“He [Should] Have Been Treated Differently”: My Family’s Struggle For and Against White Privilege

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During the better part of the nineteenth century, my ancestors struggled to attain a white racial identity in the United States. Now, just a few generations later, at the beginning of the twenty-first century, my family is in a complex struggle against white privilege. My parents, myself, and three of my siblings are blond-haired, blue-eyed, and white. My other five siblings, including the youngest, who was shot and killed in June 2019, are black. In the wake of my brother’s death, my family has struggled with feelings of grief, guilt, and fear. For half of us this includes a struggle with forms of white guilt.\(^1\) For the other half, also struggling with fear for themselves and for their black children, it is a struggle with survivor guilt. To varying extents, we all struggle with fears for our remaining black family members and we all struggle against anti-blackness. We are all burdened by the oppressive construct of whiteness, but without question, the burden weighs more heavily on my black family members.

My Northwestern-European ancestors’ struggle to attain status as white people began unwittingly, when they became converts to the Church of Jesus Christ of Latter-day Saints. They were denied whiteness neither because of the color of their skin nor because of their nations of origin (like the Irish, Germans, Austro-Hungarians, Polish, Italians, and Asians), but because of their religious beliefs and practices (like Catholics, Jews, and Hindus).\(^2\) Their experiences, like those of many other Americans now considered white, “bring the socially constructed nature of

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\(^{1}\) “Rightly or wrongly, white guilt has largely exhausted itself in America: even the most fair-minded of whites, those who would genuinely like to see racial inequality ended and poverty relieved, tend to push back against racial victimization—or race-specific claims based on the history of race discrimination in the country.” Barack Obama, quoted by, Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Tenth anniversary edition. (New York: New Press, 2020), 296.

race in American history into sharp focus.” Historian W. Paul Reeve relates my ancestors’ experiences in his groundbreaking work, *Religion of a Different Color: Race and the Mormon Struggle for Whiteness*. There he also shows how my ancestors were racialized along with other inhabitants of the United States in order to “justify religious discrimination, violence, murder, and expulsion.”

My nuclear family’s struggle against white privilege began with my mother’s early sensitization to the oppression of people of color (specifically indigenous and black) in the United States and came to a head with my brother’s death. My mother’s concerns, along with my father’s, motivated my parents in their decision to adopt five African-American children, interspersed in age with their four birth children. My parents did everything they could to protect their adopted children from the effects of racism and to provide every child opportunities to succeed. After my youngest brother was shot and killed by a white man in June 2019, stand-your-ground laws were invoked by the county attorney who declined to try the shooter. It was impossible for us not to wonder what impact Jeremy’s skin color had on his killer’s decision to shoot. We also had to wonder how it impacted the treatment of his death by law enforcement and by the justice system. Almost as upsetting as Jeremy’s death, and for me considerably more difficult to deal with, was the county attorney’s admission, several months after he declined the case, that if race had been reversed—if the shooter had been black and Jeremy white—the shooter “would have been treated differently.” This damning admission was offered privately to one of my black brothers who was pushing the county attorney to reconsider his decision.

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4 Reeve, 261.
It is hard to tell the extent to which racial bias was at play in my brother’s death and in the county attorney’s decision not to prosecute the killer. Part of the challenge is that racial bias manifests in forms that are more or less difficult to identify. Emilie Townes suggests that “intentional, explicit racial discrimination [has become] the only form of racism easily recognized by most Whites.” This explicit, easily recognizable form of racism does not appear to have caused Jeremy’s death. Townes juxtaposes this form of racism with the “structural dimensions of racism,” admitting that the latter elude everyone’s grasp.  

Throughout her book *Womanist Ethics and the Cultural Production of Evil*, Townes refers to racism as a structural or systematic evil. My sense is that the evil of racism can be upheld by an intentional, explicit form of racial bias or by what could be called an unintentional—and what many call an implicit form—of racial bias. The influence of this latter form is never clear or undeniable, and this is what makes the structural dimensions of racism elusive. Though its extent and particular forms remain elusive, the fact that structural racial bias played a role in Jeremy’s death is, for me, undeniable.

In the United States, black men like Jeremy are nine times more likely than white men to be shot and killed. People I know have struggled to agree on the cause of this inequality. I contend that the inequality is caused by a racially biased system. For me, it is clear that something in our social structure biases positive outcomes in favor of white men over black men. Specifically, white men are more protected against death at the barrel of a gun. Some people do not like the way this explanation discounts personal responsibility and individual intentions. To them it seems counterproductive to blame outcomes on the social structure—it diminishes

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personal responsibility. They dislike systemic racism as a designation because it lumps everyone into a racist category, regardless of their individual intentions. One thinker, whose ideas are often held up in opposition to the concept of systemic racism, suggests otherwise.

In *Basic Economics*, Thomas Sowell offers a general explanation of cause and effect in socio-economic outcomes. Barring some inherent deficiency in black men that increases their chances of being shot and killed, his analysis yields two possible explanations for their higher rate of gun death. Sowell is eager to make a distinction between what he calls “intentional causes” and “systemic causes.” He explains that “the kind of causation at work in an economy is often systemic interactions” rather than simple one-way causation. The italics are his. He explains how systemic interactions reduce the role of individual intentions, and he warns, “while causation can sometimes be explained by intentional actions and sometimes by systemic interactions, too often the results of systemic interactions are falsely explained by individual intentions.” In my mind, and by Sowell’s estimation, it is encouraging that so many people are now pointing to systemic interactions rather than personal intentions as the cause of racial inequalities.

Systemic or structural racism must be understood as the result of the multitude of reciprocal social interactions, involving individuals and institutions, that cause unequal racial outcomes. This system or structure receive its formal support from intentional, explicit racial bias or from unintentional, implicit racial bias. Unequal racial outcomes equate to privileges and disadvantages—to have outcomes biased in one’s favor is a privilege. White privilege and the denial of equal protection to people of color are two sides of the same coin. White privilege

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8 Sowell, 68.
equates to the denial of equal rights and protections to people of color. Any outcome biased in favor of whites is a privilege enjoyed by whites. Data demonstrates that systemic interactions result in greater protection from death for whites. Everyone has a right to protection from death. It should not vary with race.

In this essay, I will recount my family’s experience as objects of both forms of racial bias, fighting for and against white privilege. In Part I, I will relate an account of the construction of whiteness and recount the explicit racialization of my Latter-day Saint ancestors by those whose intent was to deny them the privileged rights and protections promised to white citizens. In Part II, I will examine the more subtle denial of rights and protections which disadvantage black men, like my brothers. I will review current data demonstrating that protections are not equally distributed in the United States and I will explain how the problem is compounded by colorblindness. After considering these, I will share further details of my brother’s case as a concrete example of a continuing failure to deliver equal protection in the United States. My intention is to make the structural dimensions of racism a little bit less elusive.

Recent historical scholarship has illuminated the Latter-day Saint experience on both sides of racial oppression. Concurrently, Womanist and legal scholars have deconstructed whiteness and provided stirring analyses of its ongoing oppression of black Americans. Still, this understanding remains obscure for many people who are not compelled by their lived experience to engage in a struggle with whiteness. I will draw on this scholarship in order to shine light on the destruction of life, liberty, and the pursuit of happiness produced by the white racial construct, past and present. Additional scholarship has shown how, during the first half of the twentieth century, Latter-day Saints whose ancestry is akin to mine attained whiteness at the
expense of Latter-day Saints whose ancestors are from Africa.\textsuperscript{9} It is easy for Latter-day Saints and others who look like me to forget that while they no longer experience this kind of racism, some who look different still do. It is important for white-skinned Latter-day Saints, along with all other white-skinned Americans, to discover the process of racial privileging and the ways that they, themselves, continue to act as subjects of racial oppression in various forms. That being said, my focus in this essay is on the experience of my ancestors as objects of intentional, explicit racial discrimination. I share their experience to demonstrate one form of racism that has been more obvious in the past but is not absent in the present.

Many Americans who would have been racialized as non-white in the past but who are now racialized as white fail to realize that while whiteness no longer weighs oppressively on people who look like them, this does not mean that it no longer weighs heavily on anyone else. If they are aware of this history and the ongoing oppression, these may not hit close enough to home for them to feel the real weight. I will present the Latter-day Saint struggle as a specific episode in the construction of whiteness. By showing how my white Latter-day Saint ancestors were denied whiteness, I hope that the constructedness of this status will be made clear. For those who have a hard time seeing that whiteness still acts oppressively on many people and who, based on a misunderstanding of Martin Luther King’s dream, may think that colorblindness is the best policy, I will offer my own family’s experience as an example of the mistaken pursuit of the color-blind ideal. I will explain the two-edgedness of colorblindness and identify one of the more pernicious ways that it perpetuates racial injustice. Finally, I will offer some of the

details surrounding the death of my youngest brother, the county attorney’s decision not to pursue the case, and his admission regarding race as a specific example of injustice that hits very close to home.

Part I

The reason my ancestors sought a white racial identity is that, in the United States, whiteness ensures unequaled opportunity to live free and pursue happiness. When the founding generation expressed their expectation that Government would secure unalienable rights, nearly all those for whom they claimed it were racially homogeneous. Securing life, liberty, and proxies for happiness, like wealth and health, is easier in homogeneous societies (think Scandinavia). Homogeneity did not last long in the melting pot that the United States became. Nearly 100 years after the Declaration, the self-evident truth it had recognized was codified by the Fourteenth Amendment, making it explicit that the protection of unalienable rights should be equal. Contemporary institutions, like slavery and the limitation of naturalization to “free white persons,” belied the self-evident truth that all are equal. In the United States, whites were more equal. Whites enjoyed protections that non-whites did not. Even after the Fourteenth Amendment was ratified, those who were not considered white did not receive equal protection—they did not enjoy the privileges that ensured equal opportunity.

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11 This did not immediately solve the problem. As late as the 1920s the Supreme Court was still debating who could become a naturalized citizen and gain access to that equal protection and they were finding against people based on the color of their skin. Douglas, 38–39.
An account of the construction of this racial privilege is offered by Kelly Brown Douglas, who discovers its roots in the colonial and founding era idealization of Anglo-Saxon political and religious institutions. She also describes how the construction of whiteness helped to resolve the contradiction between America’s Anglo-Saxon and immigrant identities. Whiteness signified that the immigrants were Anglo-Saxon enough. From all appearances, they were indistinguishable from blood-carrying Anglo-Saxons. In the end, “various immigrant groups of different ethnic origins were accepted into a white identity shaped around Anglo-American norms.”

Douglas reminds her reader of the important role that Anglo-Saxon heritage played in the founding of the United States. Early European immigrants to America brought with them an esteem for their Anglo-Saxon ancestors’ political and religious institutions. Pilgrims and Puritans, fleeing the Church of England, espoused the virtue and freedom of Anglo-Saxon political institutions because they supported the religious institutions that these refugee colonists hoped to build. Their Anglo-Saxon identity was bound up with their Christian-Protestant identity, traced back and tied to an Israelite heritage. The project was furthered by the founding generation, who were intent on building a nation imbued with this political and religious heritage. Thomas Jefferson and Benjamin Franklin each proposed that their Anglo-Saxon and/or Israelite heritage be represented on the United States seal. These signified their commitment to the belief that Anglo-Saxon institutions were best for protecting rights and preserving liberty. Wrapped into these beliefs about these superior institutions were ideas about the role of innate capacity and racial purity. In an essay published in 1751, Franklin worried about the capacity of non-whites to participate in English institutions, adding the observation that “the number of purely white people in the world is proportionately very small,” limited to those of Anglo-Saxon

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descent. As the nation progressed, the focus on institutional superiority shifted increasingly to a focus on racial superiority and concerns arose regarding which and whose rights would be protected.

Fears of racial and institutional corruption were initially provoked by white-skinned European immigrants who were non-Anglo-Saxon or non-Protestant. Prior to 1800, the proposition that “all men are created equal” could easily ignore questions of race/take race for granted in the United States, where nearly 85 percent of the population were of English descent—white, Anglo-Saxon, Protestants. By 1850 the situation was reversed so that more than 85 percent of the population were not of English descent. Douglas calls this “the immigrant paradox,” noting that “not everybody who looked like an Anglo-Saxon was actually Anglo-Saxon.”

“Old-stock” Americans responded by restricting immigration and by demeaning, threatening, and legally proscribing those who did immigrate in order to preserve the dominance of established institutions. Douglas observes that these early targets of racism “fought back with an asset they shared with their Anglo-Saxon bullies, namely, their whiteness. It was the exertion of the narrative of Anglo-Saxon exceptionalism that fostered the construction of

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14 Douglas, 17. Douglas cites several other prominent participants in the American founding era: Ralph Waldo Emerson credited the Saxon race with having a “democratic principle,” as well as a “commanding sense of right and wrong,” and wondered at the extent to which these were powers “of blood or race.” Douglas, 19; Elsewhere he called the English “the best stock in the world,” and “collectively a better race than any from which they are derived.” Douglas, 23; Thomas Jefferson proclaimed “… I advance it therefore as a suspicion only, that the blacks, whether originally a distinct race, or made distinct by time and circumstances, are inferior to the whites in the endowments both of body and mind. It is not against experience to suppose, that different species of the same genus, or varieties of the same species, may possess different qualifications. Will not a lover of natural history then, one who views the gradations in all the races of animals with the eye of philosophy, excuse an effort to keep those in the department of man as distinct as nature has formed them? This unfortunate difference of color, and perhaps of faculty, is a powerful obstacle to the emancipation of these people.” Thomas Jefferson, *Notes on the State of Virginia: With an Appendix*, 3rd American ed., Early American Imprints. Second Series ; No. 722 (New-York: Printed by ML& WADavis, for Furman & Loudon, 1801), 213; Throughout his life, Jefferson maintained the position that blacks were not capable to participate in American political institutions and if freed should be colonized elsewhere. See, Nicholas E Magnis, “Thomas Jefferson and Slavery: An Analysis of His Racist Thinking as Revealed by His Writings and Political Behavior,” *Journal of Black Studies* 29, no. 4 (1999): 491–509, https://doi.org/10.1177/002193479902900402.
whiteness.”17 She goes on to describe how European immigrants’ petitions for the privileges of whiteness in the United States, in spite of their non-Anglo-Saxon blood, reified the dominating construction of whiteness against those whose did not have white skin. In short, the “new stock” embraced white exceptionalism and distanced themselves—through racialized disparagement and violence—from anyone who the old stock considered unfit for citizenship. It took more than a century and a half following the declaration that “all men are created equal” for this process to reduce racialization to skin color and reach the stasis maintained since.18 Its easiest and most enduring targets were black people and blackness. Those who had the easiest time attaining whiteness were generally those with the fairest complexions. Nevertheless, many Americans who had white skin but who were not descendants of or who did not embrace the norms of Anglo-Saxon Protestantism were denied access during this period to equal protections and the unequaled opportunity offered in the United States. This happened to my ancestors.

I am a seventh-generation member of the Church of Jesus Christ of Latter-day Saints. The vast majority of my immigrant ancestors were white, Anglo-Saxon, Protestants—English and Dutch colonists who came to the Americas in the 1600s. These are traced back through the lineage of six of my more recent ancestors who joined the Church of Jesus Christ of Latter-day Saints (“the Church”) shortly after its founding in the early-mid 1800s. These six ancestors would have solidly possessed their white racial status until their conversion to the Church. The rest of my ancestors immigrated to the United States from Denmark, Sweden, Wales, Scotland, Switzerland, and England in the mid-late 1800s after converting to the Church. These ancestors’ racial status would have been suspect upon their arrival in the United States due to their religious

17 Douglas, 34.
18 As late as the 1920s, Presidents Wilson and Coolidge were attaching value to Anglo-Saxon heritage in debates about limiting immigration. The ongoing debate appeared explicitly in the 1923 Supreme Court case, United States vs. Bhagat Singh Thind, which decided that skin color determined citizenship eligibility. See Douglas, 29, 32, 38.
affiliation. By this time it was not their lack of Anglo-Saxonness that made my ancestors’
whiteness suspect; it was their non-Protestantness.

The intentional, explicit racialization of Latter-day Saints began almost as soon as the
Church was established in 1830. Historian Paul Reeve finds the beginnings of the racialization
process in the label given to members of the Church. Early on, they were called “Mormonites”
by outsiders; later this shortened to the term “Mormons.”¹⁹ This label was eventually reclaimed
by Latter-day Saints and has persisted to the present. With the label came assumptions about
Latter-day Saint group identity and characteristics that included notions of “physical
degeneration, foreignness, intellectual inferiority, susceptibility to superstition and delusion, and
ultimately racial decline.”²⁰ They were pushed to the bottom of the hierarchy of “white races”
along with the Irish and other less desirable “white” people who were immigrating from
Europe.²¹ Like these other undesirables, Latter-day Saints were often racialized as non-white.

The Latter-day Saint body was described as sensual, cunning, suspicious, smirking, and
self-conceited. One outsider offered a not uncommon physical description of this “new race,”
describing Latter-day Saints as marked by a “yellow, sunken, cadaverous visage; greenish-
colored eyes; thick, protuberant lips; low forehead; light, yellowish hair; all of which this
outsider attributed to moral depravity.”²² Similar physical descriptions were offered by doctors
who visited Latter-day Saint communities. Political cartoons sometimes depicted Latter-day
Saints, as they did the Irish, with heavy brows and foreheads, flat noses, and apelike features that
suggested beastliness and backward evolutionary descent.²³

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¹⁹ Reeve, Religion of a Different Color, 20.
²⁰ Reeve, 20.
²¹ Reeve, 39–40.
²² Reeve, 15; Blum, The Color of Christ The Son of God and the Saga of Race in America, 135–36.
²³ Reeve, Religion of a Different Color, 175.
Perceived inferiority was not only physical. A Protestant minister deemed immigrating Latter-day Saints the “sewerage and drainings of European population.”\textsuperscript{24} The \textit{New York Times} mocked that the intermingling of these new immigrants would turn Latter-day Saints into “apes with tails” within a couple generations.\textsuperscript{25} Latter-day Saint immigrants coming from countries whose people were generally accepted as white were judged by one scientist to be “from the very worst specimens of each people.”\textsuperscript{26} One writer complained that Latter-day Saint immigrants were as great a burden “as any pauper Irishmen who have ever reached America.”\textsuperscript{27} As in the cases I will proceed to describe, the racialization of my ancestors as a new and particularly degraded race reveals preconceived racial notions. At the same time, the fact that these notions were also directed at other white-skinned people points to the complexities of racial construction in the past and ways that it has changed over time.

Outsiders also commonly racialized Latter-day Saints as red savages. Accusers claimed that more than just proselytizing Native Americans, Latter-day Saints were forging alliances and intermarrying with them in order to overthrow white America.\textsuperscript{28} In response to these fears, and to stoke them, outsiders imagined further that through association and intermarriage, Latter-day Saints were becoming Native Americans and descending to the level of “savages.”\textsuperscript{29} Latter-day Saints were stereotyped along with Native Americans as idle, lazy, dirty, and licentious. They were imagined together as a wretched race, ignorant and barbarous, uncivilized, helpless and existing in hopeless poverty.\textsuperscript{30} Stories circulated of Latter-day Saints imitating, dressing up as, transforming into, and becoming indistinguishable from Native Americans in look and “savage

\textsuperscript{24} Reeve, 43.  
\textsuperscript{25} Reeve, 44.  
\textsuperscript{26} Reeve, 44.  
\textsuperscript{27} Reeve, 46.  
\textsuperscript{28} Reeve, 59.  
\textsuperscript{29} Reeve, 74, 105.  
\textsuperscript{30} Reeve, 57.
The Latter-day Saint move west into Mexican territory in the 1840s, along with growing awareness of Latter-day Saint polygamy—more intermarriage with Native Americans and the production of “half-breed” children—heightened this imagination of Mormon savagery.

Furthermore, Latter-day Saint marriages between black men and white women drew charges of interracial mixing and added to growing fear about Latter-day Saint support of abolition. Many feared that Latter-day Saints would invite free black Americans into western states. Latter-day Saint universalistic beliefs about salvation, and other inclusive ideals promoted in the religion, compounded these fears. Detractors wrote that Latter-day Saints had “nearly reached the low condition of the black population,” and that they were “little above the condition of our blacks either in regard to property or education.”

By the second half of the nineteenth century, miscegenation was a growing concern in the United States, and early Latter-day Saints were an easy target due to their practice of polygamy. Reeve writes that because they were “so thoroughly white, the conflation with blacks tended to center on the notion that in practicing polygamy Mormons were performing race: they were acting in ways that peoples of African descent acted, therefore they were racially different.”

Imagining that polygamy and miscegenation were concomitant, many Americans saw Latter-day

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31 Reeve, 60. These stories described them doing so in their designs to kill innocent whites, and Latter-day Saints were not innocent of, at very least, inciting with threats to draw on Native American help against the attacks of outsiders. See Reeve, 65. The complexity of these accusations increased as a result of competing reports about a massacre of traveling settlers at Mountain Meadows. The Latter-day Saints who were involved shifted blame to Native Americans. Others reported that the Latter-day Saints were themselves painted and disguised as Native Americans in the massacre. See Reeve, 88.

32 Reeve, 106, 111, 114.

33 For example, one scripture from the Book of Mormon states that God invites all people “to come unto him and partake of his goodness; and he denieth none that come unto him, black and white, bond and free, male and female; and he remembereth the heathen; and all are alike unto God, both Jew and Gentile” (2 Nephi 26:33). Church of Jesus Christ of Latter-day Saints. 1981. The Book of Mormon: another testament of Jesus Christ ; The Doctrine and covenants of the Church of Jesus Christ of Latter-day Saints ; The Pearl of great price. Salt Lake City, Utah, U.S.A.: Church of Jesus Christ of Latter-day Saints.

34 Reeve, Religion of a Different Color, 119.

35 Reeve, 173.
Saints contributing to “race suicide” and the darkening of the collective citizen body.36 Latter-day Saints were committing race treason and race contamination. Stereotypes of hyper-sexuality, already deployed against black men, were subsequently associated with Latter-day Saints. Missionaries were described as “the white counterpart to the mythical black rapist.”37 Cartoon depictions of Latter-day Saint families included white men’s multiple wives and children caricatured as members of various despised races. All of this came together in late nineteenth century newspaper articles, suggesting that “The Mormon and Negro questions are alike;” that “North America will be another African continent inside of two centuries;” and that the “American of the future”—“a black Mormon”—was at the crux of the deterioration.38

Racialization, combined with religious bigotry, was used to justify a range of discriminatory and violent policies against Latter-day Saints from the decade in which the Church of Jesus Christ of Latter-day Saints was organized until the end of the nineteenth century. During the founding years of the church in the 1830s, Latter-day Saints were successively expelled from two counties in Missouri, and then from the state entirely, after an extermination order was issued by Missouri Governor Lilburn W. Boggs in 1838.39 Concerned by the rapidly increasing population and political presence of Latter-day Saints, Missourians conflated them with Native and black Americans, as well as degraded whites, and drove the Latter-day Saints from their homes.40 “In every situation,” according to Reeve, “‘Mormon’ became a distinct nomenclature employed by outsiders to differentiate between themselves as ‘citizens,’ people with rights to life, liberty, and property—or the blessings of whiteness—and ‘Mormons’ as a

36 Reeve, 173.
37 Reeve, 179.
38 Reeve, 165.
39 Reeve, 69.
40 Reeve, 20, 261.
people shorn of those same basic rights.”

Racialization and extermination rhetoric continued and grew more virulent in the early 1840s after the Latter-day Saints moved to Illinois. Newspapers highlighted growing animosity toward new comers. The *New York Herald* reported that the animosity “threatened the extirpation of the whole Mormon race.” The St. Louis *New Era* distinguished between “Mormons” and “citizens” and urged the former to “amalgamate.”

After the murder of imprisoned Latter-day Saint founder Joseph Smith, the *Cleveland Herald* reported that leading up to the murder, outsiders were “all breathing extermination to the whole Mormon race.” This was confirmed by the Illinois governor who recalled desire among citizenry for the “extermination of the Mormon race.”

My Latter-day Saint ancestors were again driven from their homes, and this time, from the United States altogether.

Racialized animosity followed the Latter-day Saints when they fled into what was at the time Mexican territory. Leading up to their expulsion from Illinois, conflations with Native Americans had led some to suggest moving Latter-day Saints to a “Mormon Reserve,” complete with an administrative “superintendent” appointed by the United States Senate. This was proposed to allow “a measure of freedom and self-determination” that was threatened by their continued dwelling in the United States. Instead, my Latter-day Saint ancestors removed themselves from the United States, whose Constitution had failed to protect them, and moved closer to Native Americans in the West.

Ongoing fears of Latter-day Saints mixing with Native Americans provoked the Utah War of 1857-58. By this time, Utah was recognized as a territory of the United States and the struggle for Latter-day Saint self-determination was ongoing. While the war only amounted to the stationing of 2,500 United States troops at a fur-trading outpost nearly 100 miles outside Salt

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41 Reeve, 20–21.
42 Reeve, 23–24.
Lake City, and some harassment of the troop’s supply chains by the Utah militia, it did force the accession of Utah’s territorial governor, the Latter-day Saint prophet Brigham Young, and his replacement by a presidential appointee. The political struggle continued with Utah’s eventual application for statehood. Before Latter-day Saints were allowed to join the Union, they were required to abandon their religious practice of polygamy. In the process, my female ancestors were also stripped of rights they had been given to vote. In 1870, Utah was first in the United States to grant the vote to women, but in 1887, the Edmunds-Tucker Act disenfranchised Latter-day Saint women. The Act also stripped the Church of Jesus Christ of Latter-day Saints of its incorporated status and of over $50,000 in property. The Act was a more stringent version of the Edmunds Act that made “unlawful cohabitation” a crime so that no proof of plural marriage was required to prosecute my Latter-day Saint ancestors. My ancestors were able to escape imprisonment by hiding and by flight, but many other Latter-day Saints were not.

Violence was also perpetrated against Latter-day Saints who returned to the United States as missionaries after the Civil War. Some Southerners viewed the stereotyped, hyper-sexual Latter-day Saint missionaries as a threat to Southern women. These missionaries became “the white counterpart to the mythical black rapist.” Historian Patrick Mason has documented over 300 cases of Latter-day Saints being beaten, whipped, kidnapped, murdered, and having arson perpetrated against them and their churches burned. His findings reveal that while “Southern violence against Mormons was nowhere near the same level as lynchings of blacks, it did far exceed ‘the combined number of attacks against all other religious outsiders in the South.’”

43 Reeve, 87.
44 Reeve, 167–68.
46 Reeve, *Religion of a Different Color*, 179.
Over and again, my Latter-day Saint ancestors were conflated with other racialized inhabitants of the United States “in an attempt to strip [them] of their whiteness and therefore their rights to life, liberty, and the pursuit of happiness, including a freedom to settle where they pleased.”

The purpose of racialization was not just to demean; it was to justify the denial of equal protection. It was a demonstration of systemic injustice, supported by intentional, explicit racial discrimination.

Womanist theologian Emily Townes has deemed systematic oppression, of the kind deployed against my ancestors, the “cultural production of evil.” Townes demonstrates the way caricatures and stereotypes of black womanhood have been used as justification to deny black women equal opportunity to enjoy life, liberty, and the pursuit of happiness. For example, she describes how the mammy caricature, made famous by Aunt Jemima, worked to commodify black women and effectually limit their employment opportunities during the first half of the twentieth century. She also describes how portrayals of black women as hypersexualized welfare queens were used to deny welfare protections to black families in the 1980s and 90s. These caricatures and stereotypes are produced by what Townes terms the “fantastic hegemonic imagination”—fantastic because it imagines reality in a way that escapes the bounds of scientific, political, or sociological rationality; and hegemonic insofar as it projects and enforces its reality on those who would otherwise resist it. In other words, the fantastic hegemonic imagination attempts to rationalize the denial of unalienable rights by constructing caricatures and stereotypes to shift responsibility onto those whose rights are being denied. The white,

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49 Townes refers to life, wholeness, and freedom, contrasting these with misery. Townes, *Womanist Ethics and the Cultural Production of Evil*, 6.
51 Townes, 20.
Anglo-Saxon, Protestant imagination, described by Kelly Brown Douglas, used these tools to justify oppression of Latter-day Saints and other Americans.

Eventually, through the process described by Douglas, the white, Anglo-Saxon, Protestant imagination gave up its attachment to Anglo-Saxon Protestantism. As a result, my Latter-day Saint family no longer experiences explicit, systemic oppression because of our religion. Our religious status no longer invites racialized discrimination and we are not denied equal protection of our inalienable rights on its account. In fact, as a group, Latter-day Saints attain outcomes with respect to life, liberty, and markers for happiness, like wealth and health, at or above average rates. Nevertheless, in my nuclear family’s case, the effects of systemic racial bias are still felt. While my family no longer experiences systemic persecution because of our religious identity, the majority of my siblings do because of their skin color. My black siblings have experienced some intentional, explicit racial discrimination—name calling, tokenism, profiling, etc.—but the most difficult thing they and the rest of us have experienced as a result of racial bias is the death of our brother. Jeremy’s death was caused by racial bias of a different, less explicit form than that experienced by our ancestors.

Part II

At approximately the same time that members of the Church of Jesus Christ of Latter-day Saints were attaining a status of whiteness and therefore greater acceptance in the United States, my mother, a sixth generation Latter-day Saint, was becoming aware of the cultural production

of evil as her own race consciousness began to develop.\textsuperscript{53} She describes being vaguely aware, as an eleven year old, of a large gathering of black Americans in Washington, D.C. in June 1964. She did not hear the proclamation of Martin Luther King Jr.’s dream until later. In November of that same year, her socio-political sensibilities were heightened by the assignation of JFK; by the time MLK and RFK were assassinated five years later, she had begun writing anti-racist poetry and participating in speech competitions with race as her chosen topic. A couple decades later, after marrying and giving birth to three children, she and my father adopted an African American baby girl. Later, after giving birth to one more child, my parents adopted four more African American children, a boy and a girl and then two more boys. By the mid 1990s, my parents’ nuclear family was complete.

I am the oldest sibling and can remember details of all the later adoptions—meeting my siblings for the first time and early interactions with them at home—but the only thing I remember about the first adoption, when I was five years old, was my own sense of the novelty of a brown-skinned, springy-black-haired baby. We were raised in Utah, where the population was almost 94 percent white and less than one percent black in 1990.\textsuperscript{54} The demographics were only slightly less skewed in Utah’s single urban center where we lived.\textsuperscript{55} My parents connected us, through religious affiliation and also for practical purposes such as hair care, with local black families and with other families who had adopted black children. Through these interactions and as a result of my parents’ concerted efforts—and despite having been raised in a particularly

\textsuperscript{53} Blum & Harvey consider the placement of the Bertel Thorvaldsen \textit{Christus} statue at Temple Square in Salt Lake City, in 1966, an affirmation of Latter-day Saint commitment to Jesus, whiteness, and power, which has “become a staple of Mormon iconography.” Blum, \textit{The Color of Christ The Son of God and the Saga of Race in America}, 254.


homogeneous community—I emerged as an adult with a deep appreciation for the diversity of individual backgrounds and with some capacity for seeing beyond skin color to a person’s heart. I considered myself appropriately colorblind. I took pride in my efforts to treat everyone the same, regardless of skin color—black, brown, red, yellow, white, etc. I did not realize that the color-blind ideal promoted a mistaken application of Martin Luther King Jr.’s dream or that my intentions to avoid individualized racism obscured my view of systemic racism.

In his famous speech, Dr. King recalled his ancestors’ deliverance from captivity and lamented that black Americans were still not free, still “crippled by the manacles of segregation and the chains of discrimination” and living “on a lonely island of poverty in the midst of a vast ocean of material prosperity.” He called the Constitution and the Declaration of Independence a promissory note, “a promise that all men - yes, black men as well as white men - would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness.” He called for justice and citizenship rights and kinship with whites. He refused to be satisfied until there was an end to racial injustice; an end to police brutality; an end to discrimination in public accommodation; an end of barriers to economic mobility; an end to the indignity of “for whites only” signs; and an end to voter suppression. He dreamed aloud “that one day this nation will rise up and live out the true meaning of its creed: We hold these truths to be self-evident, that all men are created equal.”

More than 50 years later, racial injustice is not so explicit as “for whites only” signs, but it still exists in most of the other forms he described. Persistent racial injustice is evident in all of the racially unequal outcomes in the United States.

If one race consistently holds less of society’s resources and demonstrates lower levels of wellbeing, there are two possible explanations: either there is something inferior about that race

or there is something unequal about that society. It will not do to blame racially unequal outcomes on individual choices. Where outcomes are based on individual choices, they will vary individually, not by race. Instead, one must look for systemic interactions that cause racially biased outcomes. When someone explicitly or implicitly refuse to acknowledge the structural inequalities of our society, that person implicitly or explicitly places explanatory weight on racialized differences. If one follows the evidence in rejecting the notion of biologically determined racial differences in capacity, one must look to societal outcomes as the measure of racial equality in a society. Here is where colorblindness can be a problem.

To make this clearer, it is helpful to recall the analyses by Emilie Townes and Thomas Sowell presented briefly in the introductory section of this essay. First, recall Townes’ concern with the structural dimensions of racism and the extent to which this structure is supported by varying forms of racial discrimination. Intentional, explicit forms are easily recognizable. What makes the structural dimensions hard to grasp is the extent to which it is supported by unintentional, implicit forms like colorblindness. Colorblindness is one of the unintentional, implicit forms supporting the structure.

In addition to the lens she provides for considering intentional and explicitly racialized oppression of the kind endured by my ancestors, Townes also shines light on colorblindness as a form of racial oppression that is not so readily identifiable. During the twentieth century, there was a shift away from “essentialist racism,” which “emphasizes hierarchical biological inequalities,” to assertions that “we are all the same under the skin.” Accompanying this shift was an assumption that failure to attain optimum outcomes is the fault of the individual. Prospectively, this shift was laudable. Race was no longer treated as a predictor of outcomes, and

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all were considered worthy of equal opportunity. In this way colorblindness encourages individual outcomes but does not guarantee them. As I have already noted, if outcomes were determined by individual responsibility, they would vary individually and not by race. The fact that outcomes are racially unequal in the United States demonstrates systemic racial bias. Rejecting this requires an explanation based on racial inferiority. Racially unequal outcomes demonstrate structural inequality, but to see this, it is necessary to see color. If color is ignored the indicators of racial inequality will not be recognized. Colorblindness is good on the front end, when it offers equal opportunity regardless of skin color. It is detrimental on the back end if it is used to ignore or deny that unequal outcomes demonstrate a failure to provide equal opportunity.

Recall Sowell’s explanation of how systemic interactions diminish the role of individual intentions and how systemic results do not always reflect individual intentions. Sowell asserts: “Analyzing economic actions in cause-and-effect terms means examining the logic of the incentives being created, rather than simply the goals being sought. It also means examining the empirical evidence of what actually happens under such incentives.” Despite individual and societal goals to provide equal opportunity, the outcome—what actually happens—is racially unequal. It is essential therefore, according to Sowell, to examine the logic of the incentives created by our policies.59

58 Sowell, Basic Economics, 67.
59 Here Sowell diverges from many who are actively examining the logic of incentives that are producing racial inequality. Some mistakenly take Sowell to be dismissing systemic racism. Clearly he is not. The only alternatives are individual intentional racism, which he likely recognizes in some, but whose role is diminished by systemic interactions; or racial inferiority, which he also does not see. When he pushes back against particular conclusions about the systemic causes, he is only discounting them as causes of systemically biased outcomes. He is not discounting the reality of the systemic results. The same is true of Walter Williams, whose ideas, along with Sowell’s, are often held up as rejections of the reality of systemic racism. They are not rejections, they are alternate explanations! A prime example is the absence of black fathers. This is not a denial of systemic racism. Remember the slight role of individual intentions. And anyway, it just pushes the same question back a step. Why are black fathers absent, are they inferior or are they systemically hampered? See for example, “Slavery Didn’t Cause Today’s Black Problems, Welfare Did” [Site:Name] | National Review,” accessed May 14, 2021, https://www.nationalreview.com/2015/07/slavery-didnt-cause-todays-black-problems-welfare-did/; “Police Can’t
Blinding people to racial outcomes and making the structural dimensions difficult to see, colorblindness interacts systemically to promote racially biased outcomes. This is a prime example of the unintentional bias implied by Townes’ analysis, insofar as on its surface, the intention is to avoid discrimination. Due to systemic interactions, well-intentioned colorblindness contributes to racial inequality. This is apparent in the well-known example of mass incarceration.

Legal scholar Michelle Alexander analyzes how colorblindness contributes to widely recognized, racially unequal outcomes with regard to liberty. Drawing on her decade of work in the criminal justice system, Alexander offers the following diagnosis: “The colorblind public consensus that prevails in America today—i.e., the widespread belief that race no longer matters—has blinded us to the realities of race in our society and facilitated the emergence of a new caste system.”60 This is her label for the racially unequal outcome of mass incarceration. This outcome relates directly to liberty, yet she makes clear the limits it creates on life and the pursuit of happiness as well. She asserts that “in the era of colorblindness, it is no longer socially permissible to use race, explicitly, as justification for discrimination, exclusion, and social contempt. So we don’t.”61 Alexander proceeds to show how discrimination, exclusion, and social contempt for black Americans, and for black men in particular, is justified in the United States in a socially permissible way.

Citing racial disparities in the criminal justice system, Alexander searches for an explanation. She reasons that “old-fashioned racism seems out of the question” and argues that “our newly conceived ethic of colorblindness…has led defenders of mass incarceration to insist

61 Alexander, 2.
that our criminal justice system, whatever its past sins, is now largely fair and nondiscriminatory.\textsuperscript{62} She notes that defenders of mass incarceration justify the disproportionate number of incarcerated black men by pointing to their disproportionate involvement in violent crime. She laments the ending of the discussion at that point, arguing that “the problem with this abbreviated analysis is that violent crime is not responsible for mass incarceration,” and proceeds to offer compelling evidence that this is so.\textsuperscript{63} Whether she is right about the cause of mass incarceration or not, there is a more fundamental problem that she does not explicitly address. It is the problem I have belabored in this paper.

The more fundamental problem with the abbreviated analysis, which concludes that more black men are incarcerated because they have higher rates of violent crime, is that it does not ask why black men have higher rates of violent crime. If that question were asked, the answer would have to be either that they are innately different in capacity or will, or that their opportunities to attain and maintain life and liberty and pursue happiness have not been secured. If equal opportunity had been secured, black men would commit violent crime at rates equal to rates of men of every other race. Unless black men are innately different from men of other races, equal opportunity would ensure that rates would vary individually to the same extent that they do among individuals of other races. The inhibition to ask the question that would lead self-evidently to this conclusion is the most fundamental problem with colorblindness. In fact, it is a fundamental problem with the notion of blind justice in general.

Blind justice strives for but fails to achieve its fair and nondiscriminatory ideal. The problem is that, being blind, it cannot perceive whether it has achieved that ideal. It has no impetus to, and it may even be prohibited from asking questions that are integral to the

\textsuperscript{62} Alexander, 125.
\textsuperscript{63} Alexander, 125.
achievement of the ideal for which it strives. Imagine a blind-folded judge. Imagine that judge hearing and ruling strictly on the facts of 100 murder cases. In this idealized situation, neither judgment nor sentencing would be impacted by the color of the defendant’s skin. In all apparent senses, equal and unbiased justice would be served. However, the problem with the lost sense of sight is that the judge has no cause to inquire why 51 of the 100 defendants were black men. The blind judge is not given pause to wonder why black men, who only account for approximately 6.5 percent of the United States population, account for 51 percent of those charged with murder. The judge is not forced to consider whether black men are disproportionately involved in murder as a result of innate racial differences or as a result of racially oriented social disadvantages or limited opportunities. In the United States, a disproportionate number of black men are incarcerated for involvement in violent and non-violent crime. A disproportionate number of black men are also shot and killed in the United States. My youngest brother, Jeremy, is included in this disproportionate number.

On the morning of June 3, 2019, I received a phone call from my parents who said they were on their way to my house with something difficult that they needed to share. They were coming from about 45 minutes away and wanted to be sure that my brother and I, who were living together, were home. After they arrived, the four of us stood, solemn, shocked, and in tears in my living room as they explained that our youngest brother had been shot and killed the evening before. All they had been told by the police at that point was that Jeremy had been in a fight, that he had been shot, and that he had died just after midnight.

In the days shortly following his death, we learned that Jeremy had been fighting with a woman, apparently trying to recover his phone from her. We suspected that the woman, who is white, was one with whom Jeremy had been involved romantically and who, according to what
Jeremy had previously told my parents, had been stealing from and extorting Jeremy by threatening to accuse him of sexual harassment and marijuana possession. Jeremy spent the weekend before his death scrubbing the walls and carpet of his apartment to rid them of the smell of marijuana. He had just returned from visiting his birth mother in Texas and learned that while he was gone, this woman brought marijuana to his apartment, convinced his roommates to let her in, and smoked the marijuana in his room. Jeremy told my parents that she also had access to a storage unit that he kept and she told him that she had hidden marijuana in the unit and had threatened to report the location of the marijuana to the police. Apparently, the woman had been using threats like these and threats of sexual accusation to compel Jeremy to buy marijuana for her. On the night Jeremy was shot and killed, he was in a physical struggle with her trying to retrieve his phone and a small quantity of marijuana. They were outside the apartment complex where Jeremy was living. In the midst of their struggle, a white man who also lived in the apartment complex was arriving home in his car when he saw Jeremy and the woman fighting. Witnesses offer conflicting accounts of the incident, both of the struggle between Jeremy and the woman and of the events that led to the man shooting Jeremy.

Descriptions of the struggle vary from mild to disturbingly violent. One of the witness statements that portrayed the struggle as mild was excluded by officials, without explanation. (The woman’s injuries, photographed at the hospital where she spent a very short time before being released to go home, discredit more violent descriptions of the struggle.) The man arriving in his car, seeing the struggle, got out of his car with a loaded gun. He approached the situation and issued the warnings that a person with a concealed carry permit is instructed to issue. Reportedly, Jeremy did not respond to the warnings but somehow, in those moments, the woman was able to break away from Jeremy and run past the man with the gun. When Jeremy turned
toward where the woman had run and started to move toward her, the man, who was now between Jeremy and the woman, fired three times, striking Jeremy in the chest, abdomen, and grazing his hip and arm. Reports differ on the distance between the man and Jeremy when the shots were fired. It is also unclear whether Jeremy was focused on the man he was moving toward or on the woman who had run past the man. Jeremy fell to the ground; the shooter moved to address Jeremy’s wounds and yelled for someone to call 9-1-1. Police and ambulance arrived. The ambulance took Jeremy to the hospital where he died and the police began their investigation at the scene of the shooting.

Obviously these events could be narrated in different ways. There are many other details that seem more or less relevant to every concerned party. I want to describe all the factors that lead me to believe that great injustice was done in Jeremy’s death. I want to describe the impossible situation that Jeremy was in—the way that he was a casualty of some of the worst evils being produced by contemporary United States culture. I am doing all I can with what I know. I have speculations and there are obviously multiple sides to the story. This is precisely the point. This is why the case needed to go to trial. Six months after Jeremy’s death, the county attorney announced that he would not be charging the shooter—he would not be giving the case a hearing in court. Jeremy is dead and his case is closed. This is the story I know and it grieves me. It grieves my family. It grieves everyone who knew Jeremy. Someday, when his son is old enough to understand, it will grieve him. A trial may have revealed details that we did not know. It may have changed the story I know. It may have made the situation easier to understand. It may also have made the situation harder to understand. It would likely have been painful. It may or may not have provided any peace. It may or may not have served justice. Various parties
would likely have remained or become aggrieved. There was no trial, and this makes it certain that there was no justice. Where should blame be directed for this injustice?

It is difficult to identify any intentional, explicit racial discrimination either in Jeremy’s death or in the handling of his death by law enforcement and the justice system. Nothing that was captured by the police in their investigation and reporting demonstrates the shooter saying or doing anything that might indicate an intent to kill Jeremy because of his race. My parents spent extensive amounts of time with the police detective in charge of the case and with the county attorney who declined to prosecute the shooter. My parents watched for but did not see anything demonstrating contempt for or unequal treatment of either my black brother or the white shooter with respect to their racial identities. If anything, my parents feel like the investigator and prosecutor gave the case more attention and care due to my brother’s race. As far as I can tell, any racial bias did not manifest in an intentional, explicit form. Evidence of racial bias in an unintentional or implicit form is more apparent.

Signs of implicit bias appear in the police reports, and questions remain about the way this form of bias may have influenced law enforcement in their investigation. A 2017 study by the American Psychological Association found that “people have a tendency to perceive black men as larger and more threatening than similarly sized white men.” Accordingly, the man who shot Jeremy and who is 6’2” and 180 lbs., described Jeremy as about the same size as himself. Jeremy was 5’10” and 165 lbs. Several witnesses described Jeremy as having a threatening appearance. They described him as having bulging eyes and his shoulders rolled forward, interpreting this as attack mode, when he faced the shooter. The police reports do not

65 Police report accessed by family through GRAMA report. (p. 40)
demonstrate the shooter or witnesses being pressed or questioned on these descriptions. Nothing in the reports indicate that law enforcement questioned the shooter in ways that could have revealed racial bias. Law enforcement was conscientiously blind to color. These issues could have been addressed later if there had been a trial.

In an odd twist, the county attorney, who determined not to take the case to trial—where the influence of racial bias might have been explored—expressed his belief that, without a doubt, implicit bias had been involved in the shooting and investigation. Not long after declining to prosecute, he admitted that if race had been reversed, if the shooter had been black and Jeremy white, the shooter “would have been treated differently.”66 This concession was granted to one of my other adopted brother’s, Jeremy’s biological brother, who pressed the county attorney with the premise that if all else in the situation had been equal but the shooter had been black and the victim white, the black shooter would have been prosecuted.

In my own follow-up conversation with him, the county attorney explained that his concession reflected his own perception of implicit racial bias in the justice system and its tendency to skew outcomes against minority races. He failed to satisfactorily explain his own decision not to resist this tendency by trying the man who shot my brother, only citing the laws that made it, in his estimation, impossible to obtain a conviction of the shooter. These laws along with whatever forms of bias were involved in my brother’s case are among the systemic interactions that bias various outcomes against black men. While it is always possible to deny or debate the impact of racial bias in either of its forms, it is not possible to deny the systemic racial bias demonstrated by a multitude of racially unequal outcomes. Two outcomes are highlighted

by my brother’s case: higher death rates of black victims and higher conviction rates of black defendants.

One of the hardest things about Jeremy’s death is that it was predictable. I mean that it was predictable that he would die by gunshot sooner than my one white brother, my white father, and myself. It remains more likely that my other two black brothers will be shot and killed before any one of my other family members are. Considering Jeremy’s death, one of these brothers said, “I expected this to happen, I just didn’t expect it to happen so soon, and I expected that it would be the police who shot him.” He has also expressed fear in this regard and for the black sons he hopes to someday raise. His fears are not unfounded. Between 2010 and 2018, firearm deaths of white males of all ages as a result of homicide or legal intervention occurred at a rate of 3.31 per 100,000. The rate for black males was 30.85 per 100,000. In the years leading up to his death, black males were killed by guns at a rate nine times higher than white males. This raises the question, “Why?” The same question applies to the disproportionate number of black men who are arrested for gun violence.

In 2019, the year my brother was killed, 51 percent of the people arrested for murder or nonnegligent manslaughter were black. Of all races arrested on these charges, less than 12 percent were female. This translates to black males, who make up only 6 percent of the population, committing, or at least being arrested for, 45 percent of these killings. The man who killed my brother could have been arrested and tried but he was not. Are black men really so much more likely to kill? It is difficult to say because we don’t know how many white men, like

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67 “WISQARS Fatal Injury Reports.”
the one who shot my brother, never get prosecuted. This is a data collection issue that prosecutors resist. They are often not required to report race data on their cases, particularly not those they decline. If they did and if it were determined that black men really are more likely to engage in violent crime, the question would remain, “Why?”

Why are black men so much more likely to kill and be killed by guns? Is it due to an innate difference in their capacity or will? Are black men inherently, biologically, psychologically more likely than white men to shoot and kill black men? Are they just more likely to put themselves in situations where they will be shot? Are white men inherently superior to black men in their capacity or will to resist pulling a trigger and to avoid being shot? If none of these are the cause, if black men are not innately more disposed to violence and violent death, then the answer must be environmental. This is an important question that some people may struggle to answer. Are inferior dispositions more common in people of one race than in another, or is it possible that people of one race are provided with fewer alternatives and less protection?

While these rhetorical questions sit, I will reiterate the point at which I am driving. If racially unequal outcomes are not caused by innate racial inequality, they must be caused by systemic interactions, supported by some form of racial bias in some of the interactions. Determining these systemic causes is what makes systemic racism, or “the structural dimensions of racism,” so difficult to grasp. The difficulty in determining the structural dimensions is determining what factors lead to the systemic results. My purpose is not to identify specific causes, only to demonstrate the systemic nature of what happened to my brother.

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69 Shima Baughman, “Prosecutors and Mass Incarceration”. Utah Law Digital Commons. SJ Quinney College of Law, University of Utah. “While laws on the books, judicial sentencing, and police arrests are all public and transparent, prosecutorial charging decisions are made behind closed doors with little oversight or public accountability.” https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1217&context=scholarship.
Nevertheless, I will suggest some of the reciprocal interactions at play in my brother’s death and in the handling of his case.

The process agreed upon in this country for dealing with grievances and demands for justice was not pursued. Jeremy was deprived of life without due process. The shooter acted as judge, jury, and executioner when he decided to shoot. Jeremy was denied due process after his death. The county attorney acted as judge and jury when he decided not to put the shooter through the justice process. I realize that the county attorney is employed to decide which grievances are heard, which cases go to trial. I am aggrieved at that. I do not think that a single person should make that decision. The case should be heard and judged by a jury of the shooter’s peers combined with peers of the person who was shot. I realize the impracticality of this. I realize that this places an unbearable burden on the justice system. There are far more demands for justice and grievances to be heard than the system can handle. This itself is a travesty. It speaks to the need for attention to the roots of so much grievance and felt injustice. Perhaps if the system were not spending so many resources prosecuting non-violent crime, there would be resources to hear cases like Jeremy’s wherein violence causes death. If marijuana were not criminalized, it could not have been used as a tool of extortion against Jeremy. I am not advocating for this. There are many policies, procedures, and practices that could be considered as root causes. I am just pointing out that had a single policy been altered or abolished Jeremy might still be alive. In addition to policies and procedures, there are personal intentions involved. Sowell did not say that individual intentions were not causes, only that their role was reduced by reciprocal interactions.

As far as individual intentions go, there is no guarantee that even the best of these are actually helpful. Colorblindness, for example, may do more harm than good. Colorblindness
makes it difficult for observers to see the injustice in Jeremy’s death. Without seeing Jeremy’s
death in light of the disproportionate number of black male deaths, all that remains to be seen is
the intentions of the few individuals involved in his case. These are unlikely to express
intentional, explicit bias. As Michelle Alexander has made clear, unless there is express bias, it is
easy to lose sight of racial injustice in particular cases—most Americans will fiercely condemn
racial discrimination.\textsuperscript{70}

Colorblindness also obscures the view of the justice system. If it is true that the
investigator in my brother’s case did not see color, it may be part of the problem. It is one way
the case could have been handled differently. If a detective does not see color then he does not
ask questions about color—he does not ask the shooter if he was more ready to pull the trigger
because Jeremy was black. That question is off limits or at least out of sight. He does not wonder
at the shooter describing Jeremy as several inches taller than he was or at a witness’s description
of Jeremy’s threatening appearance. The county attorney who sees color enough to admit that the
case would have been handled differently does not see color enough to actually handle it
differently. He may think that handling the case differently would amount to some kind of
affirmative action that betrays the ideal of colorblindness. Perhaps he wants to appear colorblind
and thinks that handling the case differently would betray this perception. Individual intentions
are not the same in every case, but they along with the various other causes interact reciprocally
to produce a system that biases outcomes against black men. It is a system that has been
privileging white men and white communities for a long time by offering them greater
protection.

\textsuperscript{70} Alexander, \textit{The New Jim Crow}, 125.
Of primary significance in Jeremy’s death and its handling by the justice system is the way it demonstrates an ongoing privileging of the white community and a disadvantaging of the black community in the United States. This can be brought into view made visible through the lens of McCleskey v. Kemp, a Supreme Court case from the 1980s that has become infamous for its apparent upholding of discriminatory outcomes. On the heels of an unprecedented statistical study that demonstrated significant racial disparities in Georgia’s administration of the death penalty, McCleskey argued that his right to equal protection had been violated. McCleskey claimed bi-directional racial discrimination—that if he had been white or if his victim had been black, it was more likely that his sentence would not have been death. Indeed, the data from the landmark study showed that “a defendant like McCleskey who killed a white person during a robbery was more than twice as likely to get the death penalty as a defendant who killed an African-American victim.”

The Court’s 5 – 4 decision against McCleskey has been criticized for dealing a significant blow to fairness in the administration of the death penalty. Refusing to grant relief based on statistical evidence of bias in sentencing, the court signaled the acceptability of racial disparities and went so far as to allow that these disparities “are an inevitable part of our criminal justice system.” A 2019 article in The Atlantic considering McCleskey’s legacy explained that “the precedent impairs constitutional challenges based on widespread racial disparities not just in capital sentencing, but in the criminal-justice system more widely; it requires defendants to prove discrimination on a specific basis, providing clear evidence that they were explicitly targeted

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72 Jeffrey L Kirchmeier.
because of their race.” The same article noted that the Supreme Court has effectually affirmed *McCleskey* as recently as 2019 with its denial of two petitions based on findings that demonstrated racial bias in sentencing in Oklahoma.

In an article written for the Harvard Law Review shortly after the decision, Randall Kennedy provided an analysis of *McCleskey* that reverberates with importance not limited to considerations of the death penalty. While its direct concern was with the death penalty, *McCleskey* hinged on the data points regarding the race of the defendant and the victim. Kennedy recounted how race-of-defendant discrimination was subordinated to race-of-victim discrimination in both McCleskey’s oral arguments and in articles written by his experts after the case. In Georgia during the 1970s, data did not demonstrate discrimination against black defendants because of their race. It did, however, demonstrate discrimination against black victims and privileging of those who had killed blacks over those who had killed whites—those who had killed whites were more likely to be given the death sentence. On this basis, Kennedy aimed in his article to “reconceptualize the equal protection claim at issue as one that asserts the rights of the black community to an equal share of death penalty service.” He described the claim as one that had been largely ignored, describing it alternately as “the right of black victims or potential victims of murder to a response on the part of the state that is equally as vigorous as that which follows the murder of white.” The black community’s claim is obviously not limited to death penalty service; it includes equal protection through every service offered by the justice system.

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75 Kennedy, 1390–91.
76 Kennedy, 1421.
77 Kennedy, 1390.
In the wake of my brother’s death and the county attorney’s decision to not prosecute, members of the black community in Utah and those who care about them have had cause to wonder whether they are equally protected. Analogous to *McCleskey*, they argue that the county attorney would have decided to prosecute the shooter if my brother had been white. In my brother’s case, their supposition has been confirmed by the county attorney himself. If prosecutorial discretion in Utah leads to fewer cases in which those who harm black members of the community are charged and tried, the criminal justice system has failed to provide equal protection. If it is less likely that someone will be tried for killing a black man, there is less deterrence to their doing so. The disproportionate death rate of black men in the United States demonstrates that they are not equally protected by the reciprocal interactions that constitute the justice system. My brother’s death and the county attorney’s decision not to hear his case have added to the data points demonstrating the disadvantaging of the black community and the privileging of the white.

There has been a swing in the United States from one extreme—seeing skin color as a sign of inherent capacity and predictor of outcomes—to another—not seeing skin color as a sign of anything inherent or as a predictor of outcomes. The problem with the first extreme is evident in the experience of my ancestors, who were objects of structured racism that was supported by intentional, explicit forms of racial bias. The problem with the second extreme, not so widely recognized, is that skin color does continue to predict undesirable outcomes in the United States, and many Americans refuse to see it. This is evident in the experience of my siblings, who have been objects of structured racism that is supported by unintentional, implicit forms of racial bias. My ancestors struggled for the privileges granted to those deemed white. My family today
struggles against whiteprivilege because we want the privileges and protections that come with living in the United States to be shared by our whole family.
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