

Uncovering and Eliminating the Colorblind Racism within our Criminal Justice System

Introduction

The criminal justice system affects every American's life; therefore, such a system must perform for all members and groups within society. However, unfortunately due to the punitive, racially-charged policies enacted during the War on Drugs initiative, the current criminal justice system has transformed into a discriminatory institution that perpetuates racial profiling, police brutality, and mass incarceration of African American and Latinx community. Although, the change of the century brought awareness of the colorblind foundation of the criminal justice system to a few localities through actions such as NYC's "quality of life initiative" and BWC cameras, statewide and national reforms to the structure of the criminal justice system—enacted policies to offset the Controlled Substance Act and commissions which demand accountability from law enforcement—can develop a sustainable reduction of crime and recidivism while serving all members of society justly.

Issue Background and Impact

The first instances of racial disparities within the current criminal justice system began with the War on Drugs of the 1970s and 1980s (History.com). Policies developed during this time period of colossal criminalization included drug schedules established through the Controlled Substances Act of 1970 and minimum mandatory sentencing within the 1986 Anti-Drug Abuse Act. The War on Drugs attempted to reduce the national illegal drug epidemic (Nunn 386-387). Unfortunately, policies, such as the ones above, had serious racial ramifications on the future of the criminal justice system. Officers and courts started targeting minority groups in low-income, impoverished areas through harsher sentences for crack cocaine than powder cocaine—although whites consisted of 75% of all drug user while black communities consisted of only 13%—and an excessive rate of mandatory minimum sentences for nonviolent drug offenses (Welch 279). Consequently, a 100 to 1 sentencing disparity was generated for crack versus powder cocaine and through discriminatory

targeting, persons of color comprised of 70 percent of all convicts charged with mandatory minimum sentencing (Kulze; Pearl). Thus, in current examinations, the War on Drugs has gained the title of “New Jim Crow” as the intentions behind its policies’ construction were forged through a colorblind racist lens generating a currently, ineffective but accepted punitive, deterrence approach to the prejudiced criminal justice system present today (Boyd).

With the War on Drugs enacted post-civil rights movement, the criminal justice system’s component of colorblind racism remained concealed under ideals of political and economic liberalism such as “equal opportunity” and “individualism” causing the institution to appear racially neutral (Bonilla-Silva 28). By the end of the 20th century and entering into the 21st century, marginalized groups—particularly, black and Latinx communities—experienced visibly harsh racial profiling, police brutality, and mass incarceration under the covert form of colorblind racism. However, very little conversation materialized around these discretions primarily because the criminal justice system’s actions simply appeared as a penal approach in deterring future crime, when in actuality, it participated and normalized colorblind racism. Therefore, the public slowly uncovered and scrutinized the criminal justice system’s colorblind racist lens and punitive approach when media coverage began to expose the system’s horrific effects in one of the nation’s largest cities: the shooting of Amadou Diallo in 1994 by NYPD officers who confused him for a rape suspect and the assault, brutalization, and sexual abuse of Abner Louima in 1997 by NYPD officers who later attempted to cover up their actions (Nagy et al. 16). However, unfortunately, the media continues to expose the nation’s present racist criminal justice system which inefficiently protects society as many deaths including Trayvon Martin, Michael Brown, Tamir Rice, Alton Sterling and Philando Castile continue to be broadcasted (Foust 1). With exposure to the destruction of the system’s punitive approach of incapacitation and deterrence, such as the many tragic shootings above, scholars have

identified colorblind racism's role through racial profiling, discriminatory police brutality, and mass incarceration (Nolan 272).

Thus, as an effect of the War on Drugs and the nation's current "tough on crime" mentality, racial profiling exposes the false stereotypes that emerge from the criminal justice system's colorblind racist lens which does not fulfil the system's goals of reducing crime or the broken window theory (Buerger 186; Kelling et al.). Racial profiling by the system's agents skews its racially-charged, violent actions into an acceptable logic of law and order. For example, although stop and frisk, a method that perpetuates racial profiling, violates the 4th and 14th Amendments, it is still evident today (COPS; NYCLU) . Evidently, the colorblind racist lens allows the criminal justice system and its agents to utilize methods, such as stop and frisk, to exercise racial stereotypes. Such stereotypes include law enforcement's and criminal courts' perceptions of black male youth as "violent and menacing street thug(s)" or "criminal" due to African Americans and Latinos "aggressive nature" leading to greater surveillance of these groups (Welch 276). For example, in New York State alone in 2019, out of the 13,459 frisks and stops recorded, 59% were black, 29% were Latinx, and only 9% were white (NYCLU). Thus, black people are routinely stopped and searched between 4 and 7 times more than white people (Delsol).

Clearly, through stop and frisk data, the criminal justice system has come to rely on these stereotypes which are unquestionably incorrect. Primarily, one race cannot be inherently more dangerous or aggressive than another—a thought that stems from the biological argument defending slavery. Secondly, although 54% of whites believe black persons tend to exhibit a greater chance of violence, white individuals statistically are more likely to abuse drugs and engage in crime (Welch 278). Therefore, consequently, if the criminal justice system targets a community due to incorrect stereotypes when another populace plausibly commits more crimes, law enforcement are not effectively generating a long-term reduction of crime. Furthermore, law enforcement's racist acts of

aggression increases the fear and lack of trust between themselves and marginalized minority groups (Welch 282). Heightened fear and a lack of trust creates a lack of community outreach from law enforcement resulting in the failure of the criminal justice system's goal of the broken windows theory. The system's initial mistake was interpreting the broken windows theory as an increase in policing which will be covered in more detail later when discussing previously enacted policies (Kelling et al.). The concept behind the broken window theory, however, does not require completing more stop and frisks and greater profiling of African Americans and Latinx communities or harsher sentences to generate fear. Rather, the criminal justice system—even more specifically, the police as a direct link to society—should develop relations with the community it serves, particularly through listening to their concerns and needs (Skogan 28). With greater belief that the police and the criminal justice system operates for the people, those within the community are more likely to abide by the laws causing the crime rate to fall while maintaining trust (Gill et al 120). However, clearly, racial profiling alone articulates that when “talking about crime”, the criminal justice system “is talking about race” (Welch 276).

Along with the many errors involved with racial profiling, the media has exposed the criminal justice system for another major racial discriminatory trend: police brutality. With the establishment of incorrect stereotypes, such as the violent, angry black man, the criminal justice system has worsened its already harsh, punitive approach to law enforcement for persons of color. In 2016, 233 African Americans were shot and killed by police. When placing these 233 African-Americans within a greater statistic, although African Americans constitute approximately 13 percent of the US population, this community accounts for 24 percent of all individuals fatally shot by police (Nodjimbadem). Thus, African-Americans are 2.5 times more likely to be shot and killed by officers as white Americans (Nodjimbadem).

Police brutality has reached the level of tragedy illustrated above due to police forces' conservative, hierarchal structure which does not require accountability due to the colorblind racist lens the criminal justice system acts through (Nolan 271). Within their place of work, police officers learn to succeed in a current, dangerous model rooted in conservatism, toxic masculinity, and complete autonomy over themselves: the law enforcement model. Conservatism is a dangerous characteristics of the law enforcement model because while police officers should consider each case individually due to its unique circumstances, in reality, officers are trained "to see in black and white" (Nolan 275). The law enforcement's oversimplification of reality develops a skewed discretion "of sensing right from wrong, determining who is and who is not responsible; and, most critically deciding what is to be done about it" which alongside law enforcement's colorblind racist lens, worsened officers' view of society (Nolan 277-278). Therefore, faulty discretion, as an extremely important law enforcement responsibility, results in officers' reliance on racially-charged stereotypes leading to the epidemic of ethnocentrism: "the tendency to favor one's own group, its characteristics, and its products, particularly in reference to other groups" (Nolan, 278). To make matters worse, because the U.S. Department of Justice (DOJ) does not step in until an "imminent issue" is already present, the police force remains autonomous and thus, does not require a sufficient level of transparency and accountability (Nolan 280). Due to all aspects, police brutality is not simply a surface level issue, rather, an institutional problem rooted in colorblind racism.

Along with racial profiling and police brutality as effects of the colorblind lens the criminal justice system embraces, mass incarceration is the ultimate effect. Although the US makes up 5% of the global population, due to the penal criminal justice system enacted during the War on Drugs, the nation also consists of 25% of the world's prison population (ACLU). Similar to the racial stereotypes that law enforcement's discretion is infected with, the criminal court system too has inherited a punitive and racially-charged discretion leading to unforgiving sentences, especially for

marginalized groups. Out of the 25% of the world's prison population located in the US, one out of every three black men and one out of every six Latino men born today will most likely end up in prison during his lifespan (ACLU). With this colorblind racist lens, by sending marginalized groups to prison, courts also limit their opportunities as convicts after release in sectors such as employment, housing, and education (Friends Cmte on Ntl. Legislation 1) . Without opportunities to improve one's life, marginalized groups experience a greater chance of recidivism leading to generational oppression of African American and Latinx communities and their continuation in the cycle of poverty (Friends Cmte on Ntl. Legislation 1).

Past Legislation

Clearly, many issues within racial profiling, police brutality, and mass incarceration arise from the colorblind lens the criminal justice system serves a portion of the society—white communities—through. Therefore, several state legislatures have attempted to enact policy to combat the criminal justice system's marginalization of Black and Latinx communities. However, many of these following past policies did not improve the situation for minority groups because of the lack of acknowledgement these legislations gave to the covert, colorblind racism that perpetuates the current system.

NYC Quality of Life Initiative

Starting in the 1990s, states' criminal justice systems began to consider implementing the broken windows theory (Mckee). More specifically, the broken window theory articulates that if the community is rundown because the law remains unenforced, more individuals are likely to break the rules because there is a lack of repercussions (Jenkins 0:53-1:07). Therefore, many state and localities interpreted the broken windows theory as a need for increased patrol cars, surveillance, traffic stops, and greater suspicion (Kelling et al.). New York City participated in this interpretation of the broken window theory by enacting the “quality of life initiative” in 1994 (Mckee). The “quality of life

initiative” established an increased number of officers without their uniform, promoted greater arrests for misdemeanors, and implemented further patrol of the subways, public drinking and street prostitution (Mckee). Although by 1996, felonies decreased by almost 40 and homicide rate dropped by 50%, this increased level of rigid enforcement lead to greater levels of community fear (Mckee). However, fear is not a positive, sustainable characteristic to be held by society because it causes a “breakdown of social controls” or community unity and leads to an upswing in crime rates (Mckee). Therefore, NYC’s “quality of life initiative” illustrates the increased mistake of many states in assuming that the broken windows theory calls for more rigid discretion through harsh enforcement.

Community Policing

As mentioned previously, law enforcement distances itself from the community, particularly minority groups, by targeting black and Latino individuals due to the racially-charged stereotypes that the colorblind racist lens perpetuates. Therefore, in the 1990s, to resolve such a complex problem, most localities and major cities enacted a popular policy at the time: community policing (Gill 119). Community policing—a policing principle that prioritizes the relationship between police and community to address current problems and counter crime—charges law enforcement to rebuild trust and “recapture legitimacy” in an effort to achieve “collective efficacy” (Gill et al. 119; Skogan 31). If implemented correctly, community policing has the ability to revamp the racially-charged criminal justice system. However, current police officers are considered “empty holster guys” (Skogan 33). In a survey of Chicago police, a city in which community policing was implemented, two-thirds of the city’s officers removed themselves from any issue that did not involve the direct fighting of crime as they considered community policing “social work” (Skogan 33). 70% of the 7500 Chicago police surveyed also believed that the community policy reform “would bring a greater burden on police to solve all community problems” (Skogan 33). Along with the surveyed Chicago police, law enforcement throughout the nation did not implement community policing seriously

because as a conservative, autonomous institution rooted in toxic masculinity, many felt that their position would be threatened by the greater involvement of civilians, especially the involvement of marginalized groups (Skogan 36; Nolan 276).

Prediction predictive LSI-R

Although many criminal justice system reforms and policies are reactive, the federal government has attempted to create proactive prediction instruments such as the Level of Services Inventory-Revised (LSI-R) (Ferguson 1119). The LSI-R presents questions about a former convict's criminal history, education, employment, housing, mental health, substances abuse, and many other categories to estimate parole and supervised release success (Ferguson 1119). Unfortunately, this statistical tool does not provide accurate, reliable results because of the context of its questions. For example, a majority of the questions, asked in the LSI-R assessment, focus on the inmates' economic and social position as well as their standing at the start of their time served (Wilentz). Because of the time period taken into consideration, the LSI-R assessment questions do not concentrate on the respondent's rehabilitation programs, work experience and performance, or any other improvements they have made after incarceration (Wilentz). Along with this error, the LSI-R assessment leads to the continued perpetration of racial stereotypes because several of the sampling technique missteps caused generalizations based in race, sex and age (Wilentz).

Body Worn Camera

Due to the media coverage around the tragic deaths of African American men and women due to police escalation and the lack of consequences for these officers' actions, many localities and major cities have discussed and invoked body-worn cameras (BWCs) with the aid of the U.S. Department of Justice's approved federal funds (Doleac 1-2). In theory, BWCs are intended to decrease the racially-charged use of force as a result of racial profiling and police brutality. By requiring a recording camera on officers, the US Department of Justice and localities assumed that

officers would behave in a more civilized manner and when not, the footage can be utilized in the court of law as evidence (Doleac 2). However, in reality, BWCs have done little to decrease police officers' use of force which illustrates that even under surveillance, law enforcement's ethnocentrism is severely institutionalized. In the first major study on BWCs conducted in Washington DC., the actions of officers were equivalent when wearing and when not wearing a camera (Doleac 3-4). Since there is no identifiable evidence of a decrease in the use of force by police due to the implementation of BWC's, this policy attempt does not succeed in creating trust between the criminal justice system and the community it vowed to protect because it does not address police departments' skewed mentality and structure. (Doleac 4).

Possible Promising Policy Reforms

With the exposure of the colorblind racist lens within the criminal justice system and the awareness of the shortcomings of past legislation, promising policy reform is possible. However, in creating sustainable, effective reforms, the federal government must keep several previous mistakes in mind. In the past, particularly due to the severe racial impact of the War on Drugs campaign, the federal and state governments have avoided any acknowledgement of colorblind racism within the criminal justice system and its agents. Therefore, past developed reforms have not reached the core of the issues. Plus, failed resolutions such as and NYC "quality of life initiative" and body-worn cameras did not obligate transparency and accountability from the system's agents. As a consequence, police brutality and racial profiling continued to persist. Also, without addressing law enforcement's disbelief in community collaboration, a connection will not be fostered and fear will continue to exist within our colorblind racist society.

Broken Windows Reforms

The previous conversation surrounding the criminal justice system's misunderstanding of the broken window theory is a direct cause of the inefficient implementation of programs such as NYC

“quality of life initiative”. Therefore, to successfully enact the broken windows theory to produce sustainable low rates of crime, reform must begin with the Controlled Substance Act initially enacted during the War on Drugs. The broken windows theory emphasizes that successful, enforceable law fosters a safe, orderly society. However, adequate enforcement does not correlate to our current criminal justice system’s penal, deterrence approach. The Controlled Substance Act was one of the first acts that set the harsh tone for the new era of punitive enforcement through practices such as mandatory minimums (History.com). Therefore, in reforming the Controlled Substance Act, mandatory minimum sentencing should be eliminated as the incarceration of non-violent crimes, such as drug-related violations, does not decrease the recidivism rate of these convicts (Friends Cmte on Ntl. Legislation 1-2). By not focusing on rehabilitation and simply imprisoning the disorderly in society, the criminal court system cannot reach the root of convicts’ issues and thus, convicts will most likely commit the same crimes.

In moving toward a more rehabilitative model illustrates the criminal justice system’s understanding of how important focusing on the individuality of each defendant’s case is. Thus, to successfully convert to a rehabilitative model, the criminal justice system should implement bans to stop and frisk policies and Mental Health Response Teams (Campaign Zero). First, since stop and frisk is an effect of law enforcement’s racial profiling, banning several of its components reduces stop and frisk to simply necessary stops in maintaining societal order. Bans to reach the ultimate goal of reduced crime includes excluding the stop and frisk based in racial profiling from high-crime or low-income areas, requiring officers to have a realistic justification before stopping, and forbidding departments from utilizing police tactics such as interrogation and harsh detainment(Campaign Zero). In maintaining transparency and accountability, all the information above must be transcribed into a required report after a stop which is included in the public record to reprimand and halt police departments’ racial profiling techniques (Ferguson 1125; Campaign Zero). Along with these refrains

to stop and frisk, to more fully solidify a rehabilitative model, the criminal justice system should implement Mental Health Response Teams as a replacement of manhandling by officers – who do not possess excessive training in distressed interventions. The funded Mental Health Response Teams would include mental health professionals, social workers, and crisis counselors as first responders (Campaign Zero). Along with these teams' role in emergencies, mandatory training sessions should be scheduled where police officers are exposed to the necessary actions taken in a crisis intervention that requires mental health knowledge (Campaign Zero).

Community Oversight

Although the implementation of community policing failed, a focus on its theory, communication oversight, can result in greater civilian cooperation, steps for law-enforcement transparency, accountability, and overall create an orderly society. The first step in this community oversight initiative is developing both a Police Commission and Civilian Complaints Office. When assembling the Police Commission, all implemented strategies and rules of the police department must require the consideration of the community's needs (Campaign Zero). By re-structuring the current conservative, hierarchical police force into a department that requires community input, it forces officers to collaborate and take responsibility to rebuild trust with the community. Additionally, the Police Commission would utilize and publicize policy changes and conduct public disciplinary hearings so that the community remains aware of and reinforces the criminal justice systems' initiative to community oversight (Campaign Zero). To prevent the Police Commission from corruption, all members of the commission must be recommended by community organizations and at any time, can be removed. Coupled with an accountable and transparent Police Commission, a Civilian Complaints Office would accumulate, examine and create resolutions to all civilian needs or concerns. The implementation of the interconnected relationship between these organizations would eliminate obstacles for citizens to provide information on policy misconduct

(Campaign Zero). Along with these benefits, the Civilian Complaints Office would receive the same timely notification and opportunity as the police department to send an investigator to the scene of a police shooting or if an in-custody death occurs (Campaign Zero). Clearly, through the community oversight initiative, police departments not only need to communicate with society but society would have an active role in law enforcement.

Reduced Use of Force

Along with acknowledgement and accountability of the criminal justice system's mistakes and structural reforms to include community input, future policy must address police brutality by reducing law enforcement's use of force. Ways to restructure police officers' use of force while remaining protected involve banning chokeholds, hog-tying, and transporting people face down in a vehicle while also developing enforced guidelines in handling intense circumstances. In enforcing such guidelines, all officers of the law must take biennial training sessions (Campaign Zero). The training sessions would include de-escalation tactics such as creating distance and verbalization or the utilization of a certain phrase before force is used (Campaign Zero). The proper steps after force—filing a detailed report of any homicide by cop or any major harm to citizens and disclosing officers' names who were involved—will also be taught and tested in the law enforcement training session. To keep officer accountable and transparent, all filed reports will be added to a database including those officers' names (Campaign Zero). Consequently, if a certain name has several repeated incidents utilizing unnecessary force, a mandatory intervention training session is required of that officer (Campaign Zero). If reports continue to highlight the same officer's name and they attend the intervention training session three times, they will then be placed under review by the police department's board.

The Future of Reform

Although policies and initiatives, such as the ones above, are constantly proposed, enacting reform becomes more challenging. For instance, although cocaine use is less common today than it was during the War on Drugs, due to racially profiling, its arrest levels remain proportionally high (Eckholm 1). However, on a positive note, with a slow national movement away from strictly following War on Drugs' policies, already enacted reforms and initiatives, on both the federal and state level, will inspire further elimination of the racially-charged effects of our current criminal justice system. For instance, although the Controlled Substances Act of 1970 initiated the development of the punitive system in need of reform, both the Obama and Trump administration have implemented legislation such as the 2010 Secure and Responsible Drug Disposal Act. While this act works to reduce drug use especially in this current opioid epidemic, it begins to change the narrative of addiction from crime to disease in providing care facilities and safe, easy and comfortable methods in transferring unwanted or unused substances (DEA). Initial acts, such as the one above, have allowed for bipartisan congressional actions in the future allowing for further laws that transform the justice system into a rehabilitative one on the federal level.

In July 2009, the Fairness in Cocaine Sentencing Act, a bill intended to eradicate all sentencing disparities, was co-sponsored by 62 members of the U.S. House of Representatives. Although this act received much support, it was compromised into the Fair Sentencing Act. The Fair Sentencing Act was passed by both the Senate and House of Representatives and signed by President Obama in 2010 as bipartisan legislation which reduced the 100:1 crack-to-powder ratio to 18:1 (USSC). Along with the Fair Sentencing Act's impact on mandatory minimums, this historical legislation encouraged future bi-partnership on criminal justice reform. Evidence of this impact occurred in 2018, with the enactment the bipartisan bill First Step Act (Fandos et al. 3). The act is an embodiment of a successful combination of the correctly-implemented Broken Windows theory and community oversight while setting the goals for future reform: to rebuild safe communities, provide

past offenders a second chance, and initiate the hopeful future creation of a rehabilitative incarceration system and criminal justice system. Specifically, the First Step Act assigns inmates to productive, rehabilitative programs and employment training while providing them opportunities to earn incentives and time credits in an attempt to reduce recidivism. The legislation also places inmates in facilities closer to their home communities to make family visitation a reality and expands the safety valve provision allowing courts to sentencing below mandatory minimums. This act is revolutionary because it does not criminalize the socioeconomic past or addiction offenders ended up in prison because of while taking those input factors into consideration within the court of law and in sentencing. This very current act also paves the way for future reform that can continue to shave off part of mandatory minimum sentencing and slowly implement rehabilitative practices.

Along with federal legislative reform, state implementation is also necessary for a widespread change of the criminal justice system. Several states have taken charge in improving their community oversight while reducing police use of force by implementing Civilian Commissions and Police Advisory Boards. The states that have established agencies include Ohio, Texas, Georgia, Massachusetts, Virginia, Washington D.C., Utah, Pennsylvania, and several more (NAC). However, California and New York have taken the lead in civilian commissions and police accountability (Human Rights Asso., nyc.gov). For example, the San Francisco police report in 1996 illustrated that within the last eight years, San Francisco police officers shot 86 people, killing 31 people (Human Rights Asso.). Due to the results, it was clear that the police department was not practicing accountability. Therefore, the Department for Police Accountability, Police Commission, and a Discharge Review Board established new guidelines where all situations must be filed, files are accessible to the public, and a homicide investigation is required when a deadly shooting by cop occurs (Human Rights Asso.). New York City has followed suit with their own independent agency intended for police accountability called the New York Civilian Review Board (CCRB) who

investigate, organize hearings, and recommend certain action due to complaints of police officers' unnecessary use of force (nyc.gov). Clearly, through the recently enacted reforms at both the federal and state level as well as the perpetuation of more progressive but similar policies in following years or states, it is evident that the US government is beginning to notice the colorblind racism within the Criminal Justice system and starting to move toward rehabilitation and correction and away from the over 50 years of criminalization and imprisonment.

Conclusion

The future of criminal justice system is now. Since the 1970s, the War on Drugs has defined a safe, orderly society by how many stop and frisks officers can complete and how many arrests can be made with racial stereotypes at the forefront of these decisions. The punitive criminal justice system tends to slap unfit sentences through mandatory minimum sentencing and throws away the key once imprisoned instead of offering rehabilitative measures to ease re-entry. Along with this, policies such as the NYC "quality of life initiative" and LSI-R are implemented rather than tackling the colorblind racist foundation of our current system. The future proposed for the criminal justice system accounts for the errors of the War on Drugs, attempts to uproot the discriminatory stereotypes that perpetuate the colorblind racism into society, and places guidelines and boundaries to keep the system accountable. It is important to note that in reforming such a large, complex system with its racist foundation requires time, bipartisanship, and a dismantling of the War on Drugs. However, the criminal justice system affects all of society and thus, reform must become a priority.

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