WHITE VIGILANTISM AND THE RACISM OF RACE-NEUTRALITY

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ABSTRACT

Race-neutrality has long been touted in American law as central to promoting racial equality while guarding against race-based discrimination. And yet the legal doctrine of race-neutrality has perversely operated to shield claims of racial discrimination from judicial review while protecting discriminators from liability and punishment. This Article critiques the doctrine of race-neutrality by examining the law's response to white vigilantism in the much-publicized criminal trials of Kyle Rittenhouse and that of Ahmaud Arbery's assailants.

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INTRODUCTION

LatCrit[1] saved my life. It has provided an intellectual home to critically examine systemic racism while creating a community of activists, lawyers, and academics steadfastly committed to racial justice. The annual LatCrit conference has long represented a safe space in which new ideas can be discussed free from hostility, in which mentorship can take root, and in which new research and advocacy projects can be nurtured. I began attending LatCrit conferences while still in practice over seventeen years ago. While I quite enjoyed practicing commercial and immigration law, as a former schoolteacher for at-risk and low-income students, I was desperate to find ways to use my legal degree to advance racial and economic justice. LatCrit was a revelation, and through its conferences I was encouraged by many of my future mentors (including LatCrit luminaries Angela

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1. LatCrit is a legal academic organization that seeks to develop critical race scholarship and promote coalational practice in the pursuit of social justice. *See About LatCrit*, LATCRIT, https://latcrit.org/about-latcrit/ (last visited June 19, 2022).

P. Harris, Emma Coleman Jordan, Camille Nelson, and Kevin Johnson) to enter academia in order to research how the law can respond to social inequality. I am still learning about the nature of race and racism after all these years, with LatCrit providing the core foundation for critical race pedagogy and advocacy within legal academia.

This Article contemplates why our laws continue to support white supremacy and how norms of race-neutrality can operate to normalize inequality and discrimination in response to crises. It suggests that the deployment of race-neutrality itself can been seen as a response to crisis—such as it was when the Moynihan Memorandum called for a period of "benign neglect" on matters of racial justice in response to the perceived "crisis" of formal racial equality.[2]

I. EQUALITY, CRISES, AND THE PERMANENCE OF RACISM

I presented my ideas on how our social and governmental responses to crises operate to entrench and normalize racial inequality during the 2021 LatCrit conference. I advanced three primary claims about race and why we have not transcended racial inequality. One, I posited that what we think of as "race" developed over time to mediate the inherent contradiction between the norms of universal equality that undergird our society and the persistence of socioeconomic inequality**.** That is, I argued that the modern concept of "race" is not only socially constructed (which has been thoroughly established following the post-War's rejection of biological race theory),[3] but evolved over time to navigate the particular contradiction of democracy between equality and inequality. Liberal democratic egalitarianism thus depends, I suggested, on the persistence of widespread racism in society.[4]

Second, I argued that crises—such as the COVID-19 pandemic, economic recessions, seeming outbreaks of crime, and the current crisis of American democracy—can activate cognitive schemas that lead to social backlash against racialized populations, which then inform governmental responses that are often discriminatory and end up further entrenching racial inequality. I suggested that the expression of racism—whether in response to crisis events or not—serves important structural and psychic purposes. In particular, I argued that legal and governmental responses to emergencies often are ritualistic public spectacles that serve to stabilize societies reeling from crises while typically relying on the objective veneer of science to appear neutral, natural, and necessary.[5]

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2. OFFICE OF POL'Y PLANNING & RSCH., THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION (1965) (aka the "Moynihan Report"); Memorandum from Daniel P. Moynihan, Counselor to the President for Urban Affairs, to Richard Nixon, President of the United States 7 (Jan. 16, 1970).

3. *See, e.g.*, MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES 6 (3d. ed. 2015).

4. Christian Sundquist, Crisis Racism, presentation at the LatCrit 2021 Biennial Conference (Oct. 9, 2021) (lecture notes on file with author).

5. *Id.*

And finally, I theorized that the modern endurance of racism in democratic societies ostensibly committed to equality can be traced in part to those racialized socio-legal responses to crises that often rely on the apparent neutrality of science to normalize racial inequality. And while I ultimately concluded that racism may well be permanent (to paraphrase one of the founders of Critical Race Theory, the late Derrick Bell, Jr.),[6] I also claimed that the practice of race consciousness, combined with strategic litigation and targeted legislation, can allow us to disrupt these currents of racism.[7]

Following an engaging discussion on "crisis opportunism" and race after my panel at the LatCrit conference, I felt it both timely and appropriate to adapt my argument to the recent murder prosecutions of Kyle Rittenhouse and the defendants ultimately convicted in the death of Ahmaud Arbery.[8]

II. RACE-NEUTRALITY AND WHITE VIGILANTISM: FROM AHMAUD ARBERY TO KYLE RITTENHOUSE

Kyle Rittenhouse, a young white man illegally armed with an AR-15 style rifle, traveled across state lines to a protest in support of Black civil rights and shot three people—two of them dying immediately.[9] Rittenhouse, a self-identified militia member, was later seen associating with known white supremacists and flashing "white power" hand signs while out on bail for the shootings.[10] He was nonetheless found not guilty of all charges.[11]

Ahmaud Arbery, a twenty-five-year-old Black man out for a morning jog, was hunted down and killed in Georgia by white vigilantes driving a pickup truck emblazoned with the Confederate flag.[12] After Arbery was "trapped like a rat," in the words of one defendant, he was killed with three shotgun blasts to the chest at close range—with at least one defendant reportedly saying a racial slur as Arbery lay dying on the ground.[13] Arbery's

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6. DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM 13 (1992).

7. *See* Sundquist, *supra* note 4.

8. The defendants convicted of murdering Ahmaud Arbery are Travis McMichael, Gregory McMichael, and William "Roddie" Bryan. Janelle Griffith, *Three Men Convicted of Murdering Ahmaud Arbery Sentenced to Life in Prison*, NBC NEWS (Jan. 7, 2022, 4:21 PM), https://www.nbcnews.com/news/us-news/three-men-convicted-murdering-ahmaud-arbery-sentenced-life-prison-rcna10901.

9. Josiah Bates, *Kyle Rittenhouse Found Not Guilty of All Charges*, TIME (Nov. 19, 2021, 1:25 PM), https://time.com/6117401/kyle-rittenhouse-verdict-not-guilty/.

10. Wilson Wong, *Kyle Rittenhouse, Out on Bail, Flashed White Power Signs at Bar, Prosecutors Say*, NBC NEWS (Jan. 14, 2021, 8:45 AM), www.nbcnews.com/news/us-news/kyle-rittenhouse-out-bail-flashed-white-power-signs-bar-prosecutors-n1254250.

11. *See* Bates, *supra* note 9.

12. Trone Dowd, *Ahmaud Arbery's Killer Doesn't Want a Jury to See His Confederate Flag Vanity Plate*, VICE NEWS (Oct. 6, 2021, 10:48 AM), https://www.vice.com/en/article/y3dyjm/ahmaud-arbery-killer-travis-mcmichael-confederate-flag-evidence-murder-trial.

13. Russ Bynum, *Defendant: Ahmaud Arbery 'Trapped Like a Rat' Before Slaying*, ABC NEWS (Nov. 10, 2021, 4:34 PM), https://abcnews.go.com/US/wireStory/defendant-ahmaud-arbery-trapped-rat-slaying-81085944.

killers were eventually found guilty of murder and other charges.[14] These tragic events illustrate the danger of white vigilantism in our fractured body politic while revealing how race-neutral laws are often used in racially biased ways as a result of our nation's unconfronted legacy of racial oppression.

A. White Vigilantism and Self-Defense Law

The rise of white vigilantism is directly connected to the expansion of self-defense laws in the United States. From Bernhard Goetz[15] and George Zimmerman,[16] to Kyle Rittenhouse and Arbery's killers, white vigilantism routinely relies on theories of self-defense to justify the co-option of state violence to defend the racial status quo—especially when violence is used in response to a perceived "crisis" of criminality.[17] The otherwise criminal acts of white vigilantes are excused by self-defense laws if they are deemed "reasonable" in relation to the perceived threat of harm.[18] And yet the assessment of what constitutes a reasonable fear is shaped by racist stereotypes—such as Black criminality or superhuman strength—that are often deployed by white vigilantes at trial.[19] Kyle Rittenhouse was not convicted of a single crime once the jury accepted his tear-filled explanations for attending the Black Lives Matter protest. Rittenhouse disingenuously claimed that he traveled to the racial justice protest to protect the public from urban "rioters," despite wielding a loaded semiautomatic rifle and body armor and associating with white supremacists. He also claimed that he only shot *three* protestors in self-defense, despite testimony from protestors that they believed he was an active shooter.[20]

Similarly, the defendants in the Arbery trial regularly relied on racist tropes to support their self-defense claim. Indeed, they were not charged with any crime for more than two months as the formerly assigned prosecutors seemed to have accepted without question the defendants' race-neutral reason for why they chased and ultimately shot Arbery to death—that

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14. Richard Fausset, Tariro Mzezewa, & Rick Rojas, *Three Men Are Found Guilty of Murder in Arbery Shooting*, N.Y. TIMES (Nov. 24, 2021), https://www.nytimes.com/2021/11/24/us/ahmaud-arbery-murder-verdict.html?searchResultPosition=3.

15. People v. Goetz, 497 N.E.2d 41 (N.Y. 1986).

16. Notice to Appear Before the Honorable Kenneth R. Lester Jr., State v. Zimmerman, No. 2012-CF-001083-A (Fla. Cir. Ct. Apr. 20, 2012). The Bernhard Goetz and George Zimmerman cases both involved the strategic deployment of racial stereotypes by the criminal defendants to justify the murders of young Black men as "self-defense." *See generally* Jonathan Markovitz, *"A Spectacle of Slavery Unwilling to Die": Curbing Reliance on Racial Stereotyping in Self-Defense Cases*, 5 U.C. IRVINE L. REV. 873, 877–94, 902–04 (2015).

17. *See* Kiara Alfonseca, *Arbery, Rittenhouse Cases Spotlight Self-Defense and Vigilantism*, ABC NEWS (Nov. 26, 2021, 5:30 AM), https://abcnews.go.com/US/arbery-rittenhouse-cases-spotlight-defense-vigilantism/story?id=81278054.

18. *See* Markovitz, *supra* note 16, at 875–78.

19. *See id.* at 877. *See infra* note 43 and accompanying text.

20. Carli Pierson, *Kyle Rittenhouse Deserves an Award After his Melodramatic Performance on the Witness Stand*, USA TODAY (Nov. 10, 2021, 7:18 PM), https://www.usatoday.com/story/opinion/2021/11/10/kyle-rittenhouse-cried-during-his-trial-dont-fooled-his-tears/6373345001/; Bates, *supra* note 9.

they thought Arbery "looked like" a burglar and were trying to make a citizen's arrest (despite witnessing no crime).[21] This explanation rings hollow, however, once we acknowledge that citizen arrest laws (like Georgia's now revised law) were passed in the United States following the fall of chattel slavery in order to provide a legally acceptable, race-neutral reason to continue the policing of Black bodies through "slave patrols."[22] Such laws have their foundation in fugitive slave vigilantism, which empowered poor (and other) white communities to use violence to prevent the escape of enslaved persons.[23] The white vigilante policing of Black people was normalized by the incorporation of the "Fugitive Slave Clause" into the U.S. Constitution which provided (ironically in race-neutral language) that:

> No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.[24]

This legacy of chattel slavery continues to embolden white denizens to enforce racial hierarchies under the cover of seemingly neutral laws.

B. White Vigilantism and Juror Discrimination

The doctrine of race neutrality has also allowed white vigilantes—often reacting to perceived social crises—to escape criminal punishment when used to legitimize the exclusion of nonwhite jurors at trial. Race-neutral reasons were deployed to justify the fact that eleven out of the twelve jurors empaneled for the reluctant prosecution of Arbery's killers were white.[25] Defense attorneys in the case stated that they wanted more "white males born in the South," such as "Bubbas" and "Joe Six Packs," on the jury, remarked that "[W]e don't want any more Black pastors coming in[to] [the courtroom]," and invoked runaway slave caricatures in attacking the dead Arbery as having "no socks to cover his long, dirty toenails."[26] Judge Timothy Walmsley nonetheless held, incorrectly

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21. Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N.Y. TIMES (Feb. 7, 2022), https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html.

22. *See* Marvel L. Faulkner, *Dear Courts: I, Too, Am a Reasonable Man*, 48 PEPP. L. REV. 223, 230 (2021).

23. *See* Fabiola Cineas, *Ahmaud Arbery and the Case for Getting Rid of Citizen's Arrests*, VOX (Nov. 10, 2021, 9:30 AM), https://www.vox.com/22765019/ahmaud-arbery-citizens-arrest-laws.

24. U.S. CONST. art. IV, § 2, cl. 3.

25. Asia Burns, *1 Black Juror and 11 White Jurors Will Hear the Trial in the Killing of Ahmaud Arbery*, NPR (Nov. 3, 2021, 8:29 PM), https://www.npr.org/2021/11/03/1052107690/jury-mostly-white-ahmaud-arbery-georgia.

26. Theresa Waldrop, *Defense Lawyer Prompts Outrage for Bringing Up Ahmaud Arbery's Toenails in Closing Arguments*, CNN (Nov. 24, 2021, 2:23 PM), https://www.cnn.com/2021/11/22/us/ahmaud-arbery-trial-toenails-comment-outrage/index.html; Devon M. Sayers, Alta Spells, & Christina Maxouris, *'We Don't Want Any More Black Pastors Coming in Here,' Says Defense Attorney in Arbery Death Trial*, CNN (Nov. 12, 2021, 12:36 PM),

as a matter of established law,[27] that the court was powerless to address any such discrimination as the defense was able to provide a race-neutral "legitimate, nondiscriminatory" reason for excluding Black prospective jurors—despite the court's earlier finding "there appear[ed] to be intentional discrimination" in the selection of jurors.[28]

The failure of the trial court to second-guess the race-neutral explanations provided by the defense is nonetheless not surprising. America, unfortunately, has a long and continuing history of excluding Black jurors through the use of Jim Crow-styled peremptory challenges.[29] While the Supreme Court of the United States belatedly held in *Batson v. Kentucky*[30] that it was unconstitutional to exclude jurors on the basis of race,[31] peremptory juror challenges (which allow parties to eliminate a certain number of jurors without giving a reason) are a common tool of litigants to rationalize racial discrimination by allowing courts to accept almost any "race-neutral" reason for juror exclusion.[32] The *Batson* court fueled the use of peremptories to shield race-based juror exclusion from meaningful judicial review by providing that a prosecutor could rebut a defendant's showing of racial bias by articulating a "neutral explanation" for striking a juror.[33] Once the prosecutor has offered such a reason, *Batson* provides that the trial court must then determine if the defendant has provided sufficient proof of purposeful and intentional racial discrimination to warrant a finding that a constitutional violation has occurred.[34] The framework of *Batson* was later extended to situations involving prosecutorial allegations of racially discriminatory jury selection by the criminal defendant in *Georgia v. McCollum*.[35]

The trial judge in the Arbery trial was presented with such a "reverse-*Batson*" claim by the prosecution following jury selection, and yet maddeningly failed to understand that he need not accept without question the defendants' offer of race-neutral reasons for the exclusion of Black jurors.[36] Indeed, Judge Walmsley should have rejected the proffered reasons by the defense given his judicial finding that "there appears to be

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https://www.cnn.com/2021/11/11/us/ahmaud-arbery-trial-defense-attorney-black-pastors/index.html; Devon M. Sayers, Alta Spells, & Christina Maxouris, *Judge says 'There Appears to Be Intnetional Discrimination' in Arbery Jury Selection, but Allows Trial to Move Forward with 1 Black Juror*, CNN (Nov. 12 , 2021, 9:52 PM), https://www.cnn.com/2021/11/03/us/ahmaud-arbery-jury-what-we-know/index.html [hereinafter *Arbery Jury Selection*].

27. *See* Batson v. Kentucky, 476 U.S. 79, 94 (1986); Georgia v. McCollum, 505 U.S. 42, 59 (1992).

28. *Arbery Jury Selection*, *supra* note 26.

29. Gilbert S. Bayonne, Note, *Avoiding the Fire Next Time: Foster v. Chatman and the Inevitability of Peremptory Prejudice*, 44 S.U. L. REV. 265, 288–91 (2017).

30. 476 U.S. at 79.

31. *Id.* at 97.

32. Bayonne, *supra* note 29, at 274.

33. *Batson*, 476 U.S. at 98.

34. *Id.*

35. 505 U.S. at 59.

36. *Id.* The *McCollum* decision is often referred to as allowing "reverse-*Batson*" claims of discriminatory jury selection by criminal defense attorneys. *See, e.g.*, Elina Tetelbaum, *The Reverse-Batson: Wrestling with the Habeas Remedy*, 119 Yale L.J. 1739, 1743–44 (2010).

intentional discrimination" in the selection of jurors—which undoubtedly is a reasonable inference due to the race-based comments by the defense attorneys and the disproportionate selection of white jurors in the case.[37]

Justice Thurgood Marshall keenly observed in his *Batson* concurrence that "[a]ny [party] can easily assert facially neutral reasons for striking a juror, and trial courts are ill-equipped to second-guess those reasons."[38] Justice Marshall was correct in his prediction that *Batson* "will not end the racial discrimination that peremptories inject into the jury-selection process,"[39] with multiple findings that prosecutors and other attorneys are often trained to provide common race-neutral explanations for a juror strike when confronted with a *Batson/McCollum* challenge.[40] Trial courts, unfortunately, routinely accept such pretextual explanations with little to no scrutiny.

In the consolidated North Carolina state case of *State v. Robinson,*[41] for example, evidence demonstrated that prosecutors were provided with ten race-neutral justifications in their training materials for dismissing Black jurors in order to abide by *Batson*.[42] These race-neutral explanations included referencing a prospective Black juror's inappropriate dress, physical appearance, and body language as the basis for a juror strike.[43] Despite receiving *Batson* training, the prosecutors in *Robinson* were more explicit in their exclusion of Black jurors.[44] The court found that in addition to excluding prospective Black jurors at a far higher rate than prospective white jurors, the prosecutors in the case made racialized references to "thugs," "lives in blk [sic] area," and "strong as a bull" in their jury voir dire notes to describe potential Black jurors.[45]

The U.S. Supreme Court revisited *Batson* just a few years ago in *Foster v. Chatman* and reaffirmed the basic principle that the State's use of peremptory challenges to strike *all* of the prospective Black jurors in the

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37. *Arbery Jury Selection*, *supra* note 26.

38. *Batson*, 476 U.S. at 106 (Marshall, J., concurring).

39. *Id.* at 102–04.

40. *See* Bayonne, *supra* note 29, at 288–91; Bennett L. Gershman, *How Prosecutors Get Rid of Black Jurors*, SLATE (May 26, 2016, 5:51 AM), https://slate.com/news-and-politics/2016/05/how-prosecutors-get-away-with-striking-potential-black-jurors.html.

41. 846 S.E.2d 711 (N.C. 2020).

42. *Id.* at 717. The training documents were titled "Batson Justifications: Articulating Juror Negatives." *Batson Justifications From Top Gun II Seminar*, THE MARSHALL PROJECT (Aug. 6, 2019, 5:33 PM), https://www.themarshallproject.org/documents/6245301-Batson-Robinson-Brief.

43. *Batson Justifications From Top Gun II Seminar*, *supra* note 42. A judge in Illinois further compiled a "Top 20" list of the most common race-neutral reasons for a juror strike given in response to a *Batson* challenge, with justifications ranging from "too old" and "too young" to "unkempt hair" and "renter." People v. Randall, 671 N.E.2d 60, 65–66 (Ill. App. Ct. 1996).

44. Elizabeth Weill-Greenberg, *The Persistent History of Excluding Black Jurors in North Carolina*, THE APPEAL (Aug. 26, 2019), https://theappeal.org/north-carolina-black-jury-selection/.

45. *North Carolina v. Tilmon Golphin, Christina Walters, and Quintel Augustine – Augustine Jury Strikes (Prosecutor's Handwritten Jury Selection Notes)*, ACLU (Dec. 17, 2012), https://www.aclu.org/legal-document/north-carolina-v-tilmon-golphin-christina-walters-and-quintel-augustine-augustine; *Robinson*, 846 S.E.2d at 717–18; Defendant's Petition for Writ of Certiorari at 20–21, State v. Robinson, 846 S.E.2d 711 (N.C. 2020) (No. 411A94-6) 2017 WL 2494696 at *20–21.

pool was unconstitutional.[46] Even though the case involved a modern *Batson* challenge, the defendant had to go to extreme lengths to first determine whether his conviction was tainted by racial bias (under the first step of *Batson*). First, the defendant appealed his conviction and moved for a new trial; next, he filed a habeas corpus claim in federal court for collateral relief; and finally, while those proceedings were pending, he also applied through the Georgia Open Records Act to obtain copies of the jury file used by the prosecution in his case.[47]

The defendant was able to uncover evidence that Black jurors were unconstitutionally excluded on account of race only once his lawyer was finally provided copies of the prosecutor's jury file.[48] Similar to the *Robinson* case, the prosecutors did not deign to write down race-neutral explanations for juror dismissals in their notes.[49] Rather, the jury venire list used by the prosecution was color coded to indicate which prospective jurors were "Blacks."[50] Every Black prospective juror in the case had an "N" by their name, were listed on "[a] handwritten document titled 'definite NO[]s,'" and at times the prosecution scribbled notes like "Black Church" next to jurors' names.[51] Once a *Batson* challenge was filed by the defendant, the prosecution in the case attempted to advance race-neutral explanations for the juror dismissals (step two of *Batson*).[52] The Supreme Court nonetheless found the proffered explanations were contradicted by the record in that "the focus on race in the prosecution's file plainly demonstrates a concerted effort to keep black prospective jurors off the jury."[53]

The Supreme Court once again addressed *Batson* challenges just three years after its *Chatman* decision, holding that the prosecution's explicit exclusion of Black jurors on account of race violated the U.S. Constitution.[54] In *Flowers v. Mississippi*,[55] the defendant Flowers was tried six times in six separate jury trials by the same prosecutor for murders that occurred in 1996.[56] Flowers was actually convicted in the first three trials, but the Mississippi Supreme Court reversed the convictions due to "numerous instances of prosecutorial misconduct[,]" such as introducing evidence of crimes that were not before the court; implying that a defense witness had lied when there was no such evidence; and telling the jury about "taped statement[s]" by Flowers that did not exist.[57] The U.S. Supreme Court found that the defendant's rights were violated under *Batson*

46. Foster v. Chatman, 578 U.S. 488, 514 (2016).
47. *Id.* at 491–93.
48. *Id.* at 493–95, 514.
49. *Id.* at 493–95.
50. *Id.* at 493.
51. *Id.* at 495.
52. *Id.* at 495–96, 501–03.
53. *Id.* at 514.
54. Flowers v. Mississippi, 139 S. Ct. 2228, 2234–35 (2019).
55. *Id.* at 2228.
56. *Id.* at 2234.
57. *Id.* at 2235–36; Flowers v. State, 773 So.2d 309, 317 (Miss. 2000); Flowers v. State, 842 So.2d 531, 538 (Miss. 2003).

given that the prosecutor: used peremptories to strike forty-one of forty-two potential Black jurors; engaged in dramatically disparate questioning of Black and white jurors; struck Black jurors who were similarly situated with white jurors that were not struck; and that the prosecution's proffered race-neutral reasons for juror exclusions were flatly contradicted by the record.[58] Justice Alito concurred in the result, claiming that racial bias in the selection of jurors was aberrational—viewing the *Flowers* case as "highly unusual," "one of a kind," and "not an ordinary case."[59]

While *Robinson*, *Chatman,* and *Flowers* ultimately found *Batson* violations in the exclusion of Black jurors from trial, they did so only when presented with clear evidence of explicit and irrefutable racism in the selection of jurors.[60] Once again, we have a tension between our adversarial practice of allowing juror peremptory challenges (a practice that was honed in the pre-*Batson* years when excluding jurors on racial grounds was accepted) and the more fundamental constitutional principle of providing criminal defendants "the equal protection of laws." And once again, we are sent the message that racial bias in jury selection may only be practically actionable in "highly unusual" situations when there is clear evidence—procured by the defendant postconviction—of racial bias in juror selection. Racial bias can too easily infect a trial when we allow prosecutors and defense attorneys the ability to exclude jurors without reason, especially when racially disproportionate juror exclusions are typically upheld if a post hoc "race-neutral" explanation is provided.

CONCLUSION

The killings of Ahmaud Arbery, Trayvon Martin, and too many other Black and Brown people have shown that it is not enough to merely tweak our existing laws when confronted with racial vigilante violence in reaction to perceived social crises. Rather, we must end the legal grounds for racial vigilantism through a repeal of citizen arrest laws, a radical reform of our self-defense laws, and the elimination of peremptory juror challenges. The criminal prosecutions of Kyle Rittenhouse and the killers of Ahmaud Arbery have exposed not only how white vigilantism works in tandem with subjective notions of reasonableness to encourage racial violence, but also how the law's steadfast focus on "race neutrality," rather than racial justice, has operated to insulate racial bias from critique.

58. *Flowers*, 139 S. Ct. at 2250–51. The Mississippi Supreme Court had earlier held that the case "presents us with as strong a prima facie case of racial discrimination as we have ever seen in the context of a *Batson* challenge." *Id.* at 2235.

59. *Id.* at 2251–52 (Alito, J., concurring).

60. *Robinson*, 846 S.E.2d at 717–18; Weill-Greenberg, *supra* note 44; *Chatman*, 578 U.S. at 514 (2016); *Flowers*, 139 S. Ct. at 2250–51.