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At the nexus of neoliberalism, mass incarceration, and scientific racism: the conflation of blackness with risk in the 21st century

Olivia C. Sailors

Abstract: *This paper examines how the systems of power of neoliberalism, scientific racism, and mass incarceration intersect to construct and uphold the image of “black criminality” and “blackness as a risk” to society. Risk assessments used to determine prison sentencing exemplify this phenomenon. Histories of deliberate associations between blackness and criminality--through science, media, political rhetoric, and economic systems--create a field in which risk assessment is widely regarded as a useful and scientifically neutral tool in mass incarceration. Particular scientific, economic, and carceral circumstances culminating in the 21st century collude to elevate risk assessments into one aspect of a big data apparatus endowed with the capacity to predict and control future behaviors. The paper suggests future directions for scientific research to promote racial justice in the context of mass incarceration.*

Keywords: *risk assessment, validity, racial bias, criminality, mass incarceration*

Areas of Study: American Studies, Prison Studies

Introduction

Whether or not we realize it, humans are always making predictions. We use these predictions to influence our behavior and decisions. Afterwards, we reflect on ourselves and decide if our predictions led us to the outcomes we had hoped. If it doesn't, we will probably change our predictions for a similar situation, so that we eventually get our desired outcome. As Cathy O'Neil explains, we are basically making our own models in our heads in to experience what we deem to be a successful outcome.¹ However, the definition of a “successful outcome” differs from person to person. What happens when these flawed beliefs and priorities make their way into scientific and mathematical models? In the 21st century, these allegedly “impartial” models are shaping what the public believes to be “truth” and “reality”.

The impartial models that I refer to in this essay are the algorithms used to create risk assessments. A risk assessment is something used to predict recidivism, which is generally defined as rearrest within two years after leaving prison. There are two main kinds of risk assessments, being clinical and actuarial. Clinical risk assessments have been around since the 1930s, and so-called experts, such as psychologists and social workers, determined the risk of the person to public safety. Clinical assessments are still used today on occasion, but the majority of risk assessments are actuarial. Actuarial assessments allegedly were designed to make up for the flaws in human judgment, that were clear within the clinical assessments. Rather than depending on a human to make the call about a person's risk to society, they instead rely on a computer to take a series of steps to determine the risk of the potential offender.

The most frequently talked about actuarial assessment are algorithmic assessments, where government entities and private companies develop an algorithm that is designed to assess the likelihood of recidivism. They generally include a questionnaire and static data that accounts for criminal history, level of education, family information, job status, etc., and puts more weight on certain factors than others, depending on the importance to the creators of the assessment.ⁱⁱ

Algorithmic assessments are becoming increasingly appealing in among both conservatives and liberal circles. Since the 1990s, it has been playing a significant role in pretrial decision, sentencing, and parole, often in place of the older cash bail system. Many believe that the development of an algorithm "will lead to greater transparency and accountability", being a clear improvement to the current cash bail system that disproportionately harms poor people.ⁱⁱⁱ Others in favor argue that as long as the assessment shows the human capacity to change our behaviors and improve ourselves, that it may be beneficial. In essence, better assessments help

determine where the proper intervention needs to happen to assist incarcerated people who are struggling to engage with and integrate into their communities positively.^{iv} Finally, conservatives are justifying their usage as a more efficient and lower cost solution to determine who should be incarcerated.^v

Nonetheless, most of the public and scholarly discourse on risk assessments are explaining that risk assessments aren't actually doing what they are intended to do. In a large meta-analysis including studies on male and female offenders and current and ex-felons, researchers found that a commonly used risk assessment called the Psychological Inventory of Criminal Thinking Styles (PICTS) has a low to low moderate correlation (.14-.25) in predicting recidivism between 6 and 24 months after incarceration, meaning that it's not accurately predicting recidivism like it's supposed to.^{vi}

If they don't show us the likelihood of recidivism, what do they show us? Recent findings from ProPublica demonstrates that one of the most common risk assessments, COMPAS, overestimated when black offenders would reoffend and underestimated when white offenders would reoffend.^{vii} This shows that the shift from clinical to actuarial assessments hasn't eliminated human bias, but rather has shifted it to new areas of the assessment, being the questions asked, formulas created, and data collection processes. New literature on the bias within COMPAS and similar assessments is calling upon private companies to be more transparent with their algorithms. Formulas are becoming more public, but Northpointe (the company created COMPAS) is still concealing key features of the assessment, which will be explained in more detail later.^{viii}

If it's widely known that risk assessments don't actually predict recidivism, are racially biased, and as a result, reproduce the very structures they claim to dismantle, why are we becoming increasingly reliant on them in determining who goes to prison? This essay will explore the following questions; how did we get to our current time and place where risk assessments are considered a legitimate and useful tool for determining whether or not someone should be sent to prison? How, and what systems are interacting with one another to create a context where risk assessments are seen as a useful tool in sentencing? Lastly, what does our faith in risk assessments say about dominant American cultural values?

With this in mind, this essay is hardly about risk assessments at all, but rather examining modern axes of power intersecting, that being: neoliberal ideologies, racism (particularly anti-blackness), the legitimization of science as "objective", and what these beliefs look like in the context of 21st century mass incarceration. In other words, I'm most interested in what risk assessments can show us more broadly about dominant American cultural values: the image of the "black criminal" has been constructed and reconstructed in different ways depending on historical, political, and economic contexts. Today, it is generally unacceptable to make explicit connections between blackness and criminality, so in an era that prioritizes science, technology, and neoliberal ideologies, one way to maintain this image of the "black criminal" is through an algorithm that predicts black people to be a "higher risk" to society through risk assessments. Through neoliberal ideologies and supposed "scientific objectivity", risk assessments remove accountability on scientific and government institutions, both of which have a long history of anti-blackness. It's a way of producing the same racialized outcomes as if they are occurring by happenstance. Hence, risk assessments are a concrete example of how neoliberalism, scientific

racism, and mass incarceration are intersecting in the 21st century. What I hope to show here is that the nexus of these axes of power a new form of power is being constructed that is unique to the 21st century. It's growing larger and stronger, and in many ways, is invisible.

With this in mind, I will be zooming in and zooming out throughout this essay, by examining risk assessments closely, and also zooming out on the power structures in place that have led to their creation, and legitimize them as a useful tool in incarceration. First, I will trace a history of key political, economic, and scientific events that constructed, reinforced, and reshaped the association between blackness and criminality. Next, in the section "Unpacking the risk assessment", I will explain that one 21st century manifestation of the "black criminal" image is labeling black people as disproportionately "high risk" to society through risk assessments. Then, I argue that risk assessments are a part of a new 21st century big data obsession, that without our consent, is trying to understand current behaviors to predict in order to control and shape future behaviors. This is becoming increasingly dangerous, as it is bolstering the permanence of the carceral state.

Defining key terms and considering relevance

In this essay, when I use the term "neoliberalism", I am referring to specific aspects of the ideology, being a focus on individualism and individual accountability, the deregulation and removal of the government from personal affairs, the myth of meritocracy, and how these contribute to the exacerbation of inequalities. More specifically,

"Under neo-liberal post-welfare policies, inequality is a result of individuals' inadequacy, which is to be remedied not by increasing dependency through social welfare, but by requiring that individuals strive to become productive members of the workforce. Neo-liberal governments take less responsibility for the welfare of the individual; the individual becomes responsible for him or

herself. The goal for neo-liberal societies is to create a competitive, instrumentally rational individual who can compete in the marketplace.”^{ix}

This mindset is highly problematic in the context of mass incarceration, as it places blame on individuals for inequalities rather than the social and governmental structures that have produced injustice. It reinforces the myth of meritocracy, that because the marketplace is “equally accessible to all,” people are receiving benefits and opportunities solely on the basis of their merit.

Further, neoliberalism, especially in the context of big data, has led to increased surveillance of the public. With the initial benefits of the internet being so clear to politicians, and at a time where the government wanted to stay out of individual affairs, politicians embraced the internet as a decentralized space that was quickly innovating. However, its growth has become a part of a larger problem that Shoshana Zuboff calls “surveillance capitalism”. She explains that capitalism originated by taking items outside of the market, bringing them in, and commodifying them. She argues that we have entered a “new age of surveillance capitalism” where predictions about our behaviors are being brought into the market, are being bought and sold, in order to predict and control the future. This aspect of neoliberalism will be referred to as predictive analytics.

Additionally, I utilize the work of Christina Sharpe to describe how I see “anti-blackness” operating in mass incarceration and scientific racism. She writes “the history of capital is inextricable from the history of Atlantic chattel slavery...What happens when instead of becoming enraged and shocked every time a Black person is killed in the United States, we recognize Black death as a predictable and constitutive aspect of this democracy? What will

happen then if instead of demanding justice we recognize...that the very notion of justice...produces and requires Black exclusion and death as normative?”^x What she explains here is that beginnings and foundations of the modern economy, which also shaped politics, social relations, and culture, was established through enslavement, and that these institutions rely on anti-blackness and racial inequalities to function like they were supposed to function. With Black death occurring through police brutality, and Black civil and social death happening through mass incarceration, it means these institutions have not been decolonized and are still anti-black at their core.^{xi} Finally, the term “scientific racism” refers to the manipulation of scientific processes with the goal of proving certain races to be inferior to others. Anti-blackness is also at the core of scientific racism, in that social scientists designed their data processes deliberately to maintain white beliefs about “black inferiority”, that were used to justify Black physical, civil, and social death, as I will explain in the following sections.

I hope to contribute to the current literature by adding risk assessments to parts of conversations about big data and risk assessments that are already occurring. However, in general, risk assessments are rarely historicized or contextualized in scholarly literature, and they often haven’t made their way into conversations about the power of big data, as those conversations are just beginning. By adding my analysis of risk assessments to current conversations, I hope it will be clear that the construction of risk assessments and their impact shows something much bigger than the risk assessment itself: that their legitimation has been in the process for centuries and that they are more dangerous than they seem on the surface.

How did we get here? Constructing the “black criminal”

My analysis on the association between blackness and criminality starts post-enslavement and at a time of major changes in social scientific research methods. After enslavement, white supremacists in power revised slave codes in the south in attempts of shaping the roles of black people to reflect what existed during enslavement. Known as black codes, laws were created to where a certain behavior was only considered “criminal” if that person was black, such as absence from work, breaching a job contract, or vagrancy.^{xii} Furthermore, they believed that there were certain crimes that black people were inherently prone to commit, such as larceny.^{xiii} These attempts at incarcerating, or essentially re-enslaving black people, led to disproportionately higher rates of black people in prisons. The real explanations for these high rates were suppressed of course, and white social scientists saw an opportunity to define black criminality through their own lens.

Simultaneously, major changes were happening in scientific research. Scientific research between the 12th century and the 19th century was a truth and illusion framework, where the researcher tried to discover universal truths, and anything else beyond the researcher’s findings were considered an “illusion”. In the 19th century, however, there was an epistemic shift when scientists started looking at findings as either objective or subjective, fundamentally changing the way research was carried out. The acknowledgement of the existence of subjectivity in research was important, but still, after operating for seven centuries under the assumption that universal truths were possible, 19th century scientists struggled to understand the line between objective and subjective experiences.^{xiv} In this context, scientists began to grapple with the extent to which research findings could be attributed to biological dispositions versus subjective experiences.

Sociologist Tukurfu Zuberi builds upon this notion by discussing other changes that were happening in mathematics and science at the same time that supported white supremacist racial agendas. He explains that the creators of the field saw social statistics as a new way to conceptualize citizenship and individual value, worth, and rights.^{xv} Furthermore, “they believed that the confusion of politics could be replaced by an orderly reign of facts.”^{xv} In essence, the field of social statistics was created on the assumption that a person’s perception of their social world could become fact through mathematical methods. This would become a problem in the late 1890s, when white supremacists were still lashing out against the relatively newly gained freedom of black people in the United States.

Both this search for confirmation bias, a new need for objectivity, and the relatively recent introduction of social statistics as a field, set Frederick L. Hoffman up to publish his book *Race Traits and Tendencies of the American ‘Negro’* in 1896, making it first major publication to attempt to construct “black criminality” as a scientific fact. He explained that black men and women were disproportionately incarcerated in nearly every charge due to inherent biological and cultural inadequacies of not respecting life, property, chastity, and general morality.^{xvii} He concludes that the race is actually going backwards as black schools and churches were actually preventing social progress, as black people teaching other black people could only lead to the spread of immoral values.^{xviii} Effectively, the research placed the blame on black people for their own “immorality” and “lack of social progress” since ended and reinforced ideas from other scientists supporting biological inferiority. *Race Traits* became the beginning of a range of scholarship aimed at maintaining the same racial hierarchies in the name of “objectivity.”^{xix}

A closer look at Hoffman's research methods shows a variety of flaws in his research methods that newly "objective" social scientists should have caught. W.E.B. Du Bois argued that Hoffman's statistics showed more complex results than he claimed, and that he should have been recognizing the role of social factors such as wealth and poverty differences to understand high rates of black crime.^{xx} This is a significant contribution, as Hoffman and other social scientists also drew connections between whiteness and crime, and claimed that poverty was their main filter into prison. Given whites' apparent decent schools, churches, and generally high morality, and that poor whites were more likely than wealthy whites to be in prison, the effects of poverty could be the only explanation for white crime.^{xxi} This demonstrates that Hoffman was fully aware of the power of social conditions on their likelihood of going to prison but chose to apply a different method to black people. Instead, he interpreted high crime rates in black communities as they appeared by the numbers, meaning the higher numbers in prison must imply a general lack of intelligence, immorality and tendency towards crime.

Additionally, he legitimized "facts" that he couldn't confirm even existed by accepting all "expert" testimony without questioning it. For example, as a part of his larger "black inferiority" argument, he supported claims from physicians who claimed they were providing equal healthcare treatment to black and white people. Plus, it's clear that his definition of an "expert" was limited to white supremacists. For instance, prior to writing *Race Traits*, black scholar Ida B. Wells wrote *Southern Horrors: lynch laws and all its phases* which countered many of the arguments Hoffman would later make about alleged "black criminality". Her work caused a lot of controversy at the time, and it's unlikely that he didn't know of it, and more probable that he chose not to include her perspective.^{xxii} Despite the clear lack of objectivity and

flaws in his data collection processes and conclusions, all renowned social scientists of the time were willing to agree that he was an exceptional statistician who had presented an incredibly thorough study on black people.^{xxiii} His methods were validated as objective by others in his field when they confirmed the findings that white supremacists were hoping for.

Around the same time, Francis Galton (founder of the term “eugenics”) would continue with this work by intentionally misapplying biological research methods in the social sciences to spread eugenics and engage in racial reification. The methods and analysis that he chose to build off of were already inaccurate, as they came from Charles Darwin’s racialized conclusions about evolution. Nonetheless, all of Darwin’s claims were widely accepted, creating space for Galton to utilize Darwin’s conclusions in social statistics.^{xxiv} There are many issues here, but among the main ones is that when we start with a flawed data set, but the conclusions are accepted anyway, other statisticians and scientists often utilize the same processes, providing more and more evidence for the same flawed claim.

Hopefully, at this point, I have proven that social statisticians who allegedly confirmed existing studies about the “truth” of “black inferiority” are the ones being published and believed. To prove my point further, black scholar William Hannibal Thomas published *The American ‘Negro’: What He Was, What He Is, and What He May Become* several years later, upholding many of Hoffman’s arguments. He explained that black people are intrinsically inferior, mentally retarded, and have a “record of lawless existence”. Further yet, his research methods included 25 years of observation and a dismissal of more standardized research methods, as he believed they couldn’t measure the criminal “instinct” of black people. His rejection of a more standardized research method should have been enough for social scientists

to dismiss his findings. Still, the third president of the American Sociological Association praised his work by saying it was the most detailed account on black people to ever have been published.^{xxv} This furthers my point that it was not detailed and accurate research methods that were defining truth and objectivity, but rather scholars that upheld dominant views on “black criminality” were the ones being legitimized and published. Dominant ideologies became even more permanent when they were labeled as objective by people believed to be experts, effectively deterring any attempts for the general public to argue against the faulty conclusions.

Conversations about the associations between blackness and criminality were happening outside of academic spheres, too. Hoffman’s study found its way into the public sphere in an article from the New York Times that also praised his work, and Galton’s studies were widely accepted in their time as well.^{xxvi} Studies like Hoffman’s, Thomas’s, Galton’s and many others played a significant role in popularizing beliefs about “black criminality” that eventually culminated into the popular film of the time *Birth of a Nation*, about a black man who tries to rape a white woman, appealing to and reinforcing anxieties among white people about the “criminal nature” of black people, especially black men. It would later be cited by many scholars as a foundational event of the 20th century that set a precedent for widespread beliefs of “black criminality.”^{xxvii}

20th century policies and rhetoric linking blackness and criminality

My research indicates that while the 20th century had several significant instances of scientific racism (i.e. the Tuskegee Study and sterilization of black women to name a few), the link between blackness and criminality specifically wasn’t at the center of conversations in scientific journals. However, Hoffman’s, Thomas’s, and other similar studies from the late 1800s

and early 1900s had set the precedent and justification for “black criminality” as a biological reality. The image of the “black criminal” became further marginalized in the later half of the 20th century, starting with a series of policies from the Johnson administration onward that reinforced this image. Importantly, during this time, politicians began tying blackness, criminality, and neoliberalism together in a way that would expand the role of mass incarceration as a tool to further marginalize black communities. In other words, science provided the justification for “black criminality” and politicians utilized these studies and rhetoric to implement the carceral state as we know it today.

Fast forward to the civil rights movement and the Johnson era in American politics. Crime was rising at the time that the civil rights movement was gaining momentum. No one actually knew what to attribute the rise in crime to at the time, but opposition to the civil rights for communities of color quickly constructed it as the civil rights movement as the reason for the rise in crime.^{xxviii} At the same time, Democrats and race liberals were being accused by conservatives for not being tough enough on crime, putting Johnson in a situation where he felt the need to neutralize conservatives but also continue pushing for civil rights like he wanted. As a result, he created and implemented the Omnibus Crime Control and Safe Streets Act of 1968, appealing to conservative “tough on crime” rhetoric and liberal beliefs that federalizing and modernizing the criminal justice system would decrease violence aimed at racial minorities.^{xxix} The goal of the bill was federalizing the criminal justice system, and it did just that, but it also had the unintended consequences of expanding the roles of the police and numbers of prisons, that would end up hurting racial minorities the most.

During the Johnson era, we started to hear some of the main rhetoric that we will also hear in the Reagan era and today that contribute to criminalizing black communities, not only because of beliefs of black criminality, but through rhetoric of individual accountability, that would hurt poor, racialized communities the most. While some were attributing the nature of rising crime to the civil rights movement, many were also attributing it to the “negative consequences” that Johnson’s Great Society had on white people. Working-class whites began construing the Great Society (otherwise known as Johnson’s war on poverty) as something that benefitted these so-called criminals, by supporting their “bad parenting” and “increasing dependence on welfare”. Evidently, working-class whites were hoping be uplifted from poverty themselves and knew they couldn’t easily obtain that without necessary social services, but simultaneously were blaming black people for being impoverished. Essentially, this was an era where white people (even working-class whites) were blaming poor black people for being poor, and utilized antiblackness to justify why their economic circumstances should be changing, but black communities shouldn’t be receiving the same social benefits.^{xxx} This is one of the first major instances in which we will see the weaving of blackness, criminality, and rhetoric of individual accountability playing a role in the justification of locking up black people in disproportionate numbers.

Following Johnson, the Nixon administration utilized the idea of the “black criminal” to win the election. Nixon’s campaign strategy, known as the Southern Strategy, utilized coded race-based appeals and rhetoric of black “overdependence” on welfare to attract Southern and working-class white voters. In essence, they appealed to their fears of losing their privileges and economic opportunities as new groups gained their rights.^{xxxi} In particular, Nixon created what

Reagan would later extend; rhetoric of the need for “law and order”, by constructing black people as drug users and dealers, with the intention of suppressing any progress towards racial equality. We can confirm that these are intentional racialized appeals from this quote by one of Nixon’s advisors, John Ehrlichman:

“The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or black...but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities...We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”^{xxxii}

These race-based appeals were the center of his campaign and were effective in the sense that they helped him win the presidency. Additionally, the Nixon administration was successful in maintaining a powerful opposition to the civil rights movement, even after the movement had largely ended, setting up the Reagan administration to later capitalize on this white backlash.

The next major administration to have a powerful role in conflating blackness with criminality was the Reagan administration. Ford and Carter had been in office between Nixon and Reagan, so to an extent, there was a pause on conversations of blackness and criminality, although the beliefs among the white public clearly remained and were simply reignited under Reagan. Reagan, in many ways, also marks the beginning of the neoliberal era in the United States. Reagan became president during a time that he claimed to be the worst economic crisis since the Great Depression, giving him the opportunity to infuse his ideologies with public support for economic change.^{xxxiii} Responding to concerns about welfare state that started during

the Johnson era (and returned during the Reagan era), Reagan attempted to improve the economy by slashing public services (such as welfare, healthcare and education budgets) and cutting taxes on the rich. By deregulating the market, and removing the government from personal affairs, he argued that the money would “trickle down” into investments in social services from the rich.

However, these economic goals had larger goals in mind. Essential to the neoliberal philosophy that a society should run like a marketplace, decentralizing the government in a society where inequality was rampant left too much room for the rich to capitalize on easily accessible opportunities for them and created more challenges for those with few opportunities in front of them in the first place. His campaign strategist, Lee Atwater, perfectly encompasses how he weaved his ideological objectives with his economic objectives. Atwater explains that they reapplied many of the ideas from Nixon’s Southern Strategy:

“you start out in 1954 by saying “n*****”, “n*****”, “n*****”, by 1968 you can’t say “n*****”, that hurts you. It backfires. So you say stuff like forced-bussing, state’s rights and all that stuff. You’re getting so abstract now. You’re talking about cutting taxes. And of these things that you’re talking about are totally economic things, and the by-product of them is blacks get hurt worse than whites.”^{xxxiv}

This points to the intentionality of the Reagan administration to utilize economic strategies as a way to promote an anti-black agenda. As Atwater points out, black communities are being harmed more than whites at this time, and one of those reasons is due to the establishment of privatized prisons. For-profit prisons could be justified as a solution to economic woes, but mostly through Reagan’s construction of the war on drugs.

On the war on drugs front, frequent images on television of black men being handcuffed for selling or doing drugs, influenced sentencing for drug charges. With powder cocaine being

seen as the drug used by Wall Street bankers, and crack cocaine as the form of cocaine used by black men, politicians garnered enough public support to create a 1:100 disparity between the criminalization of powder to crack cocaine, leading to numbers in prisons skyrocketing, and particularly, numbers of black men.^{xxxv} This disparity is highly concerning, but not surprising, given that bankers and private business owners were constructed as the solution to our economic issues, while poor black men were described as prone to criminal behavior and lazy for not uplifting themselves from poverty.

With the Reagan administration igniting sufficient hysteria around the war on drugs, politicians that followed afterwards capitalized on associations between blackness and criminality for their campaign strategies or maintaining public support. Following the lead of Nixon and Reagan, George H.W. Bush released an ad right before the elections showing Willie Horton, a black man who was allegedly a rapist and murderer. He explained that his Democratic opponent, Michael Dukakis would allow people like him to have weekend release, while Bush would ensure that people like him were locked up. In July of that year, the New York Times was reporting on Dukakis' gap widening between 7 and 10 points.^{xxxvi} The Willie Horton ad was released in late September, and evidently gained enough traction to appeal to white voters and went beyond closing to gap to lead to a "landslide victory" by Bush.^{xxxvii} With the ad being released a little over a month before the election, and Bush's popularity increasing by about 30 points in that time period, it's clear that the ad made a significant impact.

With Michael Dukakis' loss being largely attributed to his stance on crime, Democrats realized that they had to take harsher stances on crime if they were to win the election. With, both Democrats and Republicans taking increasingly punitive perspectives on crime, the way to

differentiate themselves was to take an even harsher stance on crime than those before them to gain a political advantage. Following Bush, Clinton increased police presence on the streets and militarized them, similar to the levels that we still see today. He also established many of the punitive laws that we still observe, including longer sentences, mandatory minimums, 3 strikes laws, and created 60 new capital punishments. Not to mention, he and his wife Hillary Clinton took advantage of the similar dog-whistle politics to garner public support, by famously referring to black male criminals specifically as “superpredators.”^{xxxviii} The result of this harmful rhetoric and expansion of the carceral state was higher police presence that mostly extended to poor communities of color, which led to higher rates of incarceration in these communities in nearly every crime.

With the war on terror largely occupying the presidential administrations of the early 21st century, mass incarceration hasn't been at the center of discussions among politicians and presidential administrations. This means that the prison system looks largely like it has since the Clinton era, being extremely punitive and rampant with racial and class disparities. The majority of what has changed is the continued increase of for-profit prisons, and as a result, more big corporations with an investment in the prison industrial complex. Additionally, the housing crisis in 2008 led to cuts in many police department budgets. To regenerate revenue, police departments have responded by growing their responsibilities, extending the reach and gaze of the state. Wang lists over 20 new potential duties for police officers, suggested by “experts in the fields of city government, business, real estate, and entrepreneurship”, including responsibilities higher fees on constituents for infraction such as minor traffic violations, tripling the costs of getting a DUI, pay per call cost increase, or the police taking on new roles in communities, like

firearm safety classes, home checks, and monitoring of security cameras.^{xxxix} With the police taking on new surveillance role, it's no surprise that we saw higher policing in poor black communities in Chicago in 2014 than we did during the stop-and-frisk era in New York. Likely as a result, we are also still seeing the same high rates of police brutality against black people as we've seen for many years.^{xl}

In this section, I intended to prove that the association between blackness and criminality has a long history, which hopefully established the very deep rooted existence of the construction of black criminality, and demonstrated the ways in which science, anti-blackness, and neoliberalism have contributed to the image, which in recent years, has been sufficient reasoning to lock-up black people, especially black men. This historical tracing was necessary to understand the sections that follow it. Next, I will describe the risk assessment, which I believe is one of today's manifestations of "black criminality", as the test produces outcomes that show black people as being "higher risk" to society than other racial groups. I link blackness and risk together by describing how blackness is conflated with criminality, and how criminality leads to beliefs that that person is a "high risk" to society, justifying the need to incarcerate them. I will explain how there are particular ideological shifts happening now within mass incarceration that are reshaping ideas on who is a criminal, the majority of which we most aren't aware of because they are largely invisible to the general public.

Unpacking the risk assessment: conflating blackness with "high risk"

This is the Texas Christian University Criminal Thinking Scale (TCU CTS) risk assessment that was used at a halfway house I used to intern at. When offenders moved into the house, this was one of the first documents they filled out. They filled in the bubbles on how

much they agree or disagree with the given statement. It was given to the social worker afterwards to score it. Even with the social worker's involvement, this is still considered an actuarial assessment. The risk assessment has 36 questions but decided to I include only the first two pages.^{xli}

TCU CTSFORM

| | <i>Disagree Strongly (1)</i> | <i>Disagree (2)</i> | <i>Uncertain (3)</i> | <i>Agree (4)</i> | <i>Agree Strongly (5)</i> |
|---|--------------------------------------|-------------------------|--------------------------|-----------------------|-----------------------------------|
| 1. You get upset when you hear about someone who has lost everything in a natural disaster. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 2. You are locked-up because you had a run of bad luck. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 3. The real reason you are locked-up is because of your race. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 4. When people tell you what to do, you become aggressive. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 5. Anything can be fixed in court if you have the right connections. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 6. Seeing someone cry makes you sad. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 7. You rationalize your actions with statements like "Everyone else is doing it, so why shouldn't I?" | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 8. Bankers, lawyers, and politicians get away with breaking the law every day. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 9. You have paid your dues in life and are justified in taking what you want. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 10. When not in control of a situation, you feel the need to exert power over others. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 11. When being asked about the motives for engaging in crime, you point out how hard your life has been. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 12. You are sometimes so moved by an experience that you feel emotions you cannot describe. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

| | <i>Disagree Strongly (1)</i> | <i>Disagree (2)</i> | <i>Uncertain (3)</i> | <i>Agree (4)</i> | <i>Agree Strongly (5)</i> |
|---|--------------------------------------|-------------------------|--------------------------|-----------------------|-----------------------------------|
| 13. You argue with others over relatively trivial matters. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 14. If someone disrespects you then you have to straighten them out, even if you have to get physical. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 15. You like to be in control. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 16. You find yourself blaming the victims of some of your crimes. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 17. You feel people are important to you. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 18. This country's justice system was designed to treat everyone equally. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 19. Police do worse things than do the "criminals" they lock up. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 20. You think you have to pay back people who mess with you. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 21. Nothing you do here is going to make a difference in the way you are treated. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 22. You feel you are above the law. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 23. It is okay to commit crime in order to pay for the things you need. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 24. Society owes you a better life. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 25. Breaking the law is no big deal as long as you do not physically harm someone. ... | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 26. You find yourself blaming society and external circumstances for the problems in your life. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 27. You worry when a friend is having problems. | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

This assessment is scored in a way where the higher score someone receives, the “higher risk” they are considered, from the perspective of the test designer. In this assessment, mostly giving strongly agree answers (and occasionally a strongly disagree response) will yield the highest risk scores. The questions above fall into 6 different categories of entitlement, justification, power orientation, cold heartedness, criminal rationalization, and personal irresponsibility.^{xlii} I’m most concerned with the last two factors, that make up a third of the assessment.^{xliii} In these sections, questions such as “the real reason you are locked up is because of your race”, “laws are just a way to keep poor people down”, and “you may be a criminal but your environment made you that way”, among others show the neoliberal belief that individuals, rather than larger social structures, should be held accountable for their crimes.^{xliiv} Those that strongly agreed with the above statements (or those that took an anti-neoliberal stance that powerful institutions play the

largest role in incarceration) were labeled as “high risk”, and thus, more likely to reoffend. Furthermore, questions like “bankers, lawyers, and politicians get away with breaking the law every day”, “this country’s justice system was designed to treat everyone equally”, and “police do worse things than the ‘criminals’ they lock up” label offenders at a high risk of recidivism if they refute the myth of meritocracy and acknowledge the lack of fairness and inequality in our economic and political systems.^{xlv} Racial and class inequalities are, in fact, rampant in our economic and political systems, so those that point it out are only telling the harsh truth.

It’s ironic that these truth tellers are labeled “high risk”. By telling the truth about inequality, to *whom* are they a risk to? What exactly are they *putting at risk*? With the algorithms predicting black offenders and opposition to the neoliberal status quo as being “higher risk” to society and public safety, then it’s clear that there is an ideological foundation for the establishment of this risk assessment that intends to find these outcomes. First, because we know that it is within the capacity of scientists and statisticians to carefully curate a study to produce a certain outcome. Second, given that we know there is no racial group more prone to criminality, these results wouldn’t occur if the data had been collected fairly and interpreted accurately. The only reason it makes sense that we get these outcomes is due to how blackness has been socially constructed as more likely to commit a crime.

The example above has very clear links to my definitions of neoliberalism, anti-blackness, and scientific racism. However, in other risk assessments, some of the values are better concealed, but still yield the same results and show the same ideologies. Let’s take COMPAS as an example. The assessment is 8 pages long, so I chose the elements that were the most relevant to my analysis. This assessment doesn’t look at attitudes, but more personal and

social factors that the test designers believe could contribute to a person's incarceration. This is an example of some of the questions asked.^{xlvi}

Risk Assessment

| PERSON | | | | |
|---------|-----------------|---------|--|--|
| Name: | Offender #: | DOB: | | |
| Gender: | Marital Status: | Agency: | | |
| Male | Single | DAI | | |

| ASSESSMENT INFORMATION | | | |
|------------------------|-------------------------------------|------------|-----------------|
| Case Identifier: | Scale Set: | Screeners: | Screening Date: |
| | Wisconsin Core - Community Language | | |

Current Charges

- | | | | |
|---|--|---|---|
| <input type="checkbox"/> Homicide | <input checked="" type="checkbox"/> Weapons | <input checked="" type="checkbox"/> Assault | <input type="checkbox"/> Arson |
| <input type="checkbox"/> Robbery | <input type="checkbox"/> Burglary | <input type="checkbox"/> Property/Larceny | <input type="checkbox"/> Fraud |
| <input type="checkbox"/> Drug Trafficking/Sales | <input type="checkbox"/> Drug Possession/Use | <input type="checkbox"/> DUI/DUII | <input checked="" type="checkbox"/> Other |
| <input type="checkbox"/> Sex Offense with Force | <input type="checkbox"/> Sex Offense w/o Force | | |

- Do any current offenses involve family violence?
 No Yes
- Which offense category represents the most serious current offense?
 Misdemeanor Non-violent Felony Violent Felony
- Was this person on probation or parole at the time of the current offense?
 Probation Parole Both Neither
- Based on the screener's observations, is this person a suspected or admitted gang member?
 No Yes
- Number of pending charges or holds?
 0 1 2 3 4+
- Is the current top charge felony property or fraud?
 No Yes

Criminal History

Exclude the current case for these questions.

- How many times has this person been arrested before as an adult or juvenile (criminal arrests only)?
5

- How many times has this person failed to appear for a scheduled criminal court hearing?
 0 1 2 3 4 5+
- How many times has the person been arrested/charged w/new crime while on pretrial release (includes current)?
 0 1 2 3+

Family Criminality

The next few questions are about the family or caretakers that mainly raised you when growing up.

- Which of the following best describes who principally raised you?
 Both Natural Parents
 Natural Mother Only
 Natural Father Only
 Relative(s)
 Adoptive Parent(s)
 Foster Parent(s)
 Other arrangement
- If you lived with both parents and they later separated, how old were you at the time?
 Less than 5 5 to 10 11 to 14 15 or older Does Not Apply
- Was your father (or father figure who principally raised you) ever arrested, that you know of?
 No Yes
- Was your mother (or mother figure who principally raised you) ever arrested, that you know of?
 No Yes
- Were your brothers or sisters ever arrested, that you know of?
 No Yes
- Was your wife/husband/partner ever arrested, that you know of?
 No Yes
- Did a parent or parent figure who raised you ever have a drug or alcohol problem?
 No Yes
- Was one of your parents (or parent figure who raised you) ever sent to jail or prison?
 No Yes

Peers

Please think of your friends and the people you hung out with in the past few (3-6) months.

- How many of your friends/acquaintances have ever been arrested?
 None Few Half Most
- How many of your friends/acquaintances served time in jail or prison?
 None Few Half Most

By looking at these factors on the surface, it may not seem like anything was wrong. It might even seem quite comprehensive. The major issue with this assessment is that only the test designers know what is arguably the most crucial part of determining pretrial, sentencing, and parole decisions: the weight of each factor in determining outcomes.^{xlvii} The weight of each factor shows us how much value private companies are placing on certain factors, and without this knowledge, we can't know exactly how risk is being determined. However, if ProPublica's findings show us that risk assessments have the tendency to conflate blackness with risk, then that likely implies that risk assessments creators often are not putting emphasis in the right areas.

Additionally, this particular risk assessment relies on current charges, run-ins with the police/prior charges, family and friend criminal history (among other elements), many of which would not be asked in court to determine sentencing. Even if court procedures aren't full proof, they go further than the risk assessment does at asking about situational and contextual factors that certainly explain the nature of the potential crime better than run-ins with the police (given that run-ins with the police are frequent in highly patrolled neighborhoods) or a friend's criminal history.^{xlviii} Even these questions are racialized, as it is much more likely that a black or brown convict would have more friends and family with run-ins with the police, effectively increasing their risk score, whether or not it actually increases their apparent "risk" to society. This shows that COMPAS and many other risk assessments like it are not only an ineffective tool in measuring recidivism, but they also end up reinforcing racial hierarchies in the name of public safety. Further, they divert responsibility from test designers and governments that have established a social context where racist conclusions in science can occur, through claiming the results come from the algorithm, not the humans that designed it.

Additionally, we should be concerned about the notion of prevention (the very purpose of risk assessments) in social science research. Robert Castel explains in “From Dangerousness to Risk” that “prevention” in social science, historically “claims to *construct* the objective conditions of emergence of danger, so as then to *deduce* from them the new modalities of intervention”, with nearly every combination of factors yielding some sort of indication that the person is a “risk.”^{xliv} He goes on to argue that when one has both the means and the motivation to create a full-fledged preventative policy, then someone had to be assigned as “dangerous” from the beginning, given that someone’s potential “dangerousness” can only be proven after the undesirable behavior occurs.¹

So, to return to the questions I proposed earlier and to take them a step further; what is actually be gained by taking these types of “preventative measures”? Who is benefitting from them and what are they being prevented from? Also, to whom and to what are offenders “high risk” to? They are a *high risk to a racial and class hierarchy* that intends to subjugate and silence those who speak out against it. We know this is true because both COMPAS and the TCU CTS proved that being “high risk” is often highly correlated with being black and in opposition to an unequal and unfair status quo, and a high risk score is sufficient justification for many judges to lock this person away.

Algorithmic Power as the new 21st century soft power

Racialized scientific studies associating blackness and criminality emerged during the 1890s and early 1900s as mentioned previously, but this is a problem today too, as risk assessments have emerged as an example of a modern day resurgence of scientific racism. Nonetheless, risk assessments provide an example of a new form of scientific power unlike

anything that we have ever seen before. Shoshana Zuboff, author of *The Age of Surveillance Capitalism*, describes that for the first time ever, we are objectifying the private human experience, calling it behavioral data, buying and selling it, and utilizing it to predict current and future behaviors.

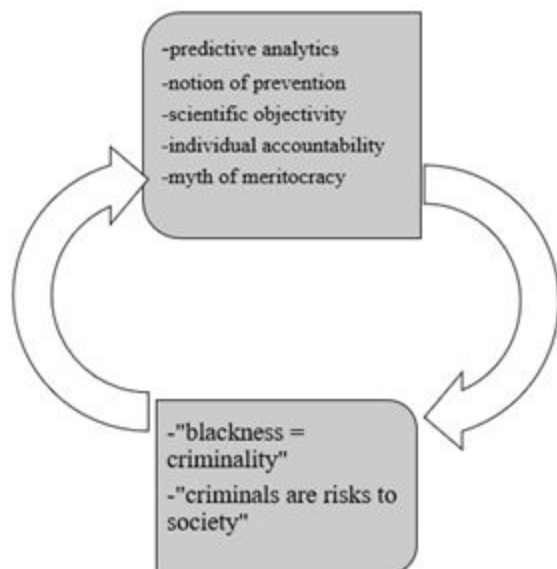
She explains that it began in 2001 with Google, who started collecting data on their users in order to improve the search engine. Google ended up collecting more data than they originally needed that they thought would go to waste. They decided to take this otherwise digital waste and combine it with their strong computational abilities to predict future behaviors of their users. Soon, they had gathered so much information, that they didn't even need consent from consumers anymore. They were able to use previous information to make inferences about consumer behaviors in order to control what they would buy, or what ads they would click on, for example. Eventually, they had enough data that they had developed methods to surveil users and consumers all over the internet.^{li} This has come to be known as predictive analytics. Other private companies began capitalizing on this quickly when they realized the new capacity to essentially control the future, including companies with stakes in the prison industrial complex.

In the context of mass incarceration, this ability to predict, and thus, control the future, has the potential to be incredibly dangerous. Walter Perry et. al describes this dynamic in their book *Predictive Policing: The Role of Crime Forecasting in Law Enforcement Operations*, writing, "The underlying assumption -- and prediction -- is that crime will likely occur where crime has already occurred: The past is prologue."^{lii} He goes on to explain the key issue with using any data of the past: "They [racial proxies] can bolster algorithmic accuracy, but only at the cost of validating and perpetuating the vicious cycle in which our justice system's propensity

to disproportionately arrest and incarcerate black people fuels the disproportionate arrest and incarceration of black people.”^{liii} In other words, by using old, flawed data (like COMPAS used) a feedback loop is being created where the more data that operates under these same racial assumptions, the more conclusions will be drawn that black offenders are “higher risk” than white offenders, providing greater reason to maintain the same disproportionate numbers of black men in prisons.

In effect, scientists and test designers have been conflating blackness with risk, and have attempted to prove it for centuries under this myth of scientific objectivity and neoliberal values of individual accountability and the myth of meritocracy. In recent years, the addition of predictive analytics and its capacity to shape future outcomes has created additional reinforcement for the proliferation of the image of the “black criminal” with its ability to shape future demographics in prisons.

Through current dominant beliefs on scientific objectivity and the use of algorithms, accountability on test designers and private companies is largely removed, even while the impact is still the same.



Police are monitoring the same neighborhoods as they did before, and risk assessments are proving the same outcomes as scientific studies linking blackness and criminality have for over a century.^{liv} The only difference is that in

the past, their approach was based on intuition, and now they have an evidence-based approach backing up their previous conclusions, thwarting blame from themselves. In many ways, this is actually worse than before because it's not removing the forms of hard power (i.e. overpolicing communities of color), but simply adding on a new form of soft power, that is largely invisible to the general public. This makes it hard for black communities to get justice when all accountability has been stripped from test designers and key aspects of the algorithms are concealed from the general public.

Conclusion

In this paper, I have traced the image of the “black criminal” throughout history and explained how it has looked different over time, but with the same beliefs and goals in mind. Then, I explained that the association between blackness and criminality today comes in the form of the risk assessment, where black people (especially black men) are labeled as “high risk” more than any other racial group. I explain how this image is able to be upheld today due to neoliberal values, scientific racism, and the mass incarceration system. Finally, I explain how when these systems intersect, the conflation of blackness with risk looks different than it ever has, where algorithms are controlling current and future racial demographics in prisons.

As the obsession with big data is growing globally, I don't see the end of risk assessments in sight, so with that in mind, I want to consider what fairness and justice could look like in the era of big data. If risk assessment algorithms are to exist, we need to start reconsidering what questions we are asking, and looking at the data in multiple ways before

conclusions are drawn. For example, if someone is looking at the impact of crime on communities, most people look at victims of the crime, which shows the locations of where crime is occurring. However, Laura Kurgan of the Columbia Center for Spatial Research asked a different question that led to more useful results. Rather than looking at where crimes were occurring, she looked at who is being criminalized, by looking at the percentages of residents in each neighborhood in New York City who were incarcerated. Her study found that 11 million dollars was invested in arresting and incarcerating people only living in 11 blocks in Brownsville, Brooklyn. Other researchers looking at the same data but asked different questions about where crime was happening, and likely would have concluded that the problem lies in Manhattan. A closer look shows us that this neighborhood is poor and in need of better resources and infrastructure to sustain themselves, implying that any criminal activity happening was probably occurring so that they could meet basic needs.^{lv}

To apply this to risk assessments, perhaps rather than asking questions that disproportionately label black people as “high risk”, test designers could (and should) consider questions about *who* and *what* is putting them *at risk* for incarceration. They should be asking questions like; what structures are in place and what factors are influencing racial disparities in incarceration? What social services could be in place to both disrupt these disparities, and decrease overall numbers in prisons? Of course, in a neoliberal era where social services are being slashed and accountability is shifted to the individual, these types of questions aren’t being asked enough, but would give much more useful results in understanding mass incarceration in the United States.

We also need to fully deconstruct the idea that black people, especially black men, are more prone to criminal behavior. As this essay has shown, this association between blackness and criminality has made its way into politics, science, economics, statistics, and more, meaning all areas involved will need to be deliberate in deconstructing this representation. Some ways that this can be possible is by having greater representation of black people in power. More specific to mass incarceration, there need to be general decarceration strategies that intend to decrease numbers in prisons and the scope of the prison industrial complex. There also needs to be tactics that respond to racial disparities alone, such as decreasing police presence in communities of color and reforming algorithms by collecting new, accurate data that asks questions about how and why racial disparities are occurring, rather than reproducing them.

Test designers also need to be designing against the occurrence of bias. In particular, we need to be thoughtful about the instances in which race is seen as a variable at all. Zuberi explains that “racial data are essential if we are to achieve racial equality; however this does not mean that every statistic should be presented racially. In fact, much that is presented as racial statistics has only helped aggravate the problem of racial conflict by making it appear that race causes people to behave or respond in particular ways.”^{vi} He goes on to explain that race itself cannot be a variable. Claiming race as a variable operates under the assumption that there is a biological difference in how certain races behave, when in fact, it’s how we socially construct race that determines racial stratification, rather than inherent differences. He argues against race as a cause by writing, “causes are only things that can, in theory, be manipulated or altered. This recognition forces us to consider the ability to vary of the individuals or units we study” and that race can’t fall into the category of a cause because “[in] research on intelligence [for example],

one cannot be more or less of one race; such a notion is impossible to measure, because race is thought to be an unalterable characteristic.”^{lvii} Thus, race as a cause can’t be used to measure any outcome because it is an independent variable that can’t be manipulated. This also means that we can’t use a proxy for race either, as the variable in its replacement is normally strongly correlated with race. Rather than asking if race is the cause, they social scientists can study whether or not racial *attitudes and prejudice* are the causes. Attitudes and prejudice can be measured as a way to determine if discrimination is occurring.

As I’ve mentioned the solutions outlined above are potential improvements to racialized algorithms in risk assessments, as I am operating under the assumption that they won’t be going away any time soon. However, after providing historical context about scientific and mathematical studies deliberately being constructed to yield the results of white supremacy and “black inferiority”, I would be naive to believe that reforming the risk assessments is truly the answer in understanding recidivism (especially when we know that many risk assessments don’t assess what they claim to assess). History behind the risk assessments can’t be erased or removed.

Further, the 21st century introduction of predictive analytics creates a dangerous feedback loop, where the original data was skewed, but produced the intended outcomes, so more data is gathered to support the originally skewed data, which effectively bolsters the permanence of the false, racialized conclusion. This is the element that proves to me that no benefits of risk assessments will outweigh their costs, unless we start collecting data from scratch, and gathering it in the way that we should have been all along.

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equitable outcomes for marginalized youth. She extends her thanks to everyone who made it possible for her to attend college and publish this research.

Endnotes:

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ⁱⁱ Matt Henry, “Risk Assessment: Explained,” *The Appeal*, The Appeal, March 25, 2019, [https://theappeal.org/risk-assessment-explained/...](https://theappeal.org/risk-assessment-explained/) (accessed September 24, 2019).

ⁱⁱⁱ *ibid.*

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^{vi} Glenn D. Walter and Christopher T. Lowenkamp. “Predicting Recidivism with the Psychological Inventory of Criminal Thinking Styles (PICTS) in Community-Supervised Male and Female Federal Offenders.” *Psychological Assessment* 28, no. 4 (2016): 655.

^{vii} Sara Wachter-Boettcher, *Technically Wrong: Sexist Apps, Biased Algorithms, and Other Threats of Toxic Tech*. New York (NY: W.W. Norton & Company, 2017), 124.

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^{xii} Angela Y. Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), 28.

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^{xiv} Lorraine Daston and D. Graham Burnett, “Do the claims of science transcend time and place?” (Presented at the [Columbia University symposium on science and history], New York).

^{xv} Tukufu Zuberi, *Thicker than Blood: How Racial Statistics Lie*, (Minneapolis: University of Minnesota Press, 2001). 36.

^{xvi} *ibid.*

^{xvii} Khalil Gibran Muhammad. *The Condemnation of Blackness: Race, Crime, and the Making of Urban America*. 51.

^{xviii} *Ibid* 52

^{xix} *Ibid* 56

^{xx} *Ibid* 64

^{xxi} *Ibid* 48

^{xxii} *Ibid* 62

^{xxiii} *Ibid* 56

- ^{xxiv} Ibid, Tukufu Zuberi, *Thicker than blood: how racial statistics lie.* (Minneapolis: University of Minnesota Press, 2001), 46.
- ^{xxv} Khalil Gibran Muhammad. *The Condemnation of Blackness: Race, Crime, and the Making of Urban America.* 79.
- ^{xxvi} Ibid, Tukufu Zuberi, *Thicker than blood: how racial statistics lie.* (Minneapolis: University of Minnesota Press, 2001), 42. 32
- ^{xxvii} DuVernay, 13th.
- ^{xxviii} *ibid*
- ^{xxix} Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press), 147.
- ^{xxx} *Ibid*, 147.
- ^{xxxi} Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press), 148.
- ^{xxxii} DuVernay, 13th.
- ^{xxxiii} *ibid*.
- ^{xxxiv} DuVernay, 13th.
- ^{xxxv} Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press), 130.
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- ^{xlii} *Ibid*.
- ^{xliii} *Ibid*. The criminal rationalization questions are questions 5, 8, 18,19,30 and 34 and personal irresponsibility questions are 2, 3, 21, 29, 31, 36.
- ^{xliv} *Ibid*. Questions 3, 31, and 36.
- ^{xlv} *Ibid*. Questions 8, 18, 19.
- ^{xlvi} Julia Angwin, “COMPAS risk assessment,” *ProPublica*: 2016. <https://www.documentcloud.org/documents/2702103-Sample-Risk-Assessment-COMPAS-COR-E.html>
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