

The U.S. Needs a New Constitution to Address the Fundamental Wrong of Slavery

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Persecution based on race is one of the grounds on which people from other countries can seek asylum in the United States. To be successful under the [Immigration and Nationality Act](#), asylum seekers must show they have been persecuted or have a well-founded fear of persecution because of grounds like their political views, religion, or nationality, and that the [perpetrator is the government](#) (which includes the police) or a group the government can't or won't control. Black Americans experience persecution based on race and reasonably fear such persecution by the American government, and if they lived in another country, it stands to reason America would grant them asylum. The extent of America's oppression of Black people means that to dismantle systemic racism, America must begin by replacing the U.S. Constitution with one based on equality and human rights [like South Africa](#) did after the end of apartheid — a system of racial discrimination and segregation that has been [compared to America's Jim Crow](#) laws.

While this may seem like a radical proposal, the U.S. Constitution is actually the world's [oldest written charter of government still in use](#) today. The [vast majority](#) of countries have [rewritten their constitutions](#) to account for changing historical circumstances. And other suggested remedies to address systemic racism, like the House's recently passed [bill](#) to create a commission to study [providing reparations to Black Americans, may be](#) necessary steps, but are not enough on their own. The many crimes America has committed against its Black citizens are not just economic. For decades, the U.S. government has systematically and intentionally persecuted Black Americans because of their race.

Again, let's take the example of an asylum seeker from another country. An applicant who is pursuing asylum on the basis of racial discrimination must show a [direct connection](#) between their race and the persecution they have experienced or have a reasonable fear of experiencing. For example, a Black man would have to demonstrate he was repeatedly arrested and beaten by the police because he is Black, or that he received a harsher punishment for the same crime a white man committed because he is Black. In its [Asylum Manual](#), Immigration Equality, an LGBTQ immigrants' rights organization, explains that "courts have held that a 'threat to life or freedom on account of race...is always persecution.'" Courts have held that serious physical harm, coercive medical or psychological treatment, invidious prosecution or disproportionate punishment for a criminal offense, severe discrimination, economic persecution, and severe criminal extortion or robbery are forms of abuse that [may be considered persecution](#). Various types of harm that may not amount to persecution on their own may become persecution when [evaluated as a whole](#), such as "enforced social or civil inactivity; economic harm; or constant surveillance," according to the [National Immigrant Justice Center](#).

In America, police are far more likely to kill Black people. Black men are approximately [2.5 times](#) more likely to be killed by police than white men, and Black women are 1.4 times more likely to be killed by police than white women, with Black men and boys facing the highest risk of being killed by the police when compared with other groups of people. Recent examples include the police killings of [Ma'Khia Bryant](#), [Daunte Wright](#), [George Floyd](#), [Breonna Taylor](#), and Elijah McClain. Moreover, the police [rarely face repercussions](#) for killing people on the job. From 2013 to 2020, [98.3%](#) of police killings have not resulted in officers being charged with a crime, according to the Mapping Police Violence project. These higher and disproportionate rates of death at the hands of the police are an example of serious physical harm by a government actor. The [lack of consequences](#) for police who kill Black people is further evidence of the state's failure to protect Black citizens.

Police violence, harassment and over-policing is not limited to one or even a handful of states, which means a Black person can't simply relocate to another part of the country to escape it. Almost everywhere in the U.S., police departments kill Black people at a disproportionately higher rate, including states as varied as Missouri, Utah, Nevada, Florida, Arizona, Wisconsin, Nebraska, Oklahoma, and California. In [her research](#), Daanika Gordon, an assistant professor of sociology at Tufts University, has found that "predominantly Black neighborhoods are simultaneously over-policed when it comes to surveillance and social control, and under-policed when it comes to emergency services." Black people are also harassed by police on the road. A [2015 analysis by The New York Times](#) found that in North Carolina, police "used their discretion to search Black drivers or their cars more than twice as often as white motorists — even though they found drugs and weapons significantly more often when the driver was white. Officers were more likely to stop Black drivers for no discernible reason. And they were more likely to use force if the driver was Black, even when they did not encounter physical resistance." Sometimes such stops result in death, such as in the cases of Wright and [Philando Castile](#).

In comparison with other races, the government disproportionately incarcerates and punishes Black Americans for criminal offenses because they are Black. Based on statistics for 2019, [Black men are imprisoned at nearly six times](#) the rate of white men and Black people are imprisoned at more than [five times](#) the rate of white people. Moreover, according to a 2017 report by the Stanford Center on Poverty and Inequality, [one in 10 Black children](#) has a parent in prison, compared with about one in 60 white children. Judges are also more likely to incarcerate Black people with longer sentences than white people for the same or similar crimes. A 2017 [U.S. Sentencing Commission report](#) found that judges give Black men prison sentences that are 19.1% longer for federal crimes that are the same in all relevant ways as the crimes committed by white men. One example of the way the criminal justice system, racial bias, and voter disenfranchisement can come together to impact Black Americans is the five-year prison sentence [Crystal Mason received for voting](#) when she did not realize a prior felony conviction for tax fraud had made her ineligible to cast a ballot. Her vote was [never counted](#). [Terri Lynn Rote](#), a white woman with no prior convictions, who tried to vote twice in the 2016 presidential election, was sentenced to two years of probation and fined \$750.

Discrimination [rises to the level of persecution](#) if it leads to substantially harmful consequences for the person, such as serious restrictions on the person's right to earn a livelihood or access normally available educational spaces, according to the United Nations Human Rights Council. It's not hard to see how over-policing of Black neighborhoods and frequent traffic stops and searches could lead to more police killings and the disproportionate imprisonment of Black people, who are then subjected to harsher sentences because they are Black. Incarceration also leads to disenfranchisement, which means Black people lose another right of citizenship. In [18 states](#), people convicted of a felony lose their voting rights during incarceration and for a period of time after, and in [11 states](#), people lose their voting rights for even longer or indefinitely for some crimes. These laws mean that [one in 16 Black Americans](#) of voting age is disenfranchised, according to the Sentencing Project, which is [3.7 times greater](#) than the number of disenfranchised Americans of other races. Black people who haven't been incarcerated are [kept from the polls](#) through voter identification and automatic purge laws, intimidation at the polls, and frequent changes to polling station locations. Taken together, killings by the police, lack of police presence when Black people need help, harassment of Black drivers, over-policing of Black neighborhoods, disproportionate incarceration, and disenfranchisement, could be argued to amount to the kind of persecution asylum seekers are asked to prove.

Additionally, a hypothetical Black asylum applicant could show a well-founded fear of persecution by demonstrating a historical [pattern or practice of persecution](#) against Black people. There is no shortage of scholarship and articles documenting such a pattern or practice in this country, from slavery, Jim Crow laws, lynching, and [redlining](#) to [voter suppression](#). Many of these policies continue to impact the lives of Black Americans.

To fix its racism problem, the United States should replace its constitution with one guided by principles of equality and human rights. Our constitution was written when "we the people" [did](#)

[not include Black people](#). Since then, attempts to modernize the constitution via amendments, like the Fourth Amendment and the 14th Amendment, have not done enough to protect Black citizens — or any other vulnerable communities for that matter — because systemic racism cannot be fixed via a patchwork approach. It requires a holistic overhaul of the systems that perpetuate it and a clear commitment to anti-racism and equality. As a starting point, the U.S. can look to South Africa. After the end of apartheid in the early 1990s, the South African government did two important things to begin building a non-racist society. First, it created the [Truth and Reconciliation Commission](#) to uncover and review atrocities committed during apartheid. Second, in 1996, it adopted a new constitution based on the idea that “human dignity, the achievement of equality, and the advancement of human rights and freedom” should [guide](#) everything the government does. The constitution was drafted with input from the public and [26](#) different political parties. As the BBC notes, it is considered one of the most [progressive](#) constitutions in the world.

Like South Africa, the U.S. should make the right to equality explicitly “[non-derogable](#),” meaning it can’t be suspended or limited under any circumstance due to its importance. [South Africa’s Bill of Rights](#) states that neither the state nor a person may “unfairly discriminate directly or indirectly against anyone on one or more grounds, including race...ethnic or social origin, color...and birth.” That’s the kind of moral clarity we need. Black Americans are Americans and it is time the U.S. Constitution treated them as such.