

Paper #3 (Question #2)
Time To Kill: Race, Punishment, Death, and Desire
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In this paper I will argue that we can observe the all-encompassing and manifest existence of Foucaultian biopolitics in Bryan Stevenson's *Just Mercy*. The form of biopolitics we can understand to exist from Stevenson's *Just Mercy* is one which includes, but is by no means solely limited to the category of race. I shall advance the argument that the form of biopolitics which Stevenson envisions in his work is one which far transcends racial boundaries. I will argue that this form of biopolitics is one which affects the *weak*, and perpetuates a codified system of inequality in which the weakest portions of our populous are left with utterly no chance at succeeding in the system. I will provide examples which Stevenson discusses in the book in the hopes of better defining this incredibly broad notion of biopolitics which I believe Stevenson endorses in the book. These examples shall include, but again will not be limited to, the poor, the mentally ill, juveniles, women, among others. Additionally, I will discuss the flawed government and political machinery which make such gross inequality in America not only possible, but a powerful reality. I will discuss how this is a systemic issue, and one which our legal system has decisively and willfully codified over the years. I intend to do all of this by resorting only to Stevenson's *Just Mercy* and Michel Foucault's *Society Must Be Defended*.

To begin, for Foucault, biopolitics is the State's way of controlling race, defined as the human species. Biopolitics, for Foucault, is an idea which acts on, and

affects *populations*, or *man-as-species*. This is an important notion, as for Foucault race means the human species, not to be confused with our understanding of race, (ethnicity/racial origins, etc)., today. Foucault's conception of biopolitics is a method of control which acts on entire *populations*, *not individuals*: "Biopolitics deals with the population, with the population as political problem, as a problem that is at once scientific and political, as a biological problem and as power's problem."¹ However, We can observe further along in *Society Must Be Defended* how this Foucaultean concept of biopolitics is particularly relevant to the issue which Stevenson is writing about in *Just Mercy*—capital punishment—as according to Foucault, biopolitics is inextricably intertwined with life and death, which is in turn embedded within the Foucaultean idea of *race*: "What in fact is racism? It is primarily a way of introducing a break into the domain of life that is under power's control: the break between what must live and what must die."² This pertains directly to Stevenson's position on the death penalty and the inequalities which he believes exist throughout capital punishment. For Foucault, power is *relational*. and this is also true in Stevenson's discussion of capital punishment, as his entire book is devoted to discussing and proving disparities in treatment on behalf of the State with its populous based on various factors. In other words, both Stevenson *and* Foucault are discussing relationships we have with the State; it is in this context in which we can see biopolitics emerge.

Race is just one category which Stevenson believes epitomizes the gross inadequacy of the American government. While Stevenson does discuss the racist

¹ Foucault, *Society Must Be Defended*, 245.

² Foucault, *Society Must Be Defended*, 254.

policies of our government and political system, his argument encompasses so much more than just race in the way that we understand it. What Stevenson is really discussing in *Just Mercy* is the way our government controls *groups* of people: *weak groups of people*. We can see this argument throughout the early pages of *Just Mercy*: “We have declared a costly war on people with substance abuse problems.”³ Similarly: “We ban poor women and, inevitably, their children from receiving food stamps and public housing if they have prior drug convictions.”⁴ Stevenson’s argument of disparate treatment and an unequal system is one which is diffuse, and affects many:

“I’ve represented women, whose numbers in prison have increased 640 percent in the last thirty years...how our hysteria about drug addiction and our hostility to the poor have made us quick to criminalize and prosecute poor women...I’ve represented mentally disabled people whose illnesses have often landed them in prison for decades.”⁵

Thus, from these excerpts it is plain to see that Stevenson is not concerned solely with race. The biopolitics he is discussing negatively impacts the poor, drug addicts/abusers, the mentally ill, women, children/juveniles, and, of course, racial minorities.

There are many instances in *Just Mercy* in which we can observe the systemic nature of this problem, which facilitates such widespread disparate treatment of American society’s weakest. For example, Stevenson devotes part of his discussion of one of his many clients, Walter McMillian, to describing racially discriminatory jury selection processes achieved via multiple peremptory strikes: “Nearly

³ Stevenson, *Just Mercy*, 15.

⁴ Stevenson, *Just Mercy*, 16.

⁵ Stevenson, *Just Mercy*, 17.

everyone on death row had been tried by an all-white or nearly all-white jury.”⁶ Stevenson proceeds to discuss the example of another death row prisoner, Jesse Morrison, whose prosecutor “had used twenty-one out of twenty-two peremptory strikes to exclude all the black people in the jury pool.”⁷ Perhaps even more astounding is that such inherently unfair practices of this nature were occurring in spite of the 1986 United States Supreme Court ruling in *Batson v. Kentucky*, which held “that prosecutors could be challenged more directly about using peremptory strikes in a racially discriminatory manner.”⁸ Thus, this indifference on the part of the system—the American federal government—makes it clear that these people, (in this instance, racial minorities), do not matter, and are worth less than others.

Let’s continue with Stevenson’s theme of willfully codified systemic inequality, which affects not one, but multiple groups. Later on in the text, we can observe another instance of fundamentally flawed jurisprudence resulting in further systematized inequality in the form of *victim-impact statements*. Stevenson describes how in 1987, in *Booth v. Maryland* how the Supreme Court ruled “that introducing evidence about the status, character, reputation, or family of a homicide victim was unconstitutional.”⁹ This ruling essentially enforced the notion of victim equality, that “all victims are equal” per-se. However, “less than three years later, the Court reversed itself in *Payne v. Tennessee* and upheld the rights of states to present evidence about the character of the victim in a capital sentencing trial.”¹⁰

⁶ Stevenson, *Just Mercy*, 60.

⁷ Ibid.

⁸ Ibid.

⁹ Stevenson, *Just Mercy*, 141.

¹⁰ Ibid.

The *Payne* ruling enforced this perverse notion of human capital, that *not* all victims are equal, and this in turn, precipitated a process of much harsher laws and sentencing at the end of the 20th century. What is even more troubling is that shortly after the *Payne* ruling was handed down, it emerged in *McCleskey v. Kemp* “that the race of the victim is the greatest predictor of who gets the death penalty in the United States.”¹¹ Therefore, through *McCleskey*, we can understand the enormity and inherent unfairness of the ruling in *Payne*, and how that decision provided the state with an additional weapon to use against the weak in ultimately deciding who lives and dies.

Lastly, *judicial override* can be understood as another area in which our legal system has failed us in the realm of capital punishment, allowing the government another opportunity to have a say in who lives and dies despite what the jury presiding over the capital punishment case may decide. Stevenson discusses this concept in the case of one of his late clients, Michael Lindsey: “Lindsey received a sentence of life imprisonment without parole from his jury, but the judge had ‘overridden’ it and imposed a death sentence on his own.”¹² Judicial override has been enforced by the United States Supreme Court: “As peculiar as the practice is, the U.S. Supreme Court upheld judicial override in an earlier Florida case.”¹³ Thus, all of the aforementioned legal concepts can be perceived as contributing to a form of biopolitics which acts on the weakest sects of society in Stevenson’s *Just Mercy*.

¹¹ Stevenson, *Just Mercy*, 142.

¹² Stevenson, *Just Mercy*, 69-70.

¹³ Stevenson, *Just Mercy*, 71.

We can better understand how these concepts and ideas function by analyzing specific cases and examples which Stevenson provides to us.

To begin the cases of Horace Dunkins and Herbert Richardson are particularly illuminating, as they demonstrate the callous disregard our legal system has for mentally ill people in capital punishment cases. Stevenson describes how “Mr. Dunkins suffered from intellectual disabilities, and the trial judge found he had ‘mental retardation’ based on his school records and earlier testing.”¹⁴ In spite of these obvious mitigating factors, Dunkins was still killed in a “botched execution that made national news.”¹⁵ Herbert Richardson was a Vietnam veteran who also suffered from mental illness in the form of post-traumatic stress disorder.¹⁶ This leads Stevenson to discuss the American government’s disregard for the psychological problems which follow our troops home long after they have vacated the battlefield: “By the mid-1980s, nearly 20 percent of the people in jails and prisons in the United States had served in the military.”¹⁷ Our government is not phased by such a startling statistic, and continues to treat veterans, many of whom suffer from mental illnesses to some degree, or in some capacity, as completely competent perpetrators and criminals. Thus, we can begin to glean from these examples an egalitarianism of criminality, coupled with victim inequality, which, when combined, stack the odds completely against those who are facing incarceration, especially if they cannot provide themselves with sufficient or adequate defense in the legal proceedings.

¹⁴ Stevenson, *Just Mercy*, 71.

¹⁵ Ibid.

¹⁶ Stevenson, *Just Mercy*, 74.

¹⁷ Stevenson, *Just Mercy*, 75.

Another example in which we can observe the contemporary politics of biopolitics in Stevenson's *Just Mercy* is in the instance of *juveniles*: "Only a handful of countries permitted the death penalty for children—and the United States was one of them...Many states had changed their laws to make it easier to prosecute children as adults, and my clients were getting younger and younger."¹⁸ Thus, the example of juveniles can be perceived as another instance in which we can observe this continued trend of uniformity, or egalitarianism in regards to criminality. The United States of America is completely fine with trying juveniles—*children*—as adults in capital cases ("the Supreme Court had upheld the death penalty for juveniles in a 1989 ruling"),¹⁹ and punishing them by sentencing them to death. Stevenson discusses this morally reprehensible flaw in our inadequate legal system by describing to us a fourteen year-old boy named Charlie, who under truly horrible circumstances, murdered his alcoholic and abusive mother's boyfriend who had been living with them together for roughly eighteen months.

Thus, the examples of Horace Dunkins, Herbert Richardson, and Charlie can all be understood as microcosms of the contemporary politics of biopolitics in Stevenson's *Just Mercy*. These examples of real people highlight much broader, general themes, concepts, and ideas in which our government has not only allowed for, but also played an active role in facilitating and enforcing the deaths and imprisonment of the weakest members of our society, who lack a voice and any real ability to defend themselves. As I have said throughout this paper, this means of controlling man-as-species includes, but is by no means confined solely to race, at

¹⁸ Stevenson, *Just Mercy*, 115.

¹⁹ Stevenson, *Just Mercy*, 116. (Stevenson is referring to *Stanford v. Kentucky* here).

least not according to Stevenson: “In the 1980s, the Court rejected a constitutional challenge to imposing the death penalty on juveniles; upheld the death penalty for disabled people suffering from ‘mental retardation’; and, in a widely condemned opinion, found no constitutional violation in the extreme racial disparities that could be seen throughout most death penalty jurisdictions.”²⁰ This quote not only highlights our government’s and our society’s willful and deliberate ignorance in our treatment of many of our own criminals; it also epitomizes how this is a problem which transcends any single category of people. This is a problem which is not drawn only along racial lines—it affects the *weakest* sections of our society: Women, children, the mentally ill, and, of course, racial minorities.

Lastly, I would like to refute any counterarguments to my point that this is, in fact, biopolitics and *not* disciplinary power. The points I would like to make in regards to how what we see in Stevenson’s *Just Mercy* is not disciplinary power, and is truly biopower pertain to two qualities of disciplinary power, which, if acknowledged, make it indisputable that Stevenson really is discussing the contemporary politics of biopolitics in his book *Just Mercy*. For Foucault, disciplinary power is not only subtle, but *invisible*. This is simply not the case in regards to the situation which Stevenson is discussing. These are relations which have been, in many cases, explicitly codified and enforced by the United States Supreme Court, the supreme law of the land. It is there for all of us to see and read. We, however, willfully disavow that there is no unfair or disparate treatment occurring as long as we are not the ones suffering from it, as this is the path of least

²⁰ Stevenson, *Just Mercy*, 78.

resistance. We make a conscious choice to blind ourselves from the unfair treatment which is occurring right in front of us, because it is simply the easiest way out. The second point I would like to make in regards to disciplinary power, which if acknowledged, would yield an agreement that what we have here is indisputably the contemporary politics of biopolitics [and not that of disciplinary power], pertains to the quality of disciplinary power: What it encompasses. Disciplinary power acts on the *individual*. This is a core concept which comprises Foucault's definition of disciplinary power. What Stevenson is discussing in *Just Mercy* is power relations which affect many and large *groups* of people. While eventually, it can be seen and understood as acting individually, ultimately it is best understood as affecting, influencing, and significantly altering the lives of large groups of people. Thus, for these reasons, and based on the concepts and specific examples I have used and discussed throughout this paper, Stevenson can be understood as discussing the contemporary politics of biopolitics and *not* discipline.