

# What is Justice?: How Justice is Derived from Cultural Values

Jalen North

## Faculty Introduction

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It's well known both that the US criminal justice system formally controls a staggering number of people and that poor people and people of color are over-represented among them. These facts are chief among those that motivate calls for reform. In this article, Jalen argues that changing them requires a shift in the cultural values underlying the system. He pinpoints our punitive practices, racialized conception of criminality, and lack of concern for underlying causes as ripe for reconsideration. Jalen's treatment of this topic advances the conversation by focusing our attention on a common thread: violence. The state responds to offenders with violence on our behalf; people are racialized as threats on the basis of how they look; and the structural barriers to economic and other success feed a vicious cycle of interpersonal and state-sanctioned violence. What benefits might come from a shift away from this? Read Jalen to find out.

## Abstract

This paper identifies and examines the cultural values guiding the American response to criminal wrongdoing. Guided by scholars from several academic disciplines, the first two sections of the paper identify how the many punishments levied by the criminal justice system reinforce negative outcomes for offenders and how these punishments intensify for underserved groups. The final section of the paper discusses alternative justice practices and contrasts the values reflected between a traditional response to criminal wrongdoing and a restorative response.

As of 2005, there were over 7 million people under some correctional supervision in the United States (Western & Wildeman 227). In 2014 alone, about 2.2 million people were in state or federal prisons at some point, and as many as 12.2 million more people visited a county jail at some point (Pfaff 11). On the surface, many people assume the surge in prison population was the war on drugs, or some ostensible effect from it, and that was the end of the story. But if we dig a little deeper into the data, we find the culture surrounding policing, prisons, and punishment is a far better explanation for the prison boom. Drug convictions represent about 21% of the total contribution to the prison boom from 1980 to 2009, yet violent crime convictions represent over 50% of the total contribution (Pfaff 39). “After all, other Western countries saw similar increases in crime (except perhaps in lethal violence) during the 1970s and 1980s without responding the same way. Part of the US response was therefore also something more cultural” (Pfaff 58). Bruce Western and Christopher Wildeman also show that general increases in crime cannot explain the prison population boom. Survey data and crime data indicate the crime rate fell between 1980 and 2000, and yet the prison population grew exponentially during this time. “Because the system of criminal sentencing had come to rely so heavily on incarceration, an arrest in the late 1990s was far more likely to lead to prison time than at the beginning of the prison boom” (Western & Wildeman 225). Clearly, there’s more to the story.

As I will argue, the attitudes that shape our response to crime are a key addition to the story about mass incarceration in America. I’m not alone in thinking so. John Pfaff argues that prosecutorial toughness is a primary driver of the documented increase in prison population. This is indicative of attitude sometimes translated into policy, but it does not have to be this way. Moreover, the appeal to attitudes is necessary to understand the documented disparities in who is locked up in America. “There is extensive research to show that what counts as crime and what gets targeted for control is shaped by concerns about race and class inequality and the potential for political upheaval” (Vitale 52). It appears we must address attitudes to get to the heart of the mass incarceration issue.

While policing, incarceration, and other punishments are meant to reduce crime, these key aspects of the US criminal justice system in practice serve to reinforce negative outcomes in offenders and prop

up our racial caste system by doubling down on aggressively punitive and racist attitudes. In this paper I aim to demonstrate how the current cultural values underlying the American criminal justice system undermine the purpose of criminal justice and create worse outcomes for offenders that intensify, depending on who is targeted. By “cultural values,” I mean societal ideals. I realize this definition is slippery, so we must pay particular attention to those ideals revealed through actions—they speak louder than words. In the first two sections of this paper, I will show the values we currently hold, then in the third section I will contrast these values with alternative justice practices. The differences will be stark. Any reasonable person would say they want to live in a safer world with less crime, but the criminal justice system as currently constituted does not serve this purpose. Change requires tenacious evaluation and subsequent redeclarations of the cultural values guiding the way our system responds to criminal wrongdoing.

## **Punishment**

Punishment, particularly violent punishment, is an important cultural value that many of us do not realize we have internalized and accepted. Our movies, our TV, even our religious texts all tell stories of violent punishments and harsh revenge. Consequently, the American attitude toward punishment is deeply punitive and accepts many forms of violence as justified when framed as punishment. Author and activist Jack Black points this out in his 1929 essay “What’s Wrong with the Right People.” His characterization of the punitive attitude of the country toward criminals is summed up as follows: “They wronged society, and society wronged them back with interest” (Black 283). The operative “with interest” is pivotal to understanding the punitive nature of punishment in America. Criminals are not just punished for the crime they commit; they are also punished simply for existing as criminals.

Once someone is identified as a criminal, they are authorized to be treated as such by both other people and the government, and they are severely punished in ways that go beyond their initial sentence. This serves to reinforce low self-esteem, remove family ties, increase stress, decrease quality of life, and often turn offenders back to a life of crime. Michelle Alexander and Pfaff agree. Alexander explains, “A criminal record today authorizes precisely the forms of discrimination we supposedly left behind—discrimination in employment, housing,

education, public benefits, and jury service. Those labeled criminals can even be denied the right to vote” (Alexander 141). Pfaff documents that between one-third and two-thirds of all criminals recidivate (72) and explains how parole can serve to increase recidivism, and indeed appears to be intended to do so.

Parole terms limit where the parolee can live, who he can spend time with, and so on. Some of these conditions may make sense on their own, but in the aggregate, they make life very difficult for parolees, inducing stress that may increase the risk of recidivism. (Pfaff 68)

Moreover, parolees are often barred from associating with known felons despite living in neighborhoods with high populations of felons. They can be denied the right to drive a car, the right to public housing, and often they are required to get a job, “criminalizing” being unemployed (Pfaff 68). Yet being a felon often

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means “checking the box” indicating a criminal record or felony, raising potential employers’ suspicions (Alexander 196; Pfaff 69). Housing and employment are imperative to preventing crime and recidivism, and yet it appears criminals are actively barred from both.

Another important deterrent from crime is marriage and family life, yet a criminal conviction has negative consequences in these areas as well. When a criminal has responsibilities to a spouse and children, they decrease their contact with other male friends, ultimately decreasing the likelihood of anti-social behavior (Western & Wildeman 234). Yet many criminals find social barriers to marriage. Ex-prisoners are less likely to marry or cohabit with the mothers of their children (Western & Wildeman 230). “Women and children in low-income urban communities now routinely cope with absent husbands and fathers lost to incarceration” (Western & Wildeman 233). There are also disadvantages for children associated with coming from a single parent home. “Growing numbers of female-headed families increased the risks of enduring poverty for women and children. Growing up poor also raised a child’s risk of school failure, poor health, and delinquency” (Western & Wildeman 234). This is not an anomaly, as fatherhood rates between incarcerated men and non-incarcerated men are nearly

identical (Western & Wildeman 235). Western and Wildeman also present data that show from 1980 to 2000 the total number of children with incarcerated fathers grew sixfold (235). This implies that criminal punishment spans across multiple family members and generations.

Unfortunately, some of these numbers are decades old, but, as Pfaff stresses, the data is spotty. Nevertheless, some more recent numbers are worth considering. In 2010, for the first time since 1972, the US prison population edged downward and continued to fall for three of the next four years. By the end of 2014 (the final year we have national data), it was about 4 percent smaller than it had been in 2010 (13). However,

a closer look at the data shows only California has truly reduced its prison population in any meaningful way (23). Pfaff suggests the reforms that have led to this “decarceration” will not

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ultimately bear much fruit because we are not ready to let up on violent offenders, who make up most of the prison population (14). Whatever the exact numbers, the US criminal justice system is still characterized by mass incarceration due to a punitive response to crime.

Jack Black concludes his essay saying, “What in a nutshell is my case against the right people, I contend that more laws and more punishment will mean nothing but more crime and more violence” (284). Black’s suggestion is that when society is inclined to meet a criminal with violence, they should be met with compassion and understanding. He says this based on personal experience—he was a burglar and thief for several decades. Then finally, he met a judge that did not treat him like a criminal: “I met trust and judicial leniency which gave me hope” (Black 285). After this, Black reformed his life and became a librarian, a popular writer, and a prison rights activist. He is highlighting the necessity of compassion toward criminals and the importance of placing rehabilitation before institutionalization. Black sums it up best himself: “Man is not reformed by the nightstick” (283). And he is not alone among criminals who need a second chance.

Black was addressing the punitive attitude of criminal justice during his time, yet nearly 100 years later, the attitudes persist. In 2023, the month of April was “Second Chance Month.” In his annual proclamation, President Biden wrote:

I believe in redemption—but for hundreds of thousands of Americans released from State and Federal prisons each year, or the nearly 80 million who have an arrest or conviction record, it is not always easy to come by. A criminal record can prevent them from landing a steady job, a safe place to live, quality health care, or the chance to go back to school. It can keep them from ever getting a loan to buy a home, start a business, or build a future. It can bar them from voting. As a result, three-quarters of formerly incarcerated people remain unemployed a year after their release—and joblessness is a top predictor of recidivism. We are not giving people a real second chance. (Biden)

Even the country's Chief Executive echoes Jack Black and other scholars, acknowledging the need to correct the criminal justice system.

## Race

The problems associated with criminal punishment apply with exponentially greater force when race is added to the mix. White supremacy is such a prominent, long-standing cultural value in this country that we even see internalized self-hatred common amongst non-White people. As Frantz Fanon writes in a section of his book *Black Skin, White Masks* titled “The Fact of Blackness”:

Below the corporeal schema I had sketched a historico-racial schema. The elements that I used had been provided for me not by “residual sensations and perceptions primarily of a tactile, vestibular, kinesthetic, and visual character” but by the other, the white man, who had woven me out of a thousand details, anecdotes, and stories. (Fanon 111)

Fanon's historico-racial schema identifies the way that history is written favorably toward White people, and more importantly, negatively toward Black people. It is an effective tool at justifying racism and colonialism. He is also pointing out that the negative history associated with Black people defines the Black identity in terms of the threat of violence. In describing a racial incident with a scared child, Fanon goes on to say, “... the corporeal schema crumbled, its place taken by a racial epidermal schema...I was responsible at the same time for my body, for my race, for my ancestors” (Fanon 112). This connects with Fanon's last point,

that he is a threat of violence. Having a legibly Black body means Black people will, oftentimes unintentionally and automatically, be reduced to their skin color and the negative stereotypes associated with it. This is important because the character of Black people is often measured in relation to negative stereotypes (Rose 377). As Alexander explains, “in the era of Mass incarceration, what it means to be a criminal in our collective consciousness has become conflated with what it means to be black, so the term *white criminal* is confounding, while the term *black criminal* is nearly redundant” (Alexander 198).

This superimposed identity of Black criminality served as a catalyst in the explosion of law-and-order rhetoric and the new Republican party led by the likes of Barry Goldwater and Richard Nixon in the 1960s, in response to the Civil Rights Movement. Western and Wildeman explore this historical phenomenon in response to the Moynihan Report in “The Black Family and Mass Incarceration.” The 1965 Moynihan Report

traced the key problems of the urban poor, such as unemployment, addiction, and violent crime, to the breakdown of the Black family and called for key social investment in Black communities to counteract these ills. Unfortunately, the

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country instead shifted to a more punitive stance on crime. “The growth of harsh sentencing policies and a punitive approach to drug control began with a rightward shift in American politics, first visible at the national level in the mid 1960s” (Western & Wildeman 223). Like Alexander (34), Western and Wildeman argue the Civil Rights Movement was inappropriately linked with street crime, which was surging at the time and peaked in the 1980s, especially in messaging to poor White people. Western and Wildeman explain the history in further detail: “... support grew for the new law and order message, particularly among southern whites and northern working-class voters of Irish, Italian, and German descent who turned away from the Democratic party in the 1970s” (223). Alex Vitale points out Michael Dukakis’ embarrassing loss in the 1988 presidential election due to being seen as too soft on crime made it abundantly clear to Democrats that they needed to adopt the same law-and-order rhetoric to avoid continuing to lose voters. Making things worse, Reagan’s War on Drugs had gained massive popularity. This effectively set the stage for Democrat Bill Clinton’s 1994 crime bill and the explosion of the prison population in the 1990s. Alexander (25)

describes this process as a “racial bribe,” using anti-Black racism as a wedge between poor White people and Black people to keep them from recognizing their shared interests.

It is easy to see, then, how the law-and-order rhetoric grew so rapidly in popularity by reinforcing negative stereotypes about Black criminality and playing on poor White people’s superiority complexes. Also, by placing a Black face on street crime, the punitive attitudes of Americans were amplified. This created a wave of new criminal justice policies that were incredibly harsh on offenders. “Tough sentences for drug and repeat offenders, strict policing and prosecution of drug traffic and public order offending, and unforgiving parole supervision, broadened the use of imprisonment from its traditional focus on serious crime” (Western & Wildeman 225). The work was not finished, though. As Western and Wildeman point out, the punitive American attitudes reflected in these policies preyed on a fully stocked corral of victims waiting to be sent off to prison.

Conveniently, poor communities of color were in a state of disarray. Deindustrialization, the war on drugs, and overly aggressive policing ravaged the inner cities of the Northeast and the Midwest. Thousands of manufacturing jobs were lost during the 1970s. According to Western and Wildeman (224), New York lost 170,000 of these jobs, Chicago lost 120,000, and Detroit lost 90,000. This left many undereducated inner city workers without any means for providing for themselves or their families. As Pfaff puts the point:

Blacks are systematically excluded from the “primary” labor market of full-time employment and diverted to the “secondary” labor market of more erratic, less stable part-time work thanks to employment biases, underfunded and underperforming schools, family and community institutions that are persistently undermined by the pressures and challenges they face and many other costs of structural racism. (Pfaff 55)

It appeared to many uneducated inner city men that a life of crime in the illegal drug trade was the only option. With increased urban policing due to new law and order policies, it was easy pickings in the inner city for Black criminals.



Vitale explains how extreme policing was targeted at broken-down communities of color through policies like broken window policing: a suggestion that if a community has “broken windows” or other dilapidations it is likely to have more crime and thus needs more police. Moreover, Alexander explains (63) how broken window policy worked in conjunction with the Supreme Court’s reinterpretation the Fourth Amendment and the War on Drugs. Originally, the Fourth Amendment was aimed to protect citizens from unreasonable searches and seizures, but the Supreme Court has rolled back many of the protections ascribed to the amendment. Cases like *Terry v. Ohio* (1968) and *Schneekloth v. Bustamonte* (1973) effectively eviscerated Fourth Amendment protections, especially for men of color. From their ability to say “No,” to the fact they could be stopped specifically based on their appearance, men of color effectively became blind spots for the Fourth Amendment. All these factors created a perfect storm, and the result was the era we know now as mass incarceration.

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As David Garland defines it, mass incarceration has two parts. First, the rate of imprisonment is well above comparable societies; and second, the demographic trends represent the systematic imprisonment of whole groups of the population (Garland 6). America satisfies both elements of this definition. Pfaff reports the number of people in state or federal prisons rose from just under 200,000 in 1972 to over 1.56 million in 2014; A quarter of the world’s prisoners (10, 13). Furthermore, the number of incarcerated people per 100,000 in the US is six to ten times higher than comparable European countries (Garland 5), and as Pfaff notes: from 1972 to 2014, the incarceration rate grew from 93 per 100,000 to 498 per 100,000 (peaking at 536 per 100,000 in 2008) (10). Furthermore, from 1980 to 2004, the percentage of young White men in jail or prison increased from 0.6% to 1.9%; during the same time, the incarceration rate for Black men grew from 5.7% to 13.5%; overall, Black men are eight times more likely than White men to be incarcerated (Western & Wildeman 228). With its systematic imprisonment of Black men, the criminal justice system is the backbone of the racial caste system in America. This necessitates a reorientation of race within criminal justice, especially within the context of punishment.

## Justice

So, what then is justice? It is clearly an important American ideal. Yet I honestly have no clue how to precisely define it. But we are all capable of recognizing injustice, and this can help to point the way forward to a better response to crime. We know from our discussion of punishment above that it currently serves injustice only, and in our conflation of punishment with violence, as Black pointed out, we have allowed the state to interject itself in the justice process and claim extra revenge on the criminal. Justice must be, then, non-punitive and non-violent. It must first serve to rehabilitate criminals before it aims to institutionalize them. To echo Black again, criminals may only be punished in principle, not also in interest. Our response to crime should reflect an appreciation of the perils and pitfalls of too much punitiveness. Criminal justice should consider what justice would mean for the victim, but the victim cannot be paid interest at the expense of the criminal. Finally, justice cannot under any circumstance claim interest on the part of the state. This interest is paid in many ways, as I have laid out. Whatever else justice requires, it surely requires that the response to criminal wrongdoing not serve to make the situation worse. Broad use of violence and extreme punishments serve no purpose other than moral posturing.

We can now pin down a few more specific characteristics of justice. Part of justice must include justice for the criminal as well as the victim. To be sure, justice must involve the restoration of the victim's personhood, safety, security, and property to the fullest extent possible. But the emphasis should be on maintaining the humanity and dignity of the criminal, while still restoring the victim. We also know from our discussions on race that justice has a blind spot for non-White and low-income people. Those with the means to do so escape punishment or face weaker penalties. So, it appears justice must pay particular attention to a person's identity. Lucky for us, we do not have to reinvent the wheel here.

A reconceptualization of criminal justice along these lines has already been contemplated by John Braithwaite in his article "Restorative Justice and a Better Future". In this essay, he aims to help the state learn from Indigenous communities to find restorative alternatives to traditional punishment. Braithwaite tells the story of Sam, a teenager, with two different endings following Sam's arrest for burglary. In the first, Sam is

sentenced to jail time, experiences the prison system, and picks up a drug habit in jail. This forces him back into crime after he is released, and eventually, having gone through the cycle of crime and violence, Sam dies alone. This is the way things often go for criminals in America. In the alternative version, after Sam is arrested, he is referred to a facilitator who sets up a restorative justice conference. Before the conference, the facilitator and Sam discuss who would best support him in the meeting, and it comes out that Sam was abused by his parents and hates them. Sam picks an old hockey coach to support him in the meeting. Sam's uncle and older sister are also called to assist. The meeting involves various parties: the victim and her daughter, Sam, the facilitator, and Sam's supporters. In the meeting, Sam discusses his troubles, such as being homeless and not having much family to speak of. The victim is also allowed to face Sam and explain how his conduct has affected her. The meeting is incredibly moving and emotional for everybody involved. It is revealed that Sam's sister was abused by their parents, so she understands Sam's lack of family ties that contribute to his life of crime. Sam and the victim reach a mutual understanding and respect. Sam agrees to pay the victim back for what he stole, but he admits he has a hard time holding steady employment as he has been unable to address his homelessness. Sam's sister agrees to take him in temporarily and the hockey coach even says he has some work that needs to be done so Sam can be paid (Braithwaite 1-2).

Consider the differences in values between a restorative model and the traditional one I have laid out in earlier sections. Our traditional system puts a lot of weight on harshness and incarceration in response to crime. Yet the restorative model has a different goal in mind: restoration. It serves justice to both the victim and the criminal. He must pay the money back, but he also receives an opportunity to address his homelessness that partially led to the crime in the first place. We also see the state had little part in the justice

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process and did not collect interest on Sam. The state's only role was to facilitate and mediate the conference. This is all much different from our current state of prosecuting offenders and appears to better match the characteristics of justice laid out in the previous section. Restorative justice also allows us to take better account of the criminal's identity and

ensure real steps are taken to rehabilitate the criminal. In Sam's case, we know he suffered a lot of violent abuse as a child, so clearly the state should not continue the abuse like we saw in the first story.

It must be noted that even on the restorative model, the state responded to Sam's wrongdoing, expressing official disapproval of his criminal conduct. Yet, the response was non-violent and non-punitive. This shows there are other ways of responding to crime. So why does the American criminal justice system treat criminals as it does? The explanation seems to have to do with the punitive attitudes of Americans. We have conflated criminal justice with violence and incarceration.

Is the restorative model simply naïve or ineffectual? The evidence suggests not. Some school districts in different parts of the country have adopted restorative practices in favor of traditional punishment—to great success. Schools use peer juries, problem solving circles, community service, conflict mediation, and other restorative practices with the hope of fostering “a welcoming place for young people regardless of the problems they bring to school and try to work out those problems cooperatively in a way that is in the best interest of the student and the larger school community” (Vitale 72). Vitale reports a task force in New York found schools with less punitive disciplinary systems were able to achieve a greater sense of safety for students, lower arrest and suspension rates, and fewer crimes, even in high-crime neighborhoods (Vitale 72). Furthermore, extensive research on the best-known restorative program in New York schools, Resolving Conflict Creatively Program, which started in 1995 and is still active in several forms today, found “these programs consistently improve both school discipline and educational outcomes. This is true for both in-school and after-school programs” (Vitale 74). So, what does this all mean? It is likely not conclusive proof that restorative justice is the answer for our current criminal justice predicament, but it shows there are viable alternatives, and this one deserves real academic attention and more serious buy-in and implementation into the criminal justice system. ■

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## Student Biography

Jalen North became a Bearkat alumnus in fall of 2022 having earned a Bachelor of Science in Political Science, with a Philosophy minor. During his time in Huntsville, Jalen played for the National Champion Bearkat Football Team and was a member of the Student-Athlete Advisory Council and the Football Leadership Council. This article is the result of nearly an entire semester of planning and research, guided by Dr. Mitchell-Yellin in the Philosophy Department. Dr. Mitchell-Yellin advised his Philosophy of Crime and Justice class early in the semester to continuously brainstorm essay topics as they engaged with the coursework to prepare for their final essay at the end of the semester. Jalen did just that, so when the time came for the paper to be written he was already inspired and fully prepared. Post-graduation, Jalen took a gap year to prepare for law school and will apply in fall 2023.