

## Imagined equality and “nothing to do with race whatsoever”

“This has nothing to do whatsoever with race. It never even occurred to me. This has nothing to do with race whatsoever.”

Thus spoke Paul Ryan in March 2014, defending his comments on a “tailspin of culture in our inner cities” leading to “generations of men not even thinking about working” [1]. Congresswoman Barbara Lee called this a “thinly-veiled racial attack”. She claimed that phrases like ‘inner city’ and ‘culture’ were “code words for what he really meant: ‘black’”. Ryan reacted with indignance: “this has nothing to do with race.”

With the 2016 election still weighing heavily on the nation, Ryan’s rhetoric strikes familiar tones. What role did race play in the election? To explore this question, I will discuss how much of the election was ‘not about race’, or at least, not explicitly. I then consider how implicit racial predispositions interact with a perception of abstract equality in the U.S., highlighting impacts on the criminal justice system. In this light, police brutality is considered. Finally, I will examine suggestions to abate these issues.

### First, how did we talk about race in the 2016 election?

There was a constant hum in the background of the election: the dimension of race. Race and racism are so fundamentally ingrained in the U.S. that, at some level, most everything could be related to some racial dynamic [2]. Simultaneously, however, many areas of the election were carefully and deliberately labelled as ‘not about race’. These claims often drowned out the hum of racial issues in political discourse. We heard about ‘economic issues’, or ‘law and order’, or how ‘*all* lives matter’. “Is it even right to be describing this as a matter of race?” [3]

Political language is often used to obscure and distract. This was particularly so for this election cycle, where major discussions about race and associated issues like criminal justice seemed to occur on some unspoken plane. The language used, however, seemed to constantly *allude* to race. “We are going to fix our inner cities,” said Trump, in his election night victory speech. “Our inner cities are a disaster,” he asserted during the presidential debates. “A disaster education-wise, job-wise, safety-wise, in every way possible.” Trump has touted language like this for years<sup>1</sup>. Reading these

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<sup>1</sup> “If we keep on this path, if we re-elect Barack Obama, the America we leave our kids and grandkids won’t look like the American we were blessed to grow up in. The American Dream will be in hock. The shining city on the hill will start to look like an inner-city wreck.” - D. J. Trump (2011) [4]

statements in isolation, it's hard to discern what these statements actually *mean*. The dictionary definition of 'inner cities' doesn't help the vagueness with which it is used. In the election, however, all of these statements seemed loaded with connotations of blackness. In answering a black audience member's question in the second presidential debate, Trump immediately told him that he would "turn our inner cities around," despite the irrelevance of inner cities to the topic. His language drew loose word associations between inner cities and race. "I'm going to help the African-Americans. I'm going to help the Latinos, Hispanics. I am going to help the inner cities." The socio-historical context of the phrase 'inner cities' offers the most insightful lens for understanding the relevance of race. The phrase was popularised in the sixties and seventies, evoking imagery of Reagan's war on drugs, of violence and hooliganism, of urban decay and poverty [5]. All of this is tied to stereotypes of blackness. "Black soul bold enough, inner city cold enough," raps Consequence in A Tribe Called Quest's *The Killing Season* [6]. Even though blackness isn't explicitly referenced in a discussion about inner cities, the *implicit* communication is still there.

'Inner city' was used as a political 'code word', allowing politicians to discuss racially-charged issues under a seemingly benign disguise. Politicians are advantaged when they replace 'race' with code words. This hides potentially racist statements under broad, generally agreeable terms, and gives leeway for listeners to interpret the broad code word as they wish<sup>2</sup>. The example of 'inner city' as a racial code word is illustrative of the *implicit* racial discourse that dominated the election. Other code words used in the 2016 election to allude to issues of race included 'law and order', 'criminal illegal aliens', 'real America', 'political correctness' and 'radical Islam', to name a few. By employing coded language, themes of racism, xenophobia and classism leached into mainstream election discourse without requiring the political self-sabotage that morally-charged statements carry<sup>3</sup>. We similarly see the use of coded language when discussing white supremacy, nativism, homophobia and bigotry. It is not surprising that proponents of these ideologies have focused so intensely on rebranding themselves as the 'alt-right' [8].

Race was discussed discreetly and obliquely in the election. Coded language was used as a *proxy* for race, with specific racial meaning obscured by ambiguity, abstraction and impersonality. This

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<sup>2</sup> "The racial cue is there, but is dominated by non-racial context." - T. Mendelberg (2001) [7] (p. 126)

<sup>3</sup> In a 'typical' election with 'typical' candidates, crassly-worded statements can be very politically damaging (such as Romney's comments about having "binders full of women"). This was applied very nonuniformly during this election. Clinton was lambasted for her comment that half of Trump's supporters belonged in a "basket of deplorables". Trump, however, managed to survive no matter what rhetoric he spouted, from his "locker room talk", to "I meant [Obama]'s the founder of ISIS", to urging Russia to commit cyber espionage and "find the 30,000 emails that are missing", to "they will soon be calling me MR. BREXIT!".

distracted from the complexity of race-related issues and blocked discussions from achieving the nuance needed to be meaningful.

In 1988, Richard Morin described what he called “the dog-whistle effect”, where slight differences in the way a question is phrased leads to large differences in the response received. “Respondents hear something in the question that researchers do not” [9]. *Code words are political dog-whistles*: “they involve sending a message that can only be heard by audience members with suitably sensitive ears” [10] (p. 1). For example, the phrase ‘law and order’ seems innocuous, but may strike fear in black communities that are still contending with the effects of ‘tough on crime’ policies, while simultaneously garnering approving nods in wealthy, white suburbs [11]. This ambiguity in interpreting political dog-whistles affords a security blanket of plausible deniability to those using coded speech. If a dog-whistle is accused of carrying racial charge, the speaker can easily pivot to some other meaning of the word [10] (p. 1-11). This is what Ryan did when Congresswoman Lee accused him of using coded language to discuss blackness. He used the ambiguity of the phrase ‘inner city’ to dodge this, instead alluding to economic interpretations of ‘inner city’. In his book *Between the World and Me*, Ta-nehesi Coates writes that “there are no racists in America, or at least none that the people who need to be white know personally” [12] (p. 97). Code words allow this to happen by allowing people to communicate racist messages while maintaining the plausible deniability to dispel charges of racism. Again, “this has nothing to do with race.”

Here lies a major tension in the American ethos. Despite clear evidence for implicit racial biases and outcomes, race was primarily discussed through strawman language in the election. This is because the United States maintains the fantasy of axiomatic, inalienable and *helplessly abstract racial equality* in America.

From the 1960s onwards, an assumed norm of racial equality was painstakingly constructed. In *The Race Card*, Tali Mendelberg observes that this norm is thriving, using the metric of whether almost all citizens “endorse the principle of equal treatment for blacks and reject the central tenets of white privilege” [7] (p. 113-119). However, she draws attention to a quieter aspect of the American psyche: the negative racial predispositions present in the white American subconscious. In the 1990s, 80% of white people surveyed by Schuman et al opposed laws preventing interracial marriage. However, only 60% “approved of inter-marriage” and less than 10% had inter-married [13]. Other surveys yielded similar results, and research exploring racial stereotyping showed extensive and unspoken

stereotypical thinking amongst citizens<sup>4</sup>. Despite white people's support of and belief in an egalitarian norm, internalised racial biases prevail. Coates writes about the assumption of "American exceptionalism" [12] (p. 8). He stresses that dismantling this assumption is "difficult because there exists, all around us, an apparatus urging us to accept American innocence at face value and not to inquire too much". This "apparatus" is supported by America's blind faith in equality, which obscures and prompts denial of racist acts and outcomes.

The tension between internalised racial predispositions and "universal commitment to the norm of racial equality" leads to ambivalence [7] (p. 111, 119-120). Abstract equality causes white people to reject open and obvious forms of discrimination, meaning that explicitly racist comments are likely to hurt a political cause. Simultaneously, implicit bias creates a propensity for the favourable treatment of white people and a hushed racial resentment towards people of colour. White people suppress negative biases only when clearly reminded of their commitment to abstract equality. Politicians benefit exploit this ambivalence. This explains why political discourse relies on implicit communication via code words<sup>5</sup>. "A racial message will have the greatest racial impact when the response it evokes can be explained by a non-racial reason... Conversely, a racial message will have little impact if the response to it cannot be explained by a non-racial reason."

This analysis suggests that explicit language can actually *hinder* the effectiveness of race-related communication [14]. Given this dynamic, what kinds of explicit language *did* we see in the election? The Clinton, Sanders and Trump campaigns employed very different strategies when discussing race explicitly.

The Clinton campaign was, overall, candidly explicit about race. Clinton said that there was an imperative "to tear down the barriers of systemic racism that are in the criminal justice system". She reminded voters about her history with exposing and combating racial discrimination, from her work with Marian Edelman as a law student to the time spent in black communities during her various 'listening tours' [15]. During the March 6th Democratic primary debate, Hillary Clinton was challenged on her support of Bill Clinton's 1994 Crime Bill. She did not beat around the bush,

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<sup>4</sup> For instance, in the 1980s, 90% of white people agreed that black and white children should attend the same schools, but only 41-51% of white people in the 1980s said they would be willing to send their child to a "majority" black school. Mendelberg observes that "whites are much less likely to choose egalitarian alternatives when asked to imagine living their lives in the company of a significant number of blacks, or in intimacy with them". [7] (p. 113-117)

<sup>5</sup> "Politicians felt an imperative to adjust their rhetoric to the growing norm of racial equality. Among the most important of these adjustments was the move to shed explicit articulations of racial stereotypes, fears and resentment, to find ways to communicate them without mentioning race explicitly. Political elites reinvented racial rhetoric, creating a tradition of political communication that rested on oblique and easily deniable references to racial distinction." - T. Mendelberg (2001) [7] (p. 111)

directly saying that “aspects of it were a mistake” and discussing her plans for to fix the “systemic racism that stalks the criminal justice system” [16]. Most importantly, however, Clinton often focused on relaying the experiences of others when talking about race. In her campaign rhetoric, she would relay conversations she had about racism with people directly affected by it, such as the mother of Trayvon Martin, who was shot by a neighbourhood watch volunteer. She said she felt a duty to “urge white people to think about what it is like to have “the talk” with your kids, scared that your sons or daughters, even, could get in trouble for no good reason whatsoever like Sandra Bland and end up dead in a jail in Texas” [17].

Bernie Sanders’ ‘democratic socialist’ campaign overwhelmingly focused on income disparity. It seemed that he only recognised systemic racism where it had measurable disparate impacts, particularly regarding wealth. He was forced to reckon with race more explicitly when Black Lives Matter activists interrupted multiple speeches in 2015, hiring a Black Lives Matter supporter as press secretary and highlighting his record of civil rights activism in the sixties<sup>6</sup> [18]. This led to an expansive racial justice strategy being detailed on the Sanders campaign site and increased mention of race in campaign rhetoric [20]. In the February 11th Democratic primary debate, Sanders said that race relations would “absolutely” be better under a Sanders presidency. When justifying why, however, he said that “what has to be appreciated is that, as a result of the disastrous and illegal behavior on Wall Street, millions of lives were hurt”. Minutes later, he was asked about race and economic stagnation. “Yes, we can talk about it as a racial issue, but it is a general economic issue”, replied Sanders [3]. He then offered analysis that held “whether you are white or black”, describing a narrative that applied to “a worker, white worker, black worker”. Racial disparity was effectively forgotten. Immersed in a belief of abstract racial equality, Sanders consistently stressed that key issues were ‘not about race’. He only explicitly reckoned with race when forced to, and even then often dodged the topic. When asked in March if his vote for the 1994 Crime Bill was a mistake, his answer made no reference to race. Although the moderator had specifically referenced the role of the Bill in “locking up a generation of black men”, all Sanders could offer was that there was “good stuff and bad stuff in the same bill” [17].

Interestingly, the Trump campaign employed both implicit racial dog-whistles and *explicit* racist rhetoric<sup>7</sup>. For instance, he said that “African Americans and Hispanics are living in hell”, advocated

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<sup>6</sup> Sanders was criticised for his disgruntled response when interrupted at the Netroots Nation convention. “If you don’t want me to be here that’s okay,” he told the protesters. “I don’t want to out-scream you.” Martin O’Malley, speaking before Sanders, similarly had his speech interrupted. O’Malley responded with “Black lives matter. White lives matter. All lives matter.” [19]

<sup>7</sup> “I thought Trump’s candidacy was an explicit reaction to the fact of a black president.” - T. Coates (2016) [2]

for stop-and-frisk to address “black-on-black crime”<sup>8</sup>, and called laziness a “trait in blacks”. How did he get away with explicit racial comments in a political scene that abhors them? One reason is the shameless inconsistency of Trump’s campaign. “Now he calls me racist - but I am least racist person there is”, tweeted Trump. Other statements range from “I love Hispanics!” to “I don’t have a racist bone in my body”. He finally disavowed the KKK as “repulsive” after initially refusing to denounce white supremacist endorsements. By making contradictory statements while completely ignoring his prior claims, Trump doesn’t have to clarify which statement was more true and doesn’t need to admit that he had previously made any mistakes<sup>9</sup>. Michael Lynch suggests that Trump’s total contradictions thus place the responsibility of discerning Trump’s actual stance on the listener [21]. “Listeners can infer that he *really believes* whichever statement they wish him to believe”, an effect made worse by human propensity towards confirming existing beliefs (confirmation bias). Moreover, these contradictions afford plausible deniability to Trump supporters. Justin Khoo notes that even if supporters promote Trump’s policies for racist reasons, they can publicly pivot to deny such racism [10] (p. 8). Trump supporters are “invited to support him because of his racist views, but also tell themselves and others that’s not why they support him”, allowing them to stay secure in the myth of an egalitarian norm. Mike Pence played a crucial role in this dynamic. While the Clinton campaign paraded every contradiction between Pence and Trump as a fatal gaffe, these inconsistencies only created more leeway for supporters to choose what they wanted to hear from Trump’s campaign [22].

The differences in prose between the Clinton and Sanders campaigns offers some explanation of why Clinton was preferred by ~75% of black voters in the Democratic primary [23]. Her references to racial issues and experience with race reparation policies possibly help explain why 88% of black voters preferred Clinton to Trump, especially in light of Trump’s racist hyperbole. Simultaneously, Clinton’s explicit recognition of racism likely alienated some white voters, perhaps reflected in her 21 percentage point margin of loss amongst white voters [24].

In light of the above discussion, let’s return the topic of code words and implicit communication. In this particular election cycle, code words were made more potent by ‘racial priming’. Code words are not inherently linked to race, instead gaining power by stoking existing racial predispositions. Racial priming occurs through exposure to rhetoric that evokes associations with race, tacitly strengthening

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<sup>8</sup> “There is a great deception in this. To yell “black-on-black crime” is to shoot a man and then shame him for bleeding.” - T. Coates (2015) [12] (p. 111)

<sup>9</sup> This is different from how Clinton backpedaled on her support of the 1994 crime bill, for instance: in doing so, she accepted responsibility for her past mistakes before restating the beliefs she instead holds today.

the connection between that rhetoric and racial biases<sup>10</sup>. This priming works because “a person makes greater use of a given predisposition after exposure to communication that cues it in some way” [7] (p. 120).

The 2016 campaigns chose pointed rhetoric to subliminally prime voters towards racial predispositions. Consider the Trump tagline, ‘Make America Great Again’. To the ears of Trump’s target demographics, this evokes a nondescript, romanticised image of America that ignores a history of colonialism and racial subjugation. The emptiness of the slogan lets listeners project whatever vague ideas of past greatness they would like onto the Trump campaign. Particularly given the sense of disenfranchisement and implicit racism that these voters associate with the Obama administration, Trump’s #MAGA slogan created a sense of “racist nostalgia” amongst supporters [25]. Trump capitalised on this with implicit and explicit statements about race, crime and migration [26]. Notably, the phrase is vapid enough for Trump supporters to maintain plausible deniability: they aren’t *racist*, they just want to return to the cultural myth of an unambiguously ‘great’ America<sup>11</sup>. The sheer repetitiveness and consistency of the Trump campaign slogan only made it more effective [7] (p. 127) [28]. Clinton’s campaign rhetoric did not take advantage of political dog-whistles in this manner<sup>12</sup>. Many of the negative political advertisements run by the Clinton campaign simply took statements made by Trump and played them over vague visuals, as if these statements were so obviously and inherently racist, sexist or otherwise damaging that just hearing them would hurt the Trump campaign [29]. This assumption was mistaken. While liberal ears may recognise the damaging predispositions alluded to by Trump’s language, the open-endedness of code words allows Trump supporters to interpret this language completely differently, with the plausible deniability of the language protecting Trump from direct accusations of racism. Clinton’s negative advertising campaign just amplified Trump’s already-too-loud voice.

Beyond intentional implicit campaign messages, mainstream news also facilitates racial priming. Through the mechanism of priming, the issues that get the most news coverage prior to an election become more important to voters [30]. This includes both cumulative exposure to news about an issue over time, and the short-run accessibility of news regarding said issue. Criminal justice policy

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<sup>10</sup> For example, one might be more likely to associate the code words ‘welfare state’ with welfare abuse, ‘welfare queens’ and ‘state parasites’ if shown lots of literature that suggests this association.

<sup>11</sup> This also occurred through visual imagery as well as through language. In July 2016, Trump tweeted that ‘crooked Hillary’ had made history as the ‘most corrupt candidate ever’, overlaid on an image of a six-pointed star and piles of banknotes. This was decried as evoking anti-Semitic themes, playing on stereotypes of Jewish corruption and allegedly using imagery directly taken from a white supremacist message boards. Trump immediately pivoted when criticised: he denounced these “false attacks” and said the six-pointed star was just a “sheriff’s badge”. [27]

<sup>12</sup> The implicit racial connotations and ubiquity of Trump’s #MAGA slogan were also more effective than the diffuse impact of Clinton’s three slogans (#StrongerTogether, #ImWithHer, #LoveTrumpsHate).

was subject to both of these effects. For instance, consider the lasting effects of the rhetoric used in 1994 to promote Bill Clinton's Crime Bill: even today, the phrase 'super predator' is used to connote black male criminality. The strength of these dated political dog-whistles was likely worsened by the frequent references to the 1994 Crime Bill made during the 2016 election. Groups ranging from Black Lives Matter to the Trump Campaign admonished Hillary Clinton for the tension between her support of the 1994 Bill and her 2016 calls to "end the era of mass incarceration". While these references attempted to hold Clinton accountable to her statements and effects on policy from 1994, they also reminded the general populace of the language that painted blackness with criminality [16]. Simultaneously, the short run new cycle was overwhelmed with reports of police brutality, mass incarceration, and racial profiling, particularly after the 2014 shooting of Michael Brown by Darren Wilson in Ferguson, MI. To those most susceptible to the effects of racial priming [31], this made race and crime central to the election while increasing the potency of code words for prompting racial predispositions.

All of these factors contributed to another chilling effect. Explicit recognition of racism was not only disincentivised in this election: it was seen as almost *shameful* to 'make things about race'. If you mentioned race, you were playing 'the race card', and would be branded as incorrect, indoctrinated and derailing.

This was achieved through the use of several highly effective political dog-whistles. The scornful tone used to discuss 'political correctness', 'identity politics' and 'safe spaces' invalidates attempts to examine the effects of race and identity on an individual's experiences in America. I argue that this might even force one to put aside one's own identity for their voice to carry legitimacy. The National Black Republican Association endorsed Trump "as citizens who happen to be black", as if their blackness was irrelevant to how policy affects them and played no role in shaping their political viewpoints [32]. The NRBA employed code words to reinforce this. They believe in Trump's ability to "push back against the mainstream media" and "end political correctness", taking advantage of how these words have been primed to imply that mainstream media intentionally misrepresented issues in the election. They urge their "fellow black Americans to seize control over their own destiny and leverage their vote", reminiscent of Trump's calls to "take our country back".

Present-day America has constructed itself on a "universal commitment to the norm of racial equality". This has also cast a ubiquitous fog on the American ability to question the reality of this norm.



## How has the coexistence of unspoken racial bias and imagined equality impacted criminal justice?

The ambivalence towards the presence and consequences of implicit racism has led to a criminal justice system grounded in the delusion of upholding ‘law’, ‘fact’ and ‘equity’. This is most immediately understood and observed in how the system creates different outcomes based on race. Blackness is punished by the U.S. criminal justice system with a stunning intensity.

This is clear in the sentencing differences between crack cocaine and powder cocaine. These are forms of the same drug, with similar physiological impacts on users, with neither form significantly more or less accompanied by other types of harmful conduct (such as violent crimes) [33]. However, under the 1986 Anti-Drug Abuse Act, distributing 5g of crack warranted the same sentence as 500g of powder: a sentencing disparity ratio of 100:1, worsened by the impositions of mandatory minimums for crack-related sentences<sup>13</sup>. This caused excessive harm to black communities. Prior to the 1986 Act, the average federal drug sentence was 11% higher for black defendants than for whites. In 1990, sentences for black defendants was 49% higher. Compared to the demographics of drug users, black people constituted a disproportionately high percentage of drug-related arrests, convictions and sentences<sup>14</sup>. Over 80% of crack-related defendants are black, though 66% of crack users are white or Hispanic. The excessive incarceration of black men disrupted black families and communities, reaffirming the cycles that promote structural inequalities in black communities. Moreover, the social meanings of crack addiction and blackness blurred into each other [11]. Ekow Yankah wrote in the New York Times that “at the edges of my 12-year-old mind was the ominous sense that no matter how far crack was from my actual life, I was somehow associated with the scourge”. The phrases ‘war on drugs’, ‘just say no’ and ‘predator’ became code words for criminalising blackness. Through this coded language, “African-Americans were cast as pathological, an indistinguishable and unsympathetic mass” [35]. The demonisation of drug addiction in the public eye worsens the problem by constructing the narrative that drug users are shameful, wild, uncontrollable and dangerous<sup>15</sup>. Drug dependency was cast as a criminal issue, not a health issue. This almost attaches a sense of *infamy* to drug users, leading to their permanent social marginalisation even when

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<sup>13</sup> The 2010 Fair Sentencing Act has since reduced this ratio to 18:1. [34]

<sup>14</sup> “Recent data indicates that African Americans make up 15% of the country’s drug users, yet they comprise 37% of those arrested for drug violations, 59% of those convicted, and 74% of those sentenced to prison for a drug offense.” - ACLU (2006) [33]

<sup>15</sup> “Addicts and casual drinkers were not transformed into criminals, as are their counterparts in drug use today. One could seek medical care for addiction without risking criminal punishment; likewise one could take a drink from time to time without rendering oneself an outlaw, hence outside the range of legitimate public discussion.” - W. J. Stuntz (2013) [36] (p. 181)

released from incarceration. This further dissuades drug users from seeking medical support, often leading to relapse and eventual recidivism. Again, however, this narrative is not applied uniformly. Black drug users are coded as ‘inner city thugs’ who *deserve* their fate in prison<sup>16</sup>. White drug users “are people and they have a purpose in life”. “They need help,” according to a former undercover narcotics detective in New Hampshire, a primarily white state with a primarily white heroin problem<sup>17</sup>. Even though the Anti-Drug Abuse Act never even *mentioned* race, when crack reached black communities, “civilisation fell” [12]. Race-based devastation reigned supreme.

Next, consider felon disenfranchisement. American citizens have an inalienable right to vote - except for those who have participated in “rebellion, or other crime”. States can constrain convicted felons’ voting rights at no cost to the state’s overall representation. This is portrayed solely as punishment for certain types of ‘infamous’ crime, again not mentioning the dynamic of race. However, the application of felon disenfranchisement laws is grounded in a history of slavery and racial suppression [38]. The targeted mass incarceration of black people also causes uneven racial outcomes related to felon disenfranchisement. As of November 2016, an estimated 6.1 million citizens (~2% of the population) were barred from voting due to felony convictions [39]. However, around 8% of the *black* population was ineligible to vote. This reduced representation gives convicted felons even less ability to change the circumstances leading to their conviction, especially given the permanent disenfranchisement applied by some states. As Stuntz notes, “power over American criminal justice ... gradually shifted from the local communities where crime took place, to the voters who elected the legislators who enacted these not-quite-symbolic criminal prohibitions” [36] (p. 191).

In the 2016 election, Florida, a key swing state, has disenfranchised 21% of its black population. Florida’s electoral college votes went to Trump by a margin of 0.3 percentage points [24]. Looking closer to home, Massachusetts voted overwhelmingly (and expectedly) blue. 60% of the state voted for Clinton, while 30% voted for Trump. Just south of Boston lies MCI-Norfolk, a medium-maximum security men’s prison. The MCI-Norfolk inmates were not able to vote in the election due to Massachusetts’ felony disenfranchisement laws [40]. They nonetheless held an internal vote parallel with the national election: 70% of the inmates voted for Clinton. Only 18% voted for

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<sup>16</sup> Coates writes about how a black person can always be blamed as responsible for their outcomes. “[A] great number of educators spoke of “personal responsibility” in a country authored and sustain by a criminal irresponsibility. The point of this language of “intention” and “personal responsibility” is broad exoneration.” “[T]hose who failed in the schools justified their destruction in the streets. The society could say “He should have stayed in school,” and then wash its hands of him.” [12] (p. 33)

<sup>17</sup> “The way I look at addiction now is completely different. I can’t tell you what changed inside of me, but these are people and they have a purpose in life and we can’t as law enforcement look at them any other way. They are committing crimes to feed their addiction, plain and simple. They need help.” - E. Adams (2015) [37]

Trump<sup>18</sup>. It is overly speculative to suggest specifically how disenfranchised citizens may have impacted the election if permitted to vote, but *some* sort of difference seems ineludible.

Lastly, we turn to plea bargains. A shocking 97% of non-dismissed federal criminal charges did not go to trial in 2013. These charges were resolved by plea bargaining, “negotiated behind closed doors and with no judicial oversight” [41]. Plea bargains allow those convicted of crimes to plead guilty to a lesser charge instead of going to trial for more severe charges, where the risk of being found guilty would come with harsher sentencing. Plea bargaining leaves huge leeway for the coercion of choice, especially for black defendants. Let’s examine what is at stake when considering a plea bargain. Two years in prison pales in comparison to ten. Twenty years in prison is far from a life sentence. The life imprisonment and the death penalty are worlds apart [42]. With such high opportunity costs, plea bargains put defendants between a rock and an impossibility. To the courts, however, these high-stakes threats are not considered inherently coercive. In *Bordenkircher v. Hayes* (1978), it was deemed acceptable for a prosecutor to threaten a defendant with a life sentence if the defendant insists on going to trial, instead of accepting a shorter, 20-year sentence via a guilty plea. This sets a standard where incredibly weighted choices can be thrust on already-distressed defendants. Black defendants are particularly disadvantaged as they are less likely to be able to afford a lawyer and have limited control over and contact with the legal counsel offered to them<sup>19</sup>. This is worsened by information asymmetry. The prosecutor is likely to be overconfident when beginning a plea bargain process, as they would have had access to case information and have not yet had their stance thoroughly questioned. This may paint an overly dismal picture of a defendant's chances in trial. There also exists active pressure for black defendants to confess to crimes they may not have committed. Exhausting questioning sessions, vague promises of release and aggressive treatment of defendants all increase someone’s propensity to false proclaim guilt. These tactics were shown to be horrifyingly effective in eliciting false confessions in the Central Park Five cases [43].

What themes unite these faces of the criminal justice system? I argue that the American narrative of equality and justice allows these racially discrepancies to persist.

At an individual level, if you look at these issues through the rose-coloured glasses of the norm of racial equality, you can always abstract away from the racist world that these policies create. You

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<sup>18</sup> This figure was obtained via communication with MIT students co-teaching Professor Lee Perlman’s ‘Philosophy of the Self and Soul’ at MCI-Norfolk during the Fall 2016 semester.

<sup>19</sup> In contrast, white defendants are more able to leverage their financial status to protect themselves within the legal system. “Because of their lucrative lines of work, all four defendants could afford high-quality lawyers who could take advantage of all of the procedural guarantees America’s justice system provides.” [36] (p. 127)

could point at the due process clauses in the Constitution, for instance, and say that the abstract fairness implicit in the text guarantees outcomes that aren't grounded in racial bias. You could portray violations of due process as exceptions to an egalitarian norm. You could gloss over the fact that 97% of cases never see 'due process', because only 3% of cases go to trial. You could say that in accepting a plea bargain, the defendant made a *choice*, and ignore the coercive forces at play.

Structurally, these racially disparate outcomes are not the result of some cosmic accident. "Discriminatory state statutes remained impermissible, but discriminatory treatment under formally neutral laws was another matter" [36] (p.117 - 118). The 1876 decisions of the *U.S. v. Cruikshank* and *U.S. v. Reese* cases illustrate a turning point in how American criminal justice is framed. *Cruikshank* disarmed much of the Fourteenth Amendment, as it was concluded that the Equal Protection clause could only be levied on states, and not private actors. Fourteenth Amendment based arguments now have no teeth when applied to current day cases. *Reese* made it near-impossible to levy the Fourteenth Amendment even against government officials by establishing "the requirement that the omnipresent but unprovable discriminatory motive be established in every case". These cases show us that criminal justice is founded on the assumption that it engenders fairness in the absence of *explicit* discrimination. It is adrift in an assumed egalitarian norm. This is further seen in *McKleskey v. Kemp* (1987). McKleskey could not prove explicit and purposeful discrimination in his case, according to the opinion delivered by Justice Powell. "In light of the safeguards designed to minimize racial bias in the process, the fundamental value of jury trial in our criminal justice system, and the benefits that discretion provides to criminal defendants," statistics showing possible *structural* discriminating factors were not applicable.

If we start with the *assumption* that the criminal justice system is equal and fair, *structural discrimination can always be denied*. Disproportionate racial outcomes are abstracted away when assessing the validity of American criminal justice. These outcomes are left unchecked, so long as the law is not *explicitly* racist. In the absence of obvious and specific racist incidents, criminal justice is reduced to pretty rhetoric, dancing around ideas 'equal protection' and 'due process'. Just as long as it's not about race.

The criminal justice policies discussed all overwhelmingly exhibit *structural* failure modes. "Mass incarceration goes on and on," wrote Stuntz. A further barrier to recognising these discriminatory structures is that the system problem of racism is confused as a personal one. Coates writes that the word 'racist' "conjures, if not a tobacco-spitting oaf, then something just as fantastic, an orc, troll, or gorgon". People are so strongly conditioned to believe in the valiant norm of equality that they actively avoid the personal label of 'racist'. This attaches a moral charge to issues of race. This is why

a white person might deny that they have benefited from structural white privilege. “The people who believe themselves to be white are obsessed with the politics of personal exoneration,” and hence ignore their contributions to structural racism [12] (p. 97). When racist outcomes occur, white people need not accept personal blame and therefore feel no motivation to help resolve these outcomes. They parrot slogans to absolve themselves of guilt: “it’s just the system, the system is broken”. This translates to “this nothing to do with me at all”.

Two months ago, Shaun King wrote that our criminal justice system is not broken [44]. “It’s functioning just the way it was designed and intended and financed to function.” American criminal justice is not an inherently fair system based on universal equality, and does not lead to race-based impacts only when improperly used. To borrow a phrase from Coates, the criminal justice system is “direct expression of all [its] country’s beliefs”. When those beliefs include both implicit racial predispositions and grand dreams of equality, you see the structural racial disparities that persist today.

This analysis can help illuminate some of the harrowing aspects present-day police brutality, because “the police reflect America in all of its will and fear, and whatever we might make of this country’s criminal justice policy, it cannot be said that it was imposed by a repressive minority” [12] (p. 78).

Terence Crutcher was killed by a police officer investigating an abandoned vehicle. As he walked towards the officer, following her commands with his hands raised, she Tasered and shot him. Moments before, another officer said that Crutcher “look[ed] like a bad dude, too” [45]. Eric Garner was choked to death in an arrest attempt for the illegal sale of cigarettes. “I can’t breathe, I can’t breathe, I can’t breathe,” he said, as multiple police officers pinned him to the ground [46]. Trayvon Martin was shot at 17 years old, followed by a neighbourhood watch volunteer as he “walked home with a pocketful of Skittles and a fruit drink”. His shooter, eventually acquitted, “feared great bodily harm or death” [47]. No matter what justification is used for cases of police brutality, it is never, *ever* about race.

Darren Wilson was not indicted for the 2014 shooting of Michael Brown. For those who deny the relevance of race to police brutality, this was all just about upholding the law. It’s about safety, and self defense, and the ‘heroes’ that police ‘violent neighbourhoods’. Supporters raised over half a million dollars for Wilson, paying for his legal fees and a move to a new house. In September 2015, an interview with Wilson was published in the New Yorker [48]. Wilson talked about “good values”, saying that many youth were caught up in “a different culture”. When asked what this meant, he

talked about “pre-gang culture, where you are just running in the streets ... it is the same younger culture that is everywhere in the inner cities.” Wilson was portrayed as gentle, vulnerable, and meticulously human. He denied that racism was institutional<sup>20</sup>. “Everyone is so quick to jump on race,” said Wilson. “It’s not a race issue.”

The black victims of police brutality are afforded no such humanity. “So that America might justify itself, the story of a black body’s destruction must always begin with his or her error, real or imagined” [12] (p. 96). “Michael Brown, 18, due to be buried on Monday, was no angel,” declared the New York Times [49]. Brown was branded as intimidating and unfeeling<sup>21</sup>. The fact that he was holding a pack of cigarillos was used to remind that he “was a criminal”, with claims ranging from petty theft to strong-arm robbery<sup>22</sup>. These false equivalencies are horrific: it was portrayed as if Mike Brown *deserved* to die because he had stolen cigarettes, or that his death was somehow justifiable because he was, after all, “no angel”.

The delicate web of innocence spun to protect a white shooter is diametrically opposed to the immediate assumption of a black victim’s guilt. The assumption of equality *cannot* withstand the blow of explicit recognition of state-sanctioned racial violence. To recognise police brutality as an expression of racism is to acknowledge the injustice of American criminal law and the implicit biases of American society. It means accepting that the system is “this way on purpose” [44]. It means abandoning personal exoneration from racist outcomes. This is why people respond to “black lives matter” with “*all* lives matter”. The explicit reference to race is excised because it exposes systemic American racism, strikes blows against imagined racial equality, and forces people to reckon with the guilt of ingrained structural biases.

White America actively dismisses the systemic racism that destroys black lives to maintain its imagined innocence. Nothing can compel this America to fight internalised racial biases when it is better off believing in an abstract equality. “*We* can’t breathe,” shouted Black Lives Matter protesters in when police officers involved in Eric Garner’s death were charged of no crime. The burden of

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<sup>20</sup> “The Justice Department found other examples of systemic racial bias in Ferguson. From 2012 to 2014, the Ferguson police issued four or more tickets to blacks on seventy-three occasions, and to whites only twice. Black drivers were more than twice as likely as others to be searched during vehicle stops, even though they were found to possess contraband twenty-six per cent less often. Some charges, like “manner of walking in roadway,” were brought against blacks almost exclusively. Wilson told me that Ferguson’s force had a few bigoted members, but he denied that racism was institutional. The Justice Department’s numbers were “skewed,” he said. “You can make those numbers fit whatever agenda you want.”” [48]

<sup>21</sup> “Mr. Brown tended to use his size to scare away potential trouble, Mr. Lewis said.” [49] “And when I grabbed him, the only way I can describe it is I felt like a five-year-old holding onto Hulk Hogan.” [50]

<sup>22</sup> This occurred despite little to no evidence that the cigarillos were stolen. Wilson simply testified that the pack of cigarillos might potentially tie Brown to reports of a recent convenience store theft. [50]

exposing and dismantling structural racism is thrust on the shoulders of those most held down by these structures.

We ultimately see a “mass un-blackening” in America today<sup>23</sup>. “Reputation ain’t glowing, reparations ain’t flowing / If you find yourself stuck in a creek, *you* better start rowing.”

### **Where can we go from here?**

As the theme of this essay has focused on ideology, language and communication, I will focus on related solutions<sup>24</sup>. Social and cultural change are prerequisites to lasting reparations<sup>25</sup>. This is particularly relevant to a state like Massachusetts, which is especially prone to false belief in imagined equality.

Massachusetts is a liberal state in a liberal corner of the U.S. This shields residents from the worst expressions of implicit and explicit racist rhetoric, and might mean that residents don't fully understand the extent of racism and discrimination in other states. Moreover, Massachusetts is less racially diverse than the rest of the U.S., with non-hispanic whites making up 75% of the population, compared to 64% nationally. Homogeneity reduces the effects of racial code words and associated priming within a society [53]. Massachusetts is comparatively protected from some of the worst possible outcomes of a Trump presidency. Certain factors would protect the state from the brunt of the damage. For instance, existing state laws extend health insurance to almost the entire state population. The potential damage of Trump’s promise to repeal the Affordable Care Act is hence diminished for MA residents [54].

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<sup>23</sup> “Mass un-blackening, it’s happening, you feel it y’all? / Rather see we in a three-by-three structure with many bars / Leave us where we are so they can play among the stars / They taking off to Mars, got the space vessels overflowing / What, you think they want us there? All of us aren’t going / Reputation ain’t glowing, reparations ain’t flowing / If you find yourself stuck in a creek, you better start rowing.” - A Tribe Called Quest (2016) [51]

<sup>24</sup> I advocate for concrete policy changes, particularly through the framework laid out by Stuntz, though I will not focus on this here. I also want to stress Coates’ caveat to policy changes: “[t]hese are all fine and applicable, but they understate the task and allow the citizens of this country to pretend that there is real distance between their own attitudes and those of the ones appointed to protect them.” [12] (p. 78)

<sup>25</sup> “If the Civil Rights Movement and Women’s Movement of the late 20th century taught us anything, they taught us that state action cannot reach many sources of bias that are responsible for persistent inequality, and this persistent inequality is unjust. The state can’t tell us whom to love, trust, or admire; it can’t tell us what to aspire to, where to live, what to care about. But these issues aren’t just a matter of individual psychology and individual agency either, for who we are and how we live is conditioned by the social practices and social meanings that structure our lives. As individuals, we aren’t responsible for social meanings (though we must constantly navigate them) or social practices (though we can act to resist or sustain them). Good people enact problematic practices: they may enact them unintentionally or without awareness; they may even think that the behavior in question is entirely natural and they have no choice; or they may not be in a position to have any idea they are problematic. Many of the practices in question cannot be ruled out by state intervention and so could occur even within a politically just society.” - S. Haslanger (2013) [52]

On the day Trump was named President-elect, it felt like Boston was in collective mourning. However, it wasn't long until bumper stickers and t-shirts appeared, touting a brazen slogan: "don't blame me, I'm from Massachusetts" [55]. This self-exoneration from the impending Trump presidency allows for retreat from the 'front lines' of the work that must be done.

The distance from the impacts of attacks on social justice allows Massachusetts residents to feel less accountability and urgency towards the cause. I propose three methods of combatting this.

First, we must recognise and educate ourselves about the racist structures that plague both the present and past of American criminal justice.

The way we learn about American history is a key factor. The careful reframing of historical race relations allows present-day society to pretend that its arrangement has nothing to do with race. As Coates writes, "the forgetting is habit, is yet another necessary component of the Dream" [12] (p. 143). As citizens, we need to understand how the racism of the past has transformed itself into the covertly racist policies of today. This in particular relates to the legal structures that shape criminal justice policy today. The major cases that caused the Fourteenth Amendment to lose much of its potential, for instance, provide context for present day legal discussions, and allow people to better understand and analyse what a particular criminal conviction might mean. This must be accompanied with a meaningful exploration of the history of black communities in the United States. Coates poses a question of representation in his book - "why were only our heroes nonviolent?" By portraying only certain black figures as being of historical relevance, present-day mentalities towards political activism are shaped with a skewed view of history. For instance, many popular retellings of Rosa Parks' lifetime start by saying that she sat at the front of a segregated bus in 1955 "because her feet were tired". This discredits and obscures the political activism and civil disobedience she participated in from 1943-1955, and paints her as a passive figure from 1955 onwards, despite her engagement in activism until she passed away in 2005. Beyond history, we must remain aware of current affairs. We must be aware of when acts of police brutality occur, or when legislature that serves to discriminate and harm is passed. Many choose not to participate in politics, or choose not to publicly discuss political affairs, due to a perceived lack of informedness. Staying abreast of current affairs with an investigative and critical mindset is one way to mitigate this [56].

This education must go beyond mere lip-service. This must be accompanied by harsh introspection and a recognition that abstract quality does not exist in America, especially for those who are black. Those who are privileged by these structures need to acknowledge the quiet ways in which they have



been advantaged. This ultimately means accepting a collective responsibility for the racial disparities that prevail today [52]. This allows people to better recognise when internal biases are affecting their vision, and better understand how racist structures can be dismantled. Using these tools, we must be ruthlessly vigilant in identifying and exposing instances of racism. This ranges from recognising racial disparities in the impacts of public policy, to bringing attention to every-day acts of race-based microaggressions. Allowing small-scale, subtle racism to persist only affirms internalised racial predispositions.

Second, we must be widely, intentionally and *relentlessly* politically engaged. This holds for both local and national politics.

“Good intention is a hall pass through history, a sleeping pill that ensures the Dream” [12] (p. 33). It is not enough to fall back on good intention, blindly vote every two or four years, and be done with political engagement<sup>26</sup>. Remaining informed on current politics is a precursor to activism. Holding your political representatives accountable to your viewpoints is a potential avenue for such activism. Attending local town halls and public forums is another mode of participation, particularly for the purpose of raising issues related to race-based outcomes, which might otherwise go unsaid due to the norm of racial equality. With this comes the importance of solidarity. “The fact of history is that black people have not - probably no people have ever - liberated themselves strictly through their own efforts” [12] (p. 97). Especially if you are someone who is relatively not disadvantaged by structural racism, your position can be levered to amplify the voices of those most affected. This includes, for instance, supporting local branches of Black Lives Matter. There is great symbolic weight to people’s presence at political protests. Internalised biases rest on symbolism, and symbols hence hold power for breaking them down. This also means that we should practice “corporeal politics”, in that we should try to maintain close and physical contact to the communities we seek to support [56]. This contact creates a better understanding of problems and possible solutions in politics.

An effective way to maintain long-term political engagement is by supporting institutions that *can* afford to focus their whole attention on particular topics. Many organisations offer short term relief to victims of race-based or other discriminatory violence. Some groups have also proven to have long and lasting impacts on criminal justice policy. A recent example is the American Civil Liberties Union’s involvement in highlighting the race-based outcomes of the Anti-Drug Abuse Act and role in the eventual enactment of the Fairer Sentencing Act [34]. Support for these organisations is

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<sup>26</sup> “And we pull down our blindfolds / Reach out for the lever in the dark / Get a sticker for our shirts as we head into the sun / Proudly bearing the mark / Headed down to the ark.” - The Mountain Goats (2008) [57]

particularly important for reaching across state and demographic boundaries to help areas that most threaten black lives and liberties.

Lastly, we must not allow coded language to prompt racial biases in political discourse. We must “be angry about the treacherous use of patriotic vocabulary” [56].

This election cycle specifically highlighted the need to recognise and deconstruct political code words, especially when the coded language is used to kindle racial predispositions. One possible solution lies in how we choose to call out political dog-whistles. As discussed earlier, it isn't possible to overtly point out any racially-charged terminology, as politicians can pivot to other meanings of the word. A better strategy, proposed by Justin Khoo, is to focus on the use of the dog-whistle and point out its race-based effects, instead of focusing on the intent of the speaker [10] (p. 30-32). For instance, instead of accusing someone talking about ‘inner cities’ of using code words for blackness, you could directly say that the proposals about inner cities would end up having a disproportionate impact on black communities. As people like to affirm a norm of racial equality, they are more likely to reject overt discriminatory outcomes than they are to reject implicit communication of stereotypes.

There is much work to be done as the 20th of January approaches. Regardless of the potential damage of a Trump presidency, however, there would have been mountains of work nonetheless. Structural racism exists, and will persist unless actively dismantled. This is true even if it is only implicitly considered in political discourse.

When discussing aspects of the abolition of slavery, Stuntz wrote that “the Chief obstacle to its solution was the will of the free population” [36] (p.43). All members of the population need to resolve their will towards disassembling structural racism. We especially need to remember that much of the population *is not free*.

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