

City University of New York (CUNY)

CUNY Academic Works

Theses

Lehman College

2018

The Perpetuation of Mass Incarceration: Analyzing systemic effects of the U.S. penal system

Lillian Barreto

CUNY Lehman College, barreto.lillian.lb@gmail.com

[How does access to this work benefit you? Let us know!](#)

More information about this work at: https://academicworks.cuny.edu/le_etds/10

Discover additional works at: <https://academicworks.cuny.edu>

This work is made publicly available by the City University of New York (CUNY).

Contact: AcademicWorks@cuny.edu

The Perpetuation of Mass Incarceration:
Analyzing systemic effects of the U.S. penal system

Lillian Barreto

CUNY Herbert H. Lehman College

Author's Note:

I am a double major in Political Science & Philosophy; honors student in the Lehman Scholars Program;
and a student-athlete of four years for Lehman College .

Receiving my Bachelor of the Arts, graduating class of 2018.

Special thanks to Professor Marcello Di Bello of the Philosophy Department at Lehman College for
mentorship and guidance during the research process.

Email: barreto.lillian.lb@gmail.com

Abstract

This paper is divided into four parts, Part I. *Perpetuation of a Disparate System*, Part II. *Perpetual Marginalization*, Part III. *My Personal Research* and Part IV. *Moving Forward*. Part I serves to show the pervasive racial disparities throughout the criminal justice system and how these disparities portray a system which discriminates primarily against poor men of color. Part II shows how this community is disadvantaged in various parts of their social, economic and political lives because of the extent of punitivity and criminalization. It explains the way these disadvantages translate to men of color being discriminated against on an even larger scale. Part III is a brief discussion of research which I personally conducted and how studies of this nature can contribute to future discourse and inquiries on the negative effects of the criminal justice system. Part IV is a conclusive chapter which also explains my main contentions and what I hoped to achieve in analyzing the penal system the way I did.

Preface

When I first considered the topic of my thesis, I wanted to do it on the school-to-prison pipeline as the criminal justice system is known to target poor, young men of color. I wanted to bring to light the way men of color are marginalized and criminalized from very young ages, essentially stripped of their adolescence. Upon reading extensive literature about the social implications of the criminal justice system as well as the school-to-prison pipeline, I began to shift my thoughts more towards the way the penal system is one of punitivity, a means of control.

This method of control is arguably the most expansive in the world; the U.S. boasts the highest rates of incarceration worldwide, not including the rates of community supervision (i.e. probation/parole). With this in mind, I chose to deconstruct how a nation, which prides itself on “life, liberty and the pursuit of happiness,” is capable of such a system of control and subjugation.

Thus, I began to analyze the ways in which the U.S. penal system is capable of working so expansively, discriminatorily and punitively. This gave me the title, *The Perpetuation of Mass Incarceration*, because the U.S. government both facilitates and perpetuates the mass incarceration--and consequent subjugation--of mostly men of color. In my humble opinion, this paper will serve to break down for you the ways in which this is made possible.

Table of Contents

❖ Perpetuation of a Disparate System -----	pg. 4
➤ Policing -----	pg. 5
➤ Charging & Sentencing -----	pg. 6
➤ Higher Crime Rates -----	pg. 8
➤ Inequitable access to resources -----	pg. 10
➤ Legislative Decisions -----	pg. 12
➤ Racial Bias: Implicit or Explicit? -----	pg. 14
➤ Colorblindness -----	pg. 17
❖ Perpetual Marginalization -----	pg. 20
➤ Expansion -----	pg. 21
➤ Education -----	pg. 24
➤ Employment and Court Injunctions -----	pg. 27
➤ Housing -----	pg. 28
➤ Disenfranchisement -----	pg. 29
➤ Vulnerability -----	pg. 33
❖ My Personal Research -----	pg. 36
❖ Moving Forward -----	pg. 42
➤ Marginalizing One Group -----	pg. 43
➤ Understanding Marginalization -----	pg. 43
➤ Ending Legal Discrimination -----	pg. 44
➤ Ending Social Marginalization -----	pg. 46
❖ References -----	pg. 48

I. Perpetuation of a Disparate System

At every step in the criminal justice system we are constantly presented with statistics showing disparities of varying degree, from initial interactions with the police to final sentences handed down to defendants. According to The Sentencing Project, one in three Black men born in 2001 will have been imprisoned in their lifetime, for Hispanics it's one in six while for Whites it's one in seventeen (Ghandnoosh, 2015, p. 11). Despite these alarming statistics, it remains hard for many to grasp the concept of the criminal justice system being able to affect one specific group of people--that is, poor men of color. It is for this reason that I find it imperative to first look at the cross sections where multiple identifying factors comprise this particularly targeted group in order to gain an understanding of the specific challenges they face when dealing with the U.S. criminal justice system.

In this section I will break down the ways in which the criminal justice system affects primarily the Black and Hispanic communities, particularly the men. It is important to look at key points throughout the criminal justice system where disparities present themselves, analyze these disparities and understand why and how they disproportionately affect the less wealthy African American and Hispanic male demographic. The first step in the criminal justice process which presents negative disparities for men of color is in policing. When discussing policing, we are essentially looking at the stops, investigations and arrests of people; here we must look at how men of color are overrepresented in this area.

Policing

The *Stanford Open Policing Project* is a data collection project which collected data on police traffic stops from various state counties for analysis. Their data shows that for the 20-29 year old male age group, Blacks are stopped at a rate of 0.42, that's 1.4 times the rate of Whites which is 0.29 relative to their share of driving-age population. Additional data suggests that police consequently searched Black drivers 2.7% of the time and White drivers only 1.3% of the time.

Arrest rates reveal similar disparities as Blacks are arrested in 2.8% of stops compared to their White counterparts at 1.7%. The most surprising statistics are the hit rates. The Open Policing Project's threshold test infers the standard of evidence officers require to carry out a search of an individual during a routine traffic stop (2017). Findings reveal that police require slightly less suspicion to search Black and Hispanic drivers than they do White drivers. Despite a lower threshold for searching Black and Hispanic drivers, data shows that the hit rates for White drivers is equal to that of Blacks. This means that, while Black drivers are stopped, searched and arrested at higher rates than Whites, they have the same probability of having contraband as the smaller sample of White drivers.

Evidence from a research conducted by Roland G. Fryer Jr. suggests that during police stops, minorities, more often than Whites, face police non-lethal uses of force--including being pushed against a wall, handcuffed, tasered, or pepper sprayed. When it comes to lethal-use of force however, Fryer only considers fatal police shootings as such and thus finds no disparity in police killings of Whites and minorities. It is important to note that he does not consider police drawing their firearms on civilians as a lethal use of force, these circumstances are instead

grouped as lethal uses of force which may be why Fryer finds no disparities in lethal-use of force. This essentially ignores the racial disparity in police actually using the *threat* of lethal force against civilians. Nevertheless he does contend that “Blacks are 21 percent more likely than Whites to be involved in an interaction with police in which at least a weapon is drawn” (Fryer, 2017, p. 4). Not only are minorities being stopped and arrested at disproportionate rates, but they are just as well being physically harassed at higher rates. It just goes to show that minorities in the U.S. aren’t given the same presumption of innocence as Whites are, even at the lowest levels of interaction with police.

Charging and Sentencing

After being arrested, alleged criminals must face prosecutors who make key decisions which will determine the severity of consequences to be faced. Prosecutors are the ones who make key decisions of who to charge, what charges to bring forth and the sentences to be faced, meaning they have a large amount of power in determining the fate of criminal defendants. Therefore, here we look at the federal prosecutor, whose discretion on what charges to bring forth and who to bring them against have, statistically, shown racially disparate effects.

A 2014 study investigating the disparities in prison sentences conducted by the University of Michigan Law School found that the initial charging decisions of federal prosecutors resulted in Black defendants receiving about 10 percent longer sentences than similarly situated Whites, after controlling for factors such as prior convictions and the crime they’re being charged with. This is due to mandatory minimum sentences which accompany certain charges, mandating that the defendant to be sentenced to a minimum number of years in

prison if convicted. Research reveals that the chance of Black defendants facing charges with mandatory minimums is roughly 65% more than the chance of Whites who commit similar crimes and have similar criminal histories (Starr, 2014, pp. 1320-1323). This is a direct result of prosecutors choosing to file charges with mandatory minimums against Black defendants at much higher rates.

Differences in charging decisions consequently result in sentencing disparities. Harsher charges brought against Black defendants directly results in them also receiving harsher sentences. Evidence of White men receiving more lenient punishments than Black and Hispanic men comes from the Bureau of Justice Statistics website. When looking at imprisonment and incarceration rates, often overlooked are rates of community supervision. Community supervision is parole or probation which are alternatives to imprisonment. One would assume that if minority men comprise the majority population of those incarcerated, then they will also comprise the majority population of those on community supervision. This, however, is certainly not the case; by year's end 2015, the percent of Black men under community supervision for probation was 30%, Hispanic men 13% and White men 55%. Parole rates show a similar pattern, 38% Black, 16% Hispanic and 44% White (Kaeble, 2017, tables 4 and 6). This shows that Black and Hispanic men are sentenced to jail and prison at higher rates, while White men are more often receiving alternative sentences to incarceration as well as early releases from prison (i.e. probation/parole).

For the purpose of this paper, I discuss disparities in the Federal criminal justice system as it presents greater racial disparities--post-arrest-- than the state criminal justice system. Likewise, having a federal conviction poses more severe penalties and post-conviction

implications as will be discussed in depth in Part II of this paper. I further narrow my focus on drug crimes in particular because they are responsible for a plurality of federal criminal convictions altogether; comprising approximately 47.5% of federal prisoners as opposed to just 15.2% in state prison (Carson, 2016, p. 20). Federal drug convictions also have greater racial disparities than state drug convictions. The federal prison population incarcerated for drug crimes is comprised of 56.5% Hispanics, 48.5% Black and 37.5% White men (Carson, 2016, p. 20). While in state prison these disparities are in fact reversed, Hispanics are 13.9%, Blacks 14.4% and Whites 15.1% (Carson, 2016, p. 18). The difference in racial disparities between state and federal prison are concerning because 1) they are much greater in the federal system and 2) they once again show whites receiving more lenient sentences than minorities being that they are the majority of drug criminals in state but the minority in federal incarceration. Such racial disparities in incarceration rates provide for more severe implications for the most heavily affected racial groups.

Higher crime rates

In a 2008 report, *Reducing Racial Disparities in the Criminal Justice System: A Manual for Practitioners and Policymakers*, the Sentencing Project presents four reasons for racial disparities in the penal system, the first being a difference in crime rates. It is often argued that Blacks commit more crime and are thus arrested at higher rates, no further explanation exists for these disparities than the fact that they simply commit crime at higher rates. This is only partially true, under very specific circumstances not discussed here--such as area of residence, type of crime, level of the charge etc. Many points brought up by the Sentencing Project state that the

people of the colored communities are more likely to be residing in urban areas, or areas with rather concentrated populations. Higher concentrations of people means more reports to police about public crime and thus creates more surveillance of poorer, urban neighborhoods. The more police look for crime, the more they are going to find it. It is also important to note that crime rates are based on reports of arrests made by police officers (The Sentencing Project, 2000, pp. 5-6). Nevertheless, the two should not be compounded, we must understand that these reports are made by the police, and crime rates are only counted by reports made to police. Because of this, it is hard to get an accurate measure of crime rates and the race of perpetrators when an unknown number of crime goes unreported and unresolved.

Interestingly however, studies done on drug usage have consistently revealed that young Whites use illegal drugs at similar or higher rates than young Blacks (see *Figure 6A*. below).

FIGURE 6A.
Rates of Drug Use and Sales, by Race

At the state level, blacks are about 6.5 times as likely as whites to be incarcerated for drug-related crimes.

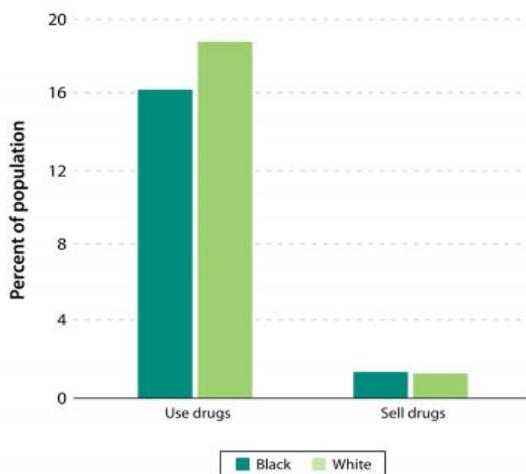
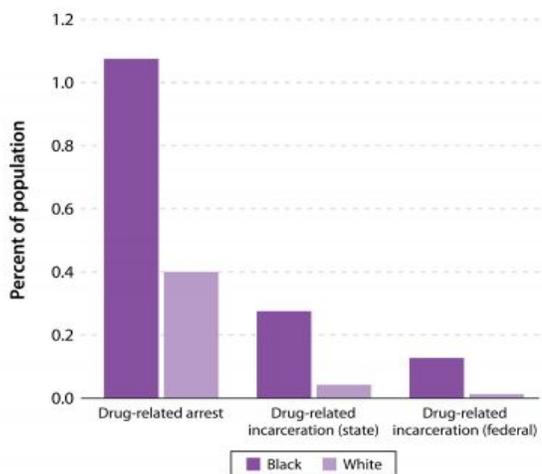


FIGURE 6B.
Rates of Drug-Related Criminal Justice Measures, by Race

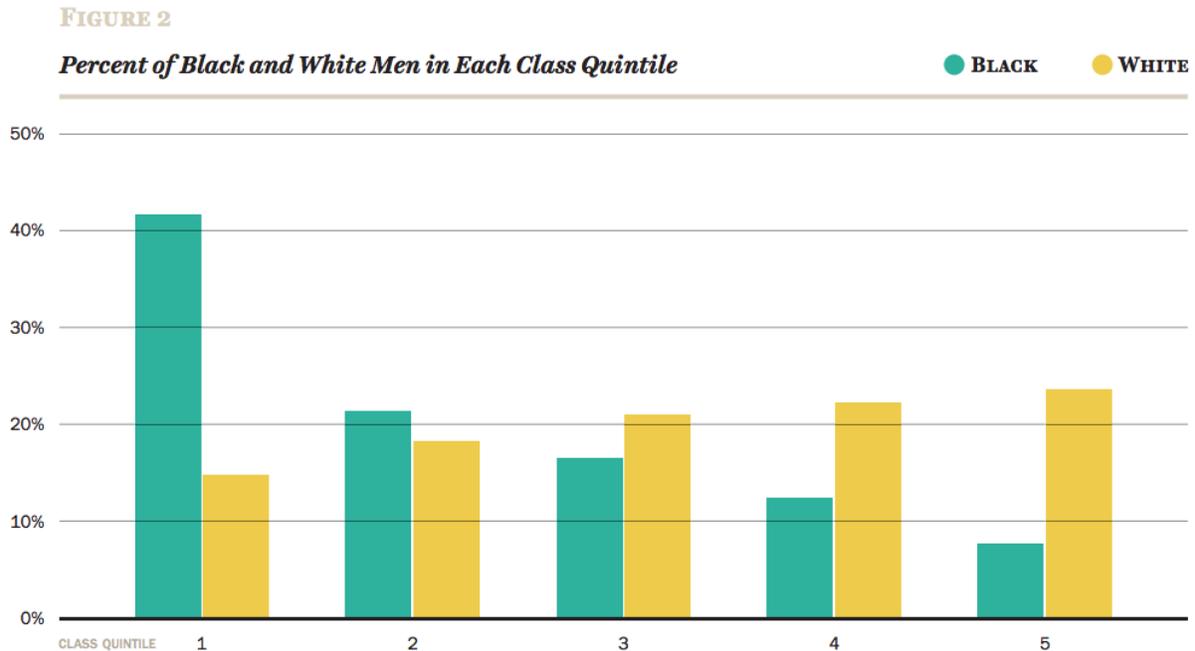


Source: BLS n.d.c; Carson 2015; Census Bureau n.d.; FBI 2015; authors' calculations.

According to the FBI Census Bureau, in 2015 Blacks used drugs at a rate of about 16% as opposed to Whites who used at roughly 18%. Nevertheless, Blacks were 2.7 times as likely as Whites to be arrested for drug-related crimes, and 6.5 times more likely to be incarcerated for such crimes (as cited in Schanzenbach et al., 2016, p. 7). These reports bring us to a halt when trying to explain disparities in crime rates and arrests; while other areas of crime such as violent ones have disparities that can't be refuted, drug crimes seem to have no basis for racially disparate arrest and prosecution rates. Crime rates are reflective of the fact that young people of color are simply more likely to be stopped, searched and consequently arrested for drug related crimes.

Inequitable access to resources

When it comes to racial disparities in the incarceration of individuals we must understand what leads to the overrepresentation of the colored community specifically inside jails and prisons. This leads to the Sentencing Project's second explanation for racial disparities, an "inequitable access to resources." As we navigate how race may affect one's interactions with police, we must also see how one's economic status affects their higher representation in the justice system.



The economic status of the Black community alone is one to cause serious concern in the U.S. as seen in *figure 2* above. Nathaniel Lewis' report on mass incarceration and economic class in the U.S. shows a percent distribution of Black and White men in each class quintile; while the percent of Black men decreases as income increases, the percentage of White men does the exact opposite (Lewis, 2017, Figure 2). Whereas the majority of White men are concentrated in the fifth, and highest, quintile, the majority of Black men are concentrated in the lowest quintile. The stark contrasts show us that the Black community is in a much more vulnerable state economically, thus less capable of releasing themselves of the clutch of the penal system.

Wealthier demographics are able to provide themselves adequate defenses by affording defense attorneys who will delegate the necessary amount of time to their case in particular. On the other hand, poorer defendants are forced to settle for public defenders who have little time and more cases than they can handle. Because of the inability to afford a proper defense, many

people can't afford to go to trial, much less risk losing and facing harsher sentences. This dilemma causes many to be forced to accept plea deals. Plea deals are offers made by prosecutors for a criminal defendant to plead guilty to a lesser charge and sentence, instead of going through trial where an unpredictable jury may decide the defendant is guilty of said harsher charge and sentence. It is estimated that 90 to 95% of criminal cases end in a plea bargain, not a trial conviction (Devers, 2011, p. 1).

Because the overwhelming majority of criminal defendants come from a lower economic class, they are forced to plead guilty; essentially waving their right to a trial by jury, rather than risk losing in trial due to a poor defense. Previously we saw how race affects one's interactions with police and how they may be subject to racial discrimination in the initial step of the criminal justice process. Now we understand how economic factors may lead to one pleading guilty, subjecting them to harsher convictions and sentences due to an inadequate defense in courts. When we combine these two factors, race and economic status, we begin to see how the two create specific conditions which lead to the overrepresentation of poor men of color in the criminal justice system.

Legislative decisions

Legislative decisions are the Sentencing Project's third reason mentioned for the pervasive disparities in the system. These decisions are the ones which have given prosecutors such high levels of discretion, facilitating their enforcement of laws in racially biased manners--albeit implicitly at times. Policies such as mandatory minimums, require judges to sentence defendants to a mandatory of at least five years for possession of five grams of crack

cocaine or 500 grams of powder cocaine; likewise the sentencing disparity is ten years for 50 grams of crack and 5,000 grams of powder cocaine. Mandatory minimums have had gross racially discriminatory effects as Blacks were more often associated with crack cocaine while Whites were associated with powder cocaine which posed less severe penalties, despite the fact that the two were the same drugs except taken differently. Although these sentencing disparities for crack and powder cocaine were reduced from 100:1 to 18:1 (28g/500g-5 years and 280g/5,000g-10 years respectively) by the Fair Sentencing Act of 2010, the Act did not apply retroactively and mandatory minimums are still imposed disproportionately.

“Three-strikes” legislation has had similar effects, that being a lifetime sentence for anyone convicted in federal court of a “serious violent felony” and has at least two prior state or federal convictions, at least one of which has to be a “serious violent felony” (18 U.S.C. § 3559(c)). This legislation may also include a prior conviction for “serious drug offenses.” Although Three-strikes laws vary by state, these similar provisions are applied to varying extents in all of them. Many believe these laws to be disproportionate penalties for crime as “serious felonies” may constitute a crime so petty as stealing golf clubs. Having this on your record, depending on the state you’re in, may make you eligible for a lifetime prison sentence.

Strictly punitive legislation has created the perfect conditions to keep criminal convicts in a cycle of subjugation which leads to repeat offenses. Such legislation includes felony disenfranchisement laws in addition to those which prevent and prohibit convicted felons from attaining housing and employment. The U.S. builds more prisons than schools, and its legislation reflects this gravitation towards punitivity rather than deterrence, rehabilitation and redirection. When prisoners are released they are demonized by society in addition to laws which explicitly

allow legal discrimination against criminals; these conditions don't serve to remove one from a life of crime but instead keep them in a cycle of it--all of which will be discussed extensively in Part II of this paper.

Racial bias: Implicit or explicit?

The fourth reason provided by the Sentencing project, overt racial bias, influences this legislative dilemma--and just about every other problem with our current system-- in an implicit yet noticeable way. Racism is a fact of society that may never be ousted entirely, with each new era it is only transformed, manifesting in different parts of society. In the past it was widely accepted to publicly express racist attitudes, both socially and physically. As we've moved beyond the civil rights era, however, racism has become a taboo. Explicit racial intent is unacceptable, discouraged and goes untolerated. But, it wasn't killed entirely as the ways in which racism was manifested have only transformed since then. Today, it only thrives in closed communities built on hatred, operating behind closed doors. Because of the way in which racist operations have become covert, the U.S. penal system is able to exist in the most discriminatory and punitive manner in the developed world. Though legislation is not explicitly racist, the effects of it still present racial disparities in the way it is enforced and implemented. One explanation as to how this is possible can be explained by colorblindness.

We can see how throughout the justice system--from police interactions to sentencing and convictions--the minority communities being easily overrepresented. Much of this may be due to conscious or subconscious biases--known as implicit biases--of the individuals who make key decisions at these decisive points throughout the criminal justice process. Implicit biases are

subconscious beliefs which influence our judgement and decision making processes in everyday life. Many disparities found at key decision points throughout the criminal justice system may be due to decisions influenced by implicit biases--such as the previous discussion on prosecutorial discretion. A comprehensive survey done on the academic literature of implicit biases explains the way implicit biases ultimately affect one's decision making at key points throughout the cognitive process (Spencer et al., 2016).

The first process mentioned where one's implicit bias presents itself is *misattribution*. Misattribution is the wrongful association of an event or experience to a particular cause. This is the confusion of something being due to dispositional causes when they may be due to situational causes, or vice versa (Spencer et al., 2016, pp. 51-52). An example of this may be attributing someone's criminal behavior to their inherent malice and desire to hurt others by robbing and committing other crimes. Maybe this person has been coerced into a life of crime from a young age because it's the only way to make money in an impoverished community. Perhaps a young criminal is so because they had parents who forced them into a life of crime. The misattribution of their criminal is attributing it to their criminal behavior being due to a rebellious disposition rather than living in conditions which cause one to turn to crime in order to survive. Erroneous associations are essentially what implicit biases are, and are understood by the following processes described in the report.

Disambiguation, is where subconscious prejudices may be most influential. This is when an event is ambiguous and the person's behavior or intentions are not yet known or understood, nor are all the facts of the situation--whether the person has a gun or wallet, is wielding a knife or phone etc. (Spencer et al., 2016, p. 52) In situations like these, people must think quickly to fill

the gaps in their knowledge, which is where *cognitive loads* come in. The capacity of human cognition is not infinite, there's only so much one can think and transfer into action (Spencer et al., 2016, p. 52-53). Thus, when presented with particularly stressful situations that require speedy responses, people will disambiguate the uncertain scenarios by using their previous experiences to determine the best course of action.

In the case of a police officer, who's encountered many a time over criminals acting in the same manner--evasive, uncooperative or aggressive-- they fill gaps in knowledge with information gained from previous experiences. Perhaps they're used to criminals being people of color because the communities they police just happens to be Black communities; encountering criminals almost daily who are dangerous and of color develops a certain wariness in the officer. They naturally develop instincts to respond to criminals they perceive as dangerous, even when these perceptions may be erroneous disambiguations. Reflexive responses naturally come with an *automatic activation* of the person's implicit biases. Automatic activation occurs daily in everything we do, when we see a person we immediately think of their associations--male, female, John, Spanish, old, young. Immediate stereotyping is only exacerbated in stressful situations, as when an officer approaches someone who is being aggressive or otherwise noncompliant. In these scenarios the officer will use their previous experiences and automatically treat the current situation as they did the previous ones, resulting in them being more assertive and forceful than the individual may think necessary (Spencer et al., 2016, p. 52). Explanations for disparities in who the police interact with and how they treat them are up for debate; nevertheless, statistics hold true that Blacks certainly are disproportionately affected in this area.

The public has shifted away from explicit racism since the civil rights movement. Even where people contend that they hold absolutely no biases against anyone different from them, *in-group* favoritism still prevails over *out-group* inclusion. In other words, though people may have nothing against others from diverse backgrounds, they are still hesitant to include them and treat them uniformly in everyday affairs. This is what has been called the “age of colorblindness” by Michelle Alexander (2012).

Colorblindness

The mentality of colorblindness is the idea that people “don’t see race” when going about their daily lives. Many have come to genuinely see everyone as truly equal, believing race is merely a social construct, thus for them it is not an essential factor in identifying and judging others. The problem with this is that, because they’ve come to disregard race altogether, colorblind people are just as well blinding themselves of seeing the struggles faced by these various races, whether they know it or not (Alexander, 2012, pp. 240-244). Just because racism today isn’t seen as pervasive an issue anymore, does not mean that the effects of a racist social order aren’t still prevalent and flourishing.

Because of colorblindness, the general idea of what constitutes racial discrimination has also been misconstrued as being defined by explicitly expressed racial animus. In the case of *McCleskey v. Kemp* (1987), the Supreme Court reasoned that defendants bringing cases of racial discrimination against them to court must “prove that the decisionmakers in [*their*] case acted with discriminatory purpose.” Essentially if one does not prove that the actors of discrimination against them did so with express intent, there is no way of proving they are being targeted

because of their race. Problems with this arise for those who are systematically targeted and disadvantaged by a system on a large scale, rather than specifically by the individual actors.

Due to the obvious absence of explicit racial animus in the U.S., colorblindness, in effect, keeps many from understanding the full scope of all the problems faced by a particular race as well. This means the public is dismissive of the claim that racial disparities in incarceration rates are due to a flawed justice system which preys on poor Black men who are vulnerable both socially and economically under the law. Law enforcement and citizens alike contribute to these racial prejudices everyday, regardless if they know it or not.

Colorblindness is a disregard for race which, albeit unintentionally, also disregards the many problems faced by diverse peoples because of the racist social structure which dominated the world for millennia. Despite people claiming to be colorblind with good intentions and expressing their appreciation for people of diverse backgrounds, everyone is susceptible to implicit biases. We are constantly shown images of a criminalized Black man, who has been stigmatized as aggressive and violent since the birth of the nation. Constant negativity about a specific group of people feeds negative associations in our daily lives. If we don't check these implicit biases we can fall into the dangerous ideology of colorblindness which allows legislation to be enforced in a discriminatory manner. Measures ought to be taken to ensure the enforcement of legislation is done in a racially neutral manner, where poor men of color aren't disproportionately represented in the criminal justice system.

In order to change the condition of poor men of color, we must first understand it in all its implications. It's not enough that we see the various ways in which this group of people is more likely to be thrust into the criminal justice system by factors such as race and economic status.

We must also consider the implications of having been through the system, and what it means to have a criminal record. Only then can the full scope of the disadvantages faced by this specific group be collectively understood to be crippling them on such a large scale which justifies the theory of the criminal justice system systematically targeting them.

The approach I suggest I derive from Kimberle Crenshaw's philosophy of *intersectionality*, which she coined in 1989 (Crenshaw, 1994). Her coining of intersectionality comes from her feminist philosophy of understanding life experiences exclusive to Black women, because of their identity as women in this society, in addition to being Black in this society. By considering multiple identifying factors which define a group we get an experience exclusive to that specific group. The importance of understanding the plight of poor men of color through this lens of intersectionality lies in the need to address the institution which is responsible for this negative experience, as well as taking the appropriate measures to change and better their encounters with the law.

II. Perpetual Marginalization

Under the current system of control, the explanation for the overwhelmingly high rates of incarceration has consistently been the greater likelihood of minorities actually committing crimes and being criminals. By this logic, the same person could argue that, because the U.S. boasts the largest prison population in the world, people from the United States are more likely to commit a crime than anyone in the world. Surely this argument is refutable on many grounds, some of which have already been touched upon in the first section. I, however, must point out the fact that higher rates of minorities being incarcerated is not reflective of their greater likelihood of committing a crime but rather the greater likelihood of them being arrested and convicted of a crime. I come to this conclusion as I understand that crime rates are calculated based on police data on arrests, charges and court convictions. This overlooks the entire population of people who aren't investigated by police because they're presumed innocent, not to mention the ones who are investigated but never arrested, much less charged and convicted. Disregarding these contentions, this section seeks to examine the extent to which the criminal justice system marginalizes an entire group of people, even long after they complete their sentence for their mistakes.

When analyzing the criminal justice system in the United States it is nearly impossible to overlook the majority population of which this system of control is comprised, that is, predominantly poor men of color as demonstrated in Part I. We can't truly appreciate just how disadvantaged this population is in its entirety until we understand all the implications of going through the criminal justice system. The marginalization of this population was first made possible by the war on drugs which facilitated the expansion of the penal system, allowing it to

reach vast numbers of people, while simultaneously making it more punitive than ever seen before.

Expansion

The unprecedented number of people flowing in and out of correctional control has led to what has come to be known as the era of mass incarceration. Beginning in the late 1970s the birth of mass incarceration began with what is now called the “prison boom;” the late 80s saw the first extreme annual increase when the drug war began its unforeseen agenda of rounding people up, en masse, to be thrust into correctional control. In order for the war on drugs to gain momentum however, politicians had to first begin the discussion of why it was necessary in order to gain support from the people. This is the critical first step of *criminalization*, you must first make an act criminal in order to have a basis for criminalizing a population. Accordingly, political discourse near the end of the civil rights movement began to focus primarily on crime rates; restoring “law and order” and being “tough on crime” rhetoric became commonplace (Alexander, 2012, pp. 40-43).

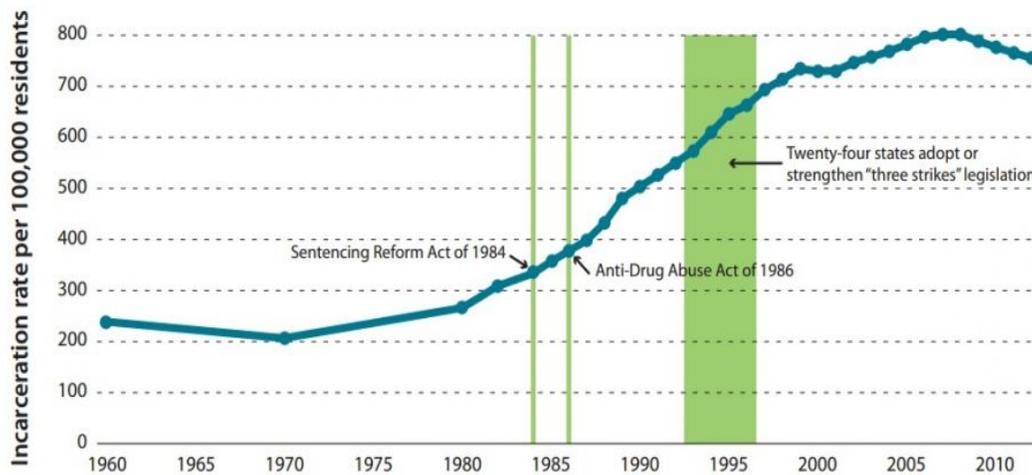
Consequently, a slew of legislative incentives were then born to expand the criminal justice system. Such incentives began with the *Comprehensive Drug Abuse Prevention and Control Act* of 1970 which was intended to target the economic structure of the drug market. This act allowed state and local officials to keep the majority of monetary and proprietary assets seized in anti-drug operations (Alexander, 2012, pp. 78-80). With the creation of the Drug Enforcement Agency (DEA) in 1973, the Pentagon offered military grade training, intelligence and even weaponry to state and local agencies for joining the fight in the drug war (Alexander,

2012, pp. 73-74). These funds led to the militarization of Special Weapons and Tactics (SWAT) teams which were initially used minimally and only in cases of extreme danger to the public or police (Alexander, 2012, pp. 74-78). More incentives came in the 1980s, one of which was the Byrne Program which provided federal grants to local law enforcement agencies that dedicated the allocated resources specifically to drug law enforcement (Alexander, 2012, pp. 73-74). This led to the growth of SWAT teams, who began to be implemented in many more routine cases like fulfilling drug warrants.

In addition to creating a more militarized police force, specifically for the war on drugs, Congress began to enact punitive laws that would lead to unforeseen rises in incarceration rates. As the Hamilton project shows in the graph below, much of the increase in incarceration is due to the aforementioned legislative agendas which facilitated the expansion of the system (Kearney et al., 2014, p. 9). One of the landmark pieces of legislation was the *Anti-Drug Abuse Act* of 1986 which established mandatory minimum sentences of 5 years for possession of 5g of crack cocaine or 500g of powder cocaine.

Incarceration Rate in the United States, 1960–2012

Federal policies, such as the Sentencing Reform Act, and state policies, such as “three strikes” legislation, were major contributing factors to the 222 percent increase in the incarceration rate between 1980 and 2012.



Sources: Austin et al. 2000; Cahalan 1986; personal communication with E. Ann Carson, Bureau of Justice Statistics, January 24, 2014; Census Bureau 2001; Glaze 2010, 2011; Glaze and Herberman 2013; Raphael and Stoll 2013; Sabol, Couture, and Harrison 2007; Sabol, West, and Cooper 2010; authors' calculations.

Note: Incarceration rate refers to the total number of inmates in custody of local jails, state and federal prisons, and privately operated facilities within that year per 100,000 U.S. residents. The three events highlighted in this figure are examples of the many policy changes that are believed to have influenced the incarceration rate since the 1980s. For more details, see the technical appendix.



Mandatory minimums not only took away discretion from judges on how to sentence individual cases but they also created extreme racial disparities in drug incarceration. This is because Blacks tended to use crack cocaine which posed longer sentences than powder cocaine, which was more commonly associated with White users. The enforcement of this harsh new legislative agenda accompanied by media imagery of Black men being rounded up for drug crimes, reinforced the idea of them being criminals that deserve their fate in jail cells. The introduction of Three-strikes legislation in 1994 by the Clinton administration was a direct result of such criminalization; giving birth to the idea of “super predators,” who were repeat offenders that needed to be imprisoned for life as they were a danger to society. It is because of the war on drugs that the criminal justice system was able to grow exponentially within just two decades. It

is also because of the ongoing war on drugs today that so many people are affected by such an expansive penal system.

In order to now understand the way Black and Hispanic male demographics are marginalized in the U.S., we must first deconstruct what it means to be labeled a criminal, which is the direct result of acquiring a criminal record. Upon being labeled “criminal,” there are many legal milestones faced post-conviction that inhibit former inmates in their transition to society. This record follows the person for life, subjecting them to what is known as *legal discrimination*. Legal discrimination includes legislation which keeps people who’ve been through the system in a cycle of subjugation. Such legislation inhibits progression in education, employment, housing and even the political arena by preventing them from partaking in, and benefitting from, these aspects of mainstream society. It is the legal discrimination of criminals which subjugates them to what Michelle Alexander refers to as a “second-class status.” The marginalization faced by these men is what excludes them from mainstream society in an almost purgatorial existence from which they can’t escape.

Education

One explanation for the perpetual marginalization of those with criminal records lies in the current system of education in the United States. This marginalization in fact begins with the failing education system of the U.S. Public high schools throughout the nation are wrought with a lack of funding, ultimately resulting in the schools’ inability to provide the means for all of their students to meet the standards required for success. Schools must meet standards showing that their students are passing their courses and actually learning the material, or at least

progressing in the lagging areas. But what about the populations of students who struggle with learning disabilities? Or face homelessness, abuse or other outside factors which make education secondary in their lives? What about all of these students, whose underperformance in the classrooms and on tests bring down the overall performance record of the schools? This is where the system begins to fail its struggling students. As they begin to fall below the desired standard, underperforming students are often encouraged to take alternate routes outside of school, such as enrolling in GED programs, rather than being provided access to programs to help them succeed. In harsher cases, truant students are disenrolled entirely from the schools or face exclusion by suspensions and expulsions (Kim et al., 2010, p. 9). These students not only face administrative exclusion, but are also subject to the stigma which arises from their status of juvenile delinquent. This may include social isolation by peers or instructors who have no patience for them and will refer them to more harsh disciplinary actions for the slightest infractions.

Schools have also come to join the war on drugs, utilizing police forces within schools to seek out drug crimes. Examples of this include random drug sweeps conducted by canine units within schools, metal detectors and scanners, drug testing students and student-athletes and searches of students by school officials (Kim et al., 2010, p. 112). Such searches by school and law enforcement officials on school grounds require only a “reasonable suspicion” that the student is in possession of contraband (*New Jersey v. T.L.O.*, 1985). The standard of reasonable suspicion, is satisfied where the school official or law enforcement officer reasonably believes the search will yield evidence that the student is in violation of school or legal codes, and the search is pursuant to a justified intervention (*New Jersey v. T.L.O.*, 1985, pp. 337-343). This threshold of “reasonable suspicion” is lower than that of police officers stopping individuals on

the street or in traffic, in which cases the officer requires “probable cause” to stop someone.

Probable cause is defined as instances where

“the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed” (as cited in *Brinegar v. United States*, 1949).

Today, it has become common place for students to face legal disciplinary action for minor infractions. Troublesome students are recommended for strict punitive treatments outside of schools, rather than redirective and rehabilitative ones for poor behavior. Behavioral issues which may warrant referrals are ones which aren't actually criminal in adult court--including truancy, curfew violations and running away. Referrals to juvenile detention centers disrupt the education of young people for prolonged periods of time as they await adjudicatory hearings (Kim et al., 2010, p. 130). This often leads to the child being forced to drop out of school.

Many young people have their first encounters with the criminal justice system, facing probation, juvenile detention and other forms of legal reprimands through the school system. By being pushed out of schools, struggling young people often find it difficult to provide for themselves and their futures. Many only achieve minimum degrees required, like the GED, to provide them access to minimum wage jobs. It is often this population which is thrust into a life of crime for the primary means of an adequate income.

Employment and Court Injunctions

The inability to acquire an adequate education makes the acquisition of a decent paying job and career all the more difficult for people with criminal records. Those with a criminal record are discriminated against in the workforce, both before and after they get the job—that's if they're lucky enough to get it in the first place. Job applications often require applicants to disclose whether they have a criminal record, as well as details of this conviction. This leads to many convicted criminals being denied jobs before they even have a chance to be interviewed or have their credentials reviewed. Even in those cases where employers inquire on criminal records after the application process, there is no difference from the applicant being forced to initially disclose this information as they are still denied jobs on the basis of their criminal record.

In cases where those with criminal records are able to obtain a job, they still enjoy no protections from legal discrimination from within the workforce. Regardless if they are a good fit for the job or an excellent employee, they may nonetheless face restrictions or a greater likelihood of strict penalties from their employers for any mistakes made in the workplace. This puts them on thin ice, and can often lead to them being fired, demoted or put on a probationary period with their employer for minor mishaps where any ordinary employee may endure a mere verbal reprimand.

For those on probation or parole, complications with employment may be much more dire. Many probationers and parolees owe courts thousands of dollars in fines and fees, upon release they are required to commence payments for these; if unable to make payments they may face jail time. As mandated by their sentence they are also required to obtain legal income as proof of their good behavior, in order to maintain their alternative to incarceration. If they fail to

find employment, they, once again, face jail time for failure to meet the requirements of their probation/parole. As an intern with the Department of Probation, I witnessed first hand this unforgiving dilemma as I watched a nineteen year old man on probation plead his case to the judge. He had a job, in fact he had two. But still he struggled to provide for his infant daughter while attempting to pay back his mounting court fees. Because of his work schedule, he was ultimately unable to meet a final condition of his probation, which was to attend GED classes. Consequently the judge found him to be in violation of his probation, and remanded him to complete his sentence in prison.

The pressure from the courts to find a means of legal income affords no leniency from employer discrimination; nor does the overwhelming prevalence of employer discrimination afford leniency from legal sanctions. Those with criminal records in the U.S. live in a sort of legal purgatory, caught in a cycle of perpetual marginalization in virtually every aspect of their academic and economic lives.

Housing

Another major milestone, post-conviction, is discrimination in housing. Convicted felons are not entitled to federal benefits including public housing, regardless of their crime. Additionally, housing agencies are legally permitted to deny housing to people convicted, believed to have been convicted or involved with those convicted of drug crimes. This alone is cause for much of the homelessness faced by recently freed inmates. What exacerbates the issue of homelessness among this population are what are known as “no-fault clauses.” Though housing agencies are legally permitted to deny leasing to individuals with criminal records, they

extend these limitations to people who even associate with those who have criminal records. Under “no-fault” clauses, housing agencies are allowed to evict tenants who have guests, relatives or friends they associate with that violate drug laws. These conditions apply regardless if the individual was caught offending in the tenant’s place of residence, on the property or even elsewhere; all whether the tenant knows about the activity or not (Alexander, 2012, pp. 145-146). It is because of policies like these that many refuse to associate with those labeled as “criminals” for fear of having to face discrimination for such associations.

The *Fair Housing Act* as has established guidelines to curtail discrimination in housing. It established that any agency which denies housing to people with prior arrests or criminal convictions must prove that such discrimination serves the nondiscriminatory interest of the housing provider and must take into consideration the type of crime and time since the conviction (Dept. of Housing, 2016, p. 6). Thus, arbitrary bases for denials of housing to convicted criminals violate the Fair Housing Act. However, should the basis for denial be the consideration of a criminal conviction for drug manufacturing or distribution, the provider will not be in violation of the Act--as provided by the exception of Section 807(b)(4).

Disenfranchisement

The most disconcerting forms of discrimination against convicted criminals occurs in the political arena; I find it particularly troubling as it directly affects the conditions and advancement--or lack thereof-- of an entire group of people. In addition to incarceration rates, the United States boasts the largest disenfranchisement rates in the developed world. Felony disenfranchisement laws revoke the right to vote for those convicted of felonies. As of 2016, an

estimated 1.6 million people in the U.S. are currently unable to vote due to a felony conviction, that's 1 in every 40 adults (Uggen et al., 2016).

These laws vary from state to state, 35 states prohibit parolees from voting, 31 of which also prohibit probationers. Four states deny the right to vote to *all* convicted felons even after completion of their sentence, regardless of their crime. In a few other states people may restore their right to vote depending on the crime they were convicted of; there is also a period of time after completion of their sentence before they may be able to restore their right to vote--usually a three to five year period (The Sentencing Project, 2014, p. 1). The racially disparate impact of disenfranchisement is also very problematic. It is estimated that 7.7% of Black adults are currently disenfranchised compared to just 1.8% of non-Black adults, that's 1 in 13 vs 1 in 56 voters respectively (The Sentencing Project, 2014, p. 2). It is also estimated that 77% of this disenfranchised population have in fact completed their sentence either entirely or are on community supervision (Uggen et al., 2016, p. 6).

Although in some states voting rights are automatically restored upon completion of one's sentence, the process of restoring the right to vote in other states can be incredibly costly, tedious and time consuming. It includes having to go through much paperwork and going through various government agencies that many people can't even begin to comprehend. One such arbitrary process currently being challenged is in the state of Florida in the case *Hand v. Scott*. Florida is one of just four states who disenfranchises all persons with felony convictions, who may seek re-enfranchisement after five years upon completion of their sentence (The Sentencing Project, 2014, p. 4). Furthermore, Florida has one of the most outdated processes for re-enfranchisement; that is, the convicted felon must obtain direct permission from the state

Governor and at least two cabinet members (Henderson, 2018, p. 1). This process poses obvious personal biases which may be politically motivated but indefinitely have a racially disparate effect. Because of these various obstacles from state to state, convicted criminals often never restore their right to vote.

Though Florida established the Office of Executive Clemency to settle matters of restoration, rights may be denied “at any time, for any reason” (as cited in Henderson, 2018, p. 2) Because of this complicated, not to mention arbitrary, restoration process several convicted felons have filed a class action lawsuit against the Governor in *Hand v. Scott*. United States District Judge Walker has determined that “Florida’s vote-restoration scheme is Unconstitutional,” though the remedies for the disenfranchised are still to be determined as the case is ongoing.

Felony disenfranchisement is particularly troublesome because, not only is an entire population of people treated as an “under caste” by mainstream society, but they are even excluded from the politics of the nation which governs them. Unable to change the laws which discriminates against them as an undercaste by partaking in the government, this disenfranchised population may just as well be citizens of no nation. Being unable to partake in politics prevents those abused by the criminal justice system from effecting the change they need to allow them to once again partake in mainstream society. From the politicians who fervorously enforce the drug war to the policies which facilitate legal discrimination of convicted criminals, the disenfranchised are in shackles, unable to exercise their democratic right to change it.

Voter disenfranchisement also reaches so far as to reach jury selections. Juries are selected based on voter registration, but if the majority of Black and Hispanic men are not

registered or eligible to vote, they are also not able to serve on juries. This is again detrimental to these communities because they are the ones most likely to have to face juries in their lifetime; but, if they aren't able to face a jury of their peers, they face a greater likelihood of biased decisions made by people who don't understand their full story. Jury selections are already problematic when you come to understand that during the selection process, prosecutors have full discretion as to who they will strike from selection. These *peremptory* strikes are legal and prosecutors can strike any juror for any reason they can come up with to make the claim that the individual may be biased. So long as these reasons are "race neutral," they are legally permissible and need no further explanations as decided by the Supreme Court in *Purkett v. Elem*, 514 U.S. 765 (1995). This grants the prosecutor virtually unlimited discretion to exclude people of color from jury selections on the basis of them holding biases so simple as having come from the same neighborhood as the defendant on trial.

Disenfranchisement, though it means that the right to vote is stripped of a certain population, extends into representation as well, known as political disenfranchisement. One serious issue is that prisons are often built in rural communities which are predominantly comprised of White people. Because the prisons are in rural areas, the inmates are now part of the rural constituent, regardless if they were from there or an urban community several districts away which tend to be comprised of mostly people of color. The influx of more people into these rural, White dominated, voter districts brings more political representation to the White population. Despite the fact that these inmates are prohibited from partaking in the politics of this new voting district they nevertheless provide them more representation. Essentially, political

representation is being taken away from the urban communities of color and given to the predominantly White rural communities (Alexander, 2012, pp. 193-194).

Vulnerability

The sad truth faced by the Black and Hispanic communities is that the criminal justice system stigmatizes entire populations which inadvertently extends to individuals who don't have criminal records. They are constantly portrayed as dangerous criminals, labeled as such and rendered incapable of social progression. Despite generations of oppression and portrayals of Blacks as criminals, the blame for their predicament is put on them. It is only in recent decades that the U.S. has begun to consider the negative experiences of minorities as caused by a direct result of their particular vulnerability under the criminal justice system.

The discussion of this phenomenon appears in Tommy Curry's in depth discussion in his piece *Michael Brown and the Need for a Genre Study of Black Male Death and Dying*. He talks about the struggles faced specifically by men of color in the United States, circumstances not faced by only people of color or just by men in general. Looking at the multiple identifying factors of 'male' and 'Black/Hispanic' we get a specific population which endures the stigma of criminalization which affects their overrepresentation in the criminal justice system and underrepresentation in mainstream society.

Curry emphasizes the need to consider the facts of 'Black maleness' collectively rather than individually. The way the justice system is enforced today makes minority men the primary group labeled a criminal in the U.S. Because being labeled "criminal" incurs vast social, political and economic hindrances, Curry notes that Black men don't benefit from the patriarchy as White

men do. Their situation is much different from their White male counterparts, due to the patriarchy being based on *White* male supremacy. Black men aren't entitled to the social benefits of the White patriarchy; for example, being seen as a human being rather than feared as a savage, or afforded the presumption of innocence rather than the assumption of criminality.

In furtherance of Curry's discussion, one should view the disadvantages faced by Black men, incurred from being labeled 'criminals,' as the dilemma faced by a single community. The fact that a single community can be identified as the majority population of criminals translates into that entire community suffering the negative effects of said label. This leads to the discrimination of minority individuals in everyday life as they are stereotyped as criminal or dangerous, inhibiting their participation in many parts of society. Not only do the generalizations of their community cause them unwarranted discrimination, but it is also the fault of the government for allowing legal discrimination to flourish that so many people are continuously denied basic civil rights well after their debt to society has been paid.

Generations of indoctrination, legal discrimination and subjugation of entire populations are undeniable historical facts of the United States. This indoctrination will consequently require generations of dismantling, but this feat can't be attempted without the initial acknowledgement of a need for change. It must be understood that the current criminal justice system has no rehabilitative intentions but is instead purely punitive. The perpetual criminalization and marginalization seen in the U.S. seeks neither to deter criminal activity nor prevent it, rather it perpetuates the discrimination and subjugation of people. Marginalizing people doesn't encourage them to partake in the society which hates them, it forces them to live on the outskirts

of said society in order to survive. Once we come to this realization by changing the way we think, only then can change be effectively implemented.

III. Personal Research

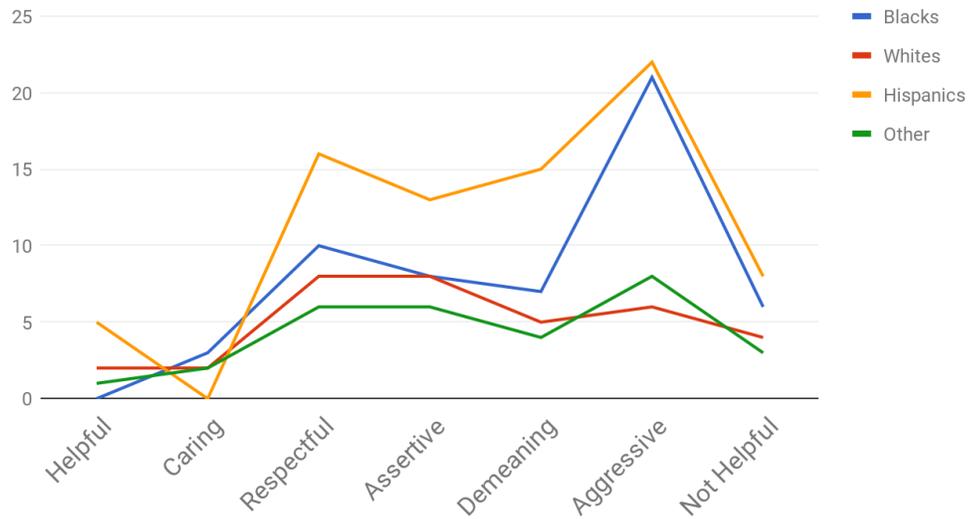
As part of my research I decided to conduct a survey to gain insight on youth perceptions of police and the criminal justice system. The survey was titled *Juvenile Perceptions on the Criminal Justice System*, and was distributed primarily among High Schoolers and University students online and in paper. My main area of interest was the high schoolers because of their age and how impressionable they are. In addition to personally sharing my survey online and distributing it on campus, I contacted three high schools with varying demographics, Cocksackie-Athens (C-A) High School, Hudson Senior High School and Harry S Truman (Truman) High School. The principals of each of these schools gave me permission to distribute the survey to the upperclassmen given the nature of the questions. The survey was open online for the months of March and April of 2018, and was distributed to the high schools during the month of April.

The total number of responses I received is 585, more than doubling the amount I initially hoped for. My sample consists of 48.4% males and 51.6% females. The majority of the responses came from the largest school, Truman High School, which was 75.7% of my sample. Hudson High School made up 11.5%, C-A 1.4%; 7.2% were university students, and 3.6% attended neither high school nor college. C-A and Hudson High Schools have a predominantly White student body (85% and 45% respectively) while Truman is predominantly Black (51%). From the largest of the schools, Truman, I received roughly 440 responses (about 21% of the entire student body). From Hudson high school I received 67 responses (roughly 9% of the student body), and from C-A I received 8 responses (about 2% of the student body). The race distribution of my sample was 41.7% Hispanic, 31.8% Black, 12.9% White and 13.6% other.

Although data analysis is ongoing, I have controlled for race and am currently analyzing how responses differ by race. A few questions I took a particular interest in for this variable are “whether the individual was personally ever stopped and questioned by police” and “whether the individual ever witnessed a parent or family member being stopped and questioned by police.” As a follow-up question for both of these I asked how the individual perceived the officer, if the officer was “helpful, caring, respectful, assertive, demeaning, aggressive or not helpful.

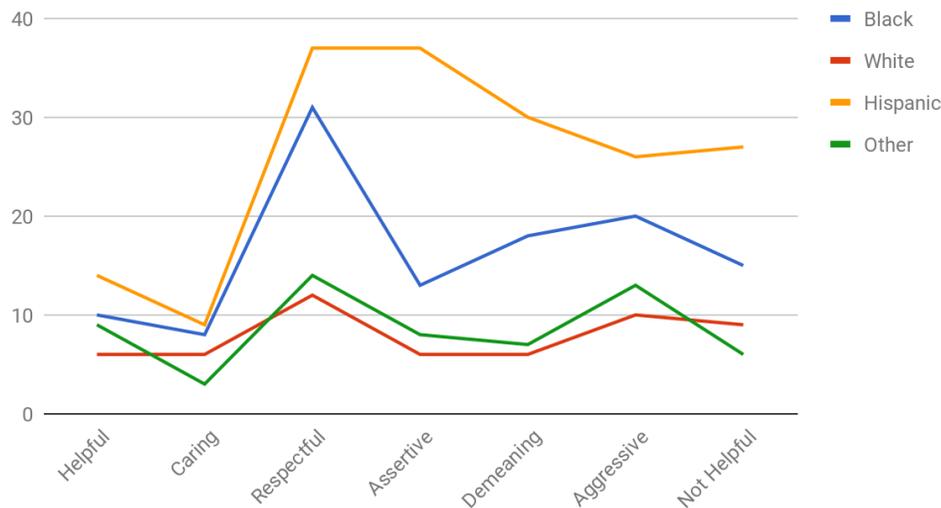
For the initial question “have you personally ever been stopped, searched and interrogated by police,” the results showed no conclusive racial disparities. In response to this question 22.7% of Whites responded yes, Hispanics 21.9% and Blacks 21.1%. When asked the question, “have you ever witnessed first-hand a parent or family member being questioned by police,” 48% of Whites responded yes, Hispanics 49.2% and Blacks 57.8%. So, although my data doesn’t show much of a difference in the amount of young people being personally stopped by police, it does show some differences in the numbers of youth who are witnessing their parents or other family members being stopped. These incidents are even more thought provoking when we consider the follow up questions.

5b. Officer's Demeanor



Incident to having personally been stopped I asked the question, “how would you describe the officer's demeanor?” Chart 5b above shows the general perception of the officers with whom the young people interacted. The correlations are mostly the same for the minority demographics, they mostly perceived the officer to be aggressive, while the majority of White respondents found the officer to be assertive and respectful. These perceptions certainly change however, when the individual was observing the behavior of the officer rather than experiencing it.

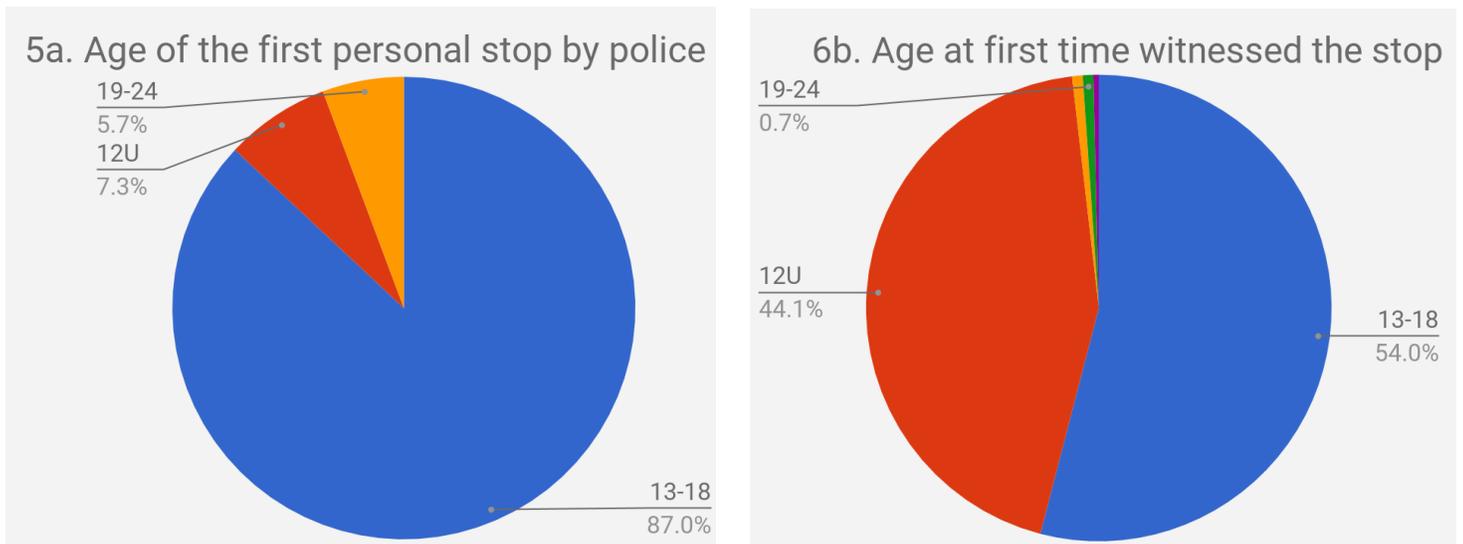
6c. Officer's Demeanor



When asked “how would you describe the officer’s demeanor” incident to witnessing a parent or family member being stopped and questioned by police, we can see the perceptions change dramatically. In chart 6c above, we see that these demographics had very similar correlations, more often finding the officer to be respectful than any other characteristic.

It appears that officer behavior is perceived to be more aggressive and unsavory when it is a more personal interaction. One reason for this may be the fact that having an officer personally stop you in the street is a major inconvenience. The young person may likely feel irritable and uneasy with the officer who is interrupting their day. Another reason could be the fact that, when observing an officer interact with someone else, being that it is not a personal interaction, the respondent will likely not think of the stop as an inconvenience. Likewise, the respondents in this case may not feel the personal stress that accompanies personally being stopped by the police and thus do not process the interaction in such a negative manner.

The more plausible answer for these differences in perceptions may come from the different ages of the respondents at the time they're stopped and the time they witness someone else being stopped.



In chart 5a, we see the majority of those who first encountered a personal stop by police were between the ages of 13 and 18. Teenagers may be much more resistant to authority figures and less trusting of officers than younger children because they are more aware of the way the world works, including the stereotypes of the distasteful nature of police officers. These factors may certainly be contributing to the sample perceiving officer behavior as more aggressive during personal stops.

Chart 6b shows that the majority of respondents who first witnessed someone else being stopped by police were between the ages of 13 and 18; however, we can also see that a much larger portion of this group has witnessed the stop when they were 12 or under (12U). The younger age group may account for the respondents more often perceiving officers as respectful when they witness their interaction with a parent or family member. This is because younger

children are not fully cognizant of many social interactions, they don't yet understand all the implications of interacting with a police officer. Because of this, they may not perceive the situation as negatively as an older person.

I have yet to control for other variables such as school or area of residence--i.e. rural, urban or suburban-- and much of the data I have already analyzed show rather inconclusive results. In constructing the questionnaire I wanted to remain objective and not ask leading questions as I understand the impressionability of young people. Provoking certain thoughts regarding the treatment of the individual in certain interactions could have given me biased results--for example if I would've asked questions on whether the individual felt targeted or unduly detained. Conscious of this I tried to keep my questions somewhat vague and open ended. This, however, was not without its setbacks. The responses I got showed rather broad results across racial lines, possibly due to my own ambiguity. Likewise, much of the results beg further questions to understand specifics of the situations which are brought up. Future research may seek to focus on one aspect of my questionnaire because of these difficulties. For example, I ask questions about visiting prisons, being stopped by police and being subject to punishments for school misconduct; future research would have better results if it focuses on one of these aspects. By focusing on one aspect, the researcher may be able to gain a deeper understanding of the ways in which young people both interact with and perceive different aspects of the criminal justice system.

IV. Moving Forward

Since the birth of the United States, White people and the government alike have been afforded the luxury of averting their eyes from the mistreatment of minority groups. When the time came to end the subjugation of the Black community with the Civil Rights Movement, the government deemed it sufficient to simply do away with the legal systems which they were so adamantly defending. The mere termination, however, of legislation which propagated an explicitly discriminatory society is not enough to grant freedom, in all its effects, to an entire group denied such for so long. This was evident when the abolishment of slavery only led to an era of Jim Crow, whose dismantling led to segregation, whose dismantling consequently leads us to today. Today's system thrives on subconscious, or implicit, biases as much as it does colorblindness; the latter of which makes the first seem impossible, consequently making the acknowledgement of a flawed system in need of change virtually nonexistent.

In Part I we saw how Black and Hispanic men face overrepresentation throughout the criminal justice system. It is only when we understand this demographic's national population that we can then see the prevalence of discrimination in the penal system. Whites comprise roughly 65% of the U.S. population, Hispanics 15% and Blacks 11% (U.S. Census Bureau, 2017); but, the rates of colored men who face stops, searches, arrests and prosecutions do not coincide with this population distribution. These disparities are due to discriminatory enforcement and implementation of legislation in the U.S. which is made possible by the amount of discretion afforded to police, prosecutors and other enforcers of the penal system.

Marginalizing One Group

Part II opens us up to the world of a criminal. We see how individuals who have criminal records in the U.S. are subject to further legal discrimination well after they have served their sentence. They struggle to support themselves and their families as a result of being discriminated against in the workforce as well as in housing. Political and voter disenfranchisement essentially strip these people of their ability to exercise their rights as citizens in the U.S. In addition to these various forms of legal discrimination, former convicts face marginalization from the general public as well. The stigma associated with criminality portrays these people as dangerous and having a bad reputation with police which puts others at risk. Because of this, many refuse to associate with former convicts and actually regard criminals as an under-class. It is unfortunate that the majority of people with criminal records were convicted of nonviolent crimes, mostly petty drug crimes. What's worse is that these people are primarily aged 16-24 years old who, even after completing their sentence, must face a lifetime of struggles because of their mistakes as children. Criminal records are like lifelong scars which subject the person to exclusion from various parts of society.

Understanding Marginalization

In Part III I presented some of my findings from my survey. Although these findings were sparse, I find it imperative that research is conducted to understand various perceptions of the criminal justice system, especially from the younger generations. This is because at a young age we are introduced to the penal system in some way, be it by TV or visiting a family member in prison, and these initial encounters are what begin to shape our understanding and feelings of the

system. If we begin to open up society to discussions on the flaws in the system, only then can we even consider beginning to change it. This change has to come from the people just as much as it does the government.

Part I showed the irrefutable racial disparities pervasive in the penal system, part II showed how men of color are the primary targets that suffer the stigma and discrimination associated with criminality. Part III introduced how we can go about understanding this targeted community's interactions with police, particularly at a young age. I believe more data on this topic can serve to further prove disparities in the extents to which the colored communities interact with the criminal justice system. In addition to the data which shows the minorities being targeted by police, surveys explaining these interactions can show us more proof of them facing police in different ways than whites might.

Ending Legal Discrimination

In outlawing racial discrimination throughout the U.S., the government enacted what's known as a negative peace, which is only the absence of tension in a conflict. Negative peace is only the foundation of an entire restructuring of a society torn by conflict. What is needed is a positive peace, as expressed in the philosophies of Dr. Martin Luther King Jr. A positive peace is, in addition to the absence of tension, an active restoration and reconciliation of peaceful social relations.

The U.S. made a major leap forward in the progression of its African American community when it ended segregation and granted civil rights to people of all color by the late 1960s. This step forward however, only terminated the era of exclusion for people of color, it in

no way commenced the inclusion of this entire group of people. In terminating the era of segregation the government mandated that the exclusion of African Americans was illegal, it did not, however, mandate the inclusion of them in everyday life. This means that those who once denied Blacks the right to enter into a restaurant are not required to invite them in, the only requirement is to not turn them away. It's not enough for the government to *say* the colored community is now officially recognized as having equal rights and respect under the law, it must prove this in their actions by actively including them in various parts of society once closed off to them entirely.

Dr. Martin Luther King Jr. expressed most articulately this need for a form of active inclusion in his 1962 speech *The Ethical Demands for Integration*. In his speech Dr. King asserts that desegregation is enforceable, but that integration however, is not. From these arguments he seeks to establish the spirit and culture of the U.S., particularly the government. Although the government has already established that minorities may no longer be excluded from mainstream society, it never mandated that this group must be *included* or integrated. Criminals face legal discrimination in employment and housing today. It is not enough for the government to counter this marginalization by mandating that only certain criminals can be excluded in housing or that they may be discriminated against only at certain times in the application process for jobs. Especially when it comes to voting rights, people with criminal records deserve still to be treated as full citizens and exercise the rights of their citizenship.

Ending Social Marginalization

For generations, we've been allowed to hate criminals, even encouraged to do so. Once labeled a criminal, they're essentially stripped of their humanity, treated as an undercaste in virtually every aspect of social, economic and political life. In the United States, the Black community has been portrayed as criminal by nature for generations; and since the start of the drug war they've been portrayed as drug addicts and "superpredators" who are a menace to society. What many fail to realize is that this collective hatred is something that has been developed to be geared towards a specific group, criminals. This focused hatred translates to the exclusion and subjugation of primarily minority men as they're the single group most touched by the criminal justice system.

The lack of understanding of the discriminatory nature of the criminal justice system is one of the ways in which the progression of the Black and Hispanic communities is stunted. A large population of these groups face exclusion and condemnation today as a direct result of having a criminal record, even from their own communities. Associating with criminals brings down one's reputation in their community, while simultaneously giving them an undesirably good one with police. It is precisely because of this that no one wants to associate with people who have a criminal record, pushing criminals into social isolation.

The public needs to be educated on the topic in order to help bring an end to the discrimination still faced by an entire population. The communities who are socially stunted by criminal records still deserve the same basic rights to education, employment, housing and political involvement as anyone who doesn't have one. Therefore, I find it essential for public discourse to shift towards the de-stigmatization and decriminalization of poor men of color.

Media and political discourse has, since the 1970s, criminalized a group of people, developing this common ideology that it is okay, and even necessary to discriminate against them. People with criminal records in the U.S. are still citizens who deserve to reap the benefits which citizenship entails. The job of the penal system is to rehabilitate criminals to deter future crime. Its strictly punitive nature however, causes many to be outcasts of society, Being treated as an outcast keeps them in a perpetual life of crime as it's the only life that they know and can partake in. It is not enough for legislation to be enacted saying that certain acts are no longer criminal; the indoctrination, the years dedicated to developing a stigma around those associated with the act, must also be undone.

References

- Alexander, M. (2012). *The new jim crow: Mass incarceration in the age of colorblindness* (Revised ed.). New York, NY: The New Press.
- Brinegar v. United States, 338 U.S. 160. (1949).
- Civil Rights Data Collection. *School/District search* [Find school]. (2015). Retrieved from <https://ocrdata.ed.gov/DistrictSchoolSearch#schoolSearch>
- Crenshaw, K. W. (1994). Mapping the margins: Intersectionality, identity politics, and violence against women of color. In M. A. Fineman & R. Mykitiuk (Eds.), *The public nature of private violence* (93-118). New York: Routledge.
- Curry, T. J. (2014). Michael Brown and the Need for a Genre Study of Black Male Death and Dying. *Theory & Event*, 17(3). Retrieved from <https://muse.jhu.edu/article/559369>
- Drug Policy Alliance. (2015). *The drug war, mass incarceration and race*. New York, N.Y.
- Fryer, R. G. (2017). An empirical analysis of racial differences in police use of force. *Harvard Dept. of Economics*.
- Ghandnoosh, N. (2015). Black lives matter: Eliminating racial inequity in the criminal justice system. *The Sentencing Project*.
- Hand v. Scott, 4:17CV126-MW/CAS (Fla 2018).
- Henderson, K. (2018). Hand v. Scott: Florida's Method of Restoring Felon Voting Rights Declared Unconstitutional. *Cumberland Law Review*, 48(2). Retrieved from https://cumberlandlawreview.com/2018/03/19/hand-v-scott-floridas-method-of-restoring-felon-voting-rights-declared-unconstitutional/#_ftn1
- Kearney, M. S., Harris, B. H., Jácome E. & Parker, L. (2014). Ten economic facts about crime and incarceration in the united states. *The Hamilton Project*.
- Kim, C. Y., Losen, D. J. & Hewitt, D. T. (2010). *The school to prison pipeline: Structuring legal reform*. New York, NY: New York University Press.

- Lewis, N. (2017). Mass incarceration: New jim crow, class war, or both?. *The People's Policy Project*.
- McCleskey v. Kemp, 481 U.S. 279. (1987).
- New Jersey v. T.L.O, 469 U.S. 325. (1985).
- Purkett v. Elem, 514 U.S. 765. (1995).
- Schanzenbach, D. W., Nunn, R., Bauer, L., Breitwieser, A., Mumford, M., & Nantz, G. (2016). Twelve facts about incarceration and prisoner reentry. *The Hamilton Project*.
- "Sentencing Classifications of Offenses," Title 18 U.S. Code, Sec. 3559. 2009 ed. Available at <https://www.gpo.gov/fdsys/pkg/USCODE-2009-title18/html/USCODE-2009-title18-partI-chap227-subchapA-sec3559.htm> Accessed 4/27/18.
- The Sentencing Project. (2008). *Reducing racial disparity in the criminal justice system: A manual for practitioners and policymakers* (2nd ed.). Washington, D.C.
- The Sentencing Project. (2014). *Felony Disenfranchisement*. Washington, D.C.
- Spencer, K. B., Charbonneau, A. K., & Glaser, J. (2016). Implicit bias and policing." *Social and Personality Psychology Compass*, 50-63.
- Stanford University. (2017). *The Stanford Open Policing Project* [Findings]. Retrieved from <https://openpolicing.stanford.edu/findings/>
- Starr, S. B. (2014). Racial disparity in federal criminal sentences. *University of Michigan Law School Repository* 122(6), 1320-54.
- Uggen, C., Larson, R. & Shannon, S. (2016). 6 Million Lost Voters. *The Sentencing Project*.
- U.S. Census Bureau. *QuickFacts* [Population]. (2017). Retrieved from <https://www.census.gov/quickfacts/fact/table/US#viewtop>
- U.S. Department of Housing and Urban Development. *Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*. Washington, D.C.: Office of General Counsel, April 2016.

U.S. Department of Justice. *The Fair Sentencing Act of 2010*. Washington, D.C.: Office of the Deputy Attorney General, August 2010.

U.S. Department of Justice. *Plea and charge bargaining: Research summary*. By Devers, L. Summary. Arlington, VA: Bureau of Justice Assistance, January 2011.

U.S. Department of Justice. *Prisoners in 2016*. By E. A. Carson. Original. Washington, D.C.: Bureau of Justice Statistics, January 2018.

U.S. Department of Justice. *Probation and parole in the united states, 2015*. By D. Kaeble and T. P. Bonczar. Revised. Washington, D.C.: Bureau of Justice Statistics, February 2017.