

# Policing in America

## Inherent Bias and Case Law

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# Brief Recap

- The watch system was composed of community volunteers whose primary duty was to warn of impending danger. Boston created a night watch in 1636, New York in 1658 and Philadelphia in 1700. The night watch was not a particularly effective crime control device.
- Watchmen often slept or drank on duty. While the watch was theoretically voluntary, many “volunteers” were simply attempting to evade military service, were conscript forced into service by their town, or were performing watch duties as a form of punishment.
- Philadelphia created the first day watch in 1833 and New York instituted a day watch in 1844 as a supplement to its new municipal police force.
- Augmenting the watch system was a system of constables, official law enforcement officers, usually paid by the fee system for warrants they served. Constables had a variety of non-law enforcement functions to perform as well, including serving as land surveyors and verifying the accuracy of weights and measures. In many cities constables were given the responsibility of supervising the activities of the night watch.

- It was not until the 1830s that the idea of a centralized municipal police department first emerged in the United States. In 1838, the city of Boston established the first American police force, followed by New York City in 1845, Albany, NY and Chicago in 1851, New Orleans and Cincinnati in 1853, Philadelphia in 1855, and Newark, NJ and Baltimore in 1857
- By the 1880s all major U.S. cities had municipal police forces in place.
- These “modern police” organizations shared similar characteristics:
  - (1) they were publicly supported and bureaucratic in form;
  - (2) police officers were full-time employees, not community volunteers or case-by-case fee retainers;
  - (3) departments had permanent and fixed rules and procedures, and employment as a police officers was continuous;
  - (4) police departments were accountable to a central governmental authority

# Policing in the South – Slave Patrols

- The first formal slave patrol was created in the Carolina colonies in 1704
- Slave patrols had three primary functions:
  - (1) to chase down, apprehend, and return to their owners, runaway slaves;
  - (2) to provide a form of organized terror to deter slave revolts; and,
  - (3) to maintain a form of discipline for slave-workers who were subject to summary justice, outside of the law, if they violated any plantation rules.

Following the Civil War, these vigilante-style organizations evolved in modern Southern police departments primarily as a means of controlling freed slaves who were now laborers working in an agricultural caste system, and enforcing “Jim Crow” segregation laws, designed to deny freed slaves equal rights and access to the political system.

# Policing in the North

- Urbanization led to “disorder” (as defined by those in power)
- Police formed to deal with that disorder
- Maintain a stable workforce for factories
- “Dangerous Classes” became a crime problem
- Early police forces notoriously corrupt
- Strike-breaking became one of their primary functions

# Issues Facing Early Police Depts

- Should police be uniformed? merchants and businesses wanted them uniformed, officers did not want to be identified
- Should they carry firearms? - early police officers carried firearms before it was policy. Departments later armed their officers. Exact time is unknown, but it was in the 1800s
- How much force could they use to carry out their duties?

# Inherent Bias – What is Race?

- Race is a socially defined category, based on perceived biological differences between groups of people.

“The outward signs on which most definitions of race are based—such as skin color and hair texture—are dictated by a handful of genes. But the other genes of two people of the same “race” can be very different. Conversely, two people of different “races” can share more genetic similarity than two individuals of the same race.” (Bamshad and Olson 2003)

What race?

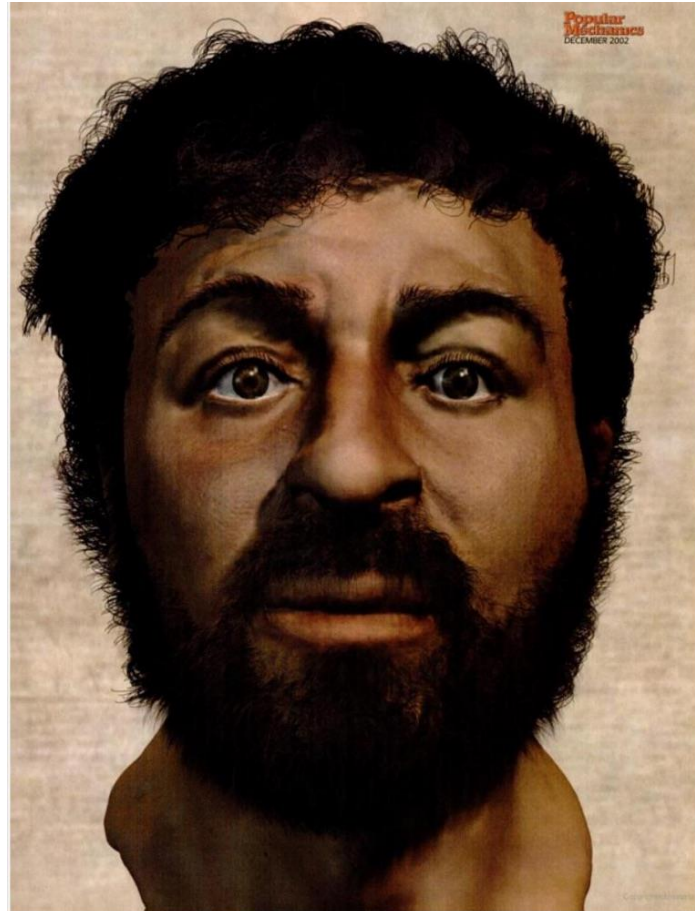




# What Race?



British forensic experts and Israeli archaeologists have collaborated to develop a computer model of Jesus Christ's face based on forensic anthropology.



# Race as history in the U.S.

- Early settlers to this country had to justify mistreating Native Americans
  - Different skin color
  - Different customs
  - Different language
  - Manifest Destiny – who cares who was here first?
- Savages - <https://www.youtube.com/watch?v=3oEWA7UgIB4>

# Ethnicity

- **Ethnicity** is also a **socially defined** category based on common language, religion, nationality, history, or another cultural factor.



# Who is a Minority?

A *minority group* is made up of members of a social group that is **systematically denied** the same access to power and resources available to the dominant groups of a society, but who are **not necessarily fewer in number** than the dominant group.



**SCARED?**

**YOU SHOULD BE. HE'S A DENTIST.**

 **COMMISSION FOR  
RACIAL EQUALITY**

# Stereotypes and Prejudice

- **Stereotypes**- Images about a group that are often erroneous Behaviors or tendencies attributed to an entire group.. members are assumed to have this characteristic
- **Prejudice** –is a belief or feeling about a certain group. It is categorical, inflexible and seldom neutral.

# Color Blind Racism

- disregard of racial characteristics – less blatant
- I don't see color
- All my Asian friends love this joke
- I have a lot of black friends
- You don't act black



# Invisible Male

- Newspaper headline:
- J. Jones was just promoted to VP of Sales for Microsoft.
  - Who is J. Jones?
- J. Jones is most likely a white male, because if not, the story will tell you otherwise (“J Jones is the first black VP in history,” etc

# What is Discrimination?

Unequal treatment based on membership in a group. Takes prejudice into action.

"culturally sanctioned beliefs, which, regardless of intentions involved, defend the advantages dominant groups have because of the subordinated position of racial minorities"  
Wellman (1993)

“a highly organized system of 'race'-based group privilege that operates at every level of society and is held together by a sophisticated ideology of color/'race' supremacy”.

# Direct



U.S. Department of Justice  
KOOSKIA  
Internment Camp Reservation  
For next 5 miles.  
No Admission ~~except~~ on official business.



DRINKING FOUNTAIN  
WHITE COLORED  
MONTGOMERY, ALA. 14 JULY 31



PUBLIC SWIMMING POOL  
WHITE ONLY  
SELMA, ALA. 14 JULY

WE SERVE  
WHITE'S *only*  
NO  
SPANISH or MEXICAN'S

# Indirect



# Critical Race Theory

- Critical race theory is an academic concept that is more than 40 years old.
- The core idea is that race is a social construct, and that racism is not merely the product of individual bias or prejudice, but also something embedded in legal systems and policies.

# Want to Test Your Biases?

- <https://implicit.harvard.edu/implicit/takeatest.html>

# What Does This All Have to do With Police?

- As children, we learn to sort things into “good” and “bad.”
- As adults, we sort things, people in our lives in order to make sense of our surroundings.
- The human brain automatically sorts people into different groups along racial lines. We instantly make decisions about others.

# Blue Bias

- Most of the rules and law we live by were legislated by white majority with power to encode “whiteness” into what is seen as reality.
- Multiculturalism and pluralism threaten whiteness as a majority
- Nobody wants to give up something they have.
- Bias is inherited from the generations before us and the generations before them.



# Functions of the Brain

- Amygdala – hot spot of fear and anxiety, always alert for signs of danger. Makes assumptions before you are aware
- PTSD – human beings can only tolerate so much reality
- Hippocampus – central to function of emotions, long-term memory storage. Too much stress can result in memory impairment, confusion and can impact judgement.

# Brain Chemistry

Oxytocin – hormone that plays a role in our social relations

Testosterone – plays a vital role in dominance, helps get the job done.

Serotonin – also associated with dominance

Cortisol - helps deal with stress; can be good or bad depending on the circumstances.

# Tax of Hypervigilance

- Cynicism
- Us v. Them
- Alpha Males and Alpha Females
- Body Language

Laws Give Us Power (or not)

# Classical Criminology

- Criminal behavior is freely chosen. Crime is the result of bad choices.
- Problem to be solved: design a system of punishment that will make it too costly for them to commit crimes (Three Strikes, Felony Murder Rule)
- Control theory – all people are naturally bad, all people will commit crime, absence of controls

# Three Strikes Laws (31 States)

- First dangerous felony – regular sentence
- Second dangerous felony – typical sentence doubles
- Third dangerous felony – 25 yrs to life  
(CA – any third felony)

# Felony Murder Rule (46 States)

- In commission of an inherently dangerous felony
- Someone dies
- Everyone involved may be charged with Felony Murder
- Life in prison
- Death penalty (24 states)

# Positivist Criminology

- Criminal behavior is result of external forces – family, school, peers, socioeconomic pressures.
- Problem: Identify causes of criminal behavior



# Social Constructionist

- Looks at the behavior of criminal law. Crime is socially constructed by the way criminal law is written and enforced.
- Problem: Determine why some behaviors are illegal, why enforcement is different for some groups of people than others.

# Let's Blame Nixon

- 1952 - Congress passed the Boggs Act. This act established the U.S. policy of mandatory minimum sentencing. With mandatory minimums, courts are required to sentence first-time offenders with a minimum sentence depending on the drug.
- 1971 – Nixon called drug abuse “public enemy number one.”
- 1986 - Ronald Reagan – signed Anti-Drug Abuse Act, which, in addition to strengthening the mandatory minimum sentencing policies, appropriated \$1.7 billion to fund the war on drugs.
- 1:100 Crack v. Powder Cocaine

# Importance of Theory – invented by people like me.

- Theories can and do influence policies and lawmakers
  - Superpredators
  - <https://www.youtube.com/watch?v=YidALyBwat0>

# Fifth Amendment

- Miranda v. Arizona (1963)

Right to remain silent, only pertains if they are going to ask you questions

Spontaneous utterances not protected

# Fourth Amendment

- Search and seizure
  - Types of searches
    - Residences
      - Permission
      - Search warrant
    - Vehicles (much more common)
      - Permission
      - Search warrant
      - Probable cause
      - Pursuant to arrest

# Entering a home w/o warrant

- Hot pursuit
- Exigent circumstances
- Emergency aid
  
- Plain view doctrine

# Car Stops

- Must you get out of the car if asked?
- Can you get a ticket for going one mile over limit?
- Can you get stopped for not wearing a seat belt?

# Terry v. Ohio (1968): Stop and Frisk

- Reasonable suspicion
- <https://www.talksonlaw.com/briefs/what-is-stop-and-frisk>