

# A Racial Justice Primer for Criminal Justice<sup>1</sup>



***“All roads in American criminology eventually lead to issues of race.”***

***--Gary LaFree and Katheryn Russell<sup>2</sup>***

**Racial justice** (defined below) is on everyone's mind -- not just in college and university criminal justice classes, but in society as a whole. Before issues of racial justice can be adequately addressed, however, there needs to be some agreement on the terms that people use when discussing topics such as **social inequity, equality, disproportionality, inclusion, and diversity**. The purpose of this document is to offer what I hope can be some useful definitions of relevant concepts.

**Race** is a term that has historically been used to distinguish groups of people from one another based on physical characteristics. The concept of **race**, however, is a social convention and not a biological reality, as all human beings belong to the genus *homo sapiens*. In the insightful article, “Race and Criminology in the Age of Genomic Science,” Anthony Walsh and Ilhong Yun point out that “we can dispense with the term *race* in favor of some other term such as *population* or *ethnic group* and nothing would be lost except [for] a word.”<sup>3</sup> The term *race* is defined again later in this document; that definition coming from the Bureau of Justice Statistics which uses it for data-gathering purposes.

The **social justice** ideal embraces all aspects of civilized life and is linked to both fundamental notions of fairness and to varied cultural beliefs about right and wrong. Social justice concerns can arise about relationships between individuals; parties (such as corporations and government agencies); the rich and the poor; genders; ethnic groups—and between entities involving social connections of all sorts. In the abstract, the concept of **social justice** embodies the highest personal and cultural ideals.

Social justice is also connected to issues of criminal justice, and to the administration of justice – of which the criminal law is an integral part. The complexity of these interactions makes it especially important to remember that **justice** sometimes means different things to different people. For example, during the 2020 nationwide Black Lives Matter (BLM) protests and the riots that followed, some people believed that sacrificing property (and even lives) in pursuit of social justice was not only acceptable but also necessary to bring attention to decades of **racial injustice**. Thus, when we examine an incident of social injustice, it makes sense to ask *whose view of justice are we talking about?* Can we, as a society, uniformly agree upon what is just and unjust? Can we even agree with each other?

It's fair to say that we all know what the word **racism** means, and that **racial profiling** (AKA **biased policing**) in American law enforcement is, at least officially, a thing of the past. Nevertheless, racial issues routinely impact relations between the various elements and actors within the criminal justice system and the population segments it serves.

**Racial profiling**, as the term is used in criminal justice, refers to any police-initiated action that is primarily based on the race, ethnicity, national origin, sexual orientation, gender or religion of an individual, rather than on (1) the individual's behavior, or (2) information that leads the police to a specific individual who has been identified as being, or having been, engaged in criminal activity.

**Racism** refers to the many individual, cultural, institutional, and systemic ways by which differential consequences are created for groups historically or currently defined as white being advantaged, and groups historically or currently defined as non-white/people of color (African, Asian, Latinx, Native American, etc.) as disadvantaged. Simply put, racism can be defined as prejudice reinforced with power; the power of some—especially white people—to normalize and perpetuate the oppression of other nonwhite people at every level of society and across time.

**Racial discrimination** is a form of active racism in which people make decisions about others (or that affect others) based upon racial characteristics, racial preferences, and stereotypical understandings of what it means to be of one race or another. **Systemic racism** is a term that implies that racism is not just an isolated practice, but that it is an integral part of the justice system (or of the financial, economic, educational, or other social system). The word **intersectionality** is used to indicate the point at which race, or gender, or some other inherent and unchangeable personal characteristic, encounters social and cultural institutions – such as when a black woman who self-identifies as transsexual enters into an encounter with agents of law enforcement. Ideally, the personal characteristics of those involved in such interactions should not influence its direction or outcome. Likewise, routine and customary practices within the system should not be influenced in any way by those characteristics.

Another term of significance in today's discussion of inequality is **white privilege**. The term refers to the unearned set of advantages, entitlements, and benefits inherently granted to white people over people of color; and which are unconsciously reinforced through culture and social structure. In short, white privilege automatically allows white people an array of unearned privileges that are normally unavailable to people of color. White privilege doesn't mean that white people don't have any hurdles to overcome; it just means that they have fewer of them than do people of color.

One phrase heard often on the national news is **Black Lives Matter (BLM)**. The BLM movement, which burst upon the scene around 2013, is embraced by millions of people of all colors, ages, and genders. Yet, it is misunderstood by many, and rejected by a large group of those who are fearful of what it might mean for the future of our society, and for the future of their lives in particular. To many, the BLM movement represents change, and change is often frightening and unwanted simply because the precise direction and extent of the change cannot be easily predicted.

The BLM movement insists that others not be complicit in viewpoints and practices that **institutionalize** racism and discrimination. Disappointment, for example, followed when House Speaker Nancy Pelosi, when asked during an MSNBC-sponsored forum, whether she supported the “Black Lives Matter” movement, and she responded by saying “Well, all lives matter.”

Pelosi might have been better informed had she visited the famous Ben and Jerry’s ice cream website that posted a message in sympathy with the BLM movement, that simply stated, “**All lives do matter. But all lives will not matter until Black lives matter.**”

Dave Meyers, who ran for sheriff of San Diego County, California, offered an informed response to the same question. “There can be no progress toward meaningful policing reform,” he said, “until our police chiefs and sheriffs publicly acknowledge the troubled, painful history of law enforcement’s interaction with Black Americans.” He added that the appropriate response to the assertion that “Black lives matter,” is not that “All lives matter,” nor that “Blue lives matter, too,” but simply and emphatically, “**Yes. Black lives matter. I’m listening.**”

Most Americans acknowledge a history of **institutionalized racism** in our society; yet not all agree that it is still pervasive or systemic today. Still others point out that racism is not just a one-way street. In any discussion of **racism, diversity, and inclusion**, it is important to realize that (1) no one has all of the answers, and (2) as Americans it is incumbent upon each of us to make an honest effort to understand the concerns of everyone involved. Unfortunately, as we have seen on an almost daily basis, attempts at honest discourse have all-too-frequently been cut off, and one side or the other insists that its approach is valid to the exclusion of others. Such an approach is itself inherently biased and unfair to everyone who lives under our system of laws. More worrisome is the contribution that it makes to social turmoil and personal distrust.

Getting to the heart of the matter, Ben and Jerry’s Website said: “... it’s clear, the effects of the criminal justice system are not color blind.” No, they are not. If we look at the facts (official statistics, in particular), we find that people of color are **disproportionately** arrested, convicted, and imprisoned at rates that belie their relatively small numbers in the U.S. population.

While almost everyone agrees that **fairness and equity equate to justice**, the debate over whether justice is being served by today’s system of criminal justice is inextricably intertwined with **proportionality** (i.e., “there are too many people in prison”, or “there are too many black men being arrested”). Yet, proportionality is not causality. When we look at statistics that appear to unmask oppression, we have to ask “What’s behind the numbers?” Are they disproportionate because of some form of **active discrimination**? Are they due to **systemic discrimination**? Is it because more police officers are white and see black people as threats? Were more blacks armed during their encounters with the police, or did they resist arrest more often? When facing a problem, any question is a fair question if it can help us get at the root of the problem – and we should not be afraid to ask it. Nor should we fear its answer.

In short, while **disproportionality** isn't unfair in and of itself, we need to understand why disproportionality exists. If it is due to racism, white privilege, and active or systemic discrimination against certain groups of people who are defined by their innate characteristics (including skin color and gender preference), then it is undeniably unjust. Yet the criminal law, if nothing else, provides a mechanism for discrimination. Our legal system must discriminate between those who are guilty of a criminal offense, and those who are innocent.

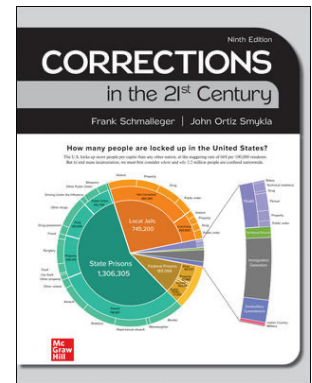
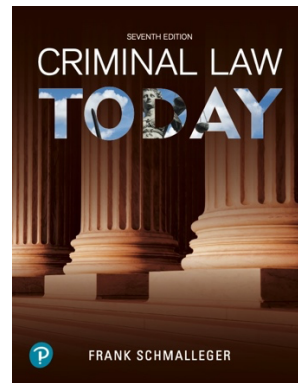
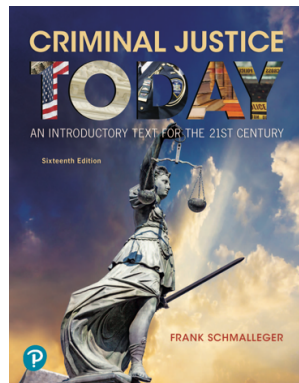
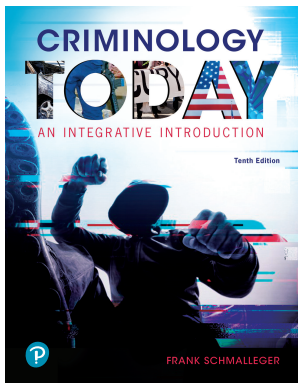
The challenge, at least for the justice system, arises when race is involved, and racial minorities are treated disproportionately. As noted earlier, however, proportionality can be a tricky thing to assess, and sometimes the overrepresentation of one group in a particular stage of justice system processing is warranted – at least in terms of contemporary criminal law. Homicides, for example, in some large American cities are at record numbers, but if looked at closely, it becomes clear that the majority of those are black-on-black killings. In fact, many well-intentioned leaders, both black and white, not only acknowledge the racial make-up of these kinds of homicides, but are openly working to reduce the numbers of such crimes by addressing the social conditions that produce them.

This is where the situation gets tricky because in America, as in any other society, **the creation of law is, at its base, inequitable**. It is people who are in control of legislatures that make the rules. Sometimes called *moral entrepreneurs*, special interest groups work to have their version of what is proper, moral, and even profitable, enacted into laws, and to legislate against practices that they consider immoral, unjust, and criminal. The marijuana legalization movement, for example, which has met with wide success in some states in recent years, remains opposed by a significant number of people – yet laws against the cultivation, sale, possession, and use of marijuana are being widely and quickly repealed (at least at the state level), and the use of marijuana has become widespread.

The short glossary that follows is intended to provide a peek into the meaning of some of the most significant inclusion and diversity terms used in the justice field today. Many of the definitions are my own, but a number are adapted from other sources (see the endnotes). You may feel that some of them could be more complete, or that they are missing some important points. If so, please feel free to write to me at [schmall@justicestudies.com](mailto:schmall@justicestudies.com) and share your insights with me.



**Frank Schmalleger, Ph.D.<sup>4</sup>**  
*Distinguished Professor Emeritus*  
*The University of North Carolina*  
[schmall@justicestudies.com](mailto:schmall@justicestudies.com)



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## A Short Glossary of Inclusion and Diversity for Students of American Criminal Justice

**Black Lives Matter (BLM)** A popular social movement whose constituents come from all ethnicities, and which works to achieve racial equity in the criminal and social justice systems in America. BLM insists that others must not be complicit in viewpoints and practices that *institutionalize* racism and discrimination. The BLM movement, which burst upon the scene around 2013, is embraced by millions of people of all colors, ages, and genders. Yet, it is misunderstood by many, and rejected by a large group of those who are fearful of what it might mean for the future of our society, and for the future of their lives in particular. To many, the BLM movement represents change, and change is often frightening and unwanted simply because the precise direction and extent of the change cannot be easily predicted.

**diversity** Includes all the ways in which people differ and encompasses all the various characteristics that make one individual or group different from another. It is all-inclusive and recognizes everyone and every group as part of social diversity and holds that each should be valued. A broad definition of *diversity* includes not only race, ethnicity, and gender—the categories that most often come to mind when the term "diversity" is used—but also age, national origin, religion, disability, sexual orientation, socioeconomic status, education, marital status, language, and physical appearance. It also involves different ideas, perspectives, and values.<sup>5</sup>

**discrimination** The unequal treatment of members of various groups based on race, gender, social class, sexual orientation, physical ability, religion and other categories.<sup>6</sup> (See also *racial discrimination*.)

**disproportionality** The ratio between the percentage of persons in a particular racial or ethnic group at a particular decision point or experiencing an event (maltreatment, incarceration, school

dropouts) compared to the percentage of the same racial or ethnic group in the overall population. This ratio could suggest underrepresentation, proportional representation, or overrepresentation of a population experiencing a particular phenomenon. The term “disparity” refers to “unequal treatment or outcomes for different groups in the same circumstance or at the same decision point.” A close examination of disproportionality and disparities brings attention to differences in outcomes, often by racial group, and by social service systems. It is necessary to examine the reasons for these differences in outcomes and to be sure that culturally competent practices are upheld.<sup>7</sup>

**disparity** Whereas disproportionality refers to the state of being out of proportion, “disparity” refers to a state of being unequal. In health and social service systems, disparity is typically used to describe unequal outcomes experienced by one racial or ethnic group when compared to *another* racial or ethnic group. In contrast, disproportionality compares the proportion of one racial or ethnic group to the *same* racial or ethnic group in the population.<sup>8</sup>

**equity** A *process* that invokes the highest ideals of justice, impartiality and fairness. The concept of equity is synonymous with fairness and justice. It is helpful to think of equity as not simply a desired state of affairs or a lofty value, but rather the **equitable process** by which those things are achieved. To be sustainable, equity should be considered as a structural and systemic concept that is central to the way society functions.<sup>9</sup>

**equality** A state or *condition* in which everyone, regardless of physical or social traits, has the same things, the same opportunities, or is in the same position.

**a note on equality** The Declaration of Independence declares that “all men are created equal.” Some decry the fact that it doesn’t say that “all men AND women are created equal,” or that “men (and women) of all ethnicities and positions, regardless of origin” are equal. While we might wish that it said those things, or even claim that it *meant* to say those things, it does not. Seen historically, however, the writers’ statement about the equality of all men was a huge historical leap in the right direction, even if it might fall short of today’s values, or the wishes of some. When the Declaration of Independence was written, it embodied the ideals of liberty, justice, and equality that were born of the Enlightenment and made manifest in both the American and French democratic revolutions of the late 1700s. Some argue that the person who wrote those highly significant words (about equality) into the American Declaration of Independence – Thomas Jefferson – was a hypocrite because he was a slave-holder. A more practical interpretation might hold that Jefferson was merely a product of his time, although certainly nearsighted (by today’s standards) in his thinking. History can be a harsh judge; but no matter your opinion of Jefferson, it is likely that he did not think of the slaves he owned as “men” (or “women”). So, when he penned that famous phrase that “all men are created equal,” he was probably thinking only of land-owning white men such as himself. Fortunately, as American society evolved, U.S. Supreme Court opinions interpreted Jefferson’s



phrase in a way that aligns it more closely to what today's racial justice advocates believe it should have meant.

**three different kinds of equality** Today, we find at least three different interpretations of what the signers of the Declaration of Independence meant when they wrote that "all men are created equal." Some say that the true meaning of the phrase refers to **equality before the law** ("the equality of law perspective"). Others contend that it posits **equality of opportunity** ("the equality of opportunity interpretation"). A final group suggests that it means that all of us should be equal in all things all the time. This third perspective can be termed the "equality of results perspective," or the "equality of outcomes viewpoint", or simply "**the equality of everything ideal**".

Considering the political, social, and philosophical conditions in England and France at the time the American Declaration of Independence was drafted, most scholars assume that what the signers had in mind when they accepted Jefferson's *all men are created equal* phrasing was *equality before the law* (i.e., all men [and women] are born equal in the eyes of the law). They were, after all, creating a new nation – the world's first lasting democracy – free from the whims of monarchs and landed aristocracy whose whims could be imposed on their subjects without the possibility of appeal. Today, following two and a half centuries of legal precedent, the idea that we are all born equal before the law is a well-established tenet of American jurisprudence. We call it **the rule of law**.

**a note on the equality of opportunity** Some people understand the phrase *all men are created equal* to mean that each person is born with just as many rights as the next person to pursue everything that he or she desires (within the limits of the law). These people say that everyone should have equality of opportunity, and that we should begin life as equals in every way possible.

Yet, others point out that while equality of opportunity is an admirable ideal, practical considerations limit its realization. Unfortunately, it is simply *not* true that people are "created" equal in every respect. People differ, and some of those differences are regarded as socially significant, while others are not. From the outset, people come into the world as male or female (regardless of gender choices they might later make); some are bigger and stronger than others, and some are smaller and weaker; some have exceptionally high intelligence (of various types), while some are gifted with below average mental abilities; some are born into wealthy families, while others may be born in prison or into poverty; and some possess skills and talents that many of the rest of us wish we could have. Even though we can't ensure that everyone is equal from the start, the challenge for the American system of justice is to treat everyone, regardless of inherent differences, as equal for purposes of the law, and to do so through equitable due process.

**a note on the equality of everything ideal** Not everyone who starts out equal ends up being equal. That's true in most aspects of life, whether it be love, war, health, finance, personal recognition, happiness, longevity, or just about anything else you can think of. Some people make wiser choices than others, some people find themselves in better circumstances than others (i.e.,

those born with the proverbial silver spoon in their mouths), some find that they have talents that most others don't have (i.e., the talent to sing, dance, entertain, or to play sports); and some are just more lucky than others (i.e., the lucky few who win a billion dollar mega-jackpot). American is a land of opportunity, and the American Dream is built on the idea that you can shape your life's outcome if you work hard enough. While some people have interpreted the declaration of equality found in America's founding documents to mean that not only are people born equal before the law, or that they should have equal opportunity for success, but that (regardless of what happens along the way), *everyone should end up being equal* (or that they should somehow be *made equal in everything at every step along life's path*). It helps to keep in mind that the guarantee of *equality before the law* does not in any way deny people the opportunity to be successful – in fact, it helps them to succeed. When it comes to the law, the American system of jurisprudence works to ensure that people be treated equally – whether they be rich or poor, black or white, male or female, etc.

So, while most people begin life with equality before the law *and* equality of opportunity, they are not guaranteed *equity of results*. In other words, we do not all get a chance to serve as chairperson of the electronic vehicle maker Tesla, nor will we all be able to earn the salary that Elon Musk makes.

**gender** A socially constructed system of classification that ascribes qualities of masculinity and femininity to people. Gender characteristics can change over time and are different between cultures. Words that refer to gender include man, woman, transgender, masculine, feminine, and queer. "Gender" also refers to one's sense of self as masculine or feminine, regardless of external genitalia. Gender is often conflated with sex; however, this is inaccurate, because "sex" refers to bodies and "gender" refers to personality characteristics.<sup>10</sup>

**inclusion** The action or state of including or of being included within a group or structure. More than simply diversity and numerical representation, inclusion involves authentic and empowered participation and a true sense of belonging.

**institutionalized racism** Racial inequity within institutions and systems of power, such as places of employment, government agencies and social services. It can take the form of unfair policies and practices, discriminatory treatment and inequitable opportunities and outcomes. A school system that concentrates people of color in the most overcrowded and under-resourced schools with the least qualified teachers compared to the educational opportunities of white students is an example of institutional racism.<sup>11</sup>

**intersectionality** A term used to indicate the point at which race, or gender, or some other inherent and unchangeable personal quality, encounters social and cultural institutions – such as when a black woman who self-identifies as transsexual enters into an encounter with agents of law enforcement. Ideally, the personal characteristics of those involved in such interactions should not



influence its direction nor its outcome; nor should routine and customary practices within the system be influenced in any way by those characteristics.

**justice** The principle of fairness; the ideal of moral equity. **Justice** is a wide concept that includes social, financial, economic, racial, criminal, and other forms of justice.

**prejudice** A positive or negative attitude toward a person or group, formed without just grounds or sufficient knowledge, and not likely to be changed in spite of new evidence or contrary argument. Prejudice is an attitude. All social groups can possess them. They are often expressed through code words and symbolic issues rather than overtly offensive language.<sup>12</sup>

**race** A term that has been used historically to distinguish groups of people from one another based upon observable physical characteristics. **Race**, however, is a social convention and not a biological reality, as all human beings belong to the genus *homo sapiens*.

**racial injustice** The systematically unfair treatment of people of certain races that yields inequitable opportunities and outcomes for everyone.

**racial justice** The systematically fair treatment of people of all races that results in equitable opportunities and outcomes for everyone. When **racial justice** is realized, all people can achieve their full potential in life, regardless of race, ethnicity or the community in which they live.

**racism** The concept of racism, while often widely thought of as simply personal prejudice, is in fact, a complex system of racial hierarchies and inequities that are a part of the social structure of society.<sup>13</sup> In the United States of America, racism refers to individual, cultural, institutional, and systemic ways by which differential consequences are created for groups historically or currently defined as advantaged (whites), and disadvantaged groups historically or currently defined as non-white/people of color (African, Asian, Latinx, Native American, etc.).

**racial profiling** Any police-initiated action that is primarily based on the race, ethnicity, national origin, sexual orientation, gender or religion of an individual, rather than on (1) the individual's behavior, or (2) information that leads the police to a specific individual who has been identified as being, or having been, engaged in criminal activity.

**racial discrimination** A form of active racism in which people make decisions about others (or that affect others) based upon racial characteristics, racial preferences, and stereotypical understandings of what it means to be of one race or another.

**rule of law** The maxim that an orderly society must be governed by established principles and known codes that are applied uniformly and fairly to all of its members.

**systemic discrimination** A term that implies that racism is not just an isolated practice, but that it is an integral part of the justice system (or of the financial, economic, educational, or other social system). AKA **systemic racism**.

**systemic equity** A complex combination of interrelated elements consciously designed to create, support and sustain social justice. It is a dynamic process that reinforces and replicates equitable ideas, power, resources, strategies, conditions, habits and outcomes.<sup>14</sup>

**social inequality** A lack of equality with regard to access to goods, services, education, jobs, medical care, and so, that correlates with social position, where that position included determinates such as race, ethnicity, gender, or other social or physical properties.

**social justice** An ideal that embraces all aspects of civilized life and is linked to fundamental notions of fairness and to cultural beliefs about right and wrong. Questions of social justice can arise about relationships between individuals, between parties (such as corporations and agencies of government), between the rich and the poor, between genders, between ethnic groups and minorities—and between entities involving social connections of all sorts.

**structural racism** Is racial bias that is built into social institutions. It describes the cumulative and compounding effects of an array of factors that systematically privilege white people and disadvantage people of color. Since the word “racism” often is understood as a conscious belief, “racialization” may be a better way to describe a process that does not require intentionality. “‘Racialization’ connotes a process rather than a static event. It underscores the fluid and dynamic nature of race...‘Structural racialization’ is a set of processes that may generate disparities or depress life outcomes without any racist actors.”<sup>15</sup>

**systemic racialization** A dynamic system that produces and replicates racial ideologies, identities and inequities. Systemic racialization is the well-institutionalized pattern of discrimination that cuts across major political, economic and social organizations in a society.

**white privilege** The unearned set of advantages, entitlements, and benefits inherently granted to white people over people of color; and which are unconsciously reinforced through culture and social structure. In short, white privilege automatically allows white people an array of unearned privileges that are normally unavailable to people of color. White privilege doesn’t mean that white people don’t have any hurdles to overcome; it just means that they have fewer of them than do people of color. also, it is a normalized belief that “white culture” – attitudes, behavior, beliefs, standards, history, values, etc. – is superior to all others. We may not say that we believe this, but we often act on the belief when we expect all other groups to meet that standard. It is the term for the idea of white superiority and is the foundation of all U.S. racism.<sup>16</sup>



## Bureau of Justice Statistics: selected terminology regarding race and ethnicity.

**ethnicity** A classification based on culture and origin, regardless of race.

**Hispanic** A person who describes himself or herself as Mexican American, Chicano, Mexican, Mexicano, Puerto Rican, Cuban, Central American, South American, Latinx, or from some other Spanish culture or origin, regardless of race.

**non-Hispanic** Persons who report their culture or origin as something other than "Hispanic" as defined above. This distinction is made regardless of race.

**race** For the National Crime Victimization Survey, respondents self-identify with one or more racial categories. Racial categories defined by the Office of Management and Budget are American Indian or Alaska Native; Asian; black or African American; Native Hawaiian or other Pacific Islander; and white. "White" refers to non-Hispanic whites and "black" refers to non-Hispanic blacks.

## Notes

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<sup>2</sup> Gary LaFree and Kathryn Russell, "The Argument for Studying Race and Crime," *Journal of Criminal Justice Education*, Vol. 4 (1993), pp. 273–289.

<sup>3</sup> Anthony Walsh and Ilhone Yun, "Race and Criminology in the Age of Genomic Sciences," *Social Science Quarterly*, Vol. 92, No. 5 (December 2011).

<sup>4</sup> With thanks to Gordon Armstrong for editing assistance.

<sup>5</sup> Baltimore Racial Justice Action, "Our Definitions," <https://bmoreantiracist.org/resources/our-definitions> (2018).

<sup>6</sup> Institute for Democratic Renewal and Project Change Anti-Racism Initiative, *A Community Builder's Tool Kit*, Appendix I (2000).

<sup>7</sup> Rowena Fong, Ruth G. McRoy, and Alan Dettlaff, "Disproportionality and Disparities," *The Encyclopedia of Social Work*, June 2, 2014, <https://oxfordre.com/socialwork/view/10.1093/acrefore/9780199975839.001.0001/acrefore-9780199975839-e-899>.

<sup>8</sup> *Ibid.*

<sup>9</sup> Baltimore Racial Justice Action, *op. cit.*

<sup>10</sup> The University of California at Berkeley, "Diversity," <https://web.archive.org/web/20160505013747/http://diversity.berkeley.edu:80/glossary-terms>.

<sup>11</sup> The Annie E. Casey Foundation, *op. cit.*

<sup>12</sup> Baltimore Racial Justice Action, *op. cit.*

<sup>13</sup> *Ibid.*

<sup>14</sup> The Annie E. Casey Foundation, *op. cit.*

<sup>15</sup> See, John A. Powell, <https://www.racialequityalliance.org/team/john-a-powell>. Professor Powell's book, *Racing to Justice: Transforming our Concepts of Self and Other to Build an Inclusive Society* (Indiana University Press, 2015) can be a good source of ideas related to race and justice.

<sup>16</sup> Baltimore Racial Justice Action, *op. cit.*