

**Law and Policy as Social Determinants of Health: How the US Government Created  
Health Disparities Between Black and White Citizens**

by

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## **Abstract**

An abundance of research exists examining how social determinants of health, such as the distribution of income, the built environment, and job security influence health outcomes, but the role of law and policy is often left out of these important discussions. Laws and policies should be included as social determinants of health as they set the structure in which people live, work, and play. Historically in the United States, laws and policies have been used to segregate and oppress Black Americans. This strategy has created significant health disparities along racial lines. This essay examines the history of four sectors of law and policy: housing, education, employment, and criminal justice. These sectors not only influence individual health status, but over generations, can cause health disparities across entire populations. This issue is significant to public health because health equity cannot be achieved under the country's current inequitable laws and policies. To improve population health and allow every person the opportunity to be as healthy as possible, a comprehensive political movement rectifying the laws and policies that systematically created inequities must be prioritized by all three branches of government. But first, laws and policies must be widely recognized and accepted as key drivers in health. This essay aims to promote such recognition by clearly linking the actions of Presidential administrations, Congress and the judiciary to the health of the public.

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## 1.0 Introduction

The social and economic systems in the United States were constructed on a legislative scaffolding of white supremacy, bolstered by the explicit and implicit biases of individuals against people of color. These laws, policies, and attitudes have dominated political agendas well beyond the abolition of slavery and the end of Jim Crow, although similar efforts to suppress non-Whites have been made under the guise of other policy areas such as housing, education, employment, and criminal justice.

The systematic oppression of people based on skin color create health disparities. There are documented racial disparities in nearly every health outcome from infant mortality to overall life expectancy. It is estimated that, if the health outcomes of Black people matched those of their White counterparts, 83,750 deaths would be prevented per year or the equivalent of fatalities from a commercial jet crash every single day (Seavy et. al., 2014).

In the discipline of public health, it is widely accepted that individual health status and resulting disparities at the population level are primarily due to social determinants of health – the economic and environmental factors that influence health status such as housing, education, and income. Thus health policy comprises much more than health insurance or healthcare policy. The role of law and policy is rarely discussed as a social determinant, mentioned only as a vague contributing factor in the complex web of health. This essay argues that laws and policies are principal determinants of health and have been used, systematically, to marginalize generations of Black people which in turn has caused significant disparities in health outcomes. If such strategies have been used to create health disparities then, although the damage inflicted upon generations

cannot be undone, a political avenue exists to move forward towards racial equality and health equity – the opportunity for every person to achieve their optimal level of health.

The first step in this endeavor is to recognize laws and policies as determinants of health. A renewed call for racial justice was ignited across the nation in 2020 with the deaths of Black people at the hands of White police officers. George Floyd and Breonna Taylor are just two of the needless victims of the law-and-order system in this country. Over half of all voters and 76% of Biden supporters in the 2020 presidential election cited racial inequality as a very important issue to them (“Important Issues in the 2020 Election”, 2020). As a new administration that campaigned on unity and inclusivity in a time of division and violence is ushered in, the stage is set for these calls to finally be answered. With so many eyes on the problem of inequality, it can no longer be ignored and explained away. It should be officially acknowledged that systemic racism exists at the hands of administrations and lawmakers. This step, while symbolic, validates the struggles of Black Americans by recognizing that structural racism exists and is a problem that millions of Americans face. Once the problem is identified, it must be followed by a deliberate and concerted implementation of comprehensive policies with the goal of achieving health equity. While this may seem nearly unachievable in such a tumultuous political climate, the alternative is the continuation of Jim Crow era laws and policies thinly veiled under a different sector heading, causing preventable deaths, injuries, and disenfranchisement of an entire race in America, the land of equal opportunity.



## **2.0 Laws And Policies**

### **2.1 Housing**

This section examines how housing laws and policies have shaped America's current residential landscape. Discriminatory housing laws and policies can be followed chronologically throughout history, starting early in the 1900s with zoning laws. Throughout much of the 20<sup>th</sup> century, administrations focused on providing housing for the war effort, but opportunities were segregated and of unequal quality.

#### **2.1.1 Residential Zoning**

Half a century after the Civil War, a new political threat loomed overseas as the Communist party seized control in Russia. The United States government, in an attempt to promote capitalism, encouraged home ownership as a way for people to invest in the democratic system. Secretary of Commerce Herbert Hoover developed a campaign that encouraged exclusionary zoning practices and warned against the dangers of living in overcrowded apartments with Blacks and European Immigrants (Rothstein, 2017).

Racial zoning ordinances, the practice of prohibiting people from buying homes within a certain area based on race, was adopted in the 1910s to reserve single family homes for White, middle-class families. This method was extremely effective. In Helena, Montana the Black population was 420 in 1910, comprising 3.4% of the population. By 1930, the Black population

was down to 131 and today only 0.5% of the Helena population is Black or African American (Rothstein, 2017).

In 1917, the Supreme Court ruled that racial zoning was unconstitutional (*Buchanan v. Warley*, 1917). The logic behind this decision was not based on upholding equal rights, but that zoning ordinances interfered with the right of property owners to sell freely. The *Buchanan* decision was largely ignored by city planners for the next several decades and in some places zoning ordinances lasted well into the 1980s.

There were multiple strategies for evading the *Buchanan* decision. One was to write restrictive covenants into deeds and other contracts to bar Blacks from moving into individual properties, which could be enforced through court orders (Silva, 2008). The purpose of the covenants, it was argued, was to protect property values. In the case of *Shelley v. Kraemer* (1948), the Supreme Court struck down this practice, recognizing that although the private agreements did not violate the constitution, the enforcement of such agreements through the court systems violated equal protections of law guaranteed under the Fourteenth Amendment.

The Federal Housing Administration (FHA) was committed to continuing operations as normal for nearly two years after the decision, when the U.S. Solicitor General announced that the FHA would stop providing insurance for restrictive covenant mortgages. Importantly, the new policy did not pertain to existing contracts and was to be implemented in several months, giving owners time to draw up new contracts before the deadline (Rothstein, 2017). The FHA continued to use federal funds to finance developers in the construction of segregated neighborhoods, until President John F. Kennedy issued an executive order prohibiting federal funds from being used to support residential racial discrimination in 1962 (Executive Order 11063, 1962). The covenants

themselves were not considered illegal until the passage of the Fair Housing Act in 1968 (“Fair Housing Rights and Obligations”, n.d.).

### **2.1.2 War Housing**

Federal housing projects were first constructed during World War I for White defense workers. Concurrently, federal policies mandated segregation of these projects, creating overcrowded, slum-like conditions for Black workers and families (Rothstein, 2017). During the Great Depression and World War II, President Franklin Roosevelt was faced with more significant housing and economic crises and directed the construction of segregated housing projects (“Was the New Deal Racist?”, 2019). Secretary of Interior Harold Ickles, worried that only the White developments would be constructed, worked to ensure that Black-only projects were completed. This consequentially imposed segregation on integrated communities and further contributed to overcrowding of Black residence buildings, as people that had been living in what were now federally mandated all-White neighborhoods were forced to leave their homes (Rothstein, 2017). It was also against the policy of the Federal Housing Administration, created in the New Deal, to provide mortgage loans to Black applicants or White applicants living in integrated projects (Coates, 2014).

The 1940 Lanham Act directed federal funds for construction of temporary housing near industries that supported the World War II defense effort. Until World War II, workers in the defense industry were mainly White men. As White employees were drafted, employers were forced under President Roosevelt’s executive order, which prohibited discrimination in the defense industry, to hire Black men to keep up with the demand for essential goods (Executive Order 8802, 1941). The influx of Black men looking for employment paired with poorly constructed, already

crowded housing, led to an intensification of slum conditions. In an effort to keep cities segregated and predominantly White, police were permitted to stop any Black man for proof of employment related to the war effort and would arrest him if he could not produce such proof (Blackmon, 2008).

### **2.1.3 Creation of Public Housing**

As World War II ended and veterans came home to their families, newly sworn in President Truman was under the pressure of yet another housing crisis. Truman proposed a public housing plan but conservative members of Congress, against government involvement in free markets, planned to amend the bill with language that would integrate housing projects. Truman lost the support of Southern Democrats and the bill did not pass. Instead, Congress moved forward with segregated public housing under the 1949 Housing Act (Rothstein, 2017). The adoption of state constitutional amendments furthered segregation by requiring local referenda before constructing integrated projects. This requirement was clearly discriminatory because of the significant number of middle-class White voters who could vote to veto the projects. A lower court struck it down, but the Supreme Court in *James v. Valtierra* (1971) reversed the decision and upheld the democratic process.

During the Eisenhower administration, the Supreme Court in *Brown v. Board of Education* (1954) ruled that “separate but equal” education could not exist as it would never truly be equal; however, the administration argued that *Brown* applied only to education and not to housing. In accordance with this policy, agencies such as the Housing and Home Finance Agency did not order integration of housing developments and Congress passed the Housing Act of 1954, which enabled local developers to continue separate and unequal housing projects (Hirsch, 2005).

In 1976, the Supreme Court in *Hills v. Gautreaux* (1976) ruled that the Chicago Housing Authority and the Department of Housing and Urban Development acted unconstitutionally in the selection of sites for new public housing. Although the housing authority selected some sites in White neighborhoods, projects were subjected to veto by the city. Only 0.5% of projects proposed in White neighborhoods survived the veto, while nearly 90% of projects in Black neighborhoods were approved. US Solicitor General Robert Bork, in defense of the Department of Housing and Urban Development, argued that nondiscriminatory housing is akin to imposing penalties upon the innocent – that is, it is unfair to the White families. The Supreme Court did not agree with this argument and rather than comply with the decision, housing projects were discontinued in Chicago.

#### **2.1.4 White Flight**

In a practice known as “blockbusting”, real estate agents would buy properties on the border of Black and White communities and then sell them to Black families desperate to escape overcrowded and rundown projects at above market price. Agents would then convince White families that Blacks were invading the neighborhood and that their property values would plummet. Panicked White families fled to the suburbs and companies would buy their homes for less than they were worth (Gaspaire, 2013). Real estate companies would then sell the home to another Black family at a high price on unrealistic installment plans. Without bank or federal loan assistance, the family would be evicted and the cycle would continue. Although integration actually increased property values (Laurenti, 1960), this exploitive process decreased property values.

The Federal Home Loan Bank Board, like the FHA, argued that loan denial was not a racial decision but was simply based in economics because clients with poor credit harmed lenders. Although this agency formally adopted a nondiscrimination policy in the early 1960s, the discriminatory practices continued. In a common strategy at the turn of the Twenty-first century, bank officers would convince clients to refinance their loans at an initial low rate. The rate would eventually skyrocket with the chance to profit from equity, but equity is not highly accrued in low-valued Black neighborhoods. In a report done by the US Department of Housing and Urban Development and the United States Treasury, Blacks of all income levels were around five times more likely to have a subprime loan than similarly situated Whites (Howell, 2006). By the early 2000s, 75% of all loans issued to Black people in Buffalo, New York were classified as subprime loans (Sapong, 2002).

These patterns continued exponentially in the years leading up to the 2008 economic collapse, and although reports existed of these disparate loans and the devastation of inevitable foreclosure, the Federal Reserve did not intervene (Rothstein, 2017). As set forth in *City of Cleveland v. Ameriquest Mortgage Securities* (2009), several cities, including Cleveland, sued banks on behalf of their Black constituents and despite evidence of explicit marketing tactics to exploit Blacks, the Northern District of Ohio United States District Court dismissed the case. Since mortgage lending is managed under government control, “there is no question that the subprime lending that occurred in Cleveland was conduct which the law sanctions”. Essentially, this means that anything guided by the law must, in fact, be lawful.

## 2.2 Education

Schools are funded largely by local taxes. The following sections examine how this funding structure arose and persisted, leading to intrinsically unequal schools years after the landmark *Brown v. Board of Education* decision.

### 2.2.1 History of Public Education

Public education was first initiated in the Northeast during the 1800s as an extension of democratic values. Initially, public schools were paid for by state endowments, land grants, and other fees. By the 1830s, the North had adopted a local tax to help supplement these funds (Walters, 2001). The South had a few schools for poor White children. Widespread public education for all children, including Black children, was only adopted by Southern states during the Reconstruction Era as a prerequisite for rejoining the Union. (Walters, 2001).

Immediately following the Civil War, Southern Blacks held some local political power but by the 1900s, groups of White supremacists regained control by using a combination of violence and policy to disenfranchise the Black population. During the period known as “Southern Progressivism”, states dropped endowment funds for public education and levied local taxes instead (Walters, 2001). The reliance on local, rather than state taxes, ensured that more money went to White-only schools and that Black children had less educational opportunities. This was the funding structure in the North as well. (Walters, 2001).

### **2.2.2 After *Brown v. Board of Education***

The *Brown v. Board of Education* case in 1954 declared segregation of schools unconstitutional but, because schools were under local control, it was difficult for the federal government to enforce (Walters, 2001). With Whites in the political elite, schools ignored the decision altogether or attempted workarounds such as not providing transportation to schools outside of racially segregated residential areas (Rothstein, 2017).

Ten years later, Congress passed several monumental pieces of legislation. The Civil Rights Act of 1964 prohibited discrimination when federal funds were involved. The Elementary and Secondary Education Act of 1965 designated federal funds for public schools. These two acts gave the federal government the authority to enforce integration by threatening to withhold funds from segregated schools (Walters, 2001). In response, wealthy White parents, particularly in the South, pooled their resources to form private, all-White schools in response to public integration.

School resources are just as significant of a predictor for standardized test performance as IQ score (Walters, 2001). Since the 1960's, there has been little additional federal investment in education, and most public schools still rely on local taxes as their main source of funding. Schools in low-income, Black neighborhoods have fewer resources and larger class sizes, while more affluent suburbs can fund better schools and more opportunities for its students.



## **2.3 Employment**

This section provides an overview of the concerted effort that was made to suppress the employability and economic advancement of Blacks after the Civil War. Despite the passage of the Civil Rights Act of 1964, workplace and employment discrimination are prevalent.

### **2.3.1 State of Employment Pre-Civil Rights Act**

Because of their lack of education, few employers in any industry were willing to hire former slaves following emancipation. Many former slaves continued to live and work on White plantations, paying the owners “rent” with the crops they harvested (Crofts, 1995). Black men who left town to find work were arrested on charges of vagrancy and sold to plantations or mines as a way to pay for legal fees. Industries, such as U.S. Steel, exploited free labor from tens of thousands of Black men. The Thirteenth amendment, which abolished slavery and involuntary servitude, allowed such exploitation of labor under punishment for a crime. This exception allowed forced labor to continue well after the Thirteenth Amendment was ratified. (Blackmon, 2008).

When Franklin Roosevelt was drafting the New Deal, he needed the support of Southern Democrats to pass social security, minimum wage, and labor union legislation. As a consequence, the two industries dominated by Black employees, agriculture and domestic service, were entirely omitted from the New Deal. The National Recovery Administration, tasked with setting standards for different industries, coded factories with predominantly Black employees differently to allow employers to pay them less than the White workers in the same industry (Perea, 2011). The Federal Emergency Relief Administration, the first national New Deal Program which provided aid to

states to promote economic recovery, focused resources primarily on unemployed Whites and left only the least desirable jobs for Black workers (Rothstein, 2017).

The National Labor Relations Act, which granted unions bargaining rights, originally only allowed certification of unions if they offered membership to both White and Black employees. In 1935, the American Federation of Labor successfully lobbied to have this clause removed. Unions then used these bargaining rights, granted by the federal government, to remove Black employees from the workforce (Rothstein, 2017).

Employers in the defense industry hired Black workers during World War II to keep up with military demand. Many unions required that Blacks could only occupy low-skill occupations. To address growing pressure from unions that did allow Black members, President Roosevelt signed an executive order in 1941 to create the Fair Employment Practice Committee. The Committee could recommend cancellation of any war-related contracts where workers were subject to discrimination. Inexplicably, Roosevelt then selected Mark Ethridge, a vocal White supremacist, as the Committee chair which effectively rendered the executive order useless (Rothstein, 2017). As soldiers returned home, Black workers hired during World War II were dismissed so that White veterans could resume employment. For Black veterans, the G.I. bill of 1944 did not extend mortgage or education benefits to non-Whites (Luders-Manuel, 2017).

### **2.3.2 State of Employment Post-Civil Rights Act**

Up until the Civil Rights Act of 1964, workplace discrimination was legal. Title VII of the act prohibits discrimination in the workplace based on race, and also forbids retaliation against claims of discrimination (“Laws enforced by EEOC”, n.d.). It is difficult to prove that a person was both harmed and that harm was racially motivated, so few discrimination claims are successful

in court (Rothstein, 2017). Combined with legal fees, lost wages, and fear of retaliation, many employees face workplace discrimination despite Title VII protections (Narain & Skrine-Jeffers, 2020).

Ban the Box legislation prohibits employers from asking for criminal history on job applications. This legislation has been promoted as part of the criminal justice reform agenda; however, recent data suggests that instead of discouraging discrimination, the employability of young Black men without a college degree actually decreased 3.4% after Ban the Box policies were implemented. Research suggests that this decline is because employers assume that young Black men would be more likely than Whites to engage in criminal activity (Doleac & Hansen, 2020).

Additionally, a mass exodus of American jobs overseas, coupled with the emergence of technology requiring a more educated workforce, unemployment has skyrocketed in urban areas where the unemployed are more likely to be Black (Rothstein, 2017).

## **2.4 Criminal Justice**

Although the US comprises 5% of the world's population, the country holds 25% of the globe's prison population ("Mass Incarceration", n.d.). In fact, since 1970, the U.S. prison population has increased about 500% ("Trends in U.S. Corrections", 2020). Although people of all races use illicit drugs at approximately the same rate than other races, Blacks are more likely to be incarcerated (Alexander, 2020).

### 2.4.1 The War on Drugs

The War on Drugs was a cornerstone of the Reagan administration. The purpose of the initiative was allegedly to tackle the crack cocaine epidemic and clear the streets of dangerous criminals. Despite this rhetoric, the War on Drugs was introduced during a time when drug use was actually declining. When Reagan announced the War on Drugs, only 2% of Americans thought that drug use was the most important issue facing the nation. By 1989, 64% of Americans thought that drug use was the most prominent issue in America (Berke, 1989). The Antidrug Abuse Act of 1986 imposed strict mandatory minimums for crack cocaine possession, which was primarily used by Blacks. The Act imposed less lengthy penalties for powder cocaine, which was primarily used by wealthier Whites. The punishment for 100 grams of powder cocaine was the same as one gram of crack cocaine (Antidrug Abuse Act of 1986, 1986.).

The provisions of the Act imposing life sentences and even the death penalty for minor drug crimes has been challenged, but the Supreme Court has repeatedly ruled that long sentences for first-time drug offenses and nonviolent crimes does not constitute cruel and unusual punishment under the Eighth Amendment. In fact, the Supreme Court upheld a forty-year sentence for possession and attempt to sell nine ounces of marijuana in *Hutto v. Davis* (1982), and the life sentence of a first-time defendant charged with attempting to sell twenty-three ounces of crack cocaine in *Harmelin v. Michigan* (1991).

The Bill Clinton “Tough on Crime” campaign further fueled the War on Drugs. Clinton’s crime bill included a lifetime welfare ban for anyone convicted of a felony drug offense. (Personal Responsibility and Work Opportunity Reconciliation Act 1996, 1996). The US saw the biggest increase in the prison population in history under the Clinton administration. More Black men were in prison during these years than in South Africa at the height of apartheid (Alexander, 2020).

With the demand for spaces behind bars skyrocketing, Clinton diverted billions of dollars from social service programs like public housing to build more correctional facilities (Wacquant, 2010).

#### **2.4.2 Getting Law Enforcement Involved**

The Reagan administration took an unprecedented step in mobilizing federal forces to tackle minor street crimes, using funds reallocated from substance use treatment and drug use prevention programs to send troops to cities across the country (Alexander, 2020). Law enforcement was originally hesitant to buy into the War on Drugs, so the Reagan administration incentivized drug searches and arrests. Jurisdictions that agreed to assist in the War on Drugs received federal grant money. In 1981, the Military Cooperation with Law Enforcement Act was passed and amended in 1984 to allow law enforcement to keep profits from seizures and foreclosures (Military Cooperation with Law Enforcement Act, 1984). Searches could be initiated for any suspicious activity. The property owner had the burden of proof to refute the wrongful seizure so law enforcement systematically targeted neighborhoods where victims of these searches lacked the resources to challenge in them court, primarily poor Black communities (Alexander, 2020).

The enforcement of drug crimes can be proactive. Rather than investigating a crime that was committed and reported, law enforcement can stop individuals under the assumption that they might be committing a crime or could commit a crime in the future. Law enforcement focused their efforts on what they believed was the most likely group to engage in illicit drug use – young Black men. This type of racially motivated strategy was challenged in the Supreme Court, but the court ruled in *Whren v. United States* (1996) that claims of racial bias in violation of the equal protections clause of the Fourteenth Amendment are permitted only if there is clear evidence that

a stop or seizure was entirely racially motivated. That is, there must be a clear written discriminatory law enforcement policy.

In *United States v. Brignoni-Ponce* (1975), the Supreme Court ruled that, under the Fourteenth Amendment, law enforcement has some discretion in their decision making and can use race as a factor when determining who to stop and search. Further, the “Stop and Frisk” rule was adopted after the 1968 Supreme Court decision in *Terry v. Ohio* (1968), which allows for warrantless searches of probable criminals. In *Florida v. Bostick* (1991), a new precedent was recognized— stops without suspicion. The Supreme Court decided that if a reasonable person has the ability to leave an encounter with a law enforcement officer, simply complying, or even not resisting, with a search is equivalent to verbally consenting to a search. Police officers are permitted however, to use force (occasionally deadly, such as chokeholds) or threaten arrest if someone asserts their right to “leave freely”. In *City of Los Angeles v. Lyons* (1983), a Black victim of a chokehold during such a stop brought a challenge to ban the practice after he suffered permanent damage. The case was dismissed because, in order to have standing to bring a lawsuit against the police department, he would have to prove that *all* officers in the city of Los Angeles use chokeholds, or that the City explicitly authorized the use of the chokehold against him. Of the sixteen people killed by chokeholds by the time the case reached the Supreme Court, twelve of the victims were Black men (Alexander, 2020).

In addition, the *Florida v. Bostick* decision opened the door for law enforcement to conduct a high volume of searches across the country. Along with searches conducted on neighborhood streets, law enforcement took to the roadways. Officers can conduct searches of motorists during stops for traffic violations no matter how minor and can threaten arrest or the use of drug dogs if a person does not consent to a search during these stops (Alexander, 2020). The Drug Enforcement

Agency openly encourages “pretext stops” during Operation Pipeline, a training program for officers on how to efficiently increase drug arrests by setting guidelines for what type of person would be most likely to have drugs – namely Black men – and how to search their vehicles for drugs (Harris, 1999).

### **2.4.3 After Arrest**

Of those arrested on drug charges, 80% of defendants need counsel and the volume of defendants has put a huge strain on the public defender system (Zoukis, 2018). Subsequently, there is pressure for defendants to take plea deals to avoid the time and monetary resources necessary for a criminal trial. The consequences of pleading guilty are vast, but rarely apparent to the defendant. It is not required by law that these consequences, such as bans from juries, voting, and public assistance, are ever explained to a defendant before they enter into a plea deal (Alexander, 2020).

The 1988 Antidrug Abuse Act created the “one-strike” policy for public housing residents – one criminal conviction means a lifetime ban from federally funded public housing (Johnson, 2001). Under the Quality Housing and Work Responsibility Act of 1998, suspicion of a felony drug crime is a sufficient cause for eviction (Alexander, 2020). As the Supreme Court ruled in *Development v. Rucker* (2002), suspicious activity can also be committed by a relative of a tenant in close proximity to a rental unit and still be cause for eviction. Many relatives of formerly incarcerated people are therefore reluctant to let them stay for fear of being evicted themselves.

Defendants can also enter a plea of not guilty and proceed with a criminal trial. Juror summons are sent using the registered voters list but felons are excluded from jury duty. While 71% of the Non-Hispanic White population is registered to vote, only 63.7% of the Non-Hispanic

Black population is registered (“Voting and Voter Registration”, 2018). It is estimated that before juror selection begins, 30% of the Black population is barred from serving on a jury of peers (Kalt, 2003). In *Purkett v. Elem* (1995), the Supreme Court recognized that it is permissible to dismiss jurors for reasons that have nothing to do with fitness as a juror, such as hair cut or choice of outfit, as long as the decision is not openly race-based.

The Supreme Court has repeatedly upheld convictions of Black defendants by all-White juries, even when the elimination of all eligible Black jurors was documented (Alexander, 2020). In *McClesky v. Kemp* (1987), the plaintiff sought the death sentence of Warren McClesky. McClesky was convicted of killing a White police officer during a robbery. McClesky’s NAACP legal team presented evidence that defendants charged with killing White victims are sentenced to death approximately eleven times more frequently than defendants charged with killing Black victims. Thus the death penalty, they argued, violated the Fourteenth Amendment. The Supreme Court denied McClesky’s claim, and noted that McClesky would have to prove that the prosecutor or jury in his specific case was racially motivated in sentencing death.

Upon release from incarceration, convicted felons are faced with even more barriers that make recidivism a more likely outcome. Employment, for example, is often a condition for parole but many companies are not willing to hire former felons. The jobs available in cities may require higher educational levels. Felons can be barred from obtaining a driver’s licenses to travel to where more jobs are available (Alexander, 2020) and public transportation has historically been routed around Black communities to further segregation efforts (Rothstein, 2017). For those able to obtain a license, it can be suspended for failing to pay sizeable court and administrative fees associated with parole. Driving without a valid license can also lead to parole violations and reincarceration.



The legal system can instate payment plans that demand 100% of income for these fees (Alexander, 2020).

Reminiscent of Jim Crow era restrictions, in several states, convicted felons do not have the right to vote (“Felony Disenfranchisement Laws”, 2020). As such, they cannot serve on a jury and do not have the ability to elect representatives that plan to address criminal justice reform. Most other developed countries allow convicted felons to vote and even facilitate voting from behind bars – those countries that do not, with the exception of the US, were all part of the Eastern bloc during the Cold War (Alexander, 2020). For states in the US that allow convicted felons to vote upon release, they face additional barriers such as paperwork and fines that further restrict their right to vote.

### **3.0 Health Disparities**

#### **3.1 Health Disparities Related to Housing**

Substandard housing may lack the necessities for proper sanitation such as clean or hot water, proper ventilation, and pest control. Infectious diseases associated with damp, cold, and dirty conditions are exacerbated by overcrowding (Krieger & Higgins, 2011). Respiratory diseases are common and lead to nearly two million emergency room visits due to asthma (Jacobs, 2011). People living in areas with high noise disturbance, such as in overcrowded apartments or in urban areas, has been associated with twice the odds of developing asthma. Noise can also disrupt sleep, leading to higher risk of developing depression, irritability, and chronic stress (Jacobs, 2011).

In the 1980's, the US General Accounting Office found that both commercial waste treatment sites and uncontrolled waste grounds were more likely to be found near Black neighborhoods than White communities. A subsequent report estimated that there was a one in ten thousand chance that this distribution was by chance and was not racially motivated (Commission for Racial Justice, 1987). Living near such sites also significantly increases the risk for birth defects, preterm birth, infant death, childhood cancers, chronic respiratory disease, stroke, kidney disease, and diabetes (Brender et.al., 2011).

Due to lead exposure in the home, nearly one million children in the United States have blood lead levels that can cause neurological disease and impact development (Krieger & Higgins, 2011). Children whose families received housing subsidies show improved growth compared to those children that are on the waiting list for assistance (Krieger & Higgins, 2011), and children that experience housing instability are 25% more likely to report poor health in adulthood than

those who are stably housed (Jacobs, 2011). Living in mixed-income areas is associated with an 11% reduction in adult obesity and significant improvement in perceived mental health (Jacobs, 2011). For families that cannot escape high-poverty areas, mothers are more likely to isolate their children due to violence outside, confining them to toxic conditions inside. They are also more likely to have mental health issues due to few social interactions (Hernandez, 2016).

### **3.2 Health Disparities Related to Education**

Low educational attainment is associated with lower self-reported health, early mortality, and higher incidence of chronic disease (Assari, 2018). Low educational attainment is also associated with higher rates of unhealthy behaviors such as smoking, alcohol abuse, and sedentary lifestyle, and is linked to higher risk of infectious disease, slower recovery when ill, and shorter life expectancy (Ross & Wu, 1995). Education heavily influences the ability to obtain a full-time job and uneducated employees are more likely to work in unskilled labor positions where they are at highest risk for occupational hazards and injury (Abdalla et. al., 2017). Even so, unemployed educated people report better mental health and overall quality of life than unemployed uneducated people because education equips people with tools to handle stress, analyze financial situations, and make strategic decisions (Ross & Wu, 1995).

### 3.3 Health Disparities Related to Employment Status

Low-income adults struggle to meet critical social needs, which in turn affects their health. One in three adults living below 200% of the federal poverty line report not being able to afford balanced meals (Cole & Nguyen, 2020). Food insecurity, or the lack of healthy or enough food due to inadequate resources, increases risk for insufficient nutritional intake, diabetes, hypertension, overall poor health, and poor sleep among non-senior adults (Gunderson & Ziliak, 2015). Food insecure mothers are also twice more likely to report mental health problems and three times more likely to report oral health problems (Gunderson & Ziliak, 2015). Among children, food insecurity is associated with an increased risk for anemia, malnutrition, cognitive delays, asthma, and mental health problems including aggression, anxiety, behavioral problems, and suicidal ideation (Gunderson & Ziliak, 2015).

Low-income or unemployed adults are more likely to be uninsured and thus are less likely to receive regular health examinations, vaccinations, and access to care for complications associated with chronic disease, such as podiatry for diabetic patients. (Cole & Nguyen, 2020). Nearly half of low-income adults report cost as a major barrier in seeking medical care (Cole & Nguyen, 2020).

One in five low-income adults report feeling stressed most or all of the time (Cole & Nguyen, 2020). Chronic stress can shorten telomeres, which are the structures at the end of chromosomes that get shorter as people age. This is thought to be a factor in the mechanisms of chronic disease. Stress can cause premature shortening of telomeres and lead to early death. Studies show that Black people and people with low-incomes have shorter telomeres than upper-middle class Whites (Chae et. al., 2014).

### **3.4 Health Disparities Related to Incarceration**

Incarcerated women of reproductive age face substantial unmet needs. This issue has gained fleeting media attention after accounts surfaced of women left to give birth alone in their cell in several states and reports of forced sterilizations in California prisons (Sufrin et. al., 2015). There is no requirement for correctional facilities to collect data on pregnancy or maternal and birth outcomes (Sufrin et. al., 2015). Instead, anecdotal accounts and smaller studies must be relied upon. For example, despite evidence that detoxification can cause stillbirth and miscarriage, the policy in one correctional facility was to force all women being treated for substance use with methadone to detox (Sufrin et. al., 2015). Another widespread example is the practice of shackling before, during and after delivery. Shackled ankles increases the risk of falls for the mother before delivery and is painful and humiliating during childbirth, when flight risk is low. It can also hinder medical professionals from performing life-saving procedures (Sufrin et. al., 2015). In one jail in Chicago, 80% of women met the criteria for at least one mental health disorder. The suicide rate for incarcerated people is nearly fourteen times the national average (Freudenburg, 2001). Funds are limited for mental health treatment in prisons because as the incarcerated population grows, the budget for re-entry programs must be spread over more people. Coupled with budget cuts at the state level for mental health treatment and similar re-entry programs as funds are diverted to the construction of more facilities, few people receive treatment for mental health while incarcerated (Freudenburg, 2001).

The mental health effects of incarceration are generational. Millions of US children have at least one currently incarcerated parent, and a Black child is eight times more likely to have an incarcerated parent than a White child (Davis & Schlafer, 2017). These children can face a number of stressors such as witnessing a parent's arrest and court proceedings, and changes in primary

guardianship, housing, and income (Davis & Shlafer, 2017). In addition, there is trauma associated with being separated from a parent for years. Many large prison systems are located in rural areas where transportation barriers prohibit children from visiting parents. Over half of incarcerated parents report being the primary wage earner for their family (Davis & Shlafer, 2017), contextualizing how stringent these financial barriers can be. Parental incarceration is associated with higher risk of mental health and behavior disorders for children. In fact, nearly 20% of children with a currently incarcerated parent have attempted suicide and 14% of children with a formerly incarcerated parent have attempted suicide (Davis & Shlafer, 2017). Although more than half of children with an incarcerated parent reported at least one mental health concern, less than one third has received any type of treatment (Davis & Shlafer, 2017).

Black children are significantly less likely to receive mental health treatment than White children, despite higher burden of mental health in the Black population (Davis & Shlafer, 2017). Poor mental health can lead to low educational attainment, fewer social skills, lower quality of life, unemployment, and early childbearing (Davis & Shlafer, 2017). Children of incarcerated parents are five times more likely to spend time in jail as adults than children of nonincarcerated parents (Freudenburg, 2001).

Finally, all people in prisons face higher risk of infectious disease, such as tuberculosis and bloodborne pathogens (Freudenburg, 2001). In one study, nearly 93% of prisoners had at least oral health issue (Testa & Fahmy, 2020).

## 4.0 Discussion

Historically, laws and policies in the United States have had a racial component that prohibits equitable implementation. The exclusion of Blacks from certain neighborhoods, which in some places lasted well into the 1980s, is a blatant example. The real estate industry profited on the poor quality of Black neighborhoods created by segregation policy by exploiting this demographic more than any other in subprime loan contracts. The foreclosed homes in these areas are now being resold in a cycle reminiscent of White flight blockbuster market tactics seen in the 1960s.

The widespread governmental strategy to contain Black people into slums and ghettos with little, if any, viable opportunity for escape has resulted in documented health disparities. Poor housing quality and housing instability is associated with a higher burden of infectious disease, chronic disease, poor mental health, and injury and accidents. Black people are significantly more likely to live in substandard housing, suppressed by 150 years of laws and policies that created economically underserved areas of poorly constructed housing units. While 7.5% of all Non-Hispanic Blacks live in substandard housing, only 2.5% of Non-Hispanic Whites live in substandard housing (Jacobs, 2011), and Blacks are 1.7 times more likely to live in housing that has at least one severe structural problem (Krieger & Higgins, 2011).

Efforts to subsidize housing, such as Section 8 vouchers, do little to impact racial segregation because the amounts are so small that the only housing affordable enough is in predominantly Black communities with high poverty rates. Moreover, few landlords accept vouchers. Only 13% of female-headed household that received vouchers in 2016 were able to move into better quality housing (Sullivan & Anderson, 2017).

Housing reform not only makes good moral sense, it is also economically sound. In New York, a supportive housing program for certain Medicaid recipients increased quality of life and produced a net return on investment (Doran et. al., 2013), and large-scale investment in housing is estimated to divert up to \$111 billion in avoidable health care costs (Sandel & Bovell-Ammon, 2020). Even if the evidence did not point so strongly to cost-effectiveness, most decisions in health care are built around treating a symptom and improving quality of life, not cost neutrality (Doran et. al., 2013). In order to improve health outcomes and eliminate health disparities by housing, new law and policy must focus on equitable distribution of funds to support the economic and physical rehabilitation of the underserved communities that the government created.

Since public schools are funded primarily through local taxes, underserved neighborhoods also have poor educational systems. Underachieving schools are in predominantly Black neighborhoods created by housing policies. Larger class sizes, inadequate supplies and curricula, and lack of funds for extracurriculars and educational opportunities leads to significantly worse outcomes for students (Walters, 2001). In 2018, the graduation rate for White students was 89.1%, while the graduation rate for Black students was 79.0% (“Public High School ACGR”, n.d.). In 2016, 35% of Whites had at least a four-year college degree, but just 21% of Black people had at least a four-year degree (“Indicator 27: Education Attainment”, 2019). Black children in Chicago are more likely to go to prison than college (Rothstein, 2017). This is not because Black children in Chicago are innately less intelligent, but because there is little opportunity to get a quality education at their local school and parents lack the resources to send them to private schools established by upper-middle class Whites.

Safe and sufficient schools can provide students with healthy meals and opportunity for exercise, as well as educate students on physical health, hygiene, and sexual health. Schools also



can teach students important life skills such as budgeting and strategic decision making. Low educational attainment is associated with higher engagement in behaviors such as substance use and sedentary lifestyle and thus a higher risk for chronic disease and poor mental health (Ross & Wu, 1995). The disparities in education access and accompanying health disparities highlight the need for political intervention and financial restructuring to ensure the equitable distribution of funds in the public school system by moving away from reliance on local taxes.

Education is intricately linked with employment. People in dangerous occupations with a high risk of injury have lower educational attainment. Higher educational attainment increases likelihood of employment, which is linked with eligibility for employer-sponsored health insurance (Abdalla et. al., 2017). Higher education is also associated with higher incomes, which gives people the opportunity to purchase necessities for good health such as nutritious foods, safe spaces for physical activity, and health care (Matthew & Broderson, 2018).

Due to the inequities established in educational policies, Black students are less likely to graduate from high school and achieve higher education than White students. The shift in urban areas from industrial zones to tech start-up hot spots has led to a skyrocketing unemployment rate as industrial positions shipped overseas are replaced with jobs requiring higher education. This has disproportionately burdened Black communities in cities across the country.

Even with a degree, employment policies have made it more difficult for Black people to gain employment. A concerted effort was made to suppress the employability and economic advancement of Black people after the Civil War, and worker discrimination was perfectly legal before the Civil Rights Act of 1964. The New Deal in conception was racially motivated by excluding industries with predominantly Black employees such as agriculture and domestic service (Perea, 2011). Post-war agencies established to aid veterans in securing employment diverted the

majority of resources to White clients, leaving only the worst jobs for Blacks. Even after the passage of the Civil Rights Act of 1964, many Black people face employment and workplace discrimination because it is difficult to prove that decisions are racially motivated. For example, employability of young Black men decreased after the implementation of Ban the Box legislation because employers assumed them to be criminals (Doleac & Hansen, 2020). Assuming Black men to be criminal and refusing to interview them would certainly classify as discrimination, but this population generally lacks the resources and skills to formally challenge this in court, and getting employers to admit that their decision was racially motivated is nearly impossible.

In a country so rooted in the values of rugged individualism and trickle-down economics, few social programs are available to the unemployed or those that live in poverty. The few programs that succeeded have been disjointed, had their budgets slashed, and are distributed inequitably. While legislation like establishing a federal living wage will alleviate some financial burden, the government must also address the discrimination against Black workers that still runs rampant in the job market and work to increase meaningful opportunities for employment. For example, The REACH Act in the District of Columbia integrates equity into governmental operations through the Office of Equity. It establishes accountability tools to measure equity through quantifiable outcomes in budgets, programs, policies, and employment (“The REACH Act”, 2020). Although many pathways exist, it is clear that the government must take an offensive approach to tackle discrimination and disparities, since responding reactively to Equal Employment Opportunity Commission complaints has done little over the past sixty years to lead Americans into an equitable future.

Criminal justice influences housing, education, and employment. Despite similar rates of illicit drug use among all races, the War on Drugs and subsequent criminal justice policies have

disproportionately affected Black men. One out of every three Black baby boys will grow up to become incarcerated, compared to one in every seventeen White boys (“Mass Incarceration”, n.d.). The mandatory sentence minimums imposed by the Antidrug Abuse Act are longer for drugs primarily used by Blacks than drugs primarily used by Whites, despite a nearly identical chemical composition (“What is the difference between cocaine and crack”, n.d.). The strategic, racially motivated public campaign directed law enforcement to conduct suspicion-less searches in underserved, primarily Black communities to increase arrest volume. The Supreme Court decided that law enforcement can use race as a motivating factor in deciding which persons to stop (*United States v. Brignoni-Ponce*, 1975). Outside of these communities, Operation Pipeline trains law enforcement to efficiently stop and search drivers that are most likely to have drugs – young Black men. Operation Pipeline is still training officers free of charge today (“Operation Pipeline Training”, 2019). Although victims in these stops do not have to consent to a search, law enforcement can threaten arrest or the use of drug dogs. Altercations can even turn deadly. About 1,000 people are killed by police every year in the United States (“Fatal Force”, 2019). Black American men have a 1 in 1,000 chance of being killed by a police officer, a risk that is 2.5 times higher than the risk for White men (Edwards, et.al., 2019). Although legally anyone can decline a search during these stops, concerns for safety brings into question how free a person, especially a Black person, is to make this choice.

In trials, jurors can be dismissed for any reason as long as race is not cited as the reason. Some valid excuses, however, include hairstyle and outfit choice. Using this strategy, law enforcement agencies can essentially construct a biased jury to determine sentences for Black defendants. Racial discrimination in criminal justice, such as sentencing and jury selection, can be challenged under the Fourteenth Amendment of the Constitution, but these challenges are rarely

successful because evidence that the system is biased is not sufficient to overturn convictions. Under this logic, the Supreme Court has repeatedly upheld life sentences for drug felonies and all-White juries in cases seeking the death penalty for Black defendants (Rothstein, 2017).

Incarcerated people are at a higher risk for infectious disease such as HIV, hepatitis C and tuberculosis. The Supreme Court decided that the right to health care in prison was a constitutional right under the Eight Amendment, because denying care is considered cruel and unusual punishment (Sufirin et. al., 2015). However, there are no federally mandated standards for healthcare. Prison policies vary drastically between what type of care is offered and how it is delivered. Imprisonment, for all of its faults, does give clinicians an opportunity to screen, test, and treat inmates without the risk of loss to follow-up due to barriers such as transportation. This is not to say that incarceration is a solution to substance use or infectious disease, but that if the health care in prison is a constitutional right, the delivery of this constitutional right should be thoughtful, efficient, and equitable.

While many prison systems do offer at least some care for inmates, there is little linkage to additional care once they are released. At time of release from prison, 90% of convicted felons do not have health insurance (Patel et. al., 2014). The majority will use emergency rooms as their primary source of care, and there is evidence that Medicaid coverage of substance use treatment results in significant health cost savings (Patel et. al., 2014). Enrolling people in Medicaid at the time of their release not only increases quality and continuity of health care, but it also leads to reduction in recidivism and health expenditures. In addition to health insurance coverage, correctional facility social workers and other social service programs for offenders have the opportunity to assist in making appointments, helping prepare for appointments, and reducing barriers in access for the formerly incarcerated. Re-incarcerated felons cite burdens related to

health as a main contributor to recidivism (Testa & Fahmy, 2020), so this issue is important to address as an additional prevention mechanism to further reduce the unequitable boom in the prison population.

Black men are nearly six times more likely to go to prison than White men and nearly one in three Black men are convicted of a felony (“Report to the United Nations”, 2018). Criminal convictions restrict people from receiving federal aid and exercising their right to vote. About 13% of the entire Black population has disenfranchised voting rights, which is seven times higher than the national average (Freudenburg, 2001). The state of Oregon took steps to allow people to maintain their rights by decriminalizing drug possession. In 2014, the state legalized marijuana and is now using revenue generated by taxes on recreational marijuana use to support substance use treatment for anyone charged with possession of drugs, including heroin and cocaine (Akins & Mosher, 2020). The state will also use funds reallocated from drug enforcement agencies to pay for court ordered treatment. For those that do not wish to seek treatment, they will face a civil (rather than criminal) fine. Rehabilitation instead of incarceration has proven to be cost-effective in other countries such as Switzerland and Portugal, and is associated with a reduction in drug related infectious disease and overdose deaths (Akins & Mosher, 2020). It remains to be seen if this law will bridge the gap in the disparity between Black and White drug users charged with drug possession, but by decriminalizing drugs Oregon will circumvent the racial disparities in drug felony consequences such as voting rights, housing, federal benefits, and employment while encouraging rehabilitation for those who are battling addiction and wish to seek help.

## 5.0 Conclusion

The actions of the government to impose racial segregation and inequality is a violation of constitutional rights under the Fourth, Eighth, Fifth, Thirteenth, Fourteenth, and Fifteenth Amendments. The comprehensive effort to oppress Black Americans has spanned all three branches of the United States government and multiple sectors of policy. Despite both the apparent unconstitutionality and moral failings of this strategy, laws and policies persist that have created distinct inequalities in housing, educational and employment opportunities, and criminal justice. These differences manifest in health disparities, particularly between Black and White populations. The ability of law and policy to influence health status make it a quintessential social determinant of health.

## **6.0 Recommendations**

The recommendations for acknowledging law and policy as social determinants of health and responding to the health disparities created by this determinant can be divided into three phases: 1) Recognize, 2) Reallocate, and 3) Rectify.

### **6.1 Recognize**

Before the government can proceed with legislative steps to address generational discrimination imposed by laws and policies and turn the corner towards health equity, they must recognize the role that they have played throughout history in furthering the reign of White supremacy. This is important because it will act to lessen tensions and mistrust between the government and the people they have mistreated for decades. Additionally, it will weaken the stereotype-based arguments used to explain the differences in health status such as laziness of the unemployed, that all criminals are violent and must be locked up in order to achieve peaceful and safe communities, and that poor health is the fault of an individual due to their choices – that people should just take walks and buy healthier food if they want to improve their health status. In truth, how free are people to make such decisions when they have been forced into substandard housing and lack the funds and transportation to make the health decisions that so many of us take for granted? Law, acting as a social determinant of health, makes these decisions for people.

## 6.2 Reallocate

It is estimated that only about 10% of a person's health status can be explained by access to health care (Cole & Nguyen 2020), yet the United States spends nearly 20% of gross domestic product on healthcare expenditures (Bauchner & Fontanarosa, 2018). Other high-income countries, such as the United Kingdom, Canada, Germany, Australia, Japan, Sweden, France, the Netherlands, Switzerland, and Denmark, spend between 9% and 12% of their GDP on health care (Bauchner & Fontanarosa, 2018). This equates to \$9,403 per capita in the United States compared to a range of \$3,377 to \$6,808 in other high-income countries (Bauchner & Fontanarosa, 2018). Despite spending more on healthcare, the United States has worse health outcomes. A person in the United States can expect to live at least two years less than a person in other high-income countries, and the United States also has a significantly higher infant mortality rate (Bauchner & Fontanarosa, 2018).

Other countries have found cost-effective success by investing in social service programs such as housing, education, and supporting a living wage and health insurance for all. By investing in people and creating an environment in which both chronic and infectious diseases can be prevented, the need for lengthy and costly treatments is avoided. The reallocation of more funds to promote programs that address social determinants is not only considered a cost savings measure, it would also aid in addressing health disparities so long as these programs are delivered equitably. Legislators should use a framework called "Health in All Policies" ("Health in All Policies", n.d.) to consider the health impacts of a piece of proposed legislation as an important factor when deciding how to proceed with voting, even if that bill is not about healthcare. This framework protects against unintended health disparities as a consequence of a law or policy and ensures that passed laws are equitable.



### **6.3 Rectify**

In the “disease” of racism, we can diagnose the problem by acknowledging the systemic barriers put in place throughout history and alleviate the symptoms by investing in social determinants of health. But in order for the solution to be sustainable, we must treat the disease by dismantling the carefully constructed system that allows discrimination to continue and replace it with equitable policies that address the root cause of racism. These policies must be part of a comprehensive, concerted effort to eradicate structural racism that moves past the symbolism of acknowledgment and enacts real change. Such strategies include making it illegal to use race as a motivating factor in police stops, allowing convicted felons to retain their right to vote and eligibility for federal benefits, decriminalizing minor drug possessions, restructuring public education financing, and making it easier for people to bring challenges of racial discrimination in the workplace or in the criminal justice system to court under the Fourteenth Amendment. While one or two of these policies alone would be lauded as victories for racial equality, as evidenced above discrimination permeates every aspect of our social and economic systems. As thorough as the effort has been to oppress Black people, the response must be equally comprehensive if we are to move past our nation’s history and achieve racial equality and health equity.

## **7.0 Limitations and Looking Forward**

This essay is a summary of relevant laws and policies and is not meant to be an exhaustive list of all policy that has contributed to racial discrimination, especially concerning local ordinances. There is also a lack of peer reviewed literature examining pre- and post- health data of implemented policies, which would best depict how law and policy directly influence health. The absence of studies can be partially explained by the fact that few scholars have recognized law and policy as a social determinant of health, so health has not been evaluated as part of a policy's impacts. Although this essay focuses on racial disparities, law and policy has also been used to oppress groups by gender, ethnicity, and sexual orientation. Further analyses could explore how policy has created health disparities between different demographic groups.

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