

LOS ANGELES MISSION COLLEGE

Legalized Oppression of African Americans Through Incarceration

Legal Research Paper

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Martin Luther King Jr. wrote in his letter from his Birmingham jail cell;

"...there are two types of law: just and unjust...A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out harmony with the moral law...Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality."

INTRODUCTION

The denial of citizenship rights to African Americans was law from the birth of **America until today...225 years later. Most Americans are not aware of historical and current laws that deny African Americans the full participation and enjoyment of American citizenship and the overall negative affect those laws have had on African American individuals, families and communities. The purpose of this paper is to identify some of those oppressive laws and to explore how they have harmed the progress and development of African Americans, particularly the African-American male who has been incarcerated at an alarming rate and forced into 'modern slavery' for the benefit of corporations and the government.**

THESIS STATEMENT

America has systematically orchestrated the oppression of African Americans through the passage of Federal, State and Municipal Laws resulting in their incarceration at alarming and disproportionate rates.

BODY

The United States through its colonies first encountered African American ancestors by capturing Africans in their own country, placing them in chains, transporting them in slave ships to the United States for the purpose of labor...slavery. The methods used to find the labor

needed to support and drive its economy was best described by Susan B. Carter: “The basic law of employment specifies the ownership and control over human labor itself. Three major categories of such ownership and control have been practiced historically: slavery and serfdom, “contract labor” such as indentured servitude, and free labor. A slave is the property of a master who exercises complete legal and physical control. Slaves pass their enslaved status on to their offspring.”ⁱ The colonies and eventually the United States of America selected slavery of Africans to generate physically controlled labor which began in 1619 in Virginia and lasted until the early 1800’s.

United States Citizenship Definition

The practice of incarcerating Africans for the purpose of free labor was validated by the United States Naturalization Act of 1790 which excluded them and their descendants from citizenship. “For carrying into complete effect the power given by the constitution, to establish an uniform rule of naturalization throughout the United States: SEC.1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise....”ⁱⁱ

The authors of the United States Constitution followed suit by merely referencing those providing labor as property. “No person held to service or labour in one state under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharge from such service or labour but shall be delivered up on claim of the party to whom such service or labour may be due.”ⁱⁱⁱ

Post Civil War Laws Restricting the Freedom of African Americans

There were several causes for the Civil War, but the issue of slavery was a major reason. “The burning issue that led to the disruption of the union, however, was the debate over the future of slavery.”^{iv} Slavery was abolished by the Thirteenth Amendment of the United States Constitution in 1865, however those states whose agrarian economy depended on the labor of slaves began passing laws to continue to enslave those of African descent referred to as Black Codes.

Black Codes 1865

Black codes were a variety of state and municipal laws meant to restrict the activities and movements of newly freed slaves. Vagrancy laws gave carte blanche authority to law enforcement officials to capture people of African descent from anywhere they were not at work for whites. Violation of these laws resulted in the incarceration of the freed slaves and the provision of free labor for land owners. “Just as the Black Codes, enacted after the Civil War to restrict the free exercise of those rights, were substitutes for the slave system, so the exclusion of Negroes from white communities became a substitute for the Black Codes. And when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery.”^v This quote from Jones v. Alfred H. Mayer Co., 392 US 409 - Supreme Court 1968 describes the metamorphosis of approaches used for the purpose of the enslavement of African Americans’ mind, spirit and body.

The Thirteenth and Fourteenth Amendments of the U.S Constitution

The Thirteenth Amendment abolished slavery in 1865. The Fourteenth Amendment of the United States Constitution redefined citizenship in 1868, which cleared the way for people of

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African descent to be recognized as citizens and to be afforded the rights and privileges of any other citizen.

“Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”^{vi}

In spite of the Thirteenth and Fourteenth Amendments of the United States Constitution, the practice of designing ways to capture, incarcerate and marginalize African Americans has continued.

Modern Day Enslavement of African Americans

Nixon’s War on Drugs was not initiated by Congress or any statute. It was a Presidential Initiative in 1971 that affected the entire country. “Shifting the conversation away from eradicating the causes of crime and focusing solely on punishing the criminal, the 'Law and Order' President was able to do two things: First, Nixon exonerated the white middle class from responsibility for the drug-related violence ravaging the inner cities. Second, he transformed the public image of the drug user into one of a dangerous and anarchic threat to American civilization. Shifting public perception in this way ultimately served to reinforce the 'necessity' of Nixon's drug war. Once addicts were no longer seen as sick victims of a society that systematically excluded them, no one would mind when they were simply locked up. In fact, incarceration was for the nation's *own good*.”^{vii}

After decades of drugs being dumped into inner-cities where the majority of African Americans live in any United States city, scores of African Americans incarcerated for their drug use and the decreased rehabilitative efforts offered them...the enslavement continued.

It is interesting that current opinion is that drug users are sick and should be treated rather than locked up, possibly because the use of heroin today is primarily in the suburbs and rural areas of this country where the majority population live...not African Americans. “Clearly, new attention to heroin use in white, affluent areas is changing the perceptions and politics of drug addiction. No longer are the addicts “desperate and hardened.” Apparently, heroin use isn’t the result of bad parenting, the rise of single-parent families or something sick or deviant in white culture. It isn’t an incurable plague that is impossible to treat except with jail time. Drug addicts no longer are predatory monsters.”^{viii}

Another contributor to the incarceration of a disproportionate number of African American males was the California Three Strike Sentencing Law of 1994: “California's Three Strikes sentencing law was originally enacted in 1994. The essence of the Three Strikes law was to require a defendant convicted of any new felony, having suffered one prior conviction of a serious felony to be sentenced to state prison for twice the term otherwise provided for the crime. If the defendant was convicted of any felony with two or more prior strikes, the law mandated a state prison term of at least 25 years to life.”^{ix}

Those caught in this three-strike sentencing net are the same ones who could not afford legal representation in their first case or have access to an attorney to work on their behalf subsequently. Public defenders have become part of the processing nature of the court, not necessarily the defender and seeker of justice for the client. The Three-Strike Sentencing law

ensured that those sentenced under the 25 years-to-life law would be removed from their families, communities and society longer but not necessarily justly...the enslavement continued.

A recent example of the capture and warehousing of African Americans was exposed when The Guardian filed a transparency lawsuit to learn more about the activities of Homan Square in Chicago. It was revealed that for nearly 11 years, 7,185 individuals had been detained at Homan Square and denied their constitutional rights. “From August 2004 to June 2015, nearly 6,000 of those held at the facility were black, which represents more than twice the proportion of the city’s population. But only 68 of those held were allowed access to attorneys or a public notice of their whereabouts, internal police records show.

- 82.2% of people detained at Homan Square were black, compared with 32.9% of the Chicago population.
- 11.8% of detainees in the Homan Square logs were Hispanic, compared with 28.9% of the population.
- 5.5% of the detainees were white, compared with 31.7% of the population.^x

Current Federal Incarceration Percentages By Race

According to the U. S. Census Bureau, African Americans represent 13.2% of the population of the United States. The Federal Bureau of Prisons’ statistics by race (October 2015) show a disproportionate percentage of incarceration of African Americans:

| | Race | # of Inmates | % of Inmates ^{xi} |
|--|-----------------|--------------|----------------------------|
| | Asian | 3,135 | 1.5% |
| | Black | 77,220 | 37.7% |
| | Native American | 3,938 | 1.9% |
| | White | 120,727 | 58.9% |

OBJECTION TO THESIS

Laws restricting the freedoms of African Americans were and are necessary to punish for crimes committed and to prevent future crimes.

OBJECTION TO THESIS REBUTTAL

No crimes were committed during the Post Civil War period when the police arrested and imprisoned African descendants for simply walking down the street or meeting in a house of worship. No crimes were committed when African Americans tried to exercise their right to vote in the south. Those who tried were beaten, imprisoned and often killed.

Crime prevention involving African Americans can be a misnomer. Whether or not a crime has been committed begins with the police officer who sometimes has discretion as to whether or not one will be arrested. If the police officer believes or wants an African American to be guilty he/she can place that person in harm's way, punish and imprison. If the police officer uses some discretion, such as a warning or contacting parents, no arrest is made and a crime is prevented. However, the message behind crime prevention in African American communities is to lock people away for as long as possible. Even if an African American does commit a crime, he/she is still entitled to legal representation and equal protection as a citizen of the United States. With competent and available legal representation or if debt related imprisonment

could be substituted for community or national service, possibly fewer African Americans would be incarcerated.

Effects of Incarceration on Families and Communities

The effect of incarceration on families and communities is complex. The family might be relieved when an habitual criminal family member is incarcerated, feeling a sense of relief from the problems he/she created within the family and welcoming the opportunity to realize their dreams and goals. The effect on families can also result in feelings of shame, anger, fear and loss because the person incarcerated was an integral part of their family life... husband, brother, son, father, and financial provider. In either case, family and community developments are stunted because of the long-term absence of males in African American neighborhoods. Family relationships are in a constant state of repair and redefinition. In order to survive, families often become dependent on government or charitable assistance. Investments in communities with high incarceration rates dwindle, offering fewer employment and business opportunities for those who remain or re-enter, creating fertile ground for the cycle to continue.

CONCLUSION

Laws that facilitate the practice of targeting and imprisoning African descendants continue to blight African American communities. Municipal laws or ordinances in African American communities meant to generate revenue by writing tickets for real or imagined violations. Failure to pay fines result in incarceration. Profiling African American males in their cars, homes or in the marketplace because of beliefs that 'African American' is synonymous with 'crime', violating their right to privacy. Any resistance to such invasion of privacy will result in

being charged with resisting arrest and oftentimes result in the shooting death of the African American.

The U. S. Congress, State Legislatures and Federal and State Judiciaries have contributed to the image bestowed on African Americans. African American ancestors were slaves, defined as property with no recognition of being human. When slaves were freed, another method of slavery evolved through the passage of Vagrancy laws that gave law enforcement authority to capture, arrest and imprison the newly freed slaves to provide a constant stream of labor forces for land owners. Modern-day laws have replaced vagrancy with drug use, prior convictions and being poor as the triggers to justify incarcerating African Americans, males in particular. Prisoners still provide a labor force for business and the government.

SUMMARY

Dred Scott fought for recognition as a free man and a citizen of Missouri all the way to the U.S. Supreme Court in 1857. The opinion of the Court sums up the historical and current view of African descendants in the United States. “In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.”^{xii}

ⁱ Source: Labor for Historical Statistics of the United States, Millennial Edition, Susan B. Carter, University of California Project on the Historical Statistics of the United States Center for Social and Economic Policy, Policy Studies Institute University of California, Riverside September, 2003)

ⁱⁱ United States Naturalization Act of 1790, Sess. II, Chap. 3; 1 stat 103. 1st Congress; March 26, 1790.

ⁱⁱⁱ U.S. Constitution Article 4 Section 2.3 (1791)

^{iv} <http://www.historynet.com/causes-of-the-civil-war>

^v Jones v. Alfred H. Mayer Co., 392 US 409 - Supreme Court 1968

^{vi} Fourteenth Amendment of the United States Constitution 1868

^{vii} <http://www.theatlantic.com/health/archive/2012/03/the-war-on-drugs-how-president-nixon-tied-addiction-to-crime/254319/>

^{viii} https://www.washingtonpost.com/opinions/when-heroin-use-hit-the-suburbs-everything-changed/2014/05/16/187dcce2-d79e-11e3-95d3-3bcd77cd4e11_story.html

^{ix} <http://www.courts.ca.gov/20142.htm>: CA Three Strikes Sentencing Law 1994

^x <http://www.theguardian.com/us-news/2015/oct/19/homan-square-chicago-police-disappeared-thousands>

^{xi} https://www.bop.gov/about/statistics/statistics_inmate_race.jsp

^{xii} Dred Scott v. Sandford, 60 US 393 - Supreme Court 1857