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# Predation in State and Nation

Race and Justice

1-21

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[journals.sagepub.com/home/raj](http://journals.sagepub.com/home/raj)**Brandon R. Davis<sup>1</sup>****Abstract**

U.S. criminal justice policies have created the uniquely American style of mass incarceration. Since 1973, America has seen a sustained and substantial rise in its incarcerated population and the formation of a carceral state. Currently, the United States imprisons 2.23 million people, which amounts to 23% of the world's total incarcerated population. The most important takeaway is that the carceral state is an institution of predation, and predatory institutions create, maintain, and reproduce difference through the use of violence. I argue that the racial state is the predatory state, but the predatory state is not necessarily always the racial state. The predatory state is different from the racial state in that it applies violence toward various intersections of marginalization. This article contributes to the theoretical development of the concept of predation by its machinations through the institution of criminal justice. I discuss the predatory state, violence, and race. Next, I examine some of the ideas surrounding the collective knowledge, memory, and guilt, as well as the epistemologies, of race. Additionally, I discuss racial ignorance and selective knowing. Lastly, I offer Ferguson and Baltimore as case studies in the relationship between predation, identity, and violence as they affect criminal justice.

**Keywords**

critical race theory, criminological theories, mass incarceration, race and policing, criminal profiling, race and policing, bias in the criminal justice system, race and public opinion, African/Black Americans, race/ethnicity

There are various ways in which states relate to their citizens. We call these relationships political regimes. There are communist, socialist, fascist, totalitarian, authoritarian, partially democratic (oligarchic), (military) dictatorships, and monarchies to name

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few. The state is the sovereign entity and the political regime is how it relates to the polis. The power of the state to target and effectively decrease the quality of life and political power of specific groups of individuals has been evident throughout history. Racial and ethnic minorities and other undesirable groups (religious, nomadic, etc.) have been the state's primary targets (Mustard, 2003). In U.S history, the state has supported the colonization and genocide of Native Americans, the enslavement of Africans, Jim Crow segregation, and discrimination against immigrants of various races and ethnicities, including in contemporary history Hispanics and Muslims. The American state has demonstrated time and time again its capacity and willingness to target and apply violence toward marginalized groups.

Lowndes, Novkov, and Warren (2008) argue that “because of the nature of race—its evolving and dynamic status as a structure of inequality, a political organizing principle, an ideology, and a system of power—historical, institutional and discursive modes of analysis are necessary to study it adequately” (p. 1). American political development scholars have produced vigorous scholarship on the racial state. It is argued to have developed amid liberalism's awkward dance with race and has given way to a fascination with racial identity, which reproduces political, social, and economic exclusions (Goldberg, 2002). I argue that the racial state is the predatory state but the predatory state is not necessarily always the racial state. The predatory state is different from the racial state in that it applies violence toward various marginalized groups. Systems of differentiation include race but also class, gender, nationality, religion, and sexual orientation. In this article, I use the term *predatory state*, in lieu of racial state, because predation is a means of social control which is and has been applied toward various marginalized groups throughout history. The concept of predation is rooted in power, and states exercise power as a means of producing social control (Rosenbaum, 1986). Predation itself is a relationship and can only be understood as such. Predation is not absolute. It is a systemic, discrete, and effective social control apparatus that has been meticulously ingrained within the modern liberal state, making its manifestations difficult to detect. Arendt (1970) aptly titles this *rule by Nobody*. Nobody, she says, is the most tyrannical ruler because there is no one person to be held accountable. Nobody rule is oppression without an oppressor. As such, the predatory state is Nobody.

Under the predatory state, laws and institutions have emerged that aid in the establishment and maintenance of unearned privilege. My central argument here is that the predatory state exists and operates at all levels of government and through all its institutions. In this article, I focus on the effect predation has as applied through the institution of criminal justice. Crime and punishment are institutional outputs and more importantly, punishment is not directly correlated with criminal activity. McNeely and Pope (1981) find that race has a direct impact on the ecology of justice and on the organizational characteristics of the institution of criminal justice. The expansion of the criminal justice system represents an unprecedented expansion of predaceous governmental power into the everyday lives of—some—Americans, which produces severe adverse consequences for those individuals, their families, and communities (Travis, Western, & Redburn, 2014; Western, 2006).

The predaceous characteristics of the U.S. criminal justice system are not absolute, but they are intersectional, as is evident in the classed, gendered, racial, spatial, and generational concentration of mass incarceration (Travis et al., 2014). The level of predation one is subject to varies with one's intersectionality or social identity. There are no social identities outside of the state. Social identities are maintained and produced by the state through interactions with institutions. Deviancy itself is a social construction. It is assigned or incorporated within marginalized social identities. The primary institution utilized for managing deviant social constructions has been criminal justice, the primary tool utilized is violence, and the primary targets have been racial and ethnic minorities. This situates racial identities within the predatory state (as opposed to the contract state), which simultaneously creates and recreates epistemologies of race that support the usage of violence, justifying marginalization. In this article, I discuss the dual state and the relationship between predation, race, and violence, as they impact the application of criminal justice. I examine how ideas surrounding collective knowledge, memory and guilt, and epistemologies of race are key to the maintenance of the predatory state. Next, I discuss how racial ignorance and selective knowing perpetuate racial control. Lastly, I offer Ferguson and Baltimore as case studies of predaceous relationships.

## The Dual State

The state is defined as an organization that can “inflict sanctions without risk of disavowal and can disavow sanctions by others” (De Jasay, 1985, p. 76). The state is a community that claims a monopoly on the legitimate use of violence. No state uses violence alone to maintain social order nor enjoys perfect legitimacy because legitimacy is not an attribute of a nation but a state of mind of its people. J. S. Mills (1859) wrote that there is a circle around every individual that government in any form should not infringe upon. He believed that there is a time in a person's life when their individuality ought to operate uninhibited. Rousseau (1971) argued that we have chosen to place ourselves under a state to protect our life, property, and to escape instability. He believed this worked collectively in the common interest of all citizens. For this purpose, in a contract state, such as the United States, all citizens are subject to the *rule of law*. The *Supremacy Clause* in the *U.S. Constitution* states the “. . . United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any state to the contrary notwithstanding.” The *rule of law* protects citizens from the illegitimate use of violence. There is nothing that more clearly distinguishes a contract society from a noncontract society than the *rule of law*. This is important because the state has a monopoly on violence, and in a contract society, the use of violence presupposes the *rule of law*, *due process*, and *formal equality*. Thus, the primary function of the government is to protect civil liberties and civil rights, and the use of violence is legitimate only if it is based on an approved set of principles endorsed by the polis (Tomasi, 2012). This is how a just society, a contract state, manages the equitable distribution of justice.

This is not to say that the classical liberal tradition surrounding the development of the modern liberal state is without fault in the formation of the predatory state. West (2002) argues that the major figures of the Enlightenment built on marginal disciplines' intellectual legitimization of racial hegemony by accepting racially hegemonic arguments without having to put forth their own theories. He finds that "the fusion of scientific investigation, Cartesian philosophy, Greek ocular metaphors, and classical aesthetic and cultural ideals constitute the essential elements of modern discourse in the West" (p. 53). I suggest liberalism, which includes much of the commitments of conservatism and neoliberalism, was used at key points in history to promote racial hegemony and is central to modernity's common moral, sociopolitical, and jurisprudential procedures that buttress the predatory state.

The modern American state was formed on unjust terms, which are embedded within its foundational documents and court decisions, and thereby within the institutions that have developed from it. For example, the U.S. Constitution authorized slavery and the three-fifths personhood of African slaves provided no representation for native peoples, disenfranchised women, and established the United States as a colonial settler society. Section 9 of the U.S. Constitution enshrined the legitimacy of the slave trade by placing a federal tax of no more than US\$10 on the importation of a human being. It further solidified slavery into the foundation of the nation by making *only* this specific clause unamendable, for over 30 years. The U.S. Constitution does not specify how many judges are supposed to be on the Supreme Court, but it details a taxation system and protects the slave trade against any and all action for over 30 years. Since then, U.S. Courts have worked to uphold slavery, segregation, discrimination, and racially biased policies. Therefore, one cannot simultaneously purport the duality of the modern American state without acknowledging its predaceous roots.

Hawkins (2011) finds that "...subordinate ethnic groups of color within... postcolonial, non-white social contexts" will "...display disproportionate levels of social control via the criminal justice system" (p. 20). Colonialism is a political system through which a nation establishes political control over a foreign territory for the purpose of exploitation (Tatum, 2000). Privilege is at the center of a colonial system. All the various forms of violence, oppression, and exploitation are employed to generate privilege. To create privilege, you must exploit, and to be exploited means to be controlled (Blauner, 1972). The predatory state is the political regime that maintains the unearned privilege created from exploitation. Blauner (1972) defines privilege as "... unfair advantage, a preferential situation or systemic 'headstart' in the pursuit of social values (whether they be money, power, position, learning, or whatnot)" (p. 22). The resources of privilege include actual power, the power potential, and the ability to exercise that power (Blalock, 1960). Social privilege is not unique to colonial societies (i.e., aristocratic titles), but in the racialized colonial context, Whites enjoy a special race-based privilege that permeates all its institutions and affects all its members (Blauner, 1972).

Fanon (1965, 1994, 2008) developed colonial theory as a sociopsychological perspective which examines the relationship between structural oppression and behavior. In the case of America, undoubtedly, the European settlers colonized Native

Americans, but they also utilized internal colonization through the importation, enslavement, and continued oppression of African peoples (Blauner, 1972). Internal colonization is different from traditional colonization in that people are brought into the society by force and then colonized. Both forms of colonization are deeply grounded in racism and racial control. Economic and social privileges are the hallmarks of racial oppression; therefore, racism cannot primarily be viewed merely as a set of beliefs or ideas. Racism is an institution. A political system. A structural mechanism with rules and tools associated with maintaining racial control and White political and economic hegemony. Racism pervades every institution, but the quintessential racial control apparatus has been the institution of criminal justice.

Colonization creates, for the privileged, a special relationship to the legal order (Blauner, 1972). The criminal justice system's role is to put oppression and exploitation into common practice via frequent and direct contact with the oppressed (Tatum, 1994). The criminal justice system is a part of the larger social structure aimed at social control. There are two distinct forms of this type of social control. The front-loaded apparatuses establish and maintain a "steady state" of unearned privilege which creates criminogenic conditions for the exploited groups. The back-loaded mechanisms refer directly to the classed, gendered, racial, spatial, and generational concentration of mass incarceration and the normalization of the disparate application of violence toward racial and ethnic minorities (Hawkins, 2011). For example, 60% of America's 2.23 million incarcerated persons are racial minorities (Carson & Sabol, 2012), and few police officers ever face a trial for the shooting deaths for African Americans let alone get convicted (<https://www.nytimes.com/interactive/2017/05/17/us/black-deaths-police.html>). A colonial political system is birthed in violence, exploitation, and racism. The predatory state is the political regime that manages and maintains the unearned privilege this produces. A colonial state is by definition a predatory state, yet all predatory regimes (sexism, homophobia, transphobe, class, etc.) do not necessarily originate from colonization. A colonial state is an overtly predaceous state. The dual state—contract and predatory—is Nobody, but it consists of the same elements: violence, identity, and predation.

## **Violence, Identity, and Predation**

Violence can be used to intimidate, demoralize, eradicate, and polarize, and its use is rational and effective in reaching these desired outcomes (Arendt, 1970). Violence can be produced unilaterally, bilaterally, or multilaterally. It can be both strategic and tactical (Kalyvas, 2006). Race, as a concept, was created within the context of exploitation and control. Solomos and Back (1996) argue that race politics are confined to the realm of social control. Social control policies can be disciplinary and regulatory. The former is centered on the body and the latter on institutions (Foucault, 1978). The size of government and the scope of its institutions are directly related to the level of effort dedicated to social control (Besteman, 2002). The level of violence an institution utilizes is directly related to its size and capacity. This is because violence increases with the extent of organizational specialization (Tilly, 2003). As the

American state has become more institutionalized, it has also become increasingly more violent. Lowndes et al. (2008) posit that three key political institutions have developed to maintain social control: political leadership, the military industrial complex, and law enforcement. In contemporary America, we have witnessed the amalgamation of all three of these institutions into the U.S. criminal justice system—a highly specialized, high-capacity institution, with ever expanding scope and reach like nothing the world has seen before. A third of America’s adult population has passed through the criminal justice system (Lerman & Weaver, 2014), and some 16 million people have a criminal record (including misdemeanors and felonies; Brame, Turner, Paternoster, & Bushway, 2012). This type of institutional capacity and surveillance costs the United States roughly US\$60 billion a year (The Sentencing Project, 2016).

That said, criminal justice institutions are not inherently deleterious. The harm principle posits that the state should only prevent actions that cause harm (J. S. Mills, 1859). Laws, courts, and police developed out of the need to equitably and fairly resolve issues of harm. From the speed limit to capital offenses, the criminal justice system is supposed to provide safety and stability to everyday interactions and it does. When we pump gas into our vehicles, we rarely doubt that the volume is accurate or that the fluid is actually unadulterated gas. We trust that there is some regulatory agency “policing” gas stations, and if wronged, we could seek redress from the person or business through the legal system. Yet, justice is only *just* if it is applied equitably. Speeding is speeding, but if 90% of the people who receive speeding tickets are disproportionately of a specific racial identity or social class, then the application, not the law, is unjust. Under a predatory regime, the application of criminal justice is a severely effective means of oppression. *The central issue is that deviancy is not an earned status. Deviancy is a social construction and punishment is not correlated with criminal activity.* Again, deviancy is assigned or incorporated into some social identities. Therefore, how identities are constructed has great bearing on how institutions relate to social groups. Institutional relationships define what it means to be “you,” and one’s social identity is continuously reinforced through institutional interactions.

Social identities include myths, stereotypes, belief systems, cultural characterizations, and popular images. They are generalized, subjective, and so much a part of our normal lives that we fail to see them. Identity formation is crucial to the political process (Tilly, 2003). Personhood (or citizenship) as a social construct is connected to one’s social identity. The state has the power to assert control over identities within the state and the power to exclude identities from state protection (the *rule of law*). As such, identity politics consist of conflicts over legitimatization and recognition within the state.

Hooker (2009) finds that racialized societies resist seeing and treating minorities as political and social equals through conceptions of political membership that are thoroughly racialized. States categorize social identities as legitimate or illegitimate going so far as establishing their right to exist (i.e., genocide, holocaust, ethnic cleansing; Tilly, 2003). State violence is often linked to identity violence. Identity violence is violence directed against people based solely on who they are within the

state (Kalyvas, 2006); therefore, one's "racial identity is pivotal in defining how [raced] groups relate to political institutions" (Lowndes, Novkov, & Warren, 2008, p. 3). Loury (2002) finds that "... America's primordial racial classification is the social otherness of Blacks" (p. 68). The difference between being socially constructed as Black as opposed to White is embedded within institutional relationships. The disparities between Blacks and Whites are produced through interactions with institutions. If there were no unnatural inequalities or unearned privileges, there would be no racism to speak of, and the concept of race itself would be inconsequential. But because institutions, such as criminal justice, relate to social identities in different ways, we have disparities we can point to as outcomes of unearned privilege.

Both institutional interactions and racism are quotidian in nature. Essed (1991) argued that "everyday racism is racism, but not all racism is everyday racism. The concept of everyday racism counters the view . . . that racism is an individual problem, a question of 'to be racist or not to be racist'" (p. 3). Everyday racism involves systematic, recurrent, and generalized familiar practices, and socialized attitudes and behaviors that provide cumulative instantiation. Racism is a structure and a process that does not exist outside of everyday practices. Essed goes on to say that "everyday life is the direct reproduction of the person embedded in social relations" (p. 48). These social relations or identities are created, structured, facilitated, and reproduced through interactions with institutions.

Blackness is one of the most thoroughly institutionalized social identities in the world (Asante, 2005). Shelby (2005) defines blackness as a racial identity, a "... vague and socially imposed category of 'racial' difference that serves to distinguish groups on the basis of their members having certain visible, inherited physical characteristics and a particular biological ancestry" (p. 207). The concept of blackness does not fully appreciate the quotidian nature of race, the complexities within race, the centrality of race in American political development, the intersectionality of race and gender and class, or the historical and contemporary racially predeceous nature of liberal institutions. This is important because racial identities hold knowledge regarding the function and justification of the institutional strategies surrounding state responses to criminality (Savelsberg & King, 2005). Both classical and contemporary theorists find that there is a relationship between social identities and criminal justice (Savelsberg, 1994). General sociological theories, especially sociostructural and evolutionary theories of functionalism and Marxism, have been used to explain the kinds of behaviors that get punished (Savelsberg, 1994), the intricacy and complexity of punishment, the processes under which legal decisions are made (Nonet & Selznick, 1978), the functions of punishment (Erikson, 1966), and the types of punishments used (Rusche & Kirchheimer, 1939/1968).

Scheingold (1992) and Hinton (2016) maintain that all racial conflicts, be they economic, social, or moral, have become signified as criminality. Blackness has "[become] a condensation symbol expressing a variety of public anxieties about seemingly intractable structural problems, there is a temptation to criminalize, or at least stigmatize, behaviors stemming from [blackness]" (Scheingold, 1992, p. 7). Scheingold (1992) found that "this response is due to a powerful belief system" (p. 21)

or ideology. Murakawa (2012) argued that “American crime policy [is] a manifestation of anxiety displaced” (p. 100). The myth of crime and punishment dramatizes the battle between good and evil, civilized and uncivilized, and citizen and alien, and makes it morally justifiable and pragmatic to harshly punish deviants. Even “swift, certain and severe punishment for those who violate society’s rules are consistent with [the] basic American ideal” (Scheingold, 1984, p. 62). Punishment is offered as an abject lesson in who is a contract citizen and who is not. Covington (2010) finds that the media paints a skewed image of irrational Black criminality, framing blackness itself as deserving of punishment and social control. This process is the criminalization of blackness. “The stigmatization of crime as ‘Black’ and the masking of crime among Whites as individual failure” and the process of “. . . linking crime to Black, as a racial group . . . reinforce[s] and reproduce[s] racial inequality” (Muhammad, 2010, p. 3).

A study on “ban-the-box” policies is a prime example of how effectively ingrained criminality is within concepts of blackness. Ban-the-box policies are laws that bar employers from asking whether a job applicant has a criminal record. Researchers conducted an experiment to examine the effect on the racial callback gap between job applications sent before and after the “ban-the-box” laws took effect in New Jersey and New York. Surprisingly, they found a large increase in callback gap after the law took effect (Agan & Starr, 2016). Employers, now unable to check the criminal history of applicants, were forced to use their own judgment and thus assumed Black applicants were more likely to have criminal records. After “ban-the-box” policies were implemented, the disparity in callbacks between Whites and Blacks increased from 7% to 45% (Agan & Starr, 2016), a 38-point swing away from Black applicants based on how effective criminality has been incorporated to blackness. The “box” was actually helping to counteract the narrative of Black criminality. Without a way to prove Black applicants are not criminals, employers reverted back to the default, and the racial callback gap increased roughly 7-fold. The “box” does have an adverse effect on felon employment, but it also appears to have helped employers negotiate around the criminalization of blackness by offering Black applicants a way to opt out of criminality.

The racialization of crime has been very effective in the politicization of criminal justice issues (Tonry, 2011). The election of judges and direct democracy make the U.S. system vulnerable to the politicization of social problems (Travis et al., 2014). In competitive elections, judges tend to hand out harsher sentences (Gordon & Huber, 2007), and the adoption of three strike laws is an example of the democratization of punishment (Barker, 2009). During the Nixon era, extreme anxiety over social change and stagflation created a political environment conducive to coded racial appeals and populist law-and-order rhetoric (Flamm, 2005). Whites argued for the expansion of the criminal justice system as a means of controlling Black lawlessness (Murakawa, 2014; Weaver, 2007). Hinton (2016) found that issues like poverty, unemployment, and inadequate housing were reshaped into vagrancy, delinquency, and lawlessness. Riots in urban cities sparked by horrendous social conditions and police brutality fueled a shift from “education, health, housing, and welfare programs” (p. 13) to



“block grants . . . increasing the nation’s punitive and carceral capacities” (p. 14), and a “Long-Range Master Plan to expand and modernize the American correctional system” (p. 164).

Due to the criminalization of blackness and the racialization of crime, African Americans are subjected to conceptual incarceration, which is a constant state of suspicion and surveillance (Markowitz & Jones-Brown, 2000). Consequently, this justifies racial control and the use of violence. For example, in April 2018, two African American men were arrested for sitting quietly in a Starbucks in Philadelphia simply because of the constant state of suspicion their blackness evoked (<https://slate.com/news-and-politics/2018/04/how-raced-spaces-explain-the-philadelphia-starbucks-arrests.html>). The two college graduate entrepreneurs had the police called on them within 2 min of arriving (<https://www.nbcphiladelphia.com/news/local/Starbucks-Arrest-Philly-Rashon-Nelson-Donte-Robinson-480231943.html>). The excessive and aggressive policing that Blacks are subjected to create a separate political environment for African Americans. Policing is defined here as the regulation and management of behavior, beliefs, and more importantly, the public image of social identities (Cohen, 1999). Over-policing Blacks reaffirms the narrative of Black criminality; Black criminality justifies the racialization of crime and the need to police Blacks aggressively. Wolfgang (1964) argues that Blacks have a peculiar legal status since they were the only ethnic group in America subjected to chattel slavery. Within the American legal system, race is the most powerful category of constitutional law, producing the highest level of judicial review (Somerville, 2005). Yet the collective trauma associated with racism has not been fully incorporated into jurisprudence, legally prohibiting its recurrence. Much like the social construction of blackness, this resistance is an epistemological process.

## **Epistemologies of Predation**

The study of epistemology is the study of knowledge. Individuals need “epistemic resources for making sense of and evaluating our experiences, and epistemic resources such as language, concepts, and criteria are normative: they are resources that are maintained by the force they exert in coordinating agents who recognize and use them” (Pohlhaus, 2012, p. 718). A critical epistemological approach examines the connections between knowledge, authority, and power. A critical epistemological analysis of institutions approaches these questions from a distinct level, focusing on how certain knowledge is excluded from collective memory and how authority is given to some knowers over others not as a result of conditional epistemic failures but is systematically and structurally connected to institutions and institutional processes (Congdon, 2015). Knowledge is a mix of cognitive and normative assumptions about the world (Mannheim, 1986). Knowledge of one’s social location, identity, experiences, and individual perceptual abilities are all called upon to make judgments. It functions to direct change within institutions and between social identities, but imperfect knowledge can be used to suppress change and maintain the status quo. When there are “. . . oppressive or appropriative knowledge practices across particular

social groups, knowers can acquire certain obligations with respect to epistemic practice simply by belonging to a privileged or oppressive group” (Townley, 2006, pp. 46–47). Limited knowledge can be used to obscure the existence of wrongdoing and to prevent claims of broader political obligation and the acknowledgment of continuing effects of harm in the present (Hook, 2009).

How a society treats knowledge and how things are remembered and forgotten are crucial in shaping its present and future. Memory is a political act. Alexander, Eyerman, Giesen, Smelser, and Sztompka (2004) argued that “identities are continuously constructed and secured not only by facing the present and future but also by reconstructing the collectivity’s earlier life” (p. 22). Savelsberg and King (2005) write that “. . . the past is always constructed, and that present-day interest of social actors profoundly affect our understanding of the past” (p. 582). Balfour (2003) finds that “. . . the American democratic project has been hobbled by the denial of the significance of slavery and the decades of Jim Crow segregation that followed from it” (p. 33). She went on to say that the “unwillingness to confront the past is connected to the failures of formal equality as an antidote to the poison of racial injustice” (p. 42). Collective memory shapes conceptions of social identities and political obligation for the polis as a whole.

Collective memory produces continuity and a connection with the past, which is needed to create and maintain social cohesion. This is important because research supports the idea of a direct relationship between collective memory and social control (Garland, 2012; Melossi, 2001) and a relationship between institutions and social control and punishment (Sutton, 2000, 2004). Connerton (1989) finds that “. . . control of society’s memory largely conditions the hierarchy of power . . . and hence the organization of collective memory” and the “control and ownership of information [is] a crucial political issue” (p. 1). “A particularly extreme case of such interaction occurs when a [institution] is used in a systematic way to deprive its citizens of their memory . . . the mental enslavement of the subjects of a [predatory] regime begins when their memories are taken away” (p. 15). In this sense, collective memory is a social construct but this does not mean that the past did not happen nor that it is not germane to contemporary politics. How things are remembered is relevant to modern society and race politics (Hooker, 2009). What it does mean is that what we know and understand as history is obtained indirectly, mediated, and filtered through socially constructed narratives (Savelsberg & King, 2011; Sullivan & Tuana, 2007). Social identities themselves are transferred as collective memory. Collective memory includes sexual, racial, historical, regional, ethnic, cultural, and national discourses (Alexander, Eyerman, Giesen, Smelser, & Sztompka, 2004). Social identities are therefore performances of collective memory.

There is a feedback loop between collective memory, collective trauma, and collective guilt. If collective trauma is incorporated into collective memory, it will legitimize the trauma and produce collective guilt for the perpetrators, and then, the collective trauma can be incorporated into jurisprudence preventing future harm. If it is not incorporated into collective memory, it will not be deemed a legitimate transgression, it will not produce collective guilt, and the trauma will remain unresolved

and free to recur. A new selectively ignorant collective memory will be constructed to protect the perpetrators from collective guilt and thereby culpability. Prime examples are conspiracy theories that deny the holocaust and American textbooks that call slaves “workers” (<https://www.nytimes.com/2015/10/06/us/publisher-promises-revisions-after-textbook-refers-to-african-slaves-as-workers.html>).

Past preserved as history and past preserved as memory are critical to the production of jurisprudence. Not fully incorporating the history of violence surrounding African Americans into collective memory makes it such that violence can continue to be perpetuated against Blacks. It is highly significant that the United States did not extend a national apology for slavery and segregation until 2008, did not follow through with reparations after the civil war, did not pass anti-lynching laws, ignored the rise of the Ku Klux Klan, and turned a blind eye to overt rampant racial violence and de facto and de jure discrimination. Alexander et al. (2004) found that privileged identities can and do refuse to recognize the existence of cultural trauma which places the responsibility of the suffering back on the offended group. The American Hate Crime Bill reflects this point by focusing on potential vulnerability based on specifically defined dimensions (Savelsberg & King, 2005). Balfour (2003) concurs, arguing that a “. . . willful national amnesia [prevents] Black citizens from enjoying in fact the freedom and equality they were guaranteed by law” (p. 33).

The memory of past trauma shapes the type of legal interventions taken. Laws act as a carrier of the past into the present. Societies that make it illegal to deny past wrongs and have national holidays of remembrance are less likely to have the same violence repeated (Alexander et al., 2004). When collective memory and trauma are institutionalized into legal norms and practices, the violence is mitigated. Collective trauma must be fully and appropriately incorporated into collective memory, such that the trauma is collectively understood as a wrong before it can be codified into law. To not fully incorporate collective trauma into collective memory is an epistemological morality play of selective ignorance. Collective memory as a process depends crucially on selective ignorance.

Ignorance refers to a justified belief connected to purpose and use (Gaudet, 2013). It is a lack of knowledge, an unlearning of something known for negative purposes (Maguire, 2015). The product of selective ignorance is epistemic injustice. Epistemological ignorance is a critical tool in the avoidance of collective guilt. The attribution and rejection of guilt is common when dealing with trauma. Selective ignorance is used to assuage if not avoid the collective guilt that would arise from coming to terms with injustices. Forgetting and indifference become a rite of passage or condition of political membership. Hooker (2009) argued that “as a result of the selective forgetting characteristic of collective memory, individuals are forced to forget about precisely those characteristics that have been the principal cause of the harms committed against them, in order to secure the benefits afforded by political life” (p. 109). Ignorance may drive inquiry by commission or omission, but it can also produce misguided and punitive knowledge. Yet ignorance does have epistemic value as a theoretical tool for acquiring knowledge.<sup>1</sup>

Ignorance produces a sense of invulnerability which can be seen in the ideological rhetoric of White supremacist organizations. The "... denial of vulnerability can be understood to be motivated by the desire—conscious or not—to maintain a certain kind of [privileged] subjectivity" and "invulnerability is a central feature of masterful subjectivity because it solidifies a sense of control, indeed an illusion of control" (p. 312). Pohlhaus (2012) finds that "... the knower's situatedness refers to the situations in which the knower finds herself repeatedly over time due to the social relationships that position her in the world. This situatedness develops particular habits of attention that may attune the knower to others' habits of attention or not, depending upon one's social vulnerability" (p. 717). Therefore "epistemically speaking, situatedness is fundamentally about how relations with others position the knower in relation to the world" (p. 717). If your social position is one of privilege, invulnerability becomes a drug of sorts. It produces within the privileged group a sense of entitlement and deserving that they will defend violently so as to not have to experience the withdrawals from being denied unearned privilege. Therefore, they actively engage (implicitly and explicitly) in epistemologies of ignorance.

In Charles Mills' (1997) foundational text *The Racial Contract*, he conceptualized the idea of an epistemology of ignorance. It is an inverted epistemology, "a particular pattern of localized and global cognitive dysfunctions (which are psychologically and socially functional), producing the ironic outcome that Whites will in general be unable to understand the world they themselves have made" (p. 18). An epistemology of ignorance examines what knowledge is considered worth knowing (Feenan, 2007). There are several forms of epistemologically privileged group-based ignorance (White, male, heterosexual, nondisabled, Christian, Eurocentric, etc.). Mills uses the term White ignorance because he is speaking to and about a willful race-based ignorance produced by White supremacy and the Eurocentric world view it presupposes on all other social identities. This includes "... ignorance [or indifference] about the oppressive conditions experienced by non-Whites, the institutions, beliefs, and practices that underlie such inequalities, and the privileges that benefit Whites simply because of their racialized position" (Pohlhaus, 2012, p. 10). White ignorance is a color blindness that rests on formal equality but denies the need to address contemporary inequalities and disparities affecting marginalized groups (Fricker, 2003). It is a systematic process of self-deception and with "... genuine self-deception people avoid doing things that they have an inkling might reveal what they do not want to know" (Lynch, 2016, p. 506). Selective ignorance is always intentional, and the afflicted cannot be fully aware of the extent of their ignorance, and that to some degree, Whites have an affirmative interest in viewing the world erroneously (C. Mills, 1997).

A theory of epistemological ignorance "... allows us to appreciate the deep ways in which race-based prejudice can embed itself in our thinking, distorting even basic instances of empirical claim-making, memory, and belief-formation" (Congdon, 2015, p. 78). Freire (2000) posits that proceeding with an epistemological frame of ignorance exposes how ignorance is socially constructed and reproduced to maintain unearned privilege. Townley (2006) finds that a "failure to acknowledge one's social

location [or identity] can obstruct one's understanding of and responsible conduct within an epistemic interaction, regardless of one's ethical or political commitments" (p. 47). Charles Mills suggested people of color "know and understand Whites better than the White people know [themselves]" (Sullivan & Tuana, 2007, p. 17) because members of marginalized social identities have no logical reason to fool themselves about the world they live in. African Americans are forced to acknowledge their relationship to institutions and transmit this vital information to other Blacks and future generations as an epistemological means of defense. The subnational racial socialization process specifically and accurately acknowledges blackness' relationship to institutions. In terms of the criminal justice system, Blacks refer to this transference as "the talk" ([https://www.huffingtonpost.com/entry/inside-the-heart-breaking-talk-black-parents-must-have-with-their-kids\\_us\\_581ca092e4b0d9ce6fbb465b](https://www.huffingtonpost.com/entry/inside-the-heart-breaking-talk-black-parents-must-have-with-their-kids_us_581ca092e4b0d9ce6fbb465b)). A conversation where Black parents inform their children that they will be treated differently by police because of their race, and that there is no "good" behavior, clothing, social position, gender, sexual orientation, religious affiliation, occupation, or whatnot that will protect them from police brutality.<sup>2</sup>

I use the term *racial ignorance* because predation and epistemologies of ignorance are intersectional. Racial ignorance does not allow the incorporation of racial facts into collective memory. The floccinaucinihilipilification of the Black experience is crucial to racial ignorance. It buttresses whiteness with an unassailable sense of invulnerability, exceptionalism, and superiority that is supported by selective ignorance, which is used to construct a warped perception of reality that has real implications for public policy. Racial ignorance "... frames American sexism and racism as anomalies" but in actuality "sexism and racism, patriarchy and White supremacy, have been the norm not the exception" (Sullivan & Tuana, 2007, p. 17). Therefore, for some Whites the "... officially sanctioned view of reality is not an actual reality. It is imagined" (p. 79). A *New York Times* survey reported that 75% of Whites have few or no Black friends ([www.nytimes.com](http://www.nytimes.com)). *Look Different* found that 70% of Whites grow up in homes that do not discuss race (<http://www.lookdifferent.org/Whitepeople>). These two statistics alone make it increasingly less likely that White people will be faced with racial realities or counter-narratives.

### ***Racial Ignorance: Some Examples***

The Whiteness Project, an initiative to understand how Whites feel about being White, highlights the phenomenon of racial ignorance ([www.Whitenessproject.com](http://www.Whitenessproject.com)). Although the answers varied, a large portion of the two samples reported views consistent with being significantly influenced by racial ignorance. The primary example was a millennial White female who vehemently denied personally harming Blacks (or Hispanics), purported she was not responsible for their current social condition, and therefore, was not liable for recompenses. She suggested Blacks "step off." Her argument was that the original offenders were dead and you cannot get things from dead people. In reality, dead people do give you things, and the past does impact the present and future. Social and economic inheritances including social

status, titles, privileges, and actual wealth (property, land, money, etc.) are all passed down to future generations by ancestors.

The Whiteness Project reported that 51% of Whites believe that slavery is not a factor *at all* in the lives of African Americans ([www.Whitenessproject.com](http://www.Whitenessproject.com)). Only 10% of Whites believe most Whites are racist but 38% believe most Blacks are racist, thereby making racism a Black problem ([www.Whitenessproject.com](http://www.Whitenessproject.com)). Beliefs and opinions such as these lead to 73% of Whites believing that Blacks should receive no considerations to overcome inequality, and some 88% of Whites outright opposing the preferential hiring and promotion of Blacks ([www.Whitenessproject.com](http://www.Whitenessproject.com)). The fact that the above question actually said, *to overcome inequality*, acknowledges that inequality exists, but racial ignorance shifts the responsibility to Blacks. The *Huffington Post* found that 26% of Whites admit racism is a serious issue but also say there is nothing they can do about it ([www.huffingtonpost.com](http://www.huffingtonpost.com) and [www.today.yougov.com](http://www.today.yougov.com)). Thirty-eight percent of Whites believe that Whites work harder than Blacks and 28% contribute minority economic and educational success *solely* to racial preference ([www.Whitenessproject.com](http://www.Whitenessproject.com)). A second White millennial woman blamed minorities for her not receiving a college scholarship. In reality, Whites are 62% of the public student population but receive 72% of all merit-based scholarships ([www.finaid.org](http://www.finaid.org)).

Where criminal justice is concerned, three young White men made very telling yet different claims. The first claimed that the killing of Mike Brown, in Ferguson, Missouri, was justified because the officer involved felt threatened and that actually White Christian males were the most oppressed group in America. This mind-set is supported in the fact that 40% of Whites say many or almost all Black men are violent and 58% of White millennials and 60% of working-class Whites believe that discrimination against Whites is as big a problem as it is against people of color ([www.monkeycage.org](http://www.monkeycage.org); [www.publicreligion.com](http://www.publicreligion.com)). The second young man's claims built on the first, saying that Blacks deserve the treatment they get from police because Blacks commit more crimes and create more trouble. He suggested that Blacks should just not do anything wrong and then professed how he had *never* done anything wrong. He is wholly incorrect, but when polled, Whites consistently overestimate how many crimes are committed by Blacks, some by as much as 30% ([www.Whitenessproject.org](http://www.Whitenessproject.org)). Another White male spoke through racial ignorance and put the first two claims into perspective. This individual said he *was an actual drug dealer* and that he knowingly took advantage of the criminal justice system based on his White privilege. He said he had been arrested over 20 times, sometimes with large amounts of drugs, and had only one arrest (for public intoxication) on his record. He stated that he basically did whatever he wanted to do knowing he would receive only a minor consequence. He also admitted that if he were not White, he would be in jail and that speaking this out loud caused him considerable guilt.

### ***Ferguson and Baltimore: Case in Point***

The recent developments within the criminal justice system are not an accidental by-product of racism; they are the result of epistemological ignorance which perpetuates

racial predation (Lowndes et al., 2008). The Department of Justice (DOJ, 2015, 2016) reports on Ferguson, MO, and Baltimore, MD, outline the phenomenon of predation via criminal justice most explicitly. In 2014, the population of Ferguson was 70% Black and had been for over 15 years. Yet the mayor, the entire court system, 50 of the 54 police officers, and five of the six city council members were White. How is this possible? I offer predation. The DOJ (2015) found evidence that the Ferguson municipal government purposefully targeted African Americans as a means to bolster the city's coffers via the criminal justice system. There is direct evidence, in the form of racist e-mails sent by city officials, court supervisors, and police officers and commanders affirming the racial targeting. The DOJ (2015) found that of the 21,000 residents of Ferguson, roughly 16,000 (or 70%) had outstanding arrest warrants—a ratio proportional to the entire Black population.

There was “. . . substantial evidence that the [Ferguson municipal] court's procedures are constitutionally deficient and function to impede a person's ability to challenge or resolve a municipal charge, resulting in unnecessary prolonged cases and an increased likelihood of running afoul of court requirements” (DOJ, 2015, p. 42). The Ferguson court “imposes severe penalties when a defendant fails to meet court requirements, including added fines and fees and arrest warrants that are unnecessary and run counter to public safety” (p. 42). The Ferguson municipal court requires needless in-court appearances and is only open during very selective hours. These significant burdens came full circle when the court then issued arrest warrants as a means to secure payment of fines and fees. Of these debtor warrants, 92% were issued against Blacks, and Blacks account for 96% of all arrests made exclusively because of a debtor warrant (DOJ, 2015). From 2010 to 2015, the amount of revenue extracted from the majority Black community went from US\$1.38 million to US\$3.09 million.

In Baltimore, the police exploited citizens but also utilized gratuitous acts of violence against the Black population. The DOJ (2016) explicitly stated that the police created “two Baltimores” each “receiving dissimilar policing services. One is affluent and predominately White, while the other is impoverished and largely Black” (p. 156). In Baltimore, 44% of all police stops were conducted in two relatively small Black neighborhoods comprising only 11% of the city's population (DOJ, 2016). The Baltimore Police Department (BPD) trained officers to use what is called “zero tolerance” enforcement which led to a pattern of unconstitutional stops, searches, and arrests; disparities in the rates of stops, searches, and arrests; the use of constitutionally excessive force; and police retaliation against citizens engaging in constitutionally protected expression (DOJ, 2016). Black Baltimoreans were 3 times more likely to be stopped by police and made up 95% of the 410 individuals stopped by BPD at least 10 times from 2010 to 2015. One Black man was stopped over 30 times, and not one of the stops resulted in a citation or arrest.

The most disturbing and humiliating act of predation the BPD engaged in was unconstitutional strip searches. The DOJ (2016) reported that “BDP officers strip-searched individuals without justification—often in public areas—subjecting [blacks] to humiliation and violating the Constitution” (p. 32). The BPD stripped-searched men, women, and juveniles prior to arrest and in public view. The BPD strip-searched

one Black woman whose only infraction was a missing headlight. In full view of the street, officers searched in and around her bra before pulling down the woman's underwear and searching her anal cavity. Finding nothing, the woman was released and no citations were issued. In a separate incident, a male officer stripped-searched a teenage Black male in full view of the street and his girlfriend who was accompanying him. The officer went so far as to pull down the teenager's pants and underwear exposing his genitals to public view. In a similar situation, after a traffic stop did not yield any contraband, an "officer pulled down the man's pants and underwear, exposing his genitals on the side of a public street, and then strip-searched him" (DOJ, 2016, p. 34). Most recently, a federal jury convicted two Baltimore police officers of racketeering, racketeering conspiracy, and robbery in one of the largest police corruption scandals in history (<http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-police-corruption-next-steps-20180208-story.html>). In the same case, six additional police officers, a five-man crew (dealing millions in heroin with police protection), and one bail bondsman, all pled guilty without a trial to a myriad of similar charges (<http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-police-corruption-next-steps-20180208-story.html>). Baltimore police were also found to carry fake guns in their patrol cars to plant on innocent people they accidentally hit with their cars and/or shot ([https://www.vice.com/en\\_us/article/8xvzwp/baltimore-cops-carried-toy-guns-to-plant-on-people-they-shot-trial-reveals-vgtrn](https://www.vice.com/en_us/article/8xvzwp/baltimore-cops-carried-toy-guns-to-plant-on-people-they-shot-trial-reveals-vgtrn)).

## **Summary and Implications**

Predation produces separate and distinctive political environments for citizens even within the same locality. Predation acts as a penalty of sorts and is levied as violence against marginalized groups. Three million dollars was the cost of blackness in Ferguson. In Baltimore, the cost was their human dignity, if not, their life. The level of predation African Americans are under is directly related to their relationship to institutions of criminal justice. The predation described above required a powerful belief system and maliciously willful acts of racial ignorance to remain indifferent of the immense suffering this creates. The Ferguson government is a textbook example of a predatory state. Multiple institutions of government collectively conspired to exploit a subset of the population in order to maintain political hegemony. This is also the definition of systemic racism: Whites using the institutions of government to exploit Blacks for political and economic gain. Baltimore is a textbook example of the intentional complexities of predation. In Baltimore, African Americans were explicitly excluded from the contract state. The Baltimore police was found to have created two separate political environments—one contract and one predatory—and was actually committing crimes against noncontract citizens to the point of actively looking to cover up murders. The environment was so predaceous that U.S. citizens, Black men, women, and children, could be stripped naked in public and have their bodily orifices searched without any justification. The Black male teenager who was strip-searched filed a complaint and "shortly after filling...the same officer approached him...pushed him against a wall, pulled down his pants, and grabbed his



genitals” in retaliation (DOJ, 2016, p. 33). In Baltimore, the racial violence included the sexual exploitation of women, men, and teens exposing the intersectional nature of predation.

This article attempts to detail theoretically the various ways in which institutions relate to their citizens. The power of the state to target and effectively decrease the quality of life and political power of specific groups of individuals is evident throughout American history. American political development scholars have produced vigorous scholarship on the American racial state and the institutions that reinforce it. I have argued that the racial state is the predatory state, but the predatory state is not necessarily always the racial state. The predatory state applies violence against various marginalized groups producing various intersecting systems of differentiation.

I find that coming into contact with the predatory state via the criminal justice system has significant negative implications for African Americans. This does not mean that the negative effects of predation do not affect Whites, specifically poor Whites, but for Blacks living under predatory regimes, like the ones in Ferguson and Baltimore, and many other U.S. cities such as these, there is a greater overall impact based on the gendered, classed, racial, spatial, and generational concentration of criminal justice resources. This supports my argument that the predatory state is active and is applying a disproportionate amount of violence toward African Americans. My arguments suggest in no uncertain terms that the predatory state has become increasingly detrimental to American political development. It is critical for social scientists to examine the mechanisms through which predaceous institutions are affecting racial and ethnic minorities but also the complexities of the intersectionality of predation. In a postcolonial state supposedly founded on *rule of law*, *due process*, and *formal equality*, the study of the consequences of the predatory state has major implications for American democracy. It is time scholars took notice of the epistemological framework buttressing predaceous institutions.

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1. John Rawls’ “veil of ignorance” is an example of this.
2. See politics of respectability.

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