kevin Anderson, ‘Marx’s Intertwining of Race and Class During the Civil War in the U.S.’ (2017) 17(1) *Journal of Social Psychology*, p. 3. <<https://escholarship.org/uc/item/6238s7h2>>

¹⁰⁹ ‘In May 1967, NBC correspondent Sander Vanocur asked Dr. Martin Luther King, Jr., “What is it about the Negro? I mean, every other group that came as an immigrant somehow—not easily, but somehow got around it? Is it just the fact that Negroes are black?” See full video interview at: Cory Heidelberger, ‘King: “Cruel Jest” to Tell Bootless Man to Lift Self by Bootstraps’. Available at: <<https://dakotafreepress.com/2019/01/21/king-cruel-jest-to-tell-bootless-man-to-lift-self-by-bootstraps/>>

¹¹⁰ Laura I. Appleman, ‘Cashing in on Convicts: Privatization, Punishment, and the People’ (vol. 2018, no.3) *Utah Law Review* 579, pp. 582-607.

¹¹¹ The official website of Corecivic: <<https://www.corecivic.com/>>

¹¹² The official website of Geo Group Inc: <<https://www.geogroup.com/>>

¹¹³ Robert J. Rhee, ‘A Legal Theory of Shareholder Primacy’ (2018) 102 *Minnesota Law Review* 1951-2016, pp. 2002-2010.

on each prisoner's feeding per day is \$2.62.¹¹⁴ As earlier stated, the punishment clause exempts involuntary servitude in the context of imprisonment, and towards rehabilitating and reforming prisoners, the law authorizes that the latter could be made to do menial tasks for little or no pay.¹¹⁵

Using prisoners to carry out tasks that would otherwise have been paid for at commercial rates helps swell up prison stocks, since the financial difference between the market rate and the lower sum paid to prisoners is ploughed back into the corporate coffers which enhances the corporate value and profit for the shareholders. Further, since the American government pays corporate prisons based on the number of inmates they have under their care, and given that about \$36,000 is annually budgeted for one prisoner compared to the average daily feeding cost of each prisoner, the shareholders of these prison corporations, in principle, thus stand a chance to make an astronomically high amount as return on investment. From the profit perspective, this presumably triggers the competitive race for the mass acquisition of prisoners, perhaps, through some police-agents.¹¹⁶ In fact, for prison shareholders and their directors, prisoners with long term sentences functionally act as long term retainer-ship contracts with the governments, a sort of guarantee which enable them to reasonably forecast their revenues over a long period of time, thus making them attractive to potential credit or equity investors.¹¹⁷

Toward sustaining their regular stream of income from the governments, and also grow their corporate stocks, the ideal and most sought-after candidates for imprisonment are therefore young Black people accused of murder, rape, and other crimes with long term sentences. Assessing the main causes for mass Black incarceration from the perspective of corporate profit maximization helps to explain why private prison corporations oppose death penalty, or the numerous instances Black people were wrongfully accused by the police for rape and murder, but later through whistleblowing efforts, it was discovered that the police had exonerating pieces of evidence *ab initio*, but refused to make them available to the defense counsel.¹¹⁸

On a daily basis corporate prison business managers charged with the task of profit-maximization must ask themselves the economic question of where and how prisoners will be acquired in order to be eligible in participating to scramble from the prison annual budget, just like the slave owners wondered where and how to acquire slaves in order to grow their farm holdings. Similarly, just like the answer was found in the invasion of West Africa to subdue and kidnap Africans to work in the American plantations; in the

¹¹⁴ Peter Wagner and Bernadette Rabuy, 'Following the Money of Mass Incarceration' *Prison Policy Initiative* (25 January 2017) <<https://www.prisonpolicy.org/reports/money.html>>

¹¹⁵ cf. Laura Appleman (n 110), p. 586.

¹¹⁶ Joseph Goldstein and Ashley Southall, 'I Got Tired of Hunting Black and Hispanic People' *New York Times* (9 December 2019) <<https://www.nytimes.com/2019/12/06/nyregion/nyc-police-subway-racial-profiling.html>>

¹¹⁷ cf. Laura Appleman (n 110), p. 624.

¹¹⁸ cf. Central Park Five (n 86).

contemporary America, the solution for prison owners is the same but approached slightly differently by using corrupt members of the criminal justice system to actualize mass Black incarceration through false accusations, wrongful arrests, unfair trial, and finally depositing them into private prisons where they begin to yield money, sometimes for the rest of their lives.

4.2. The cash bail system

The cash bail system also helps to perpetuate mass Black incarceration. The average bail sum for felony in America is \$10,000 and most Black people arrested wrongfully are not able to afford their cash bail or even bail-bond premiums:¹¹⁹ the value of the latter is usually about 10% of the bail sum charged upfront, which is generally unaffordable due to the low income of Black people. Since full cash payment for felony charges is a precondition for bail (which is generally unaffordable), resorting to purchasing bail-bond premiums appears easier even though the accused Black person stands to lose the collateral used in securing the bail-bond premium if they miss to attend their trial proceeding and their Bail-bond corporation steps in to pay.

In truth the Bail-bond corporations bear no material risk even though they prima facie act as insurance: thus whether accused Black persons fail to attend trial or do attend, they make profit out of their wrongful arrests and trials. The generally unaffordable high cash bail sums and bail-bond premiums ensure that an accused Black person remains in jail throughout their trial, and during this awaiting trial or trial period, their sojourn in jail also makes money for the owners of the jail detention facilities.¹²⁰

This situation negatively affects the lives and progress of Black people: for example, in 2010, Kalief Browder, a 16-year Black boy was accused of stealing a backpack containing valuables in, New York. His bail was set at \$3,000 but his family could not afford to pay for it and this caused him to be detained without trial at the Rikers Island jail complex for three years before he was released. He hung himself few years after he was released, citing that he became mentally traumatized while in detention.¹²¹ Browder's case is a typical experience for many other Black people whose cases often escape the attention of the public or human rights activists.

¹¹⁹ Mary T. Phillips, 'A Decade of Bail Research in New York City', Final Report, *New York City Criminal Justice Agency* (August 2012), at pp. 41-50. In America, calls for bail reforms have lasted for several decades without any significant outcome. See the Testimony of former U.S. Attorney General, Robert Kennedy: 'Bail Legislation Before the Subcommittee on Constitutional Rights and Improvements in Judicial Machinery of the Senate Judiciary Committee' *US. Department of Justice* (August 4, 1964). Available at: <<https://www.justice.gov/sites/default/files/ag/legacy/2011/01/20/08-04-1964.pdf>>

¹²⁰ See generally Laura I. Appleman, 'Justice in the Shadowlands: Pretrial Detention, Punishment, & the Sixth Amendment' (2012) 69 *Washington & Lee Law Review* 1297 (she argued how pretrial detention functionally violates the Sixth Amendment right to trial by jury).

¹²¹ Jennifer Gonnerman, 'Kalief Browder 1993 - 2015' *The New Yorker* (7 June 2015) <<https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>>

4.3. Who own the stocks of the prison and bail-bond corporations?

The relevancy of this question is premised on one of the cardinal principles of natural justice which disallows a person from presiding over their own case. Having established above that financial investments in prison and bail-bond corporations yield high returns on investment considering the certainty of the annual budget and the solid structure in place to ensure the easy acquisition of vulnerable minorities, notably Black and Brown people in America, it has become vitally important to investigate whether judges, police officers, and influential people in the American criminal justice system own stocks of the prison and bail-bond corporations.¹²²

There had been efforts in the past to carry out this investigation, but expectedly, legal rules have been put in place to frustrate such attempts, by making it difficult to obtain and publish the list of individual shareholders of these corporations. For example, CoreCivic, registered in the state of Maryland even though headquartered in Tennessee, enjoys the former's corporate law requirement that only a shareholder with 5% of stocks (about \$200 million in the case of CoreCivic) can request and peruse the list of shareholders. Similarly, under the law of Florida where GEO Group is registered, a shareholder is prohibited from distributing any information or record if the distribution differs from the purpose indicated during the time it was obtained from the corporation.¹²³

This discovery effort ought to be championed by the government: although its clean hands in the circumstance are strongly doubted considering its deference to capitalism and the profit-making orientation which underscores America's domestic and foreign policies. There is need to agitate towards enacting legislation that expressly prohibit judges, police officers, and key officers in the criminal justice system from directly or indirectly owning stocks in prison, bail-bond corporations, and even the monopolistic telephone corporations located in prison premises that charge inmates \$1.50 per minute.¹²⁴ Also such legislation ought to bequeath regular Americans with the right to freely apply and obtain without delay, the list of shareholders of these corporations: it is reasonably believed that this could become an effective *ex ante* remedy toward curtailing the corruption of the police and biases of judges that perpetuate mass Black incarceration.

5. CONCLUSION: PROTESTS YIELD MORE AND BETTER RIGHTS

Based on the forgoing, the paper concludes that it is reasonable to believe that race and profit play active and influential roles in the American criminal justice system. It reiterates that the black-letter law or rights have not worked well for Black people in America: those who profit from the status quo continue to create systems and barriers

¹²² Gillian White, 'Who Really Makes Money Off of Bail Bonds?' *The Atlantic* (12 May 2017) <<https://www.theatlantic.com/business/archive/2017/05/bail-bonds/526542/>>

¹²³ Alex Friedmann, 'Who Owns Private Prison Stocks' *Prison Legal News* (31 July 2015) <<https://www.prisonlegalnews.org/news/2015/jul/31/who-owns-private-prison-stock/>>

¹²⁴ Aleks Kajstura, 'Evading Regulation, Some In-State Phone Calls From Jails Cost Over \$1.50 a Minute' *Prison Policy Initiative* (19 January 2017) <<https://www.prisonpolicy.org/blog/2017/01/19/intrastate/>>

that frustrate equal treatment and enjoyment of human rights. And in order to continue to profit from this unjust enrichment, the ‘black body’ has been made a metaphor for crime, violence, poverty and hate. In this era of Internet and globalization, there is more hope for Black people in America to reinvent the narrative and show the world these systemic ills and oppressions they suffer in abundance. Sufficient global awareness could amplify the stifled voices, trigger empathy and solidarity as showcased in the global protests following George Floyd’s death. This also means that if use of protests was effective toward achieving the Thirteenth Amendment and other important rights stemming from the Civil Rights movement in the non-digital era, then it has become more efficacious and promising in the twenty-first century, wherein the prevalent use of smart phones enabled the world to eyewitness the horrific execution of George Floyd.

It is highly disturbing that these atrocities are committed regularly, most times without punishment, and other times, with inadequate punishment of the wrongdoers, in a country that regularly praises itself as “[t]he guardians of freedom, preserving it for the benefit of the human race.”¹²⁵ Black people in America should continue to learn how best to pierce through the deceptive veils of politicians, especially candidates for congressional seats who try to appease their feelings only during elections but do not sincerely engage afterward in fulfilling the promises that will end racial inequalities, perhaps due to regulatory capture. For Black people, similarly to what Malcolm X proposed, a new model of politicking is needed: one that does not rest strictly on political party affiliations, but on credible individuals who have sufficiently shown commitment to end the racial discrimination and police brutality of Black people in America.¹²⁶

History teaches that true freedom is not given on a platter; it is fought for with dialogues, resistance, agitations and protests, and the Black people in America with more than 500 years of fighting for every right they have, are perhaps the most experienced freedom fighters in the world: their approaches could be useful for marginalized peoples across the globe. The protests in the aftermath of George Floyd’s death had already yielded some positive reforms and continue to inspire more reforms. Therefore, irrespective of any discouraging voices, it is hoped that more protests would be undertaken to achieve sustainable reforms that critically address police brutality, bail, and private prison systems, which until now have deepened the motivation that ensures the mass incarceration of Black people in America. Evidently, the positive outcomes from the protests and resistance against oppression and police brutality in America have also been a vital source of inspiration for the youths in Nigeria who in October 2020, started to boldly raise their heads above the parapet and standing on their full height to challenge incidents of police brutality through protests and the #EndSARS Movement

¹²⁵ Andrew Jackson, ‘Farewell Address of President Andrew Jackson’ *Miller Center* (4 March 1837) <<https://millercenter.org/the-presidency/presidential-speeches/march-4-1837-farewell-address>> accessed 7 June 2020.

¹²⁶ Malcolm X, ‘The Ballot or the Bullet’ *American RadioWorks* (12 April 1964) <<https://americanradioworks.publicradio.org/features/blackspeech/mx.html>>

¹²⁷ Neil Munshi, ‘Youth of Nigeria Force Buhari’s Hand as Anger at Police Brutality Boils Over’ *Financial Times* (15 October 2020) <<https://www.ft.com/content/777c9f4e-e071-49c8-98f6-abcd2e8b0d76>>

which has become a metaphor for youth resistance and agitations toward ending bad governance in Nigeria.¹²⁷

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