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**CRIMINAL JUSTICE AND SOCIAL INJUSTICE  
African American Men in the U.S.**

**ABSTRACT**

The staunch protection of civil liberties is what separates the United States from totalitarian nations. However, “racial profiling,” excessive force, police brutality, and blatant disregard for civil liberties have magnified the flaws in this “democratic society.” The disparities in the U.S justice system are also a cause of concern. African Americans (Blacks) make up 12.8 percent of the population but 49 percent of those incarcerated. One out of every four Black men from the age of 16 to 26 has some connection with the penal system e.g. in prison, in jail, on parole, on probation. Young Black men are six times more likely to be incarcerated by adult courts as White youth for equally serious crime. Race, in the U.S. criminal justice system, significantly affects the probability that a person will be sentenced and convicted of a crime. Race also determines the severity of the punishment. This paper examines the criminal justice system in the U.S. in the context of social justice.

**INTRODUCTION**

Four years ago, I invited Rodney G. King to speak to my political science class at California State Polytechnic University, Pomona. I also invited his cousin and one of the jurors who sat on his civil trial to participate in a panel discussion on King's experience. Before the panel began its discussion, I showed a documentary of the civil unrest that included the video of King's beating. The 80 students in the lecture hall fought back tears as they watched, with King, the infamous act of police brutality.

This year marks the 10th anniversary of the Rodney King beating. Since the 1997 panel discussion, King and I have had several opportunities to discuss what the beating did to him physically and psychologically; it was devastating. What has changed in the U.S. since the infamous beating? This study examines the impact that race has played in the U.S. criminal justice in the past decade. It addresses the fundamental contradictions that lie in the U.S. principles of liberal democracy and its practices of discrimination and social injustice. A number of scholars have recently addressed the inequities in the U.S. criminal justice (Cole 2000; Schiraldi, Feldman, Ziedener 2001; Dorfman 2001; Hallinan 2000). While others have enhanced our understanding of social justice (Rawls 1971; Crawford 1973; Russell 2001; Arrigo 2000; Quinney 1999). This study attempts to integrate the insightful work of these

scholars.

### **RACE AND THE POLICE**

Critical race theory in the U.S. developed from critical legal studies. Critical legal studies was developed to analyze and deconstruct legal doctrines. The primary outcome of critical legal studies is that law cannot be relied upon to protect those who are without power. According to this school of thought, law is not designed to construct justice but instead is designed to protect those who already hold power. As a derivative of critical legal studies, critical race theory suggests that the justice system is manipulated to legitimize White supremacy and maintain a rule of law (Russell 1999). In U.S. society, the police have acted as agents of the system. Indeed, White supremacy has been legitimized in police behavior. Those without power have come to see the police as the enemy. James Baldwin discusses the problem in his 1964 essay, "Fifth Avenue, Uptown: A Letter From Harlem."

The only way to police the ghetto is to be oppressive. None of the police commissioner's men, even with the best will in the world, have any way of understanding the lives led by the people they swagger in twos and threes controlling. Their very presence is an insult, and it would be, even if they spent their entire day feeding gum drops to children. They represent the force of the White world, and that force intentions are simply...to keep the Black man corralled up here, in his place. The badge, the gun in the holster, and the swinging club make vivid what will happen should his rebellion become overt "(p.60-5).

On March 3, 1991, Rodney King was brutally beaten by four Los Angeles Police Department officers. On April 26, 1992, those officers were found not guilty of criminal acts. This decision sparked the infamous 1992 Los Angeles Riots. Since the King incident, the U.S. has witnessed a number of cases of police brutality.

In August of 1997, four New York police officers assaulted Abner Louima, a Haitian immigrant. Among other forceful tactics used, officers sodomized Louima with a toilet plunger leaving him hospitalized with severe injuries including a ruptured bladder and colon. In the same spirit, four New York police officers used 41 shots to kill unarmed West African immigrant, Amadou Diallo in 1999. They mistook him for a rapist. In a two-month trial that ended in March 2000, an Albany New York jury found the police officers "not guilty" on a range of charges, the least of which was official negligence (Reese 1999).

Irvin Landrum, an 18-year old African American, died January 17, 1999, six days after he was shot three times by Claremont (CA) police officers. Police accused Landrum of pulling a revolver. An investigation showed that the gun Landrum

allegedly used was never fired and did not bear his fingerprints. Many accused the police of planting the gun. To add insult to injury, the Claremont city manager gave the two officers who shot Landrum \$1,000 rewards as “Employees of the Year” (Mozingo 1999).

One of the most recent cases of police brutality was the case of Timothy Thomas. Thomas was an unarmed 19-year old African American who was pursued and killed by a Cincinnati police officer in April of 2001 because of fourteen outstanding misdemeanor violations ranging from failing to pay traffic violation tickets to driving without a seatbelt. Thomas’s death sparked three days of riots in Cincinnati, the worst in four decades. He was the fifteenth Black man killed by the Cincinnati police since 1995. No Whites were killed by Cincinnati police during this period (Associated Press 2001).

The recurring problem of police brutality in the U.S has taken on various forms: firearms, nightsticks, chokeholds, hogtying, batons, Taser and stun guns, pepper spray, water cannons, dogs and high-speed pursuits. "To Protect and Serve" is a ubiquitous motto for police departments nationwide. As agents of the government, police officers are sworn to "protect and serve" by upholding the U.S. Constitution. However, the behavior of many police officers, especially in urban centers, is undermining democracy, civility and diminishing trust among significant sectors of the American public. "Racial profiling," excessive force, and police brutality reflect a blatant disregard for civil liberties and have magnified the flaws in the U.S.'s liberal democracy.

### **CRIMINAL JUSTICE THEORY IN U.S.**

In theory, the U.S. criminal justice system is based on principals of fairness, justice, and equity. This system of justice is guided by the principles outlined in the U.S. Constitution. In the preamble of the Constitution, the founders of the U.S. stated that the purpose of our nation was to “establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.” The Bill of Rights is a fundamental component of the Constitution. Indeed, without the Bill of Rights, the Constitution would be a seriously flawed document. The Founding Fathers of the American Democracy were insightful in giving weight to the rights of the accused. From their perspective, in order for a democracy to flourish, the civil liberties of individuals had to be protected (Schmidt, Shelley, and Bardes 1999).

Ostensibly, the staunch protection of civil liberties is what separates the U.S. from totalitarian nations. In nations under a totalitarian regime, police, acting as agents of the government, have no regards for the basic civil liberties of individuals. They have no regards for human rights. In these regimes, individuals do not have equal protection of the law. The cornerstone of the post-Civil War system of justice is the equal protection clause found in the 14th Amendment to the U.S. Constitution. The 14th Amendment states that no State shall “deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law” (Kelman 1996).

It is paramount in a democracy that the rule of law is obeyed; this requires the keeping of the peace. Hence, the American democracy is an experiment in law enforcement and peace keeping. It is an experiment in which police are called upon to provide security and protect liberty to uphold the ultimate purpose of government. James Madison stated “Justice is the end of government...it has ever been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.” Indeed, it was Madison’s Federalist Paper Number 10 that presaged the nation’s struggles to preserve both liberty with order (Delattre 1996).

Some suggest that the role of police in U.S. society is crime prevention. In fact, the police have multiple roles in the U.S. criminal justice system: peacekeeping, maintenance of order, and social service delivery (Delattre 1996). The police are just one dimension of a multi-layered criminal justice system that involves the courts, judges, lawyers, parole officers, and corrections officers. In the past decade, however, politicians and the American public, through voter-approved laws such as California Proposition 21 (to be discussed later), have had the greatest impact on the criminal justice system. These two entities have constructed a criminal justice system that is seen in the eyes of many minorities as unfair and unjust. This system lacks legitimacy with a significant sector of the U.S. population.

### **SOCIAL JUSTICE THEORY**

What is social justice? The term is socially constructed. It is based on the social, political, and economic reality of a society. In the contemporary capitalist society, social justice in the context of crime revolves around promoting and maintaining law and order (Quinney 1999). However, the definition of social justice is amorphous. Over the years, definitions of social justice have changed. Plato and Aristotle developed versions of social justice, which lacked applicability to the discussion of the U.S. criminal justice system. In the Republic, Plato states that a just state has three social classes, workers, soldiers, and rulers. Justice is said to be the performance by each class of its job and non-interference in the jobs of the other classes. In the Ethics Aristotle starts with what all men agree is the aim of life, edaimonia (happiness). He states that in seeking happiness all men are seeking to actualize to the best of their capabilities (Flew 1978; Arrigo 2000). Although the works of these Greek philosophers are largely inapplicable, the U.S. has developed its liberal democracy around the works of other social philosophers.

According to Immanuel Kant’s ethical formalism, any behavior that cannot be categorized as “just and proper” is immoral. John Stuart Mill’s theory of justice revolves around utilitarianism, the “greatest good for greatest the possible number of people.” Mills’s philosophy is based on “consequence of behavior” not the act itself. Thomas Hobbes lays out his principles of justice in the Leviathan. According to Hobbes, justice revolves around the 1) “right of nature,” which is the liberty that each

man has to use his own power as he sees fit for his survival, 2) “liberty,” which is the absence of external impediments, and 3) “law of nature,” a man is forbidden to do that which is destructive to his own life (Arrigo 2000).

John Locke theorizes in his Two Treatises on Government that initially people entered into a “social contract” with the government in order to protect property rights and be protected from interpersonal violence. In exchange for this protection, people gave the government their “consent to be governed.” Locke states that if the government abuses its rights, it can be legitimately replaced (Locke 1967).

Locke’s conception of justice is applicable to the discussion of the U.S. criminal justice system because the founders relied on the writings of Locke to guide them in constructing a system of democratic governance. Indeed, many phrases of the U.S. Declaration of Independence repeat parts of Locke’s Second Treatise verbatim: people are endowed “with certain unalienable rights;” governments come about “to secure these rights;” and to gain “their just powers from the consent of the governed;” and whenever government “becomes destructive of (the) ends” for which it was set up in the first place, “it is the right of the people to alter or to abolish it.” Locke’s argument became the basis for forming a popular government as well as a justification for revolution (Kelman, 1996).

More recent social philosophers have enhanced our understanding of the concept of social justice. Howard Zinn states in *Disobedience and Democracy* that there is no moral imperative to obey an immoral law, unless the very idea of obeying a law has legitimacy and moral value. John Rawls’s theory of justice relies on two principles, equal liberty and democratic equality (Crawford 1973; Rawls 1971; Zinn 1968).

While many theorists and philosophers have discussed the issue of justice in the abstract, Martin Luther King Jr.’s conception of social justice is the most relevant to the plight of African Americans in today’s society. Indeed, we should use King’s definition of social justice as the context for deciding the justness of the U.S. criminal justice system. King discusses the issue of social justice in a dialectical framework that exposes the glaring contradictions between the nation’s noble creed and ignoble deeds. During the most tumultuous period of the Civil Rights Movement, King was arrested in the city of Birmingham, Alabama for protesting the unjust laws of segregation in the South. While in jail, King poignantly highlighted the contradictions in America’s system of justice in the famous “Letter From The Birmingham Jail.”

Injustice anywhere is a threat to justice everywhere... Perhaps its easy for those who have never felt the stinging darts of segregation to say, “Wait.” But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate-filled policemen curse, kick and even kill your Black brothers and

sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society...then you will understand why we find it difficult to wait (Martin Luther King Jr., Letter From The Birmingham Jail, April 16, 1963).

What are the criteria that render a law unjust? According to King, there are many factors that could render a law unjust. He lists four: 1) if it degrades human personality 2) if it binds one group and not another 3) if it is enacted by an authority not truly representative and 4) if, though just in itself, it is unjustly applied. The presence of one of these factors is sufficient to make a law unjust (Crawford 1973).

The U.S. has created a system of criminal justice that meets all four of King's criteria for unjust laws. In fact, the U.S. system does not consistently equate with the various theories of social justice discussed. What makes the U.S. system inconsistent with the theories of Kant, Mill, Rawls, Hobbes, Locke, and Zinn is that the laws are unjustly applied. Not only is the U.S. system incongruent with the various theories of justice, this system is unequal to other systems of criminal justice in the Western world.

### **THE U.S. PRISON POPULATION**

In 2000, the total number of people in America's prisons and jails reached two million. The U.S. contains five percent of the world's population, but 25 percent of the population behind bars. No nation in the world incarcerates a higher percentage of their population than the U.S. The federal government has predicted that one out of every eleven men will be imprisoned during their lifetime (Hallinan 2001).

The U.S. per capita incarceration rate is second only to Russia's and five times higher than that of the next highest Western nation. According to statistics compiled by the Justice Policy Institute, the U.S. has only reached this distinction in the past 20 years. During the first 80 years of the 20th century, the prison population saw a small increase, which matched the growth of the general population in the U.S. During the 1940s and the 1960s the prison growth rate actually decreased (Cole 2000).

However, since 1980 the growth of prisons in the U.S. has exploded. In the 1990s, the U.S. added nearly 700,000 prisoners to its system, almost 30 times higher than the average growth from 1920 through 1970. The prison population has increased by over 50,000 in California alone. The majority of these inmates are young Black men. Some 60 percent of these inmates are nonviolent drug offenders (Feldman, Schiraldi, and Ziedenberg 2001).

In 1994, the U.S. Congress passed the "Violent Crime Control and Law Enforcement Act," which stiffened prison sentences and proliferated the building of prisons. As a result of this legislation, the federal justice department has implemented a mandatory minimum sentence and many states have implemented the "Three Strikes Law," stating that if a person is convicted of three crimes they will be sentenced to 25

years to life in prison (Cole 2000). This law was intended for those who committed three violent crimes; however, it has been grossly misused. For example, a Black homeless man in California was recently sentenced to 25 years in prison for stealing a bottle of liquor on two occasions and for stealing an umbrella on a rainy night. This case is not an anomaly.

Although youth crime decreased in California during the 1980s and 90s, the voters of California voted for Proposition 21 in 2000. Proposition 21 requires that youth as young as 14 be automatically tried as adults for certain offenses. In one estimate, more than 200,000 youths in the U.S. were prosecuted as adults in 1998 (Dorfman and Schiraldi 2001). In 1994, there were 1.4 million jail and prison inmates in the U.S. By 1997, the criminal justice system employed more than two million people and cost taxpayers more than \$70 billion a year. According to one estimate, by 2002, the criminal justice system will cost taxpayers more than \$200 billion annually. Today, more people are working in the criminal justice system than all of the social service sectors combined.

According to a 2001 report entitled “Too Little Too Late: President Clinton’s Prison Legacy” by Feldman, Schiraldi, and Ziedenberg, the Clinton era experienced a quadrupling of the prison population. Some 8.5 million people are either under control of the correctional system or working for the criminal justice system. This includes two million people working in corrections, two million people behind bars, and another 4.5 million people on parole and probation. African American males were most affected by the increase incarceration rates from 1980-1999. Between this period, the incarceration rate for African American tripled from 1,156 per 100,000 to 3,620 per 100,000 (Feldman, Schiraldi, and Ziedenberg 2001). In the U.S. criminal justice system, race significantly affects the probability that a person will be sentenced and convicted of a crime. Race also determines the severity of the punishment.

#### **RACE & THE JUSTICE SYSTEM**

Today, 49 percent of inmates are Black. Typically, they come from the cities. Sticking them in the boondocks where family members have a hard time visiting, where guards have likely never encountered anyone like them, almost always leads to problems, often violent ones. Yet this is where we build our prisons. These communities profit most from the prison boom: from the construction jobs and the prison jobs and all the spin-off business that prisons create. Yet it is hard to ignore that those who are getting rich are usually White and those in prison are usually not (Hallinan 2001: p.xiii).

In his landmark (1944) book, *An American Dilemma: The Negro Problem and Modern Democracy*, Gunnar Myrdal poignantly discusses America’s dilemma involving what to do with the Negro population. “When we say that there is a Negro problem in America, what we mean is that the Americans are worried about it.” The question then was whether Whites could peacefully and comfortably coexist with this population. In each period of contemporary American history, this question has been

the predominant theme. Perceptions and stereotypes of young Black men as being lawless and dangerous have remained strong and consistent throughout the country's history.

In a comprehensive study on "Youth, Race, and Crime in the News," Lori Dorfman of the Media Studies Group and Vincent Schiraldi of the Justice Policy Institute compiled data, which examines stereotypes and misconceptions that are fueled by the media. According to their study, some 76 percent of the public state that they form their opinions about crime from what they read and see in the news. Their study concluded that 86 percent of White homicides are committed by other Whites, and overall, Whites are three times as likely to be victimized by other Whites as by minorities. The probability that a White will be the victim of a crime by a Black youth is small. Moreover, African Americans are underrepresented in reporting as victims and overrepresented in the news perpetrators. Articles about White homicide victims tend to be longer and more frequent than the articles that cover African American victims (Dorfman and Schiraldi 2001).

In the 1950s, when segregation was legal, African-Americans made up 30 percent of the nation's prison population. Today, African Americans make up 12.8 percent of the U.S. population but 49 percent of all prison inmates. One out of every four Black men from the age of 16 to 26 has some connection with the penal system e.g. in prison, in jail, on parole, on probation. The federal government predicts that one out of every four Black men will be imprisoned during their lifetime (Palmer 1999; Hallinan 2001).

While some who study the issues blame poverty and lack of economic opportunity for these statistics, others blame police for targeting and concentrating their efforts in urban, predominantly Black communities. According to David Cole of the Georgetown University Law Center, much of the increase in Black incarceration has occurred while Black violent crime rates have dropped. From 1970 to 1996, the percentage of Blacks in prison increased by 25 percent while the Black proportion of violent crime arrests fell by 20 percent. The principal reason for this shift is the "so-called" war on drugs, which has primarily targeted minorities. Data suggest that the war on drugs has been enforced disproportionately (2000).

According to self-report data compiled by the U.S. Public Health Service, African-Americans constitute about 14 percent of the nation's illegal drug users, yet they make up 35 percent of those arrested for drug possession, 55 percent of those convicted for drug possession, and 74 percent of those sentenced to serve time for their crimes. Consequently, for a crime they commit in proportion to their representation in the population at large, Blacks are six times more likely to be incarcerated than Whites (Cole 2000).

Although about two-thirds of crack cocaine users are White or Latino, 84.5 percent of defendants convicted of crack possession in federal court in 1994 were African American, 10.3 percent White, and 5.2% Latino (Feldman, Schiraldi, and

Ziedenberg 2001). The U.S. Congress passed a bill in the 1980s during the crack epidemic that punished a first-time offender of crack cocaine with five years in prison for the possession of five grams of crack. A powder cocaine first-time offender would have to be caught with 500 grams of powder cocaine to receive the equivalent sentence. Civil rights leaders explain the reason for this enormous disparity is because crack cocaine is used by poor Blacks and powder cocaine is used by rich Whites. These leaders also point to scientific studies that have shown that crack is no more addictive than powder cocaine (Holmes 2001).

Youth of color in the state of California are more than eight times more likely to be incarcerated by adult courts as White youth for equally serious crime. Youth of color are also treated more severely than White youth at each stage of the justice system, even when charged with the same offenses. In the most recent reporting to the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice, every state but one that reported data found disproportionate confinement of minority youth (Dorfman and Schiraldi 2001). Laurie Levensen, a former federal prosecutor and associate dean of Loyola Law School in Los Angeles states that "We are incarcerating an entire generation of people." The statistics have significant social implications because this population does not have jobs, pay taxes, and care for their children at home. Because many states prohibit felons from the right to vote, at least one out of seven African American males will lose the right to vote (Palmer 1999).

The opportunities for many young Blacks to engage in full citizenship is restricted. In order for a democracy to thrive, all citizens must have the opportunity to engage in the various aspects of public life. As Kelman states, "Democracy recognizes the dignity and worth of each person...by authorizing the lowliest as well as the mightiest to participate in governing, our government publicly affirms the value of every human" (1996, p.7). The unequal treatment of young Black men in the U.S. is betraying the fundamental principles of democracy.

#### **PROFIT MOTIVES**

Regions that lost manufacturing jobs and were left out of the economic boon of the 1990s are increasingly relying on prisons as a primary source of employment. Big companies involved in the prison industry are estimated to generate more than \$30 billion a year. According Feldman, Schiraldi, and Ziedenberg, by 1995, state expenditures for prisons grew by \$926 million, while expenditures for university construction fell by \$954 million. In 1995, states spent more money building prisons (\$2.6 billion) than building universities (\$2.5 billion).

The telephone company AT&T estimates that inmates place approximately \$1 billion in long distance calls annually. Inmates are forced to use one long distance carrier chosen by the prison. Inmates must make collect calls. The prices of these calls are inflated sometimes up to \$3.00 per minute--30 times the cost in the general market. Prisons receive "kick-backs" up to 50 cents per call. As Joseph Hallinan states, "a single pay phone could earn its owner up to \$12,000...and it has made

corrections departments phone-call millionaires” (2001: p.xiv).

Prisons have to contract with businesses to provide clothes, sheets, toothpaste, soap, and a variety of other necessities. Big business has exploited the opportunity to build prisons and to contract with prisons for profit. Before 1983 there were no private prisons in the U.S. Today, there are over 150 (Hollinan p.xvii). With the growing demand for prison construction, there is an equal demand to keep these prisons occupied. These demands have come at the expense of young Black men.

The statistics discussed in this article clearly highlight serious race-based problems in the U.S. criminal justice system. The blatant and systematic disparities in the system point to human rights violations. Many of the social justice theories revolve around the concept of equality. In many ways, the U.S. criminal justice system does not meet the various criteria for being just.

### **CONCLUSION**

How do we explain the proliferation of prisons in the U.S.? How do we explain the staggering disparities between the treatment of Blacks and Whites in the justice system? Two factors generally explain these two scenarios, capitalistic exploitation and racism.

There are glaring contradictions in the principles and practices of the American Democracy. In May of 2001, the U.S. was voted off of the United Nations Human Rights Commission. Immediately after this decision, the U.S. Congress voted to punish the UN by withholding \$244-million in their overdue UN dues. Instead of creating backlash towards the UN, U.S. policymakers should use this opportunity for self-reflection. Perhaps a period of introspection will enable the U.S. government to assess the egregious human rights violations it has sanctioned over the past decade.

The U.S. was founded on noble and egalitarian principles that benefited the public good. Framers of the U.S. Constitution enthusiastically embraced the writings of John Locke. Locke argued that people have natural rights that cannot be taken away. The basic natural rights are life, liberty, and property. However, on some points, the framers diverged from the Lockean tradition, which was based on an idea of majoritarian politics of interests. In the Federalist Papers, James Madison, Alexander Hamilton, and John Jay outline a system of governance in which the U.S. would balance the interests of the majority while protecting the rights of the minority. In Federalist 51, Madison asks, on what basis can any majority ever be found? Not on the basis of a self-interest hostile to the public good, he argued. Perhaps it is this self-interest hostile to the public good that has led to the disparities in the current U.S. criminal justice system.

Since the Rodney King beating 10 years ago, the situation for young Black men has become drastically worse. Civil liberties law in the U.S. has evolved significantly in the past 40 years. However, in the past decade, these laws have increasingly been applied unequally. What does this say about the U.S. model of liberal democracy? Statistical disparities and unequal treatment between Blacks and Whites, suggest the

U.S. criminal justice system meets Martin Luther King Jr.'s criteria for being unjust: the system degrades human personality, it binds one group and not another, it is enacted by an authority not truly representative and is unjustly applied.

The U.S. society made its first attempt to live up to its noble egalitarian principles during the period of "Radical Reconstruction" (1866-1877). Since this period, incremental progress has been coupled with staggering setbacks for Blacks in America. This disturbing pattern of dealing with the "Negro Problem" has been, and remains, an "American Dilemma."

In a postmodern era, the U.S. cannot afford to revert to the unjust laws of a pre-modern era, one marked by barbarism. The cornerstone of a civil society is respect for the "heterogeneous." The role of government and all of its agents is to carry out duties in ways that exemplify fairness, justice, and equity. Given this, social injustice should not be a reality in American society.

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