Racial Disparities in Criminal Justice and the Need for a Multicultural Workforce

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Abstract

Racial disparity is an age-long problem in the American criminal justice system. The phenomenon elicits debate on whether such disparities are due to the supposed more delinquent behavior of people of color compared to their white counterparts, or a function of the policies of the criminal justice system. Literature review conducted herein showed that racial disparities and discrimination are an outcome of an ineffective criminal justice system. The proposed solution of integration of racial and cultural diversity remains understudied posing challenges to the reform process.

Keywords: Racial Disparities, Racial discrimination, Criminal Justice, Multicultural, Workforce, African Americans.
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The insightful text by Walker, Spohn, and DeLone (2012) titled *The Color of Justice: Race, Ethnicity, and Crime in America*, presents a disturbing picture of the American criminal justice system that its stakeholders wish would rather remain unpublicized. Racial disparities permeate the criminal justice system, leading some observers to adopt a colored or racial perspective in their description of the system. Attempts to explain persistent racial disparities in the criminal justice system consistently fail to elicit lasting solutions, partly due to the entrenched status quo and perceived lack of political will. As a result, the criminal justice system serves as a channel for perpetration of racial discriminative practices by both law enforcement and the justice system. The Innocence Project was commissioned to ascertain the number of individuals serving jail terms for crimes they did not commit. The project established that majority of the people exonerated by DNA evidence, were people of color (70%), with African Americans forming the largest percentage (61%) (Walker et al., 2012). The statistics denounce the argument advanced by some factions that the criminal justice system is not racist, and allegations of systematic racial discrimination are founded on myth. Proponents of the argument contend that the high number of African Americans incarcerated stems from the delinquent behavior of this racial group and not discrimination by the criminal justice system. In a report on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance submitted to the United Nations Special Rapporteur, the Sentencing Project (2018), highlighted some of the pertinent issues driving the criticism of the American criminal justice. Under the international law, the Sentencing Project (2018) found the US culpable of creating and perpetuating policies that allow racial disparities to exist in its criminal justice system. The agency cited the US for violating its obligations under Article 2 and Article 26 of the
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International Covenant on Civil and Political Rights to ensure that all its residents - regardless of race - are treated equally under the law. *In this paper, researcher argues that the dominance of racial disparities in the composition of offenders and policing personnel impairs the administration of justice in the American criminal justice system, justifying calls for redress through a multicultural workforce across the board.*

In light of the literature and reports on rampant racial disparities in the US criminal justice system, the research paper seeks to make a case for solution of the problem by examining a number of discourses. First, it is imperative to present an overview of racial disparities in the American criminal justice system not only to highlight the magnitude of the problem but also to debunk the notion that racial discrimination is a myth. In addition, the paper explored the effects of a perceived racist American criminal justice in the context of policing, law, and order, and administration of justice. Next, the paper suggests a solution for addressing the issue in the form of a multicultural workforce. Presentation of the solution revolves around a number of aspects that cut across the board including the police and justice department workforces, and creation of diverse employment opportunities for absorption of racial minorities. The subsequent part of the paper attempts to justify the solution further by highlighting the composition of the criminal justice workforce, considered analogous to the perpetration of racial discrimination. The last section of the paper examines implications of the findings for the American criminal justice system, particularly its reform policies. The paper concludes by revisiting important point revealed throughout its content presented as a summary.
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Literature Review

Racial Disparities and Effects on Administration of Justice

There is substantial empirical evidence showing that racial and ethnic disparities in crime and the American criminal justice are real and not a myth as some factions would like the public to believe. Some factions denounce the myth concept because the debate on racial discrimination in the criminal justice system permeates all important public discourses such as politics, crime, and immigration. Moreover, the criminal justice system receives incessant criticism as the leading perpetrator of racial and ethnic discrimination. Racial disparities have historically defined paradigms of lives of the American citizens. The existence of a continuum in the relationship between disparity and discrimination suggest the two always occur concurrently (Walker et al., 2012). Answering the questions raised is dependent on reliable data on the historical trends of racial and ethnic influences on administration of justice. However, it is important to note that statistics on the existence of racial disparities may have a detrimental effect in the fight against perpetration of discrimination in the criminal justice system. Numbers are often controversial because they elicit different reactions from different people. Contrary to the commonly held assumption that knowledge of full extent of existing disparities would motivate people to fight associated racial prejudices, Hetey and Eberhardt (2018) argued that such has not been the case. According to Hetey and Eberhardt (2018), exposure to extreme disparities can cause people to become more, not less, supportive of the very policies that create those disparities. In the criminal justice system, highlighting racial disparities in the domain potentially triggers fear and stereotypic associations linking Blacks with crime. The assertions are consistent with Reskin (2012) theory on race and discrimination system, which postulates that race discrimination is a system whose emergent properties reinforce the effects of their
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components. Reskin (2012) contended that the emergent property of a system of race-linked disparities is a meta-level phenomenon that shapes individuals’ culture, cognitions, and institutions, thereby distorting whether and how they perceive and make sense of racial disparities. The observations may justify the persistence of racial disparities and discrimination despite decades of research yielding concrete data that ought to inform successful policies on the same.

The Sentencing Project (2018) report shows areas of particular interest in the criminal justice system where racial disparities and discrimination permeate. They include policing, pretrial, sentencing, parole, and post-prison collateral consequences. Kim and Kiesel (2018) observed that in an era of punitive criminal justice policies and mass incarceration, the long shadow of police racial treatment of alleged offenders has become more pronounced. According to Kim and Kiesel (2018), comparison of racial disparity in prison sentencing and at arrest while controlling for factors such as crime type and history of the arrest population established the presence of racial disparity in prison sentencing at the state level before start of criminal proceedings by the courts. A comparison of Black and White drug offenders by Rosenberg, Groves, and Blankenship (2018) established that policing data on arrests shows Blacks as more likely to have sales and possession charges. The data is contradictory because Blacks were also found to have preference for marijuana, a less addictive drug that is less likely to report severe exacerbations. Such evidence leads to the contention that the disproportionately high number of Black offenders in the criminal justice system is not an outcome of delinquent behavior of this population group, but perpetration of racial discrimination by the law enforcement agencies and personnel.
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The phenomenon extends beyond policing. Racial disparities permeate the corridors of justice in the American criminal justice system, affecting the prosecution, sentencing, and punishment of offenders (Rehavi & Starr, 2014; Spohn, 2013; Yang, 2015). Judicial discretion continues to attract significant criticism because of such racial biases. Arrest offense and criminal history data show that Blacks received sentences almost 10 times longer compared to whites arrested for similar crimes (Rehavi & Starr, 2014). The trend is explicable through the prosecutors’ initial charging tendencies that include filing charges carrying mandatory minimum sentences. Ceteris paribus, the odds of black arrestees facing charges with mandatory minimum sentences are 1.75 times higher than those of white arrestees. The practice by prosecutors contravenes the spirit of the federal sentencing guidelines of reducing unwarranted sentencing disparities among similar defendants (Yang, 2015). In the case United States v. Booker, the US Supreme Court ruled that “the Sixth Amendment right to jury trial requires that besides a prior conviction, only facts admitted by a defendant or proved beyond a reasonable doubt to a jury may be used to calculate a sentence exceeding the prescribed statutory maximum sentence” (United States v. Booker, 2005). However, Yang (2015) established that random assignment of cases to judges revealed racial disparities to be greater among judges appointed after Booker. A similar trend was observed among prosecutors who responded through increased judicial discretion by charging defendants of color with binding mandatory minimum sentences.

The effects of racial discrimination in policing and increased judicial discretion for prosecutors and judges in the criminal justice system are extensively documented. The Sentencing Project (2018) report established a valid case for treatment of concerns on racial disparities in the American criminal justice system because of the associated adverse implications. According to the Federal Bureau Uniform Crime Reporting Program, black
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Americans comprised 27% of all the arrestee in the US in 2016. The number is double the population of African Americans in the country. Black youth who accounted for 15% of all American children made up 37% of juvenile arrests in the same year (Puzzanchera, Sladky, & Kang, 2017). The perceived linkage between race and crime is largely a function of the concentrated urban poverty, to which blacks are common victims compared to other racial groups. The development to such a state is institutionalized in the American society. Recent data by the Centre for Disease Control and Prevention (2017) and the National Centre for Education Statistics (2017) showed that compared to their white counterparts, African Americans have a double risk of dying at infants, 3.6 times likely to experience childhood poverty, and 2 times more likely to have not completed high school. The disparities have also been observed across other areas such as residential location, employment, health, housing, and credit (Reskin, 2012). These factors have longitudinal effects on their teenagers and young adults. Exposure to such debilitating conditions can dramatically increase the propensity to commit crime. However, despite evidence of high numbers of African Americans engaging in crime, white Americans are accused of overestimating the numbers to suit the agenda of portraying the black community as delinquent in an attempt to discount the prevalence of bias in the criminal justice system.

From an outsider’s point of view, it is apparent that the criminal justice system is involved in a conspiracy to admonish African American using the racist card. Players in the system are guilty of association with those perpetrating racial discrimination. Policies intended to maintain law and order are exploited by those mandated to implement them to advance racial discrimination. Observers have accused the highest ranked officials in law enforcement of turning a blind eye to perpetration of racial discrimination by their juniors. The declaration of the New York City’s ‘stop-and-frisk’ tactic as unconstitutional in 2013 owed to evidence showing its
use by the officers to conduct stops in a racially discriminatory manner (Goldstein, 2013). The policy received significant criticism for apparently targeting low-income neighborhood where drugs and arms were perceived to be dealt. Black drivers are more likely to be stopped, but are far more likely to be searched and arrested. The causes and outcomes of such stops have been known to differ by race. The policy was ultimately discarded for being ineffective, but not before it was widely used to perpetrate racial discrimination. On the other hand, some localities still deploy the stop-and-frisk practice despite the ban. State agencies have also been criticized for perceived reluctance to scale back on the Broken Window Policing. This is a public safety strategy that seeks to clamp down on petty offenses and neighborhood disorder, common crimes in low-income neighborhoods that are populated by African Americans. In 2015, the Civil Rights Division of the Department of Justice (DOJ) concluded in its report that in some instances, law enforcement practices are shaped by focus on revenue collection rather than public safety needs.

A study by the Arch City (2015) corroborated those by Spohn (2013) and Walker et al. (2015) on the likelihood of black offenders being held in custody prior to trial. African Americans are 3.5 times more likely than non-Hispanic whites to be imprisoned in local jails. Policies at the processing stage compound the situation. The development is of significance in examination of racial disparities at this stage owing to the fact that pretrial detention increases the odds of conviction. Offenders detained awaiting trial are more likely to accept less favorable pleas, to be sentenced to prison, and to get longer sentences. The disparities in sentencing are also evident in the number of African Americans in the prison population (57%) despite them making only 29% of the US population (U.S. Bureau of Justice Statistics, 2018; Rastogi et al., 2011; Ennis, RíosVargas, & Albert, 2011). The trend is driven by a number of practices by personnel in the criminal justice system including biased use of discretion, policies that
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disadvantage people of color, and policies that disadvantage poor people. People of color have been shown to experience a harder process when applying for discretionary parole and other have reduces prospects because they serve fixed term sentences. African Americans, particularly black men, have been demonstrated to encounter challenges during re-integration into the society because of their criminal record (Shannon et al., 2017). The scenario highlights the extent of collateral consequences of racial disparities in the criminal justice systems to victims.

Solution through Adoption of a Multicultural Workforce

Addressing the racial and cultural composition of the American workforce is a phenomenon with years of history. The Kerner Commission based on a report by the National Advisory Commission on Civil Disorders first proposed the solution in 1968. The objective was to create massive and sustained investments in jobs and education to reverse the segregation and poverty [that] have created in the racial ghetto a destructive environment totally unknown to most white Americans. Harris and Curtis (2018) observed that five decades later, the promise remains unmet, a scenario complicated by the fact that improvement continues to be elusive as the situation worsens. The importance of a renewed approach intended to whip support of different stakeholders from all sectors of the American society to revive this unmet dream cannot be understated.

The need for a racially and multicultural police force in taming racially instigated policing, arrest, detention, and prosecution of offenders cannot be understated. A number of scholars and other stakeholders have advocated for increasing the composition of racial minorities in the law enforcement workforce. Police-community tension is a common phenomenon in policing as evidenced in the events following the police killing of Michael Brown in 2015. African Americans feel targeted by policies and officers in the criminal justice
systems, whose workforce comprises mostly white Americans. Shjarback et al. (2017) argued that increasing minority representation in law enforcement has long been viewed as a primary means to improve police-citizen relations. The recommendation for diversification of the police force were initially advanced by the Kerner Commission in 1968 when it proposed for strategies to be laid down to absorb the disadvantaged minority populations into the American workforce including the law enforcement (The Sentencing Project, 2018). However, the process is wrought with challenges with Stergioulis (2018) noting that efforts to integrate diversity have faced monumental obstacles. The high prevalence of racial discrimination in the workforce can be attributed to the development. As a result, Wilson, Wilson, and Gwann (2016) recognize the need for identification of barriers to such diversity efforts. Some of the identified barriers are associated with the methodologies and marketing practices used in recruiting campaigns that appear to discriminate against the people of color. Wilson et al. (2016) established that African Americans were exposed to low levels of informational distribution and contact, low presence of supervisory personnel among officers of color, low levels of minority officer hires, and issues related to the selection process for police officers. These factors drastically reduce the chances of recruitment of black people into the police force. Moreover, contrary opinions have been expressed about whether having more black police officers can reduce racial disparities in the criminal justice system. Nicholson-Crotty, Nicholson-Crotty, and Fernandez (2017) found out that increasing the proportion of the force that is black is not an effective strategy for reducing police-involved homicides of black citizens in most cities. The findings are detrimental to the quest for a multicultural workforce, but more such studies are needed for better understanding of the approach and its implications in the fight against racial discrimination in the criminal justice system.
Implications of the Study

Review of research on racial disparities and discrimination in the American criminal justice system reveals a disturbing picture that is unlikely to vanish any time soon. Despite data showing that the phenomena are real, there are contradictions about the most appropriate way of addressing the situation. While reform of the police force is suggested in this study, the approach is criticized for lack of effectiveness. The implication of the finding is that more studies must be conducted to explore the efficiency of such a strategy to inform adoption. The process must include identifying and addressing barriers to equal employment opportunities facing African Americans to facilitate their integration into the police force. The study should be extended to other racial minority groups including Hispanics and Asians.

Conclusion

The study highlights the existence of racial disparities and discrimination in the American criminal justice system. The disparities permeate different areas of the system including composition of the workforce, policing, arrests, detention, prosecution, sentencing and punishment. African Americans, apparently, are the most affected population group. The suggested approach for solving the problem, integration of racial and cultural diversity into the recruitment process of law enforcement officers, is under explored, thus its effectiveness cannot be ascertained. Therefore, more research is needed to better understand if the strategy can work in different contexts where racial disparities are rampant.
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References


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