

The Racialization of the Prison Industrial Complex

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Social justice solutions are needed nowadays more than ever. The American dream includes notions of freedom, opportunity, and equality. However, the modern criminal justice system and the prison industrial complex more broadly, are objectively racists and classists— Imprisoning disproportionate numbers of minority and poor Americans.

Wasatch Defense Lawyers are opposed to the biased application of a law, and we will fight for you, or your loved one, to ensure the most equitable outcome!

Mass Incarceration and Racial Inequity

Mass incarceration is both the genesis, and an unintended byproduct, of the modern prison industrial complex. With over one percent of the American population behind bars, and another two percent either on probation or parole, it is not unfair to declare the United States a mass incarceration society. Regardless of how you label this current episteme of criminal justice, a society that imprisons such a significant portion of its population is manifestly *divided against* itself. Mass incarceration society can be identified by two features: first, the culture imprisons its member at a rate that is “markedly above the historical and comparative norm for societies of this type;” and second, the application of incarnation is disproportionately targeted at certain groups, rather than equitably applied across the society. Consequently, this current episteme of the United States penal system acts to reinforce and reinscribe racial inequity through various policies and practices that explicitly target communities of color.

Over the past thirty years, the United States prison population has undergone unprecedented expansion. Since 1980, there has been a steady rise in the numbers of people in jail, prison, or on probation or parole. In the early 1980s, there were fewer than three hundred thousand people in prison. However, by the year 2000, that number had swelled to more than one million. In fact, the United States' prison population remained below three hundred thousand throughout most of the twentieth century. This abrupt uptick in the rate of incarceration was brought about by policy reform that proliferated throughout the late-1980s.

The extreme nature of our penal system is brought into stark focus when considered internationally. The United States imprisons its population at a rate that is more than four times the rate of Mexico; and nearly twelve times the rate of places like Japan and Sweden. Only Russia even come close to the rates of incarceration found in the United States. The most recent data shows a Russian incarceration ratio of five-hundred thirty-two per one-hundred thousand whereas the United States incarcerates seven-hundred twenty-six citizens per one-hundred thousand. Nowhere else in the world imprisons its citizenry on such a scale!

The primary driver behind the dramatic inflation of the prison population is generally attributed to the War on Drugs by most contemporary scholars. Furthermore, the primary factor contributing to the increase in population is largely due to sentencing policies and practices; and not due to an increase in criminal activity. While significant increases in violent crime coincided with the formation of the prison industrial complex, the great rise in rates of incarceration are not statistically attributable to violent crime. As Marc Mauer explains:

"There were 154,361 more offenders sentenced to prison in 1995 than 1985... an increase of 84 percent. The vast majority of this increase... drug offender alone accounted for over half the increase. Less than one-fourth of the increase [involved] violent offenses"

Furthermore, the War on Drugs objectively impacts communities of color at disproportionate rates. The sharp rise in the United States prison population was driven by hifalutin anti-drug policy— and not by any verifiable increase in drug use, nor by the contemporaneous increase in violent crime. Generally, law enforcement practices and policies disproportionately targeted low income and minority communities in an attempt to enforce heavy-handed anti-drug measures. Consequently, the practice of mass incarceration appears to be an obvious manifestation of systemic racial bigotry and social inequity in the United States.

Combating Inequity in Law

If the criminal justice system acts as a mechanism of social oppression, its legitimacy will progressively erode. Public belief about the fairness of procedures and motivation of police are key elements in a legal system's claim to legitimacy. **When procedural fairness**

or executive equity is lacking, society has two main weapons to correct the problem: jury nullification and civil action.

Jury nullification refers to the power of juries to disregard evidence and render any verdict they so choose; and juries may even refrain from reaching a verdict at all. As to jury nullification, legal scholar Paul Butler made the controversial suggestion that minority jurors should uniformly acquit defendants of color. Butler suggests that historical patterns of law enforcement and policy that target communities of color creates a nearly conclusive presumption of innocence for any minority defendant. Accordingly, jurors could organize to categorically acquit minority defendants in order to ameliorate the mass incarceration of communities of color. While there has not yet been any organized application of mass jury nullification, the option remains available to the American people.

Civil action is also available against any officer that actively discriminates against the constitutional rights of a citizen. Civil action increases public awareness and punishes the institutions directly for any malfeasance. By impacting the revenue of law enforcement agencies through concerted legal action, society can monitor and moderate police corruption and bigotry. Institutions (even exceptionally stubborn institutions) inevitably respond when they begin to lose money!

Conclusion

The United States prison industrial complex is a blemish on the values of our society! Racial inequity and the unfair application of law have no place in any society that values freedom and opportunity. Unfortunately, the current legal paradigm involves deliberate policies and practices that result in the mass incarceration of communities of color. It is unacceptable for this pattern of racial inequity to continue—the American people can and should utilize every available tool to extricate ourselves from this current penal paradigm. Juries have the capacity to nullify the systemic racism of the judiciary, and exonerated defendants have the right to pursue legal damages against corrupt officials.

At Wasatch Defense Lawyers, we believe in fighting for racial equity and class impartiality in the American judicial system! Although society has a long way to go before we arrive at a post-racial episteme, we must nonetheless continue to proactively strive for a better tomorrow— and Wasatch Defense Lawyers will never stop fighting for a more racially equitable America!