

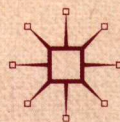
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# **CRIME & PUNISHMENT**

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**IN AFRICAN  
AMERICAN  
HISTORY ▶**

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**JAMES CAMPBELL**

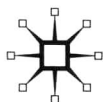


# Crime and Punishment in African American History

JAMES CAMPBELL



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African American history has been scarred by violent and discriminatory law enforcement—from the mass executions of rebel slaves through to the present day in which more black citizens are incarcerated than ever before. This book provides an in-depth overview of crime, punishment, and justice in African American history. It presents cutting-edge scholarship on major issues of criminal justice history in the United States, and explores everyday African American experiences alongside famous trials and court decisions. It also highlights the ways in which resistance to oppressive policing, punishment, and vigilante justice has advanced the broader struggle for black freedom, and driven an ongoing process of criminal justice reforms.

JAMES CAMPBELL is Lecturer in American History at the University of Leicester, UK. He is the author of *Slavery on Trial: Race, Class, and Criminal Justice in Antebellum Richmond, Virginia* and co-editor (with Rebecca Fraser) of *Reconstruction: People and Perspectives*.

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# Introduction

In February 2012, the killing of Trayvon Martin in Sanford, Florida, catapulted issues of race, crime, and punishment to the forefront of the American political and news agenda. Returning home from a 7-Eleven store, the African American teenager was followed and shot dead outside a gated community by George Zimmerman, a white, volunteer neighborhood watch captain of Latino descent who claimed he acted in self-defense. The Sanford police agreed. Following a cursory investigation, no arrests were made and the killing was quickly ruled a justifiable homicide. Within weeks, however, protests against the police handling of the case—led by Martin’s family and joined by hundreds of thousands of supporters—swept across the nation. The Sanford police chief was suspended, the investigation reopened, and Zimmerman eventually arrested and charged with second-degree murder. At the time of writing, George Zimmerman is yet to stand trial, but the name of Trayvon Martin is already enshrined in the long history of African American crime and punishment. Indeed, the national and international prominence of the case is partly a consequence of the many ways that it resonates with that history. It evokes past practices of white vigilantes assuming pseudo-police powers over African Americans, law enforcement officers neglecting white-on-black violence, and equal justice resting on mass protest movements rather than the rule of law. Through these connections, the case raises questions about the past and current state of civil rights, race relations, policing, and the criminal law in the United States.

This book takes up these questions by exploring the intersection of African American history and criminal justice history over the course of nearly four centuries. It investigates how African Americans have engaged with, influenced, and experienced crime and punishment from the seventeenth century to the present. It asks how black experiences of law enforcement have changed over time, why these changes have occurred, and what significance they have had within

and beyond black communities. It looks at forms of policing, court procedures, and punishments, tracing their evolution in different regions and jurisdictions. It also explores the circumstances in which the legal system has deferred to, or sometimes been supplanted by, extrajudicial authorities such as slaveholders, the Ku Klux Klan, and lynch mobs. While these subjects mostly defy sweeping generalizations, the analysis presented here reveals notable continuities over time in the outcomes and implications of African Americans' encounters with the criminal justice system. These encounters have often been discriminatory and violent, but their form and consequences have varied across the United States according to local circumstances and have changed considerably over time as the relationship between race and law enforcement has been remade in different eras according to evolving political and economic interests, powerful protest movements, and developing ideas about law, justice, and punishment.

In approaching this subject matter, *Crime and Punishment in African American History* introduces and interrogates six major themes that resonate across the past four centuries:

**The black freedom struggle.** The African American history of criminal justice is an integral part of the history of the black freedom struggle. Although popular memory of the civil rights movement is dominated by demands for the right to vote and integrated schools, black political activism has always been rooted in campaigns for equal justice and for protection from racial violence and unjust punishment. Nonetheless, civil rights gains have not always translated into improvements in the treatment of African Americans in terms of criminal justice. On the contrary, African American political and social advances have often been met with an intensification of racial repression justified in the name of crime control. In the aftermath of both the American Civil War and the modern civil rights movement, for example, criminal justice mechanisms were used to strip large numbers of African Americans of recently acquired citizenship rights. More pervasively, black political activists from slave rebels to student sit-in demonstrators have regularly been subject to criminal justice sanctions.

**Labor.** The forms and function of law enforcement against African Americans have consistently been tied to issues of labor control. From slavery, through the peonage and chain gangs of the Jim Crow era, and the mass incarceration that accompanied deindustrialization in the late-twentieth century, the arrest, prosecution, and punishment of black workers has served the interests of landholders, industrialists, and government through providing a subordinate and cheap labor force.

**Violence.** In the black past, violence has permeated law enforcement and there has rarely been a clear-cut divide between extralegal punishment and the justice

system. On the contrary, law and violence have often been closely intertwined. Slave courts readily dispensed with even the pretense of due process in periods of slave uprisings, and in the 1850s slaveholders seized runaways under the barely regulated legal procedures of the Fugitive Slave Act. In the segregation era, black defendants were sentenced to death in courtrooms surrounded by baying mobs, and prisoners worked in convict leasing camps alongside tenants trapped in debt peonage. African Americans are today rarely subject to extralegal policing by white vigilantes, but new forms of militarized law enforcement, parole, and civil injunctions have created a parallel system of crime control in many black communities that operates outside standard judicial procedures.

**Resistance.** African Americans have continually resisted white-dominated law enforcement and extralegal punishment. Through armed self-defense, political mobilization, and legal challenges, black resistance has challenged and destabilized white supremacy, driving an ongoing process of criminal justice reform that sometimes has mitigated the system's harshest features, though rarely threatened their foundations and often resulted only in the evolution of new forms of repression. The earliest slave laws developed to contain insurrections and escapes; a multifaceted movement against lynching forced allegations of black criminality to be heard in southern courtrooms; discriminatory trials were liable to challenges in federal courts and international protests; militant black organizations in the 1960s protected civil rights workers from Klan violence, and ongoing grassroots campaigns contest the contemporary war on drugs and prison-industrial complex.

**Gender and class.** African American crime and punishment has always been related to the construction of boundaries, divisions, and ideas about gender and class. The outcome of rape prosecutions against black defendants has reflected the social status of white female victims as well as the racial identity of their alleged attackers; laws criminalizing mixed-race marriages and sexual relationships were used from the Civil War to the 1960s to police racial boundaries, and the denigration of black womanhood has in many periods led police to neglect vice in urban black neighborhoods. Racially discriminatory law enforcement has also routinely been used to defuse class tensions among whites, though not infrequently poor whites have also been caught up in penal mechanisms targeted primarily at the black population.

**Place.** The African American history of crime and punishment has been heavily conditioned by local context. From the slave era to the present, the South has been exceptional in the pervasiveness and severity of racial violence, discriminatory criminal justice, and coercive penal practices. This broad southern distinctiveness, however, masks significant variations among and within different states, and it has not developed in isolation, but rather in dialogue with the rest of the nation and with the federal government and judiciary. The African American experience of criminal law in the northern and western



states likewise stems from distinctive local conditions, but also reflects deep entanglements and influences across county, state, and regional borders.

This book is heavily influenced by a new and diverse body of scholarship that has developed on issues of crime and punishment in African American history over the past 30 years. Making use of previously neglected sources, such as local court records and African American newspapers, historians have provided original insights into the “everyday” black experience of law enforcement and extralegal violence. Through detailed, local case studies of subjects including slave law, lynching, convict leasing, police brutality, discriminatory prosecutions, and the death penalty, this work has focused on how law enforcement works in practice and found a history filled with diversity, tensions, divisions, and conflicts underlying and complicating the well-worn narrative of violent white supremacy and racist criminal justice in the American past. It has, moreover, provided an important counterpoint to legal histories that draw mainly on appeals court and legislative records to examine the federal and constitutional dimensions of violence and law enforcement in black history, but which sometimes neglect both the influence of nonlegal factors on the administration of criminal justice and the impact of legal outcomes outside of the courtroom.

Building on the new understandings of African American crime and punishment opened up by grassroots studies, this book joins many individual stories into a longer narrative in order to present a wide-lens interpretative history. This approach aims to highlight connections, continuities, and change across time and place. It also allows for consideration of how African American crime and punishment relates to broader themes in American history and makes the case more forcefully than a local study possibly can for incorporating issues of race, crime, and punishment as a central component of wider historical debates. It presents, for example, the long history of African American crime and punishment as a powerful counterpoint to the promises of America’s founding documents and the nation’s rhetorical and constitutional commitment to freedom, justice, the rule of law, and equal protection. It reveals an engrained alternative tradition—a genealogy of injustice—in which violence has played as prominent a role as legal process, white supremacy has been as influential as egalitarian principles, and black resistance has played a primary role in the evolution of the criminal justice system. But it warns against essentializing this tradition by demonstrating that it

stemmed from different causes and took different forms in different places and at different times.

Few previous studies have attempted to analyze together the social and legal histories of African American criminal justice and extra-legal law enforcement over the long sweep of the American past. There are, however, a number of historical, legal, and social-science analyses of long-term shifts in issues of race, law, and criminal justice that provide a broad interpretative framework for this book. The most prevalent view—and the view with which most Americans today would likely concur—argues that criminal law has become more equal, less violent, and fairer in its treatment of African Americans over time. Assessing developments in African American criminal justice from slavery to the present, legal historian Randall Kennedy found “dramatic discontinuities” between the eras of slavery, segregation, and the present and identified the modern civil rights movement of the 1950s and 1960s as a major turning point after which the history of African Americans and law enforcement changed profoundly. Kennedy also criticized late-twentieth century scholarship and political activism that identified with the struggles of black defendants and convicts and called for constraints on the powers of law enforcement. In Kennedy’s view, this work was detrimental to the interests of black America and undermined attempts to deal with more pressing legal concerns, such as the underenforcement of law in black communities ravaged by illegal drugs and high rates of intraracial violence. Adopting a more polemical and less nuanced stance, the conservative black scholar Thomas Sowell maintained that the “battle for civil rights was fought and won” in the past and dismissed continued African American agitation as representing the socially destabilizing “politicization of the law.” From this perspective—which law professor Paul Butler calls “the celebratory tradition”—change in issues of race and criminal justice appears either as a product of, or inseparable from, broader changes in civil rights law that have affected all aspects of American race relations and the black experience.<sup>1</sup>

Alternative interpretations focus more on continuity than change, draw a clearer distinction between the history of African American crime and punishment and the course of the wider civil rights struggle, and are less sanguine about the evolving black experience of law enforcement. The theme of continuity has recently been evoked by law professor Michelle Alexander who describes the vast scale on which African Americans are imprisoned in the twenty-first century as constituting a “new Jim Crow,” much as historians studying earlier

eras have described convict leasing as “worse than slavery,” and the system of peonage that flourished in the South from Reconstruction to the mid-twentieth century, as “slavery by another name.” Diverse explanations have been put forward for the persistence of racial discrimination in law enforcement. Derrick Bell argued that progress toward racial justice has occurred only when the interests of black and white Americans converge, and throughout American history this has invariably been only a temporary condition. As characterized by former federal judge and historian Leon Higginbotham, African American legal history has been a “journey” from “total racial oppression” to only “muted shades of freedom” in which legal reforms have struggled to erase the precept of black inferiority that was cultivated through slavery and segregation and continues to influence judicial processes. William Stuntz, by contrast, focuses on new factors that allowed discrimination to flourish in the second half of the twentieth century, such as declining local community influence over criminal justice outcomes and a massive expansion in prosecutors’ discretionary power that came at the expense of legal due process. In Doris Provine’s assessment, discrimination in American criminal law has “morphed ... rather than disappeared,” as jurists and politicians in recent decades have embraced an ideology of color-blind jurisprudence that fails to address the persistence of structural and unconscious racism.<sup>2</sup>

The way in which the history of African American crime and punishment is written and understood is consequently of profound importance to interpretations of criminal justice in the present. In a recent study, criminologists James Unnever and Shaun Gabbidon argue that “centuries of subordination,” and “criminal justice injustices” have forged a unique African American worldview marked by a profound “cynicism” about modern law enforcement that contributes to high rates of offending. Anthropologist John Hartigan similarly argues that Americans’ views on race, crime, and punishment in the present are “in part, based on the relevance they attribute to the past.” Among those who consider race a key variable in twenty-first-century criminal justice, history is “ever present, with certain actions and attitudes being continually repeated,” while for proponents of the view that the civil rights movement largely eroded the pertinence of race to the enforcement of criminal law, the past is confined to history and crime and punishment in the present considered “an entirely contemporary matter.” The way in which the past is understood also has relevance to efforts to reform criminal justice processes and outcomes in the