
NOBLE PRINCIPLES, IGNOBLE PRACTICES: RACE AND THE U.S. CRIMINAL JUSTICE SYSTEM

Renford Reese, Political Science, Cal Poly Pomona University

Introduction

The criminal justice system has consistently contradicted the principles of the American democracy. The victimization and unequal treatment of minorities in the courts, police departments, and corrections facilities is inconsistent with the U.S. Constitution. More specifically, this treatment undermines the significance of the *equal protection clause* of the 14th Amendment to the U.S. Constitution. Race-motivated arrests, sentencing, and incarcerations highlight the injustices of this system.

Since the Rodney King beating over a decade 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 four criteria for being unjust cited by Crawford (1973). First, the system degrades human personality. Second, it binds one group and not another. Third, it is enacted by an authority not truly representative. Fourth, it is unjustly applied.

A number of scholars have recently addressed the politics of race in the U.S. (Walton & Smith 2000; LeMay, 2000; Feagin, 2000; Russell, 1999; Dudziak, 2000; Barker, 1966; Ropers & Pence, 1995), while others have focused on the inequities in the criminal justice system (Knepper, 2003; Feldman, Schiraldi, & Ziedenberg, 2001; Dorfman & Schiraldi, 2001; Cole, 2000). This article attempts to highlight America's noble creed and ignoble deeds by examining the racial bias in the U.S. criminal justice system.

Social and Criminal Justice

Philosophers look at the concept of social justice in the context of freedom. For instance, Orlando Patterson (1991), who is a sociologist as well as a philosopher, discusses the notion of civic freedom, which he defines as the capacity of adult members of a community to participate in its life and governance. Eric Foner (cited in Walton & Smith, 2000) discusses the notion of freedom in the context of rights. Natural rights are those rights that are inherent to one's humanity such as life, liberty, and the pursuit of happiness. Civil rights are based on equal treatment under the law, which is paramount for the defense of natural rights.

Martin Luther King Jr.'s four conceptions of freedom were borne out of the Civil Rights Movement. King's definition of *liberal freedom* is the absence of arbitrary legal or institutional restrictions on individuals coupled with the equal protection of the law. *Freedom as autonomy* is based on an individual's ability to internalize a state of autonomy, self-determination and respect. *Participatory freedom* is the right of an individual to fully participate in civic life. *Collective deliverance* revolves around a group's liberation from external control (e.g., slavery, captivity, or oppression) (Walton & Smith, 2000).

The concept of the *Social Contract* is at the foundation of today's liberal democracies. The social contract is a conceptual reference to the relationship that should exist between the government and its citizens. The general principle of the social contract assumes that citizens must subject themselves to the authority of the government and government should protect the natural rights of its citizens (Barker, 1966). Thomas Hobbes, Jean-Jacques Rousseau, John Locke, and Cesare Beccarria, *Enlightenment* thinkers, have discussed the social contract in their writings. Hobbes and Locke disagreed on the role of the government in the contract. For Hobbes, the government represented the *leviathan*, an all-powerful entity to which citizens completely submit and give up their rights. Locke, however, wrote that people never completely give up their rights. According to Locke, government was legitimate as long as it reflected the will of the people and preserved natural rights of its citizens. If the government reneged on this contractual position, it should be replaced (Knepper, 2003).

Framers of the U.S. Constitution enthusiastically embraced the writings of Locke. The framers agreed, as Locke (1967) theorized, that people have natural rights that cannot be taken away. The basic natural rights are life, liberty, and property. However, their support for the institution of slavery showed that the framers agreed with Lockean principles only in the abstract. In theory, the U.S. criminal justice system is based on principles of fairness, justice, and equity. This system of justice is guided by the principles outlined in the Constitution. The preamble of the Constitution states that the purpose of our nation is 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" (Kelman, 1996, p. A-4).

Moreover, the Bill of Rights, a fundamental component of the Constitution, protects civil liberties. The 14th Amendment to the Constitution provides "equal protection under the law." Ostensibly, the staunch protection of civil liberties and equal protection of citizens is what separates the U.S. from totalitarian nations. In nations under a totalitarian regime, police, acting as agents of the government, have no regard for the basic civil liberties of individuals. In these regimes, individuals do not have equal protection of the law.

Critical Race Theory

Critical race theory in the U.S. developed from critical legal studies, which were developed to analyze and deconstruct legal doctrines. Lawyers, legal scholars, and civil rights activists interested in the relationship of race, racism, and power started the critical race theory movement in the mid-1970s. Derrick Bell, professor of law at New York University, is considered the father of this movement (Delgado & Stefancic, 2001). 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 posits that the justice system is manipulated to legitimize White supremacy and maintain a rule of law (Russell 1999).

The two overarching themes that guided the framers of the U.S. Constitution were protecting private property and limiting the power of the government to avoid tyranny (Walton & Smith 2000). The serious concern of protecting the minority who owned property laid the foundation for an elitist democracy. In the context of critical race theory, the criminal justice system has upheld the principle of protecting the privileged.

The criminal justice system in the U.S. represents the interests of the power structure; it plays a *power maintenance* role in society. As Richard Ropers and Dan Pence state, “The history, preoccupation, and structured role of the criminal justice system for adults and juveniles has ensured the political, social, and economic subordination of this nation’s racial minorities” (Ropers & Pence, 1995, p.187).

The U.S. has based its moral sensibilities on a unique individualism that Alexis de Tocqueville (1945) describes in his classic *Democracy in America*. As Michael Lewis (1993) states, individualism is at the core of America’s culture of inequality. The assumption is that with hard work everyone can achieve personal success. This bold assumption does not take into account the oppressive social structure that exists (Lewis, 1993). The idea that anyone can be successful in America is a quixotic notion that does not mirror reality. Social conditions have restricted many young Black males from attaining equal opportunities.

Race and the Justice System

In U.S. society, the police have acted as agents of the system. Indeed, the White dominated social structure has been legitimized in police behavior. Those without power have come to see the police as the enemy. The themes of racial profiling and police brutality have resonated throughout U.S. history. What the *Kerner Report on Perspectives*

Civil Disorders found in 1968 is true today: "...To many Negroes police have come to symbolize white power, white racism, and white repression" (United States Congress, Joint Economic Committee, 1968, p.206).

On April 1, 1991, the infamous Rodney King beating was captured on videotape. Since that date, there have been alarmingly frequent cases of police brutality including Amadou Diallo, Abner Louima, Demetrius DuBose, Irvin Landrum, Thomas Jones, Timothy Thomas, and Donovan Jackson (Reese, 2004). Each of these cases is a clear example of police officers using unjustified and excessive force to subdue black men. These cases represent only the high profile instances of race-driven police brutality; there are more. 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.

According to self-report data compiled by the U.S. Public Health Service in 1999, 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 (cited in Cole, 2000a). According to Human Rights Watch (2002), relative to population, Black men are admitted to state and federal prison on drug charges at 13.4 times the rate of white men. Black men are incarcerated for all offenses at 8.2 times the rate of whites. In seven states, blacks make up between 80 and 90 percent of all drug offenders sent to prison. One in every 20 black men is in state or federal prison, compared to one in 180 white men.

Aforementioned facts suggest that the justice system of the United States is incarcerating a disproportionate number of young Black men. As a result, opportunities for many young Blacks to engage in full citizenship are restricted. The incarceration rates of black men have significant social implications because this population does not have jobs, pay taxes, or care for their children at home. Forty-five states and the District of Columbia deny the right to vote to offenders in prison. At least one of seven African American males has lost, at least temporarily, the right to vote. Thirty-two of these states deny the right to vote to those on parole. Fourteen states have laws prohibiting felons from voting for life. "Felony disenfranchisement" prohibits approximately four million Americans--mostly underprivileged and minority--from voting. Nationally, the number of black men who are disenfranchised because of their conviction status is 13 percent, many for life, compared to less than 2 percent for whites (Cole, 2000b).

In 1994 Congress passed the *Violent Crime Control and Law Enforcement Act*. As a result of this legislation many states implemented a "three strikes and you're out" law, stating that if a person is convicted of three crimes they will be sentenced to twenty-five years to life in prison. This law was intended for those who committed

three violent crimes; however, it has been grossly misused.

In March 2003 the U. S. Supreme Court, in a 5-4 decision, upheld the legitimacy of three-strikes laws. The Supreme Court ruled in two California cases that the state's three-strikes law did not yield "grossly disproportionate" sentences that violate the Eighth Amendment of the U.S. Constitution. In the case of *Lockyer v. Andrade*, the Supreme Court upheld the indeterminate life sentence with no possibility of parole for 50 years that Leandro Andrade received for stealing \$153 worth of children's videotapes from Kmart. In *Ewing v. California*, Ewing was sentenced to twenty-five years to life for grand theft after he stole three golf clubs worth a total of \$1,200. This offense also qualified as a third strike (Chemerinsky, 2003).

The *Scales of Justice* symbolize, among other things, proportionality in the context of crime and punishment. The classicists adamantly believed that crime and punishment should be proportional. Italian Enlightenment thinker Cesare Beccaria laid the foundation for classical thought on crime and punishment in his seminal book *Dei Delitti e delle Pene* or *Of Crimes and Punishment*, first published in 1764. According to Beccaria (cited in Knepper, 2003), the government could encourage lawful behavior by carefully measuring the proportionality of crimes and punishment. "It is better to prevent crimes than to punish them," argues Beccaria. "That is the ultimate end of every good legislation." (Knepper, 2003, p.36). The utilitarian philosopher Jeremy Bentham states, "Punishment, which, if it goes beyond the limit of necessity is a pure evil." (Knepper, 2003, p.38). Politicians and policymakers who have constructed the policies that constitute our current criminal justice system are going against over two centuries of rational thought on the subject of crime and punishment.

Conclusions

Alexis de Tocqueville stated in 1835 in *Democracy in America* that the unequal treatment of Blacks in America would lead to a revolution. He predicted the Civil War. Unequal treatment has historically been the impetus for most of the race riots that have taken place in the U.S. Indeed, the race riots of 1919, 1965, 1992, and the most recent race riots in Cincinnati were caused by the unequal treatment of Blacks.

Racial polarization, racial bias, and racial insensitivity have threatened to undermine the strong foundation of a variety of American institutions, especially the criminal justice system. The passage of the 13th, 14th, and 15th Amendments to the U.S. Constitution ended the federal government's official endorsement of racial discrimination in the U.S. However, blatant discrimination still exists. The criminal justice system has embraced the legacy of America's unattractive past.

The staunch protection of civil liberties is what separates the United States from

totalitarian nations. However, racial profiling, excessive force, police brutality, racial disparities in the system and blatant disregard for civil liberties have magnified the flaws in this “democratic society.” The U.S. has created a system of criminal justice that meets all four of Martin Luther King Jr.’s criteria for unjust laws. In fact, the U.S. system of criminal justice is inconsistent with the various theories of social justice because the laws are unjustly applied. 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 the greatest possible number of people.” Indeed, the fate of one American is intertwined with the fate of another.

As the great African American leader Booker T. Washington stated in his 1895 Atlantic Compromise Address, “The laws of changeless justice bind oppressor with oppressed; and close as sin and suffering joined. We march to fate abreast” (Washington, 1901). King eloquently stated in his 1962 “Letter from the Birmingham Jail”, “We are caught in an inescapable network of mutuality, tied in a single garment of destiny” (King, 1964).

The U.S. cannot continue to ignore the disparities in the criminal justice system and the unequal treatment of a significant sector of its population. The health and well being of America’s liberal democracy is being undermined by an unjust system. In order for the U.S. to tout its system as a model of democracy for the world, it must remedy the systemic race-based problems that lay at its foundation. 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. The legitimacy of the U.S. model of democracy depends on its embrace of these fundamental principles.

Please direct all correspondence to Renford Reese, Ph.D.; Cal Poly Pomona University; 3801 W. Temple Avenue; Pomona, CA 91768. rreese@csupomona.edu.

References

Barker, E. (1966). *Social contract: Essays by Locke, Hume and Rousseau*. London: Oxford University Press.

Chemerinsky, E. (2003, March 10). Three strikes: Cruel, unusual and unfair. *The Los Angeles Times*, p. B11.

Cole, D. (2000a, January 21). Why so severe? Tough-on crime policies burden a disempowered minority. *Fulton County Daily Report*.

Cole, D. (2000b, February 3). Denying felon vote hurts them, society. *USA Today*.

Crawford, C. (1973). *Civil disobedience: A casebook*. New York: Crowell.

Delgado, R., & Stefancic, J. (2001). *Critical race theory: An introduction*. New York: New York University Press.

Dorfman, L., & Schiraldi, V. (2001, April). *Off balance: Youth, race, and crime in the news*. Justice Policy Institute.

Dudziak, M.L. (2000). *Cold war civil rights: Race and the image of American democracy*. Princeton, NJ: Princeton University Press.

Feagin, J. (2000). *Racist America: Roots, current realities, and future reparations*. New York: Routledge.

Feldman, L., Schiraldi, V., & Ziedenberg, J. (2001, February). *Too little too late: President Clinton's prison legacy*. Justice Policy Institute.

Human Rights Watch. (2002). *Race and the criminal justice system: Summary and recommendations*. New York: Human Rights Watch. Retrieved from <http://www.hrw.org/us/usdom.php>.

Kelman, S. (1996). *American democracy and the public good*. Fort Worth, TX: Harcourt Brace College Publishers.

King, M. L., Jr. (1964). Letter from Birmingham Jail. *Why we can't wait*. New York: Harper and Row.

Knepper, P. (2003). *Explaining criminal conduct: Theories and systems in criminology*. Durham, NC: Carolina Academic Press.

LeMay, M.C. (2000). *The perennial struggle: Race, ethnicity, and minority group politics in the United States*. Upper Saddle River, NJ: Prentice Hall.

Lewis, M. (1993). *The culture of inequality, second edition*. Amherst: University of Massachusetts Press.

Locke, J. (1967). *Two treatises on government*. Cambridge: Cambridge University Press.

Patterson, O. (1991). *Freedom in the making of Western culture*. New York: Basic Books.

Reese, R. (2004). *American paradox: Young black men*. Durham, NC: Carolina

Academic Press.

Ropers, R. H., & Pence, D. J. (1995). *American prejudice: With liberty and justice for some*. New York: Insight Books.

Russell, K. (1999). Critical race theory and social justice. In B. A. Arrigo (Ed.), *Social justice/criminal justice: The maturation of critical theory in law, crime, and deviance*. Belmont, CA: West/Wadsworth.

Tocqueville, A. (1945). *Democracy in America*. New York: Vintage Books.

United States Congress, Joint Economic Committee. (1968). *Employment and Manpower Problems in the Cities: Implications of the Report of the National Advisory Commission on Civil Disorders*. Washington, DC: U.S. Government Printing Office.

Walton, H., Jr., & Smith, C. C. (2000). *American politics and the African American quest for universal freedom*. New York: Longman.

Washington, B. T. [1901] 1995. *Up from slavery*. Oxford: Oxford University Press.