

TOPIC A: Efforts to abolish racial discrimination in global courthouses and strategies to achieve fair rulings, with a focus on the north american law system

Introduction

The strong bias against African-descendent people all over the world is a well-known problem, which plagues and endangers the lives of African-descendants every day. From historical times, they have always been treated as lesser beings and mocked for their lifestyle, features, and mostly, for the colour of their skin. The correct term for this hateful bias is racism, defined as:

Any action, practice, or belief that reflects the racial worldview--the ideology that humans may be divided into separate and exclusive biological entities called 'races'; that there is a causal link between inherited physical traits and traits of personality, intellect, morality, and other cultural and behavioural features; and that some races are innately superior to others.
(Britannica, n.d.)

Despite the fact there are many races which have been systematically marginalized throughout history, people of African descent have been continually targeted by racist laws and policies, such as South Africa's Apartheid policies, which promoted the idea that a darker skin meant you were a subpar civilian, and therefore should only have subpar jobs, and overall have a low participation within society, whereas people of lighter skin tones had the right to live an accommodated life. These beliefs were treated as universal truths, however, there is no scientific evidence that proves the existence of more and less important races.
(Britannica, n.d.)

One of the countries with high discrimination rates is the United States of America. Particularly brought to light within Donald Trump's administration, non-Caucasian Americans have been increasingly targeted and discriminated against, especially African-Americans. However, this behavior is deeply rooted in the country's history, from slavery, to Jim Crow laws, all having lasting repercussions in American mentality.

One of the most important examples of this discrimination lies in the court system, as cases with an African-American defendant and a Caucasian victim, if they even make it to court, it ends with a conviction. There are countless examples of this, such as the cases of the Scottsboro boys, Ed Johnson, Andre Thomas, and Johnny Bennett, as well as several studies which examine what factors can lead to a racially biased verdict, as well as the consequences this can bring.

The Commission on Crime Prevention and Criminal Justice, through resolution 73/185 by the General Assembly and resolution 2018/15 by the Economic and Social Council, has a role contributing to the 2030 Agenda for Sustainable Development, particularly tied to the Sustainable Development Goal 16. This SDG, named Peace, Justice, and Strong Institutions, is targeted towards achieving equality and safety within legality, and one of its objectives is to "promote the rule of law at the national and international levels and ensure equal access to justice for all" (United Nations, 2019). Aside from this, one of the main functions of the CCPCJ, as quoted from the official website, is to improve "efficiency and fairness of criminal justice administration systems" (United Nations Office on Drugs and Crime, n.d.).

Historical Framework

Historically, African-American people living in the United States have always been met with intolerance due to their ethnic origin, as they were originally brought into the country by the Dutch for the purpose of slavery, during the early European settlement in the United States. Following the Civil War, the Emancipation Proclamation, issued in 1862 by president Abraham Lincoln, and the later 13th, 14th and 15th Amendments to the American Constitution, slavery was officially outlawed, and African-American men were granted equal protection under the law, as well as the right to vote. However, the mentality that African-Americans were lesser than Caucasians persisted, resulting in the formation of groups such as the Knights of the White Camellia and the Ku Klux Klan, which dedicated their efforts into intimidating African-American citizens and sabotaging their political campaigns. Jim Crow laws were set in place almost immediately after the abolishment of slavery, "detailing when, where and how freed slaves could work, and for how much compensation" (HISTORY, 2019), essentially nullifying any accomplishments made after the Civil War and forcing African-Americans into oppression. According to A'Lelia Bundles, "Those who got too uppity were lynched, firebombed in their homes and chased from land they owned" (Bundles, 2015).

Aside from being segregated politically and socially, African-Americans were also made into cultural smear targets. Works such as DW Griffith's *Birth of a Nation*, David Butlers' *The Littlest Rebel*, and Disney's *Song of the South*, as well as the popularization of blackface, glorified the Confederate ideals and even depicted the Ku Klux Klan as heroic, while promoting African-Americans as either happy and willing slaves, or dangerous criminals.

African-American discrimination nowadays

American race relations vastly improved in the aftermath of the 1950's Civil Rights movement, which led to the Civil Rights Act. This legislation guarantees equal voting rights, outlaws public segregation, among other landmark achievements for African-Americans. Despite this, the reality for many African-American men and women, is one of constant fear and othering, especially from within the American justice system and law enforcement departments. According to the United States' Justice Department:

[African-Americans] in Ferguson, Missouri, accounted for an overwhelming majority of traffic stops, traffic tickets, and arrests over a two-year period—nearly everyone who got a jaywalking ticket was [African-American]. When [African-American] drivers were pulled over in Ferguson, [...] they were searched at twice the rate of [Caucasian] drivers. (2015)

Conducts like these are a direct consequence of the Civil War-era belief that African-Americans are inexorably linked to violence and crime, which makes them recurrent targets for law enforcement officers. Even though excessive "routine" check-ups have become a nearly daily occurrence for many, cases of police officers abusing their powers pose a latent threat to African Americans. US Legal defines police brutality as "a civil rights violation that occurs when a police officer acts with excessive force by using an amount of force with regards to a civilian that is more than necessary" (n.d.). This phenomenon, which has always existed but gained traction in recent years, has claimed the lives of individuals who either committed minor offenses, such as speeding or driving past a stop light, or were simply racially profiled and reflexively injured by Caucasian police officers. According to statistics by Mapping Police Violence, of the total number of African American victims of police brutality, only 31% were alleged carrying weapons, whereas 69% were unarmed (2014). Cases like these have ignited the founding of organizations such as Black Lives Matter, which rallies against the systematic targeting of African-Americans.

Aside from endangerment on the streets, African-Americans are also vulnerable within American courts. There are records of many police reports and 911 calls which report "suspicious activity" by African-Americans, often male, as well as reports of criminal behavior. If these suspects are caught, there is a very high chance that their case won't even make it to court, as the "violent African-American" stereotype often leads officers to assume that the suspect is guilty, automatically convicting them. If the case does get reviewed in a courthouse, in the case of having an African-American defendant and a Caucasian victim, it will most likely end in a conviction. As law professor at Drexel University Adam Benforado states, and many members of the African-American community agree, deep-rooted prejudices and personal agendas of the members of the court play pivotal roles in the verdict given, even more so than the evidence presented.

Factors that affect verdicts

'**Unfair: The New Science of Criminal Injustice**', a book written by the aforementioned Adam Benforado, explores what factors can result in swaying the judges and jurors' opinion one way or another, ultimately leading to declaring a defendant guilty or not. Similarly, Radley Balko, a columnist for the Washington Post, states that biases within the courtroom do not necessarily mean that an attorney, jury or judge is racist, but rather than the systemic racism upon which America was built on leads to "racially disparate outcomes", whether or not this was a conscious decision on their part. This is a consequence of the same racial profiling responsible for police brutality, an stigma prevalent since the 1800's.

During an interview regarding his book, Benforado cites a study by Cornell University, in which researchers state that defendants with more stereotypically African-American characteristics, such as wide noses, thick lips, and darker skin, are much more likely to be convicted and receive higher sentences than a Caucasian defendant. As quoted from the original research:

People more readily apply racial stereotypes to [African-Americans] who are thought to look more stereotypically Black, compared with Blacks who are thought to look less stereotypically [African-Americans]. [...] The more stereotypically [African-American] a person's physical traits appear to be, the more criminal that person is perceived to be. (Eberhardt, Davies, Purdie-Vaughns & Johnson, 2006) This is because "[judges and jurors] are just susceptible and have been exposed to the same negative stereotypes linking blackness and violence or crime" (Benforado, 2015).

This disparity is also reflected on the defense arguments that can be applied during trial, such as the 'Graham v. Connor' defense, which is very prominent within police brutality cases. According to Mapping Police Violence, 99% of police brutality cases where a Caucasian officer harms an African-American individual have gone non-convicted, and out of 351 cases, 13 officers are charged, and only five are convicted (2015). The 'Graham vs. Connor' defense is largely used in these cases, as defense lawyers claim that the defendant only used force as a method of self defense, while facing what at the time they believe to be an imminent danger. This is backed by the Supreme Court, which ruled that a police officer is allowed to use force when in perceived danger, in the aftermath of a police brutality case. However, cases where African-American officers harm a Caucasian victim, namely the recent trial of officer Mohamed Noor, shows that when this defense is used in opposite scenarios, it loses credibility, and can be outright denied by jurors.

Consequences of an unfair conviction

The aforementioned Cornell University made an extensive research paper regarding the conditions of African-Americans during trials, why they are vulnerable, and the consequences they face. This study, named “Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes”, presents evidence that show that, especially in the case of a Caucasian victim accusing an African-American, there is a higher probability that the jury applies longer sentences if the defendant is found guilty. Cornell researchers found that, stereotypical African-American defendants serve an average of eight extra months in prison, compared to Caucasian defendants with similar charges.

However, the most important and concerning disparity, is the fact that racially biased convictions can lead to the application of capital punishment. Capital punishment has always been controversial, because, while many believed it is strictly applied to extremely dangerous felons, other argue that those who are most affected are people in poverty and people of colour (Claiborne, 2017). This argument stems from the fact that proper legal representation, which is essential to avoid a conviction, is nearly impossible to obtain while struggling with poverty, and 20% of African-Americans currently live in poverty making it the second most impoverished sector of the American population, only after Native Americans (The Henry J. Kaiser Family Foundation, 2018). This, coupled with the amount of discriminatory police officers, prosecutors and jurors, greatly increase an African-American's risk of not only being guilty, but being eligible for death row if the accusations are severe enough, especially during trials in which a Caucasian victim's life has been taken. Multiple studies, including Cornell University's, have concluded that cases involving the decease of a Caucasian person are often racially biased. “These studies typically control for other variables in the cases studied, such as the number of victims or the brutality of the crime, and still found that defendants were more likely to be sentenced to death if they [took the life of] a white person”(Death Penalty Information Centre, n.d.). Furthermore, the American Civil Liberties Union reports that “12 people have been executed where the defendant was white and the victim [African-American], compared with 178 black defendants executed for [charges against] white victims”, and confirms that, since 1976, 43% of executed inmates, and 55% of those awaiting execution, are African-American (n.d.).

Actions taken against discrimination in court

As an action to prevent racial discrimination, the Committee on the Elimination of Racial Discrimination (CERD) created the International Convention on the Elimination of All Forms of Racial Discrimination in December 21st, 1965, and put it to action in January 4th, 1969. It has 25 articles divided in three parts. The first states that, as a main objective, it is made to promote, encourage and take care of universal respect and human rights for all, also giving all fundamental freedoms; in spite of race, sex, religion and language. The second declares that every single human being is equal before the law and entitled to the same protection of it against any action and incitement to discrimination. Further, the convention affirms the necessity of eliminating racial discrimination, fast in all its forms, throughout the globe, by giving the following statement: “there is no justification for racial discrimination, in theory or in practice, anywhere” (OHCHR, 1996-2019).

‘The Sentencing Project’ was created in the year 1986 by Marc Mauer; this project works for a more fair and effective criminal Justice in the United States, which is the world's leader in incarceration, by applying reforms in the sentence policy, addressing unfair disparities and practices in a racial matter and pleading for other ways of making justice instead of

incarceration. Their work also consists on uploading ground breaking research activity about aggressive media campaigns and strategies for advocating policy reform.

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Glossary

- A** **Abolishment:** Doing away with something by formal action. Advocate: To support something publicly.
- Alleged:** Said, without proof, to have taken place or to have a specified illegal or undesirable quality.

Apartheid: A former policy of segregation and political and economic discrimination against non-European groups in the Republic of South Africa.

B Bias: An attitude that always favours one way of feeling or acting especially without considering any other possibilities.

Blackface: Dark makeup worn in a caricature of the appearance of a black person.

C Capital Punishment: The practice of killing people as punishment for serious crimes.

Caucasian: Of, constituting, or characteristic of a race of humankind native to Europe, North Africa, and southwest Asia and classified according to physical features —used especially in referring to persons of European descent having usually light skin pigmentation.

Causal: Involving causation or a cause, marked by cause and effect.

Conviction: The act or process of finding a person guilty of a crime in a court of law.

D Defendant: Someone who is being sued or accused of committing a crime.

E Emancipate: To free from restraint, control, or the power of another.

Ethnic: Relating to large groups of people classed according to common racial, national, tribal, religious, linguistic, or cultural origin or background.

F Felon: A person who has committed a felony.

Felony: A grave crime declared to be a felony by the common law or by statute regardless of the punishment imposed.

G Ground-breaking: Introducing new ideas or methods.

J Jaywalking: The act of crossing a street in an illegal, careless, or unsafe manner.

Juror: A person summoned to serve on a jury.

M Marginal: Excluded from or existing outside the mainstream of society, a group, or a school of thought.

Mock: To treat with contempt or ridicule.

N Nullify: To make of no value or consequence.

O Oppression: Unjust or cruel exercise of authority or power.

Othering: Any action by which an individual or group becomes mentally classified as not part of a specific group or community.

Outlaw: To make illegal.

P Pivotal: Vitally important.

Prejudice: An adverse opinion or leaning formed without just grounds or before sufficient knowledge.

Profiling: The act of suspecting or targeting a person on the basis of observed characteristics or behavior.

Prosecutor: A person, especially a public official, who institutes legal proceedings against someone.

S Sabotage: To intentionally damage or destroy property.

Segregation: The separation or isolation of a race, class, or ethnic group by enforced or voluntary residence in a restricted area, by barriers to social intercourse, by separate educational facilities, or by other discriminatory means.

Smear: A usually unsubstantiated charge or accusation against a person or organization.

Stigma: A mark of disgrace associated with a particular circumstance, quality, or person.

Subpar: Below a usual or normal level or standard.

Sway: To control or influence a person or course of action.

Systematic: Relating to or consisting of a system.

T Target: To aim an attack or a criticism at somebody or something.

Trial: The formal examination before a competent tribunal of the matter in issue in a civil or criminal cause in order to determine such issue.

KEY QUESTIONS

- Is your delegation involved in different kinds of programs in order to help minority groups?
- If so, which are they?
- Are they now being applied to this minority groups?
- How are you applying them?
- Are their private companies that help minority groups in your delegation?
- If so, which are they?
- And what have they been doing to help?
- Which government agency is working with minority groups?
- How long have they being doing this?
- Which have been the results recently?