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## **The Color of Justice: Segregation in the US and South Africa**

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### **Abstract:**

In this paper, the author outlines how skin color (i.e., race) has impacted justice in the US (with a special focus on the southern United States) and the Republic of South Africa. The focus of this paper is on segregation, and the author illustrates similarities and differences between the two countries in terms of how identities associated with skin color impacted the practice of segregation in both countries. Emphasis is placed on the laws and institutions used to discriminate against people of color over the passage of time. Note that the focus of this paper is on treatment of Blacks, specifically, with limited commentary on other populations (e.g., Native Americans in the US, “Coloreds” and Indians in South Africa). A future paper will explore the treatment of these other groups, as well as other forms of discrimination used in both countries. The paper identifies the purposes of segregation in each country, rooted in theories of racial discrimination.

**Keywords:** Justice, law, race, skin color, discrimination

## **Introduction:**

While there are vast differences in the histories of the United States and South Africa, including in terms of how the countries have treated people of color across decades and even centuries, there are also some very interesting similarities. The overlap in how Native Americans and “African Americans” (or “Negroes” or “colored people”) in the United States on the one hand, and Black Africans, Indians, and “Coloreds” in South Africa on the other hand, draws our attention to how “race” or skin color impacted and continues to impact the law and criminal justice practice around the world.

Joint analyses of the US and South Africa make sense because the United States and South Africa “are widely regarded as being the most pervasively racist in the world” (Cell, 1982: ix). After all, both societies “discriminated against people of color ... in extremely systematic fashion, ever since their founding as settlement colonies in the seventeenth century” (Cell, 1982: 3). Discrimination *by law* lasted from the 1600s in both countries until at least the 1960s in the US and the 1990s in South Africa. That reason alone makes the two countries worthy of study, but so too does the surprising realization that segregation in the US directly influenced racial discrimination in South Africa, as will be shown later in the paper.

It is important to note, at the outset, that race (when it comes to skin color) is not a biological reality (Templeton, 2013). Instead, the concept of race was invented and the “intersection of race and class did not simply happen. It was made to happen” (Cell, 1982: 17). That intersection is very well known in both the US and South Africa: Blacks in both countries have been and are disproportionately poor, unemployed, and disadvantaged in many other ways. Cell (1982: 16) notes that race is a political process “rooted in the specific power relations of the particular societies where peoples meet, live, work, fight, and propagate ... the species. ... the concept of race reflects the interaction of dominant and subjected groups throughout history.” According to Cell (1982: 17), “there is no race consciousness” in places and times where only one like group of people exists and thus “race does not exist. Only when racially conscious groups collide, with one rationalizing its dominance while the other strives to maintain its identity and integrity, does race become a social and historical factor.” This paper will identify how, when, and why race was created in the US and South Africa, and also show who benefited and suffered from this invention.

In this paper, the author provides examples of how key populations were victimized in various ways, but with a special focus on segregation. Other forms of discrimination are noted, including human rights discrimination (e.g., being enslaved), political discrimination (e.g.,

being denied citizenship and the right to vote), land theft, and even violence (i.e., domestic terrorism); a future paper will focus on those topics, explicitly. The explicit focus of this paper is on Blacks in the US and South Africa, with limited commentary on other peoples of color who suffered discrimination, as well. Future papers will specifically address those other populations in more detail. The primary purpose of this paper is to illustrate how and why segregation based on skin color occurred in both the US and South Africa.

## **Literature Review: The Creation of Race, and Theories of Racism and Discrimination**

As noted earlier, race is a human invention. *Racial formation* theorists show how racial categories are created and assigned by people in power in the first place (Omi & Winant, 1986, 1994; Winant, 1994). Omi and Winant (1994: 55) define racial formation as “the sociohistorical process by which racial categories are created, inhabited, transformed, and [ultimately] destroyed.” Race, though invented, does ultimately become means of organizing both individual behavior and social life. As noted by Bonilla-Silva (1997: 471): “Historically the classification of a people in racial terms has been a highly political act associated with practices such as conquest and colonialization, enslavement, peonage, indentured servitude, and, more recently, colonial and neocolonial labor immigration.” For example, the term “Indian” was created in the sixteenth century and the term “Negro” in the seventeenth century “to justify the conquest and exploitation of various peoples” (Bonilla-Silva, 1997: 471). In this process, since “Indians” were depicted as savages, it means Europeans were civilized; since “Negroes” were slaves, Whites were meant to be free. Race is thus not a natural, biological category but instead an invented, socially constructed one. This paper will identify the people who created the discriminatory systems of law and justice in the US and South Africa based on conceptions of race they themselves created.

Importantly, once “the process of attaching meaning to a ‘people’ is instituted, race becomes a real category of group association and identity” that actually begins to have meaning and real impacts on society and groups within (Bonilla-Silva, 1997: 471). Moreover, societal institutions—political, economic, educational, social, become competitive of “us versus them,” creating further potential conflicts. Later in the paper, the issue of competition is discussed as it relates to the racial histories of both countries. Interestingly, the concept of race itself appears to be heavily dependent on economic interests. For example, Bonilla-Silva

(1997: 473) writes: “The placement of groups of people in racial categories stemmed initially from the interests of powerful actors in the social system (e.g., the capitalist class, the planter class, colonizers).” We will see this in the examination of the segregation histories of both the US and South Africa. For example, Bonilla-Silva (1997: 473) notes that “racialized social orders emerged after the imperialist expansion of Europe to the New World and Africa.” It was, of course, people who can identify as Whites who colonized what would become the United States and South Africa, and people they designated as Blacks who suffered from it, along with other people of color.

Ideas related to what would become “race” began to impact North American life a century prior to the founding of the United States. For example, Roediger (2021) shows how the increased need for labor in the 1600s changed the nature of indentured servitude from temporary to permanent, and from multicultural (i.e., European, Native American, and Black) to exclusively Black. Further, Bacon’s Rebellion (1676) resulted in privileges being given to European workers over Blacks, “ensuring divisions between the lower classes and laying the racist foundations for class that still divide us” (Cruz, 2017). Smedley (2007) called this rebellion “the first major threat to social stability” as it involved thousands of poor workers, potentially disrupting the steady supply of workers to plantation owners. Colony rulers, all land owners and planters, “began to pass a series of laws separating out Africans and their descendants, restricting their rights and mobility, and imposing a condition of permanent slavery on them” (Smedley, 2007). These were based largely on physical characteristics of the population, including skin color: “In this period, hundreds of laws were passed restricting the rights of Africans and their descendants” (Smedley, 2007). One such law, in 1691, prohibited the marriage of Europeans to other groups, and this was the first time the term “White” appeared in public record (Smedley, 2007). In the state of Virginia, laws made slavery hereditary and based on the status of the mother rather than the father (1662) and it became legal to maintain slaves even when they had converted to Christianity (1667). All of these developments served to make race more real (Roediger, 2021).

The concept of race became institutionalized in the early 1700s during a time in North America when there was an increased need for labor that would come in the form of slavery (Smedley, 1997, 1999, 2007). Roediger (2021) writes: “By the mid-1700s, new laws and societal norms linked Africans to perpetual labor, and the

American colonies made formal social distinctions among its people based on appearance, place of origin, and heredity.” To settle the contradictions of slavery with European beliefs of liberty, equality, human rights, democracy and similar concepts related to justice, it was necessary to dehumanize slaves—i.e., Blacks—and this occurred through numerous means. One was religious, based on the idea that Blacks were heathens in need of saving. Curran (2020) writes: “The logic behind the history of race initially seems deceptively clear: to justify the forced deportation of 400,000 Black Africans to North America (and another eleven million to other parts of the Americas between 1525 and 1866), Europeans and their American heirs found it necessary to debase and revile their captives.” Smedley (1997) writes that slavery defenders “turned to the notion of the natural inferiority of Africans and thus their God-given suitability for slavery. Such arguments became more frequent and strident from the end of the eighteenth century on, and the characterizations of Africans became more negative.”

Another basis was scientific, through studies coming in the 1800s, claiming, among other things, that Blacks were a subspecies of humans or a different species, entirely. According to Curran (2020). “the Continent’s savants and natural philosophers no longer automatically looked to the Bible to explain the story of the human species. Intent on finding physical explanations for natural phenomena, naturalists employed more ‘empirical’ methods to solve one of the biggest ‘anthropological’ questions of the day: why did people from Africa, millions of whom were already toiling in European plantations, look different from white Europeans?” Before the 1750s, there already were more than a dozen scientific explanations of why Blacks looked different than Whites: “Some claimed that blackness came from vapors emanating from the skin; others claimed that black skin was passed on from generation to generation via the power of the maternal imagination or from darkened sperm; still others asserted that the heat or the air of the Torrid Zone darkened the humors and stained the skin” (Curran, 2020).

A dominant belief at the time, called *degeneration*, was that Blacks descended from Whites, and as they did, they became less intelligent, morally developed, physically different (e.g., smaller skulls and brains) and even physically damaged with “black brains, black bile, black sperm and even race-specific black lice” (Curran, 2020). Ultimately, physical differences, real and imagined, were linked to people’s

economic and political statuses to create new identities organized around the concept of race, an idea that would persist long after even the end of slavery (Smedley, 1997, 1999, 2007). By the 1800s, “Physical differences were merged with status differences and coalesced to form a social hierarchy that placed ‘white’ at the top and ‘black’ at the bottom ... ‘white’ was an identity that designated a privileged, landholding (usually male) status.” And being white meant “having clear rights in the society while not being white signified your freedoms, rights, and property were unstable, if not, nonexistent” (Roediger, 2021). Thus, as noted earlier in the paper, race is and always has been, connected with economic factors such as social class. Smedley (1997) agrees, writing that race “was from its inception, and is today, about who should have access to privilege, power, status and wealth, and who should not.”

The “founding fathers,” men like Thomas Jefferson, saw Blacks as inferiors to Whites. In 1782, Jefferson wrote: that Blacks “are inferior to the whites in the endowment both of body and mind. ... Comparing them by their faculties of memory, reason, and imagination ... in memory they are equal to the whites; in reason much inferior ... and ... in imagination they are dull, tasteless, and anomalous. ... never yet could I find that a black had uttered a thought above the level of plain narration; never see even an elementary trait, of painting or sculpture” (Magnis, 1999). Even the US Supreme Court, the highest court in the land, declared Blacks to be nothing but property, in the case of *Dred Scott v Sanford*, 60 U.S. (19 How.) 393 (1857). Chief Justice Roger Taney stated that, since negroes were property, they “were not intended by the framers of the Constitution to be accorded citizenship rights.”

Other historical tragedies and travesties became justified by race. Roediger (2021) claims, for example: “Over centuries, the false notion that ‘white’ people were inherently smarter, more capable, and more human than nonwhite people became accepted worldwide. This categorization of people became a justification for European colonization and subsequent enslavement of people from Africa” (as well as *in* Africa, as in the case of South Africa). Cruz (2017) even asserts that race “is almost entirely a product of the European imagination.” And she agrees that there was no concept of race until European colonization, which “needed ways of differentiating various rights, privileges, social, and legal standings between various laborers.” That is, race relates directly to, and stems directly from, economics. In this way, we can understand racism to be rooted in economic motives.

An early scholarly definition of *racism* was “the dogma that one ethnic group is condemned by nature to congenital inferiority and another group is destined to congenital superiority” (Benedict, 1945: 87). A similar but more developed definition is “any set of beliefs that organic, genetically transmitted differences (whether real or imagined) between human groups are intrinsically associated with the presence or the absence of certain socially relevant abilities or characteristics, hence that such differences are a legitimate basis of invidious distinctions between groups socially defined as races” (van den Berghe, 1967: 11).

Bonilla-Silva (1997: 466) provides what he calls the *idealist view* of racism, one rooted in social psychology and focused on ideas or beliefs: “First, racism is defined as a set of ideas or beliefs. Second, those beliefs are regarded as having the potential to lead individuals to develop prejudices, defined as ‘negative attitudes towards an entire group of people’ (Schaefer, 1990: 53). Finally, these prejudicial attitudes may induce individuals to real actions or discrimination against racial minorities.” Discrimination, of course, refers to the actual acts committed against some groups by others based on prejudicial attitudes—acts that are considered unfair.

It should be noted that racism involves domination of at least one group by another group. As noted by Schaefer (1990: 16), racism is “a doctrine of racial supremacy, that one race is superior.” This suggests racism is ultimately about *power*, leading to relevant questions such as, who creates and benefits from certain power arrangements in society? These are many theories that attempt to address such questions, some more in line with what has already been established about race than others. Ten theoretical approaches are reviewed below.

First, *functionalism* holds that that racism and discrimination exist because they serve key societal functions or purposes (Lumen, 2020). For example, slavery in the US and South Africa was justified by a largely economic rationale, and was tolerable to people in the south and in early South Africa especially on the basis of the belief that Blacks were inferior to Whites (Eldridge & Morton, 2019; Meyer, 2007; Worden, 2010; Wright, 2013). Ultimately, the functions served by discrimination, in the form of segregation in each country, will be revealed.

Functions for groups at the lowest end of power arrangements can also be served by racism. For example, the *system justification* perspective suggests that low status groups come to internalize personal or collective inferiority (Jost, Burgess, & Mosso, 2001). A person’s low-status in society “can be seen as deserved punishment for their unworthiness and can lead to the expression of outgroup bias, or a sense that the outgroup is better and therefore ought to

be privileged” (Al Ramiah et al., 2010: 90). Whether and how much Blacks in the US and South Africa actually came to see themselves as deserving less privilege in their respective countries is an interesting question but will not be addressed in this paper.

Second, of course, most theoretical approaches to racism hold that racism serves the interests of those at the top of power arrangements. For example, *conflict theorists* argue that the primary purposes of racism and discrimination serve the interests of dominant groups in society—e.g., Whites, the wealthy (Lumen, 2020). *Jim Crow* laws in the US south and racial separation policies of *Apartheid* used against Blacks in South Africa certainly did not generally serve the interests of Blacks (Dodge, 2020; Marx, 1998; Thellwell, 2020). Jim Crow and other forms of segregation in each country are examined later in the paper. This paper will illustrate that the dominant groups in the US and South Africa whose interests were served by discrimination were, obviously, Whites.

Third, and related to the above, *social identity* theorists suggest that racial discrimination is used to protect the self-esteem of the powerful and to give themselves a sense of meaning (Turner, Hogg, Oakes, Reicher, & Wetherell, 1987). According to Al Ramiah, Hewstone, Dovidio, and Penner (2010: 86-87), the “drive for a positive social identity can result in discrimination, which is expressed as either direct harm to the outgroup, or more commonly and spontaneously, as giving preferential treatment to the ingroup, a phenomenon known as ingroup bias.” We will see this issue arise when examining discrimination in the US and especially in South Africa where Apartheid policies were created for the explicit benefit of Whites.

Fourth, *symbolic interactionists* argue that, over time, symbols of inferiority associated with race or skin color are created and used to subjugate and maintain power differentials in society (Lumen, 2020). Over time, a series of beliefs and practices becomes part of our way of life—a *culture of prejudice*. Lumen (2020: 5) notes: “We grow up surrounded by images of stereotypes and casual expressions of racism and prejudice,” including very subtle images of race even on products for sale in grocery stores and in restaurants. In both the US and South Africa, various symbols related to racial inferiority were used to justify all kinds of discrimination.

However, fifth, the *minimal group* perspective suggests that discrimination can also emerge spontaneously, produced by competition between different groups (Tajfel & Turner, 1986). Al Ramiah, Hewstone, Dovidio, & Penner (2010: 87) note that “mere categorisation as a group member can lead to ingroup bias, the favouring of ingroup members over outgroup



members in evaluations and allocation of resources.” Al Ramiah et al (2010: 87) claim that “hundreds of studies show that participants rate ingroup members more positively, exhibit preference of ingroup members in allocation of resources, and want to maintain maximal difference in allocation between ingroup and outgroup members, thereby giving outgroup members less than an equality norm would require.” This would further spontaneous discrimination that doesn’t require much conscious thought, an important consideration to keep in mind when trying to understand how racial discrimination persisted for so long in the US and South Africa.

Sixth, as society evolves and racism and discrimination become increasingly unpopular, are not tolerated, and even become prohibited by law, stereotypes and racist ideology are still often held by individuals. When race cannot be used to discriminate, individuals use factors other than race (e.g., crime) to more subtly discriminate. Discriminatory criminal justice policies can be justified, for example, on legal factors such as offense seriousness and prior criminal record, even though those factors are clearly impacted by race and biases built into the law and policing (Robinson, 2021a). Al Ramiah et al. (2010: 90, emphasis added) claim that “*aversive racists* will systematically discriminate when appropriate behaviours are not clearly prescribed or they can justify their behavior on the basis of some factor other than race.” This is according to the *aversive racism* perspective (Dovidio & Gaertner, 2004), referred to that way because racism is generally frowned upon and rejected even as it still persists. As noted by Al Ramiah et al. (2010: 89): “Equality norms give rise to considerable psychological conflict in which people regard prejudice as unjust and offensive, but remain unable to fully suppress their own biases.”

The concept of *symbolic racism* is similar, where White Americans support “the principles of equality for Black Americans, but at the same time do not support efforts to implement these principles,” especially when doing so runs counter to their own interests (Bowser, 2017: 576). This approach may hold importance for helping to understand how discrimination persists in contemporary societies, but likely offers little to understanding racism from the seventeenth to mid-twentieth centuries when the law was simply discriminatory in intent in both the US and South Africa.

Seventh, the *institutionalist* perspective shows that racism and discrimination have become part of our institutions, including even “race-neutral” laws (Alvarez et al., 1979; Carmichael, 1971; Chesler, 1976; Wellman, 1977). Bowser (2017) argues that are three legs to the stools of racism—individual, cultural, and institutional. *Individual racism* refers to

discriminatory actions of individual people, such as a racist police officer. *Cultural racism* is “the presumption of White supremacy over Black inferiority.” Bowser suggests this “precedes and preconditions institutional expressions of racism” and “provides the blueprint and architecture for the organization of institutional racism, its objectives (White dominance), and criteria for success (White privilege)” (Bowser, 2017: 581). *Institutional racism* is discrimination that is built into the structures of a society, which means racial disparities will be apparent that may have their roots in the application of racially neutral factors such as unemployment, prior criminal record, and so forth (Walker, Spohn, & DeLone, 2017).

Bowser provides the following as examples of institutional racisms: “steering by real estate agents and block busting (Kwate, Goodman, Jackson, & Harris, 2013); denying home loans and charging higher mortgage interests rates to Blacks (Woods, 2012); maintaining racially segregated schools by using unequal home values as the basis of school funding (Johnson, 2014); using seniority as a basis for employment (Byron, 2010), making Blacks the last hired and the first fired; and criminalizing Black men in the application of laws (Meares, 2014).” Bowser notes: “None of these practices is overtly racist. Schools, employers, police and courts, banks, and real estate function as they should. Racial motives are imminently deniable. Racism is evidence only in outcomes.”

Part of this may be owing to *unconscious racism* related to symbols of members of different races, as suggested by the minimal group perspective. For example, “dark-skinned Black men” being “closely associated with crime and danger” whereas light-skinned men are “more commonly associated with attractiveness and goodness” (Bowser, 2017: 577). Russell-Brown (2008) even uses the term *criminalblackman* to capture the reality that there is a very specific conception of crime in American society. And Alexander (2010) convincingly demonstrates that *Black* has become synonymous with *crime* in the US, due to the actions of “law and order” politicians as well as media coverage of crime (Robinson, 2018). Again, this approach likely has most salience in situations where the law is not intended to discriminate, whereas through much of both US and South African history, laws were passed and carried out with discriminatory intent, as will be shown later in the paper.

Eighth, the *internal colonialism* approach argues that societal institutions are White-dominated and are used to exploit, control, and suppress people of color (Barrera, 1979; Blauner, 1972; Moore, 1970). The institutionalist and internal colonialism perspectives share the idea that racism is structural in nature. For example, Bonilla-Silva (1997: 466) notes that the institutionalist perspective sees racism as “a combination of prejudice and power that

allows the dominant race to institutionalize its dominance at all levels in a society” and the internal colonialism view is that racism is “an institutional matter based on a system in which the White majority ‘raises its social position by exploiting, controlling, and keeping down others who are categorized in racial or ethnic terms’” (Blauner, 1972: 22). The key structures involved in keeping Blacks (and other people of color) subjugated throughout US and South African history are identified later in this paper; most significant is the law.

Ninth, and perhaps most famous given its widespread recent presence in the news, *critical race theory* is consistent with the institutionalist and internal colonialism approaches (George, 2021). When applied to the case of the US, it holds that “the law and legal institutions in the United States are inherently racist insofar as they function to create and maintain social, economic, and political inequalities between Whites and nonWhites, especially African Americans” (Britannica, 2021: np). Delgado and Stefania (2012) suggest that race is socially constructed in ways to the benefits of those in power and that racism is normal in this context. One would expect a similar reality in a country like South Africa, when, through nearly all of its history, it was ruled by Whites in spite of governing a country made up overwhelmingly of Black people.

This review of theories of racial discrimination can help us understand how race becomes an organizing principle of society, leading to a *racialized social systems* approach. This tenth and final theoretical perspective defines racialized social systems as “societies in which economic, political, social, and ideological levels are partially structured by the placement of actors in ... categories of races. Races typically are identified by their phenotypes, but ... the selection of certain human traits to designate a racial group is always socially rather than biologically based” (Bonilla-Silva, 1997: 469). In these societies, racial categories are organized in a “hierarchy that produces definite social relations between the races. The race placed in the superior position tends to receive greater economic remuneration and access to better occupations and/or prospects in the labor market, occupies a primary position in the political system, is granted higher social estimation (e.g., is viewed as ‘smarter’ or ‘better looking’), often has the license to draw physical (segregation) as well as social (racial etiquette) boundaries between itself and other races ... The totality of these racialized social relations and practices constitutes the racial structure of a society” (Bonilla-Silva, 1997: 469-470). Once a society is racialized, “a set of social relations and practices based on racial distinctions develops at all societal levels ... on the basis of this structure, there develops a racial ideology (what analysis have coded as racism)” (Bonilla-Silva, 1997:

474). This approach is consistent with the institutionalist approach, internal colonialism, and critical race theory, and we will see evidence in this paper of how both American and South African societies became racialized over time.

The major arguments of this approach are that:

1. Race is part of the foundation and structure of society
2. Racism is not just individual in nature
3. Racism changes over time, meaning it is not static
4. Racism is not irrational but instead rational and even functional
5. Racism is often covert
6. Racism is not just our legacy but in fact it persists (Bonilla-Silva, 1997).

This paper will illustrate how race was clearly part of the foundation and structure of the US and South Africa, how racism became part of American and South African institutions, how racial discrimination changed over time, and how racism within each country operated as a rational and even functional system. When turning the focus of this approach toward the United States and South Africa, we can understand social practices such as slavery, Jim Crow, other forms of segregation including even Apartheid, as rational features of two societies that were (and are) largely organized around the socially constructed idea of race.

## **Analysis**

In both the United States and South Africa, native populations and other people of color were enslaved, segregated, and discriminated against in many different ways. In both countries, these groups were also victims of violence (ranging from murder to lynching to bombings and assassinations), and they lost land through legal means as well as outright theft and mass murder. Table 1 categorizes different forms of discrimination discovered through historical analyses of both countries, focusing on both primary and secondary documents. Each category contains certain behaviors meant to capture the type of treatment major groups of people in each country experienced.

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*Table 1. Forms of Discrimination Included in Analysis*

<i>Human Rights</i>	Slavery
	Dismantling of tribes
	Forced assimilation

	Religious conversion, prohibition of religion Harm to animals meant to control populations Restriction of free movement, assembly Educational discrimination Employment discrimination Transportation discrimination Bans to interracial marriage
<i>Political</i>	Denial of citizenship and naturalization Deportation to other countries Civil liberties violations by government agencies Tax disparities Prohibition of opposition Diminishment of voting rights
<i>Segregation</i>	Physical separation Separate facilities and institutions
<i>Land theft</i>	Land removal by law or force Forced relocation Deleterious outcomes associated with land theft (death, illness)
<i>Violence</i>	Killing Lynching Governmental riots against people of color Attacks by citizens against people of color

An examination of the history of both countries shows that the same forms of discrimination were ultimately used in each country. Again, the focus of this paper is on segregation, but the other types of discrimination will be examined in a future paper. Table 2 shows that the mechanisms of discrimination against Native Americans and African Americans in the US were the same as they were against Indians, Blacks, and Coloreds in South Africa; “Colored” refers to people of mixed races, and they were especially present in the Cape Colony of South Africa. The meaning of each letter is noted within the table. As you can see, each major group experienced the same forms of discrimination and violence, yet, they often occurred at different times and in different ways. This suggests that discrimination tends to occur in the same way across countries, cultures, and time periods, likely indicative of its institutional nature.

*Table 2. Forms of Discrimination Used Against People of Color in the United States and South Africa*

	<u>United States</u>		<u>South Africa</u>
<i>Native Americans</i>	E, L, S, D, V	<i>Indians</i>	E, L, D, D, V
<i>African Americans</i>	E, L, S, D, V	<i>Blacks</i>	E, L, S, D, V
		<i>“Coloreds”</i>	E, L, S, D, V

Key:

Enslaved	E
Land theft	L
Segregated	S
Discrimination	D
Violence	V

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Of course, there were significant differences in how each group experienced these forms of discrimination and when they occurred. Such differences are due to the major differences between the US and South Africa, including governmental structures, laws, institutions, cultures, and so forth. The most obvious differences between the US and South Africa are that Blacks in South Africa were (and are) a majority in and were indigenous to the country, whereas they made up (and make up) a small portion of and were imported via slavery to the United States. Of course, Native Americans were indigenous to the land that would become the United States, and their treatment at the hands of Whites is worthy of its own paper. Second, Blacks did become citizens by law in the US by the *Civil Rights Act of 1866*, whereas this did not happen until much later in South Africa with the passage of the *Constitution of the Republic of South Africa* in 1996, even though Blacks there were always born in and thus indigenous to that country. Third, in the US, Blacks had much more in common with Whites due to being more significantly influenced by their culture than did Blacks in South Africa. Fourth, there was much more integration of Blacks into the US than in South Africa, in part because Blacks were truly never fully separated from Whites as they were in South Africa (Fredrickson, 1982: 250-1). For these reasons and others, “the specific kinds of separation that were stressed and regarded as crucial for maintaining White privilege and furthering White interests were not the same” (Fredrickson, 1982: 241). Other similarities and differences in discrimination between the two countries are identified and discussed in the paper.

Table 3 illustrates the approximate time periods when major groups in the US and South Africa experienced deleterious treatment through the law. Though there is remarkable overlap in the timing of these occurrences, a notable though obvious difference is in the founding of the two countries. For clarification, the Union of South Africa was formed in 1910 by a joining of four semi-independent Colonies in the country—the Cape Province, the Orange Free State, the Transvaal, and Natal. Great Britain had occupied South Africa from 1815 after the Dutch had begun colonizing the region for trade purposes starting in 1652. The Dutch or Boer Republics—fought two wars with England over the land, with Britain ultimately prevailing over the South African Republic and the Orange Free State in the Second Boer War from 1899 to 1902. The first such war was from 1880-1881 and was

between England and the Boers of the Transvaal. The *Voortrekkers* (i.e., people of Dutch extract) had left the Cape Colony. Their “Great Trek” came about for many reasons, one of which was an opposition to the equalization of Blacks and Whites in the Cape Province. This is how their independent and “free” (for Whites) provinces were created.

A treaty, the *Peace of Vereeniging*, was signed by members of the Colonies as well as Great Britain, in 1902. The Dutch language was granted equal status to English, the Provinces were told they would be granted self-rule in exchange for loyalty to the Crown, and “in order to make this peace acceptable to the Boer republics (those controlled by the Dutch), it was decided to exclude from the terms an insistence on universal franchise for both Black and White” (South African History, 2021c). This is an important realization that denial of citizenship rights for Blacks was intended to begin with the forming of the Union. South African History (2021c) suggests that part of the reason Britain didn’t want to exterminate the Boers is because “they would need an alliance with” them “for racial domination to be viable.” If there is any doubt about this, consider the two wings of the Union building designed by British architect Sir Herbert Baker—they were meant to symbolize “the ‘two races’ in South Africa: The English speakers and the Afrikaners” (i.e., the Boers). Thus, Blacks in their own country were not even recognized as a legitimate “race.” A national convention in 1908 led to the passage of the *South Africa Act of 1909* that ultimately denied voting rights to Blacks in South Africa.

Yet, it is important to note that discrimination began in South Africa before even the establishment of the Union. For example, the *Masters and Servants Acts* (passed between 1856 and 1904) made it illegal to break a contract of employment. These laws were held by courts to be applicable to unskilled workers, in jobs that were typically held only by Blacks. This occurred when the territory was still under British control.

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*Table 3. Timeline of Discrimination in the US and South Africa*

	<u>United States</u>	<u>South Africa</u>
First contact	1600s	1600s
Country established	1776	1910
Slavery	1600s-1860s	1600s-1830s
Discrimination by law	1600s	1600s
Segregation	1800-1900s	1800s-1900s

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The table illustrates significant overlaps in terms of timing of discrimination in both countries. This is discussed in more detail in the paper. Similarities and differences in

discrimination between South Africa and the US are described next, in a discussion of perhaps the most significant form of discrimination within each country—segregation. This claim is supported by the reality that segregation in the US and South Africa did not just mean physical separation but rather an elaborate system of discrimination involving land, education, work, political rights, and more (Cell, 1982).

### **Segregation.**

Both countries experienced and were actually organized around the concept of segregation. When people think of *segregation*, they likely think of physical separateness—separate facilities for people of different skin colors, for example. Whereas most Americans would associate separate facilities such as water fountains for Whites only with the United States, laws like the *Reservation of Separate Amenities Act No 49* (1953) created separate parks, beaches, bathrooms, etc. for different racial groups in South Africa. And signs indicating which groups were allowed to utilize such facilities were posted by the Apartheid government, just as in the American south. Later laws such as the *Bantu Investment Corporation Act No 34* (1959) made it clear that the Apartheid government intended for Blacks to have completely separate financial, commercial, and social lives.

Yet, scholars of segregation suggest the term does not just mean physical separation. Cell (1982: 14), for example, calls it “an interlocking system of economic institutions, social practices and customs, political power, law, and ideology, all of which function both as means and as ends in one group’s efforts to keep another (or others) in their place within a society that is actually becoming unified.” This is a reminder about a point made earlier in the paper, that race is really about domination and power. Cell (1982: 14) also explains that, although segregation is synonymous with discrimination—“the crux of the matter is the monopoly by the dominant group over the political institutions of the state.” This suggests discrimination becomes institutionalized.

The importance of economics and segregation is made clear when one considers the case of slavery. Historians note that true physical segregation in times like slavery was unnecessary and impractical when economies depended on the presence of workers at all times, allowing and even mandating close contact between Black (workers) and White (owners). Here, a “clear-cut status difference” was maintained by force and the threat of force rather than physical separation (Fredrickson, 1982: 257). In the absence of slavery, efforts to



achieve physical separation become more necessary when Whites want to maintain dominance over other groups.

After the fall of slavery, in the southern US, “a general pattern of *de facto* social separation developed between 1865 and 1890 that was well on its way to crystallization by the end of Reconstruction” in the late 1870s. Fredrickson (1982: 260) explains: “One of the most important aspects of this development was the growth of parallel communal institutions” such as churches. Fredrickson notes that, it was in eighteenth century churches in both the US and South Africa where segregation (i.e., separate seating areas) was first seen. Seating was arranged by social status, wealth, and other factors heavily impacted by skin color. And in the nineteenth century, Whites began demanding separate service for Blacks and Whites.

Although some laws were passed to assure “equal access to public facilities ... little was done to enforce them, and Blacks were often effectively excluded from establishments or conveyances accommodating Whites even before such legislation was repealed or ignored” (Fredrickson, 1982: 261). Blacks were relegated not yet by law to second-class accommodations, but relegated they were, along with poor Whites, so that both race and class distinctions were involved.

In the US, segregation became more pronounced from the 1890s and 1960s under the realm of *Jim Crow* law and practice, where Blacks were not only largely kept separate from Whites in public institutions but also faced “glaringly inferior” amenities and enormous voting restrictions. That is, segregation went from “informal and unstable” to “fixed and rigid,” largely because of laws passed by southern state legislatures (Fredrickson, 1982: 271). The point is, although it may seem that segregation in the US and South Africa was “normal and natural” it instead was “maintained only by well-organized and well-mobilized forces” (Cell, 1982: 17). These forces operated largely at the state level in the United States but at the national level in South Africa.

The first Jim Crow law passed in the US was 1881, in Tennessee, when the state legislature made it mandatory for separate first-class train seating for Blacks; true separation of the races on trains was not achieved by law for another ten years (Fredrickson, 1982: 262). Jim Crow laws in South Africa developed more slowly and lasted much longer, in part because of transfers of powers between different occupying governments.

Then, in the US, from 1890 until 1910, “southern state legislatures passed a panoply of laws requiring separation of the races in virtually all possible areas of social interaction.”

Importantly, such laws were made Constitutional “by the Supreme Court’s decision of 1896 that racial segregation did not violate the Fourteenth Amendment if the facilities provided were equal” (Fredrickson, 1982: 268). The court, in the case, *Plessey v. Ferguson*, 163 US 537 (1896) held, in part, that separate railcar facilities for Whites and Blacks were justified on the grounds of keeping the peace in the interests of public safety.

Segregation between the “races” was also upheld by African courts from 1934 to 1950. Such segregation in South Africa like in the US “was valid only if the facilities for nonwhites could be considered equal to those provided for Europeans” (Fredrickson, 1982: 248). The language and logic was nearly identical to that used by US courts, but of course public facilities were vastly inferior for nonwhites in both countries. The *Reservation of Separate Amenities Act* (1953), noted earlier, mandated not only segregation between the races but it also “explicitly authorized inferior amenities for nonwhites” (Frederickson, 1982: 248). This is a clear difference between South Africa and the United States; additional differences will be noted and then addressed later in the discussion section of this paper.

Cell (1982) agrees that segregation began in the American south about 1890 and in South Africa in 1910 with the founding of the Union of South Africa by Afrikaners and the British. That timing is not likely coincidental as the term segregation also took hold in both the US and South Africa in the early 20<sup>th</sup> Century, and “South African White supremacists may in fact have borrowed the term from their American counterparts” (Fredrickson, 1982: 241). In fact, South Africans studied the American experience with segregation, started just a couple of decades earlier: “the comparison was there; it was convenient; and it was used” (Cell, 1982: 231). South African officials had “examined American conditions and precedents closely, noting successes as well as glaring errors to be avoided” so that “the two cases of evolving segregation were linked historically” (Cell, 1982: 231). That is, America’s treatment of Blacks directly influenced segregation and the development of Apartheid in South Africa. So, the impact of US events on South Africa turns out to be quite significant.

Physical segregation began in South Africa in 1910 “with the establishment of a self-governing union.” Fredrickson (1982: 239-240) explains that this reality “could only be achieved after a centralized and independent White settler state had displaced the British government as the dominant force in the making of ‘native policy’ throughout South Africa.” That centralized government was run by the Dutch, Boers, or Afrikaners. One of the first pieces of segregationist legislation in South Africa was the *Native Land Act of 1913*, which established separate living areas and public facilities, as well as distinct political institutions.

As explained by Fredrickson (1982: 241): “Beginning with the Native Land Act of 1913, a series of laws sought to limit most face-to-face association of Europeans and Africans to the economic realm (where...African labor was indispensable). The principle motive for prescribing separate living areas, public facilities, and political institutions was to restrict the power and privileges of the African majority to such an extent that the preservation of White majority rule would be absolutely assured.” And of course, it was a “grossly inequitable division of territory between races” (Fredrickson, 1982: 244). The law also made it illegal for Blacks to purchase land or enter into sharecropping agreements outside of the reserves (i.e., those areas designated only for Blacks), and over time, the law was extended to forbid Blacks from living outside of those areas, as well. Blacks would become “contract wage laborers or labor tenants” and would make up the large majority of work force in South Africa (Fredrickson, 1982: 241-242).

Here it is useful to acknowledge the major economic differences that existed between the two countries. For example, in South Africa, White settlers did not have the same levels of economic opportunities as those in the US, and there was also the lack of a “natural transportation system” to get and move goods across the country (Frederickson, 1981: xxii). These economic differences were based in part on geography (e.g., South Africa had no navigable rivers or lakes) and natural resources (e.g., South Africa discovered large reserves of gold) impacted the history of race relations in both countries. For example, Fredrickson (1982: xxiii) writes: “Were it not the world’s largest supplier of [gold], the contemporary republic would not be able to sustain such a large and prosperous White population and might well have reverted to African rule as the rest of Africa decolonized ... the primacy of gold is important mainly because of the peculiar conditions under which labor was recruited and utilized in the mines. The emergence of an industrial staple economy dependent on a cheap and regimented non-White labor force had implications for modern phases of race relations that can profitably be contrasted with the effects of the most extensive and less labor-repressive forms of industrial activity that could arise in a physical environment offering more varied opportunities for economic development.” So, part of the reason for segregation was economics; White Africans justified the temporary presence of Blacks for work, but refused to accept their permanent presence for residential purposes (or even to be citizens).

Stated simply, in the White areas, there was a huge need for Black labor, and the “main concern was to increase the supply of labor available to White farmers and industrialists by stifling the incipient growth of an African peasant class outside the reserved

areas” (Fredrickson, 1982: 244). The ruling party clearly did not want Blacks around except for economic reasons. Consider language from the *Native Affairs Commission of 1921*: “It should be understood that the town is a European area in which there is no place for the redundant [i.e., unemployed] native who neither works nor serves his or her people.” Or that of the *Transvaal Local Government Commission*, who in 1922, wrote “that it should be a recognized principle of government that natives—men, women, and children—should only be permitted within municipal areas in so far and for so long as their presence is demanded by the wants of the White population” (Fredrickson, 1982: 242).

The *Natives (Urban Areas) Act No 21* (1923) gave the government the power to regulate Blacks in urban areas. In White and industrial areas of cities, Blacks could only live in specific areas and could be forced to move there. Cities and/or employers were required by the law to provide housing for Blacks and cities had to create revenue accounts using money from fines, fees, rents, and other forms of payment, in order to upkeep these areas. Blacks seen as surplus labor could be deported to reserves.

By 1936, under the *Development Trust and Land Act No 18*, 13 total reserves for Blacks were created, then comprising only 6% of the land in the country. The Department of Bantu Administration and Development was also authorized to eliminate black-owned land that was surrounded by Whites (so-called “Blackspots”). Further, the South African Development Trust was empowered to acquire land specifically to settle Blacks. Under the *Development Trust and Land Act No 18* (1936) and *Black (Native) Laws Amendment Act No 46* (1937), Blacks were not allowed to own land either in the reserves or in urban areas.

Further, all of the *Natives (or Urban Areas) Acts* over the years (1920s through 1950s) sought to “regulate the flow of Africans into the cities by such devices as requiring them to have jobs or granting them only a limited time to look for work.” They also “discouraged male workers from bringing their families and directed that new arrivals be housed in controlled ‘locations’ or compounds.” Local officials “were empowered to expel the economically ‘redundant’... and ... the rights of Blacks to acquire urban freehold property was restricted.” One South African official said, in 1959: “All the Bantu have their permanent homes in the reserves and their entry into other areas or urban centers is merely of a temporary nature and for economic reasons. In other words they are admitted as workseekers, not as settlers” (Fredrickson, 1982: 242).

Yet, it was under the policy of *Apartheid*, perhaps the most famous form of segregation in world history, that the idea of “apartness” (i.e., separate) became

institutionalized. Motivated by the belief that it would be better for each group to “develop along its own lines,” “the Afrikaner-dominated Nationalist party” won election on a platform of Apartheid in 1948. Frederickson (1982: 240) explains that: “The Nationalists closed the remaining loopholes in the system,” originally created in 1910, “extended its scope to include some local areas and nonwhite subgroups previously immune from its full rigors, improved and vastly enlarged the centralized bureaucratic machinery used to administer the program, gave the state new and arbitrary powers to counter resistance and enforce restrictions on Black freedom, and promulgated a more elaborate and consistent ideology to justify the established policy of separate and unequal.”

Ultimately, the idea of separate being best for all is what led the South African government to grant at least partial political independence to different Black groups within their own “territories” or “homelands” or “Bantustans.” Yet, historians like Fredrickson (1982: 245) claim that the “actual function [was] ... to provide a reservoir of cheap and coercible labor for the rest of the country—labor that does not have to be paid a family wage or provided with many of the usual social services ...” Given Africans “independence” in its own homelands also gave the White government of South African ammunition in its argument that Blacks were “aliens” in their own country and this not deserving of any political rights in the country. As explained by South African History (2021b): “The idea was to separate Blacks from the Whites, and give Blacks the responsibility of running their own independent governments, thus denying them protection and any remaining rights a Black could have in South Africa. In other words, Bantustans were established for the permanent removal of the Black population in White South Africa.”

Fredrickson (1982: 246) claims that Apartheid in South Africa was motivated by two major purposes. The first was “continued political dominance of a White oligarchy” and to “sustain the White monopoly on political power by deflecting African ambitions into the comparatively safe terrain of homeland policies.” This was clearly rooted in ideas of White supremacy and thus racism. The second was to have a “continued assurance of a supply of cheap and coercible African labor as a source of growth and prosperity for the White economy.” So, economic factors contributed greatly to segregation in South Africa.

Cell’s (1982: 230) reading of American and South African history is consistent with this idea, leading to the conclusion that segregation in each country was the outcome of perceived, intense competition during “the early stages of industrialization and urbanization, the formation of industrial elites and proletariats, the consolidation of state or, in the

American case, of party systems ... the very basis of social order was being threatened severely.” The mechanisms were, of course, different: “In the decade or so after 1890 the Southern states frequently conspired with each other to enact an impressive array of Jim Crow laws and to disenfranchise Black and many poor-White voters. In South Africa, newly centralized and completely autonomous after 1910, the state partitioned the country into grossly inequitable White and Native areas, established a national structure of Native administration, and devised instruments for dealing with the essentially novel problems posed by the presence of Africans in town” (Cell, 1982: 230-231). So, in the US, segregation was a conspiracy of southern states, whereas in South Africa, it was official, national policy. But, in both countries, economic competition played a significant role in racial discrimination.

One of the earliest Apartheid laws was the *Group Areas Act No 41* (1950), which made residential segregation compulsory. Where different races could live, work, and own property was specified by law. The aim of the law was to control the movement of non-Whites in the country. As Blacks tried to move into cities for work, they were seen as a threat to Whites, and they could be evicted from White areas under the law. Enforcement of segregation in the US was informal but often with the help of southern law enforcement officials (e.g., sheriffs) or citizen groups including the Ku Klux Klan (Robinson, 1997; Williams, & Romer, 2020).

In the same year (1950), the *Population Registration Act* “ultimately required everyone to carry an identity card indicating his or her racial classification.” This gave the South African government the ability to apply “segregation laws to anyone who was not ‘obviously White in appearance’ or ‘by general repute and acceptance’” (Fredrickson, 1982: 271). The law required that all South Africans be classified into on three racial categories: White, Black, or Colored (Indians were treated as Colored under the law). Racial classification was based on appearance, descent, and social acceptance. A White person was one who had two White parents and who had White speech, education, deportment, demeanor, and habits. People were classified by the Department of Home Affairs. This law also required Blacks to carry passbooks, or passes (aka *dompas*), which contained their photos, personal information, and fingerprint. This pass was needed to move about the country including even into Black areas.

Importantly, this was *not* the first effort to define race in South Africa. According to Fredrickson (1982: 270): “The first attempt to define White and Colored for public discourse purposes occurred in the Cape Supreme Court decision of 1911 in which the right of local

school boards to exclude Colored children [in Capetown] from public schools was upheld.” Still, since many Colored children passed as White and no examination of ancestry was required to prove Whiteness, schools remained somewhat integrated. Segregation of education was also less common in the Cape Province due to the lack of economic development in the area until at least the middle of the nineteenth century. Meanwhile, in the US, “in colonial and pre-Civil war America ... Blacks were, with very few exceptions, excluded from White-supported educational institutions” (Fredrickson, 1982: 259). Again, the issue of educational discrimination will be examined in another paper.

The creation of race and the first mention of “White” in the US was examined earlier in this paper. Although the first official record of the term White seems to have occurred nearly 200 years prior to that in South Africa (1691 versus 1911), thinking about race in places like South Africa was clearly impacted both by US developments in race relations but also by prevailing European thinking about race more generally. To reiterate, European colonizers conceptualized race in the context of economic needs and brought their conceptions with them wherever they went, including North America and the African continent (Cruz, 2017). In South Africa, the Dutch Afrikaners set up a whole system of government and life organized around a concept of racial supremacy housed in a system called Apartheid.

In South Africa, the *Bantu Authorities Act No 68* (1951) set up homelands for Blacks with the specific purpose of keeping them away from Whites permanently. Blacks were pushed out of cities and forced to live in reserves. Homelands were run by chiefs who were in service to White leaders in the capital. Residents in these homelands had no national citizenship or political rights. And, in 1952, the *Natives Laws Amendment Act* made it so that only Blacks who had been born in a town and had lived there for 15 straight years or those who had worked for the same employer for 10 straight years could live in a town. The same year, the *Natives (Abolition of Passes and Co-ordination of Documents) Act No. 67* required that Blacks carry passbooks with their photo, place of origin, employment record, tax payments, and fingerprints. Failure to produce a passbook to a police officer was a crime. Further, Blacks could not leave a rural reservation for an urban area without a permit from local authorities and they must get a permit to seek employment within an urban area within 72 hours.

These were among the most notable and significant segregation laws in South Africa. Never has an effort been made in the US to treat Blacks this way, although of course lands

were stolen from other native people through various means. For example, the *Indian Removal Act* (1830) called for the relocation of all Eastern tribes across the Mississippi River. Caravelis and Robinson (2015) note that various tribes were relocated to Oklahoma, including the Cherokee, Chickasaw, Choctaw, and Creek tribes. The process of forcing tribes to relocate took more than a decade and became known as the *Trail of Tears* due to the massive loss of life that occurred. The *Dawes Act* (1887), aka the *General Allotment Act*, gave the US government further power to break-up Native American land. Though the goal was to force Natives to live like Whites (through farming) to achieve greater assimilation of Natives into White culture, 90 million acres of land were stolen from Natives and given to Whites (National Park Service, 2021). Another paper by this author will examine this issue in great detail.

Next, the *Promotion of Bantu Self-Government Act* (1959) established eight unique ethnic identities in the country and appointed a Commissioner-General to be a representative of the government. These officials were to develop homelands for each group and then each group would self-govern. The *Urban Blacks Council Act No 79* (1961) gave Blacks self-government powers in the urban townships. Yet, these powers were very limited and greatly hindered by corruption.

Blacks in South Africa were assigned as legal citizens in one homeland designated for their own ethnic group, through the *Bantu Homelands Citizenship Act* (1970). This law did not mean Blacks in South Africa had rights throughout the country. Instead, Blacks only had rights in their homelands, but these areas were not completely independent nor were they fully functional. South African History (2021b) notes that: “The local homeland economies were not developed. Bantustans relied almost entirely on White South Africa’s economy. Farming was not very viable largely because of the poor agricultural land in the homelands. In addition, Blacks owned only thirteen percent of South Africa’s land. These farm lands were in a poor condition because of soil erosion, and over grazing.” Consequently, “millions of Blacks had to leave the Bantustans daily and work in the mines, for White farmers and other industries in the cities. The homelands served as labour reservoirs, housing the unemployed and releasing them when their labour was needed in White South Africa.”

So it was in 1970 that the South African government made it clear that no Black person would qualify for South African citizenship or the right to live and work in the country. This law declared Blacks to be aliens in their own country. Minister Connie Mulder stated: “No Black person will eventually qualify ... because they will all be aliens, and as such, will



only be able to occupy the houses bequeathed to them by their fathers, in the urban areas, by special permission of the Minister.”

The *Bantu Homelands Constitution Act (National States Constitutional Act) No 21* (1971) and *Black Affairs Administration Act No 45* (1971) gave additional powers to homeland governments and between 1972 and 1977, some homelands became independent while all of them were declared autonomous. However, these lands were poor with few employment opportunities, and the people remained dependent on the South African government for survival. Further, under the *Black Laws Amendment Act No 7* (1973), tribes within or even an entire homeland could be ordered to move, and there was no right to appeal, so even the mere presence of Blacks in any area was subject to White control.

Segregation in South African and the United States was not just residential in nature. Other forms of segregation dealt with education, work, and even access to voting. A follow-up paper to this one deals with other forms of discrimination, including political and human rights discrimination, and efforts to assure separate (and even inferior) education, work experiences, and access to the vote are examined in that paper.

## **Discussion:**

This paper has shown the laws and institutions used in both the United States and South Africa used to implement segregation in each country. This analysis has shown that there were significant differences in segregation between the two countries. For example, in the US, courts, including the US Supreme Court, found it unconstitutional to try to stop Blacks from living on the same blocks as Whites, based in part on the Fourteenth Amendment. Yet, in South Africa, people assigned to different races were actually ordered to the areas in which they could reside, by law. Fredrickson (1982: 254) concludes that “the areal aspect of segregation—the determination of where people have a right to live, either permanently or temporarily—[was] central to modern South Africans race policy.” But, in the American south, “the essence of segregation was not geographical or even a spatial but was rather an effort to maintain hierarchical social distance between racial groups that were too much involved with each other to be separated by sharply drawn territorial, cultural, or economic boundaries.”

Blacks in the US also never had to carry passes to travel from one area to another, but they were clearly unwelcome in many (especially southern) White areas and were (and are)

routinely harassed on the roadways. It is also true that the process of *redlining* resulted in the near elimination of federally insured mortgages to certain (Black) neighborhoods in the US (Rothstein, 2018). Instead, the government efforts were “primarily designed to provide housing to White, middle-class, lower-middle-class families,” according to Rothstein. The logic of the Federal Housing Administration was that, if more Blacks lived in areas predominantly made up of Whites, property values would decline and loans would be at risk. There is some evidence of long-term loss of total worth among Blacks because of this form of historical segregation (Gross, 2017).

Other major differences between the two countries were how and when segregation was ended: US efforts to end it by law were successful earlier as the US Supreme Court struck down Jim Crow (“separate but equal laws”) and the Justice Department enforced legal rulings in the 1960s. Consider educational segregation, for example. The US Supreme Court, found, in *Brown v. Board of Education*, 347 U.S. 483 (1954), that segregated schools were unconstitutional in violation of the 14<sup>th</sup> Amendment, even if they were equal in terms of quality. At the very same time, Apartheid laws were ramping up in seriousness, as shown in this paper, created and endorsed by a national government. Fredrickson (1982) agrees, noting that the first major challenges to segregation in the US occurred in the 1950s, right about the same time segregation policy was becoming most rigid and institutionalized at the national level in South Africa.

It was never like this in the United States, at least not after the US Civil War and the passage of the 13<sup>th</sup> Amendment in 1865. Yet, integration of schools was frequently forced upon the unwilling South, even over the objection of Governors and other officials. Famously, Governor George Wallace of Alabama, stated, in his inauguration address, standing in the doorway to the state’s capitol building, on the same place as where Jefferson Davis had been sworn in as President of the Confederate States of America: “In the name of the greatest people that have ever trod this earth, I draw the line in the dust and toss the gauntlet before the feet of tyranny, and I say segregation now, segregation tomorrow, segregation forever.”

So, in the United States, civil rights equality was pushed forward by the federal government, but, in South Africa, Apartheid was the official policy of the national government from 1948 until the 1990s, and the entire history of the country since Colonization was characterized by segregation based on skin color (South African History, 2021a). A new Constitution guaranteeing equality for all was not effective in South Africa

until 1996 (Robinson, 2021b). This turns out to be one of the biggest differences between the two countries—timing.

In spite of the differences, it remains a fact that both the United States and South Africa were founded on discriminatory intent in the law, on the basis of White supremacy. In fact, of all the forms of discrimination used within both countries, perhaps it is racial segregation that best illustrates the very idea of White supremacy. Fredrickson (1982: 239) calls forced racial segregation, or *de jure* segregation, “the most striking institutional expression of White supremacy in both the United States and South Africa.” It was after all, White, male Europeans, who promoted White supremacy through means such as slavery and segregation. So, two major similarities between the US and South Africa are that it was “White attitudes, ideologies, and policies” that created discrimination in each country, and the ones who imposed the discrimination were White and “northwest European Protestants” (Frederickson, 1981: xviii). This is an undeniable, historical fact.

Frederickson (1981: xi) defines *White supremacy* as “the attitudes, ideologies, and policies associated with the rise of blatant forms of White or European dominance over ‘nonWhite’ populations.” Yet, it was not ignorant, foolish people who institutionalized discrimination. Instead, Cell (1982: x) asserts that it was “well-educated and comparatively moderate men” who created the systems of segregation that would come to characterize the US and South Africa. In the US, it started with southern Democrats, and in South Africa, it was Dutch settlers, Boers, or Afrikaners. In the US, it was conservative Whites loyal only to their own cause who created systems of discrimination. In South Africa, Afrikaner nationalism permitted the expansion of discrimination—for example, the more extreme “Natives policy” discussed in this paper (Cell, 1982: 6). Afrikaners made up the bulk of politicians, police, and the secret society called the “Broederbond” (Cell, 1982: 10) that was instrumental in forming and maintaining the Apartheid government and that had very close ties with big business in the country.

Fredrickson (1982: xxiv) points out an important difference between the US and South Africa. He notes that “both the struggle for American independence and the northern cause in the Civil War were ideologically conditioned by universalistic conceptions of human freedom and equality, whereas the Afrikaner struggle for nationhood that came to ultimate fruition in the contemporary Republic of South Africa was inspired in the main by a highly particularistic sense of ethnic identity and exclusiveness.” That is, racial discrimination in the US was accomplished overwhelmingly by segments of the population of the country, most

notably in the South. But, in South Africa, it was the national government itself that achieved it.

Cell's (1982: 3) analysis of US and South African history also suggests that the "driving force" or "ultimate cause" of segregation was "White racism." He argues that the very earliest of European settlers in both the US and South Africa could not have escaped the idea that Black was "evil, ugly" and White was "pure, beautiful, and godly" because this was "fundamental to their psychology" (Cell, 1982: 3-4): "The subordinate group is portrayed not only as naturally inferior, childlike, and servile but also as innately aggressive, dangerous, and uppity" (Cell, 1982: 12). People of color were ultimately even depicted as "subhuman." This "color syndrome" included "unconscious associations" that were "projected upon groups of people who were ... different, exploitable, and dangerously competitive. It was in the settlers' interests to attack and dominate them." Ultimately, the "color prejudice" became racism, "which permeated thought, mores, institutions, and social relations" (Cell, 1982: 4).

Yet, Cell (1982: 4) argues that "racism alone cannot be a necessary and sufficient explanation of any particular form of discrimination." He argues that the development of segregation rested on other factors as well, including economics, closely integrated with issues of social class. Factors such as industrialization and "inter-racial competition for industrial jobs" played significant roles in the history of segregation in the US and South Africa (Fredrickson, 1982: xix). In South Africa, "native segregation" and then Apartheid "sustained a labor system and provided a foundation for economic development (Fredrickson, 1982: 241). All of this was discussed in the paper.

Given all this, which theoretical explanations discussed earlier in the paper can best help us understand the historical discrimination against people of color in the US and South Africa? To help us answer, let's revisit some of the key conclusions of the paper. First, segregation and human & political rights violations all benefited Whites at the expense of Blacks. Second, the laws passed and societal institutions that enabled and carried out discrimination were (often explicitly) based on the alleged inferiority of Blacks, but were simultaneously also often rooted in economic concerns. Third, discrimination in the US and South Africa became institutionalized, soundly grounded in the law, for example.

Taken as a system of suppression, one can hardly imagine more successful implementation beyond the American and South African examples. Unlike, say, Nazi Germany's "final solution" of expelling and killing an entire population from existence, powerful Whites in the US and South Africa instead sought to dominate and exploit Blacks

for their own benefit; this required keeping Blacks around, though in segregated and diminished statuses. Consistent with this argument, Cell (1982: 4) calls racism in the US and South Africa “eminently functional.” After all, it led to the dominance of Whites over any and all other people—black, brown, etc.—and the successful creation of new nations. Cell (1982: 18) even writes that “segregation must be recognized as one of the most successful political ideologies of the past century. It was, indeed, the highest stage of White supremacy,” upheld even by Constitutions and the highest courts in the lands. Incredibly, racism and discrimination continued to exist in the US even as they “blatantly contradicted the highest ideas of the world’s largest and greatest democracy”—liberty, equality, happiness, and justice for all (p. 5).

This reality is supportive of the conflict, institutionalist, internal colonialism approaches, as well as of critical race theory and the argument of racialized social systems, where race became a way of organizing all of society around the very idea of legal and even moral discrimination. In both the US and South Africa, the socially constructed idea of race became the measure of a person’s worth, including for human and political rights, and determined to significant degrees whether people were entitled to land and protection from violence. That it took centuries for each country to develop along the lines of greater equality for all—even when, in the one case (the US), its founding documents stated a commitment to this very thing, and in the other case, (South Africa), the country has always been a majority minority country—is clear evidence that discrimination became institutionalized. Individual discrimination could have never sustained such denials of basic human and political rights for so long.

The histories of the US, particularly the southern US, and South Africa, are remarkably similar in terms of the forms of discrimination used against Native populations and people of color. Although it is beyond the scope of this paper, one might expect to find this to be true across the histories of different countries on the globe. Importantly, it was largely through the law—forced upon those in power by those not in power—which ultimately led to the end of discrimination *by law*. The timing of discrimination’s legal end, by Constitutional amendments and US Supreme Court action in the US and the writing and enactment of a new Constitution in South Africa, understandably varied. This is a function of many things, including different populations, economies, opportunities, written laws, Constitutions, and court interpretations. But, incredibly, both nations achieved more racial equality through legal means; in the case of the US, it was by applying the words on the

country's original founding document to more people across time, and in South Africa, it was achieved by writing a new Constitution—written and voted on for the first time by people of color in their own country.

Future papers will examine other forms of discrimination in each country. Further analysis will also examine the impact of discriminatory laws and practices on other groups in each country, including Native Americans in the US and Indians and “Coloreds” in South Africa. Finally, future research will illustrate how each country brought about necessary changes to achieve greater equality in the US and South Africa.

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