

IB Extended Essay

Racial Bias in the United States' Criminal Justice System

Research Question: To what extent are the racial disparities in the United States' Criminal Justice System a human rights violation against African-American males?

IB Subject: Human Rights

Personal Code: ftr766

Session: May 2017

Word Count: 3998

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Abstract

This paper will examine the racial disparities in the United States' Criminal Justice System and attempt to answer the question, "To what extent are the racial disparities in the United States' Criminal Justice System a human rights violation against African-American males?" Throughout, numerous studies and statistics will be referenced to prove that the US criminal justice system is indeed very biased against Black males and this inherent bias is a direct human rights violation. The disparities in race violates three of the United Nations Human rights declaration clauses as well as amendment six of the United States Constitution. The history of racism in the United States will be examined beginning with the Civil War up to the Civil Rights Movement. More recent violations will then be examined beginning with the War on Drugs and creation of privatized prisons. Finally, a solution to the problem of extreme bias at every point will be offered. The findings of this paper conclude that multiple human rights violations are occurring, however the United States citizen's and government possess the power and resources to stop it at any time.

Word Count: 192

Introduction

The racial inequalities that exist in the US Criminal Justice System are often underestimated despite the statistical evidence that has proven the disparities. The prison system in this country unfairly targets and incarcerates black males. This is an issue that has occurred since the end of the civil war and has worsened in recent years. Current statistics are that 1 in 3 black males will be arrested at some point in their life. Black men spend 20% more time behind bars than their white counterparts and the arrest rates for drugs in the black community is four times higher than for other races.¹ All of this despite the fact that crime rates across races are virtually equal. This is a result of extreme racist views since the end of the civil war. The United States' criminal justice system represents a violation of basic human rights that must be addressed.

The definition of a Human Right must also be explored and for the purposes of this paper the United Nations' definition shall be used, "human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible."² The violation of human rights stated in Articles seven, nine and ten of the United Nations Declaration of Human Rights (UNDHR) will be examined. They

¹ Rina Palta, "Why For-Profit Prisons House More Inmates Of Color," NPR, , accessed January 04, 2017, <http://www.npr.org/sections/codeswitch/2014/03/13/289000532/why-for-profit-prisons-house-more-inmates-of-color>.

² "What are Human Rights," What are Human Rights, , accessed January 04, 2017, <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

guarantee the following, “That all people are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. No one shall be subjected to arbitrary arrest, detention or exile. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”³

The United States’ criminal justice system systematically disenfranchises and marginalizes African-Americans by violating the basic human rights guaranteed to them by the Universal Declaration of Human Rights and the Constitution. The United States also condones the use of slavery as punishment for a crime in the 13th amendment, and this is used as justification for some of the prison systems. ⁴The evidence for this claim will be explored in this paper beginning with a look into the dark history of the treatment of African-Americans and exploring the institutionalized racism that still exists today. The criminal justice system is ineffective and biased and a reform of the system needs to happen in order for the United States to progress as a country. I will also explore the possibilities for fixing the issue of institutionalized racism within the country and changing the justice system.

³“Universal Declaration of Human Rights.” United Nations. Accessed January 04, 2017.
<http://www.un.org/en/universal-declaration-human-rights/index.html>.

⁴ “Primary Documents in American History,” 13th Amendment to the U.S. Constitution: Primary Documents of American History (Virtual Programs & Services, Library of Congress), , accessed January 04, 2017,
<https://www.loc.gov/rr/program/bib/ourdocs/13thamendment.html>.

History

The flaws in the criminal justice system today have roots dating back to the days of slavery and the civil war. Throughout American history, African-Americans have been marginalized by a country founded on the belief of freedom and justice for all. Evidence of this can even be seen in the Constitution which is supposed to be a doctrine guaranteeing the rights and freedoms of all people and prevent each individual's rights from being infringed upon by the government. To guarantee this, the Bill of Rights, a series of ten amendments considered to be fundamental human rights, was created. However when the Bill of Rights was constructed, it was designed to specifically benefit property owning white men over the age of 21. Although these rights were supposed to be guaranteed to every citizen, when history is examined, minorities were not granted these same fundamental rights. In fact when the constitution was drafted, Black slaves were only counted as three-fifths of a person.⁵ It is this belief that African Americans aren't worth as much as their white counterparts or even considered a complete human being that drives the institutional racism currently found in the country and can specifically be seen in the criminal justice system. Although this clause lost its relevancy when slaves were granted their freedom, it is still a dark reminder of the United States' view of African-American people as inferior. Even after the civil war, racism continued. When we examine the Reconstruction Era in history we can continue to see this trend of

⁵ "Constitution," Three Fifths Compromise - constitution | Laws.com, , accessed January 04, 2017, <http://constitution.laws.com/three-fifths-compromise>.

the marginalization of Black people. During this era Blacks were granted a great deal of new freedoms like the ability to vote, but this was met with extreme backlash mostly in the form of the founding of the KKK⁶ and the establishment of “black codes”.⁷ The “black codes or J” were a series of laws enacted in the Southern States designed to restrict the activities of the newly freed slaves.⁸ One law required former slaves to sign yearly labor contracts and if they refused they could be arrested or forced into unpaid labor.⁹ This was not considered to be a violation of the Constitution and was allowed for some time. These types of laws took different forms and names over the years. During the era of slavery these were the “slave codes”. After reconstruction, they turned into the “black codes”. And post reconstruction era, it was the “lynch codes” and the “Jim Crow laws”. These laws were designed to dictate the lives of the African-American community and keep them in a tightly constrained poor living environment disenfranchising and marginalizing them until the 1950s when the “separate but equal” clause was deemed unconstitutional by the Supreme Court.¹⁰ The next law enacted benefitting the African-American community was the Civil Rights Act of 1964 which “...forbade discrimination

⁶“Constitution,” Three Fifths Compromise - constitution | Laws.com, accessed January 04, 2017, <http://constitution.laws.com/three-fifths-compromise>.

⁷“The System Isn’t Broken, It Was Designed That Way: A Critical Analysis of Historical Racial Disadvantage in the Criminal Justice System | The Hampton Institute,” The System Isn’t Broken, It Was Designed That Way: A Critical Analysis of Historical Racial Disadvantage in the Criminal Justice System | The Hampton Institute, , accessed January 04, 2017, <http://www.hamptoninstitute.org/systemisntbroken.html#.WBOVr-ArKhc>.

⁸ History.com Staff, “Black Codes,” History.com, 2010, , accessed January 04, 2017, <http://www.history.com/topics/black-history/black-codes>.

⁹ Ibid.

¹⁰History.com Staff, “Civil Rights Movement,” History.com, 2009, , accessed January 04, 2017, <http://www.history.com/topics/black-history/civil-rights-movement>.

on the basis of sex as well as race in hiring, promoting, and firing”.¹¹ Although this was revolutionary at the time, it was and still is not enough to guarantee African-Americans the equal rights and opportunities they deserve. Transitioning into the more modern era, we can still see examples of this racism. All of this has lead into a normalization of racism that has leaked into all areas of society-specifically the criminal justice system.

Modern Criminal Justice

To analyze the impartiality of the criminal justice system, we first must understand what the criminal Justice system is and understand its importance. It can be defined as “a generic term for the procedure by which criminal conduct is investigated, evidence gathered, arrests made, charges brought, defenses raised, trials conducted, sentences rendered and punishment carried out.”¹² Although the specific process usually varies from state to state, the process usually is as follows: report and investigation of a crime, arraignment, trial, sentencing and corrections. Directly after the crime is committed someone will report it and an investigation, conducted by a law enforcement officer, will occur. Usually a suspect can be identified leading into the arraignment stage when the defendant pleads “guilty” or “not guilty”. Depending on the plea a trial will take place and then sentencing, which could potentially include jail time. The process as a whole is very lengthy, sometimes taking years and involves a plethora

¹¹ "The Civil Rights Act of 1964 and the Equal Employment Opportunity Commission," National Archives and Records Administration, , accessed January 04, 2017, <https://www.archives.gov/education/lessons/civil-rights-act>.

¹² "Legal Dictionary - Law.com," Law.com Legal Dictionary, , accessed January 04, 2017, <http://dictionary.law.com/Default.aspx?selected=405>.

of people and costs tax payers millions each year. This is a process guaranteed in the Bill of Rights in the United States' Constitution under the sixth amendment which states, "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed..."¹³ Although the amendment specifically emphasizes "speedy" trial, the trial portion alone often takes years to complete. The New York World reports that in the Bronx, "accused felons in New York City will wait, on average, over two years before their trial is heard in court, according to data provided by the New York State Unified Court System. About one-third are out on bail during that period, but the rest remain behind bars, either not offered bail or unable to pay it."¹⁴ This is time spent waiting in jail; before their case is even presented before a jury and a judge. This is a direct violation of the sixth amendment which guarantees the right to a speedy trial. The importance of a speedy trial are, "an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibility that long delay will impair the ability of an accused to defend himself."¹⁵ This process directly and unfairly affects low-income people and minorities. A majority of people waiting for trial are low-income black men who can't afford to pay bail. This not only violates the Constitution but also the

¹³ "Sixth Amendment - U.S. Constitution - FindLaw." Findlaw. Accessed September 12, 2016. <http://constitution.findlaw.com/amendment6.html>.

¹⁴ "How long does it take for a criminal case to go to trial?," The New York World, 2013, , accessed January 04, 2017, <http://www.thenewyorkworld.com/2012/02/27/the-daily-q-how-long-criminal-cas/>.

¹⁵ "CRS Annotated Constitution," CRS/LII Annotated Constitution Sixth Amendment, , accessed January 04, 2017, https://www.law.cornell.edu/anncon/html/amdt6frag2_user.html.

Universal Declaration of Human Rights. This statistic is made worse by the fact that 95% of prison inmates have never seen trial.¹⁶ This means that about 2 million of the 2.2 million people currently in prison never had the opportunity to defend themselves in a courtroom, and the reality is that many of them are innocent. This occurs because of the popularity of plea bargains. Chris Hedges writes “There is rarely an impartial investigation. Of those millions who bargained away their right to a trial by accepting plea deals, “significant percentages of them are innocent.”¹⁷ The United States sentences thousands of people a year to prison without ever fully examining and presenting the evidence. That is a direct violation of human rights.

After examining the history of institutionalized racism in the culture of the United States, it is easier to understand how the criminal justice system is flawed. Dr. Jones sums up the relationship between society and the criminal justice system when she states, “the criminal justice system is a reflection of society. African Americans have a historical reputation of marginalization and denigration in the United States that reputation is paralleled in the criminal justice system.”¹⁸ The inherent racism in the criminal justice system begins before a crime has even been committed, this can be seen in racial profiling. Although African-Americans only make up approximately 30% of

¹⁶Claire Bernish, "Due Process is Dead: A Staggering 95% of All Inmates in America Have Never Received a Trial," The Free Thought Project, 2016, , accessed January 04, 2017, <http://thefreethoughtproject.com/due-process-dead-staggering-95-inmates-america-received-trial/>.

¹⁷ ibid

¹⁸"The System Isn't Broken, It Was Designed That Way: A Critical Analysis of Historical Racial Disadvantage in the Criminal Justice System | The Hampton Institute," The System Isn't Broken, It Was Designed That Way: A Critical Analysis of Historical Racial Disadvantage in the Criminal Justice System | The Hampton Institute, , accessed January 04, 2017, <http://www.hamptoninstitution.org/systemisntbroken.html#.WBOVr-ArkHc>.

the total population in the United States, they account for about 60% of the population in prisons.¹⁹ Part of this disproportionality can be explained by the increased rate of crime in the black community however, "...only 61 percent of the black incarceration rate is explained by disproportionate engagement in criminal behavior. Thus, nearly 40 percent of the racial disparity in incarceration today cannot be explained by differential offending patterns."²⁰ So these racial disparities in incarceration must be linked to some other factors. Some possibilities are pre-existing racial biases within the sentencing judges or perhaps the racial profiling and over-policing of predominately black neighborhoods. In New York 50% of the people stopped under the stop and frisk law were black despite African-Americans only making up approximately 23% of the population.²¹ The American Civil Liberties Union defines racial profiling as "... the discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual's race, ethnicity, religion or national origin."²²In 2005 the Federal Justice Bureau conducted a survey of 80,000 people and traffic stops and "found that minority drivers were three times as likely to have their vehicles searched during traffic stops as

¹⁹ Kerby, Sophia. "The Top 10 Most Startling Facts About People of Color and Criminal Justice in the United States." Center for American Progress. March 13, 2013. Accessed September 12, 2016.
<https://www.americanprogress.org/issues/race/news/2012/03/13/11351/the-top-10-most-startling-facts-about-people-of-color-and-criminal-justice-in-the-united-states/>.

²⁰ Maurer, Marc. "Advertisement." Justice for All? Challenging Racial Disparities in the Criminal Justice System. Accessed September 12, 2016.
http://www.americanbar.org/publications/human_rights_magazine_home/human_rights_vol37_2010/fall2010/justice_for_all_challenging_racial_disparities_criminal_justice_system.html

²¹Keith Rushing, "The Reasons Why So Many Black People Are in Prison Go Well Beyond Profiling," The Huffington Post, , accessed January 04, 2017, http://www.huffingtonpost.com/keith-rushing/the-reasons-why-so-many-b_b_883310.html

²²"Racial Profiling: Definition," American Civil Liberties Union, , accessed January 04, 2017, <https://www.aclu.org/other/racial-profiling-definition>.

white drivers.”²³ Part of the disparity between incarceration rates can then be attributed in part to the variations in policing. Black people are policed at higher rates and pulled over at greater rates so this would naturally lead to a higher rate of black people in prison. They are more likely to be found doing criminal activity because they are more likely to be observed in the first place. There aren’t specific laws that we can pass to change somebody’s unconscious biases and behavior. The only thing that can help this situation is education and perhaps contact theory.²⁴ Contact theory states that forcing two opposing groups to have constant contact with each other can encourage more understanding and reduce tensions between them. Perhaps involving law enforcement officers with the black community to create mutual trust and respect for one another. This could potentially reduce the rate of racial profiling.

The United States’ justice system is notorious for criminalizing African-Americans and incarcerating them at extreme rates- but often fails when attempting to garner justice for African-Americans. This violates Article seven of the Universal declaration of Human Rights which states that all people “are equal before the law and are entitled without any discrimination to equal protection of the law.”²⁵ Black people are not shown the same equal protection under the law that whites are. Examples of this violation can

²³“Official in Racial Profiling Study Demoted,” The Washington Post, August 25, 2005, , accessed January 04, 2017, <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/24/AR2005082401893.html>.

²⁴ “The Real Challenge When Police Use Lethal Force,” Governing magazine: State and local government news for America’s leaders, , accessed January 04, 2017, <http://www.governing.com/gov-institute/voices/col-real-challenge-police-lethal-force-resolving-political-disputes.html>.

²⁵ “Universal Declaration of Human Rights,” United Nations, , accessed January 04, 2017, <http://www.un.org/en/universal-declaration-human-rights/index.html>.

be found throughout history and in modern day cases. One infamous case is the Emmitt Till case in the mid 1900's. Till was accused of whistling at a white woman, and was beaten and shot in the head by a mob of white men. The men suspected of killing him were acquitted by an all-white male jury. A few months later those men confessed but there was no re-trial.²⁶ This blatant unfairness is a result of hundreds of years of the belief that black lives are unimportant and inferior to white lives. One infamous modern day case is Trayvon Martin. Trayvon Martin was an unarmed 17 year old shot by George Zimmerman in 2012. When Zimmerman was later acquitted of murder it sparked national controversy and helped lead to the formation of the Black Lives Matter movement.²⁷ These cases were decided by almost exclusively white juries which violates the promise that juries will be represented by all peers. These examples show how the justice system devalues African-American lives and fails to find justice for them. These cases help perpetrate the white supremacy ideology that has been around for centuries.

Profiting From Punishment

The Racial disparities in the criminal justice system can be primarily traced back to the 1970's when the United States began "mass incarcerations". Throughout the 20th

²⁶"The System Isn't Broken, It Was Designed That Way: A Critical Analysis of Historical Racial Disadvantage in the Criminal Justice System | The Hampton Institute," The System Isn't Broken, It Was Designed That Way: A Critical Analysis of Historical Racial Disadvantage in the Criminal Justice System | The Hampton Institute, , accessed January 04, 2017, <http://www.hamptoninstitute.org/systemisntbroken.html#.WBOVr-ArKhc>.

²⁷ "Trayvon Martin," Biography.com, February 09, 2016, , accessed January 04, 2017, <http://www.biography.com/people/trayvon-martin-21283721>.

century, crime rates and incarceration primarily remained the same, but a boom was seen in the 1970's when Richard Nixon became the first president to build his campaign on fear mongering of crime and drugs. When he was elected president, he created the "War on Drugs." This marked an era that the United States began to deal with drug abuse and addiction criminally instead of as a mental health issue. Later in the century Nixon's advisor John Ehrlichman admitted, "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."²⁸ This was government sanctioned racism that began the disenfranchisement of the black community in the coming decades. It has been found that African-Americans account for approximately 14% of all drug use but represent 37% of the people in prison for drug related crimes. The Drug Policy Alliance describes the racial bias in the War on Drugs as "higher arrest and incarceration rates for African Americans and Latinos are not reflective of increased prevalence of drug use or sales in these communities, but rather of a law enforcement focus on urban areas, on lower-

²⁸ "Richard Nixon Drugs War Quote Rears Its Ugly Head – Again," Newsmax, March 24, 2016, , accessed January 04, 2017, <http://www.newsmax.com/TheWire/richard-mixon-drugs-war-quote/2016/03/24/id/720681/>.

income communities and on communities of color as well as inequitable treatment by the criminal justice system.”²⁹

The worst violation of human rights involving the criminal justice system is the creation of private prisons. Private prisons house more inmates than federal prisons and are hired and paid for by the states. These prisons attempt to profitize punishment, so they often overcrowd their prisons to increase earnings. The prisons have agreements with the states to keep them at 90% or above capacity. The state is then incentivized to sentence people to prison to fill the space it agreed to. This increases the amount of people incarcerated for small, petty offenses. A new study conducted by University of California graduate student found a disproportionate number of young black men in for-profit prisons.

Solution and Conclusion

The United States is founded on the belief of freedom and justice for all yet there is still a substantial inequality between blacks and whites. A vast majority of the population is not treated in the same way and face more difficulties than others simply

²⁹ "Mass Criminalization," Consequences of Drug Conviction | Mass Criminalization | Drug Policy Alliance, , accessed January 04, 2017, <http://www.drugpolicy.org/mass-criminalization>.

because of the color of their skin. Many people believe we are in a post-racism era but when examining the criminal justice system this is simply not true. We must attempt to fix these violations of human rights by reforming the justice system as a whole. As previously stated, this must begin with an attempt to change the mindset of law enforcement officers, officers of the court and the public in general. Currently there is a lot of distrust and lack of respect between people of color and law enforcement officers. To change this we need to bring both parties together and allow them to interact in a nonviolent and non-accusatory way. Some people refer to this as community policing.³⁰ A study conducted by various Universities across the nation analyzed the effectiveness of community policing and found that, "in 27 of the 65 comparisons where official crime outcomes were analyzed, community-oriented policing was associated with 5% to 10% greater odds of reduced crime. This finding was not statistically significant."³¹ Despite the statistical insignificance it does prove that community policing does have some positive impact and is worth trying. Another effective reform tactic would be to hold police officers and others in positions of leadership responsible for misconduct and institutionalized racism. Recently a slew of fatal police shootings against African-Americans has occurred. In these cases the officer, usually white, is acquitted of all

³⁰ Henry, Jessica S. "Top 10 Ways to Fix the Criminal Justice System." The Huffington Post. December 22, 2014. Accessed September 12, 2016. http://www.huffingtonpost.com/jessica-s-henry/top-10-ways-to-fix-the-cr_b_6362274.html.

³¹"Community-oriented policing strategies: Meta-analysis of law enforcement practices," Journalist's Resource, September 30, 2016, , accessed January 04, 2017, <http://journalistsresource.org/studies/government/criminal-justice/the-impact-of-community-policing-meta-analysis-of-its-effects-in-u-s-cities>.

charges despite overwhelming evidence to show otherwise. This can create a society where law enforcement officers often feel that they themselves are above the law. This leads to increased police shootings and more tension between minorities and law enforcement officers. Officers that are guilty of shooting unarmed citizens need to be held responsible for their actions. They need to be held under the same standard as the rest of the population. Better training also needs to be provided to these officers. Shooting should be a last result and the officers trainings need to reflect this. Black and white neighborhoods need to be policed at the same rates to reduce any disparity. All of these steps can be taken before a crime has even been committed, which would hopefully reduce the crime rate initially.

However certain steps need to be taken after the crime itself has been committed, specifically in regards to sentencing. Sentencing for first offender, nonviolent crimes needs to be reduced. In addition, sentencing across races needs to be the same. The color of your skin should not influence the amount of time spent in prison for a crime and steps need to be taken to ensure this does not factor into the length of sentences. All of this can be done by providing more universal training for sitting judges and ensuring that all judges across the nation are held to the same standards. If a judge or justice is found to be violating any of these standards, immediate disciplinary action should be taken, this can mean disbarring the judge or simply providing more training. Once a person reaches prison, more opportunities need to be given for the individual to reform their actions-addiction counselors should be provided to those serving drug

offences. Once in prison more opportunities should be given to the incarcerated to change their actions and receive help. However, the change cannot stop once the person leaves prison. We must also change the bias that prevents ex-criminals from getting jobs. I believe this is the number one reason that criminals go on to repeat their crimes. There is no incentive to stop their criminal behaviors because once they leave prison it is hard for them to return back to society. There is a huge stigma in the job industry when hiring ex-offenders and this leads to a disproportionate level of unemployment.

Although the United States has made giant strides in regards to race relations through the years, much more progress still needs to be made. The current problems in the United States can be traced to centuries of marginalization and disenfranchising of all minorities but specifically blacks. This can primarily be seen in the disproportionate number of African-Americans incarcerated in the U.S prisons. However, despite the centuries of oppression I believe that the United States has the potential to change. If we implement these ideas for the criminal justice system, I believe that racism could be lessened and race relations in this country would continue to improve.

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