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**Structural Discrimination: Race and Racial Profiling**

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Abstract

These authors assert that race and racial profiling is embedded into society’s customs, norms, practices, policies and laws. The arrest and use of deadly force against African Americans by police officers is interrelated and interwoven into society. That is, discrimination is built into the social structure. Pincus (1994: 84) writes that “[t]he key element in structural discrimination is not the intent but the effect of keeping minority groups in a subordinate position”. To this end, this paper asserts that structural discrimination is built into the custom, norms, policies and laws, which explain why police officers arrest and use deadly force against minority groups, especially African American males.

**Introduction**

Crime data indicate that blacks are more likely to be arrest, sentenced and convicted than whites. Self- reported studies indicate that African American and white offenders/ suspects are generally similar in behavior and that the differences in arrest statistics may indicate a differential selection policy by police (Tracy, 1987)). Evidence of racial bias in the arrest process can be found in the use of racial profiling to stop African Americans and search their cars without probable cause or reasonable suspicion (Siegel, 2012). Racial Profiling is defined as the use of race / ethnicity as an indicator to classify criminal suspects, with the result that persons, especially people of color, are stopped because of their race or ethnicity and not because of any illegal activity (Walker et al., 2007). Suspects who are poor, black or male are more likely to be formally arrested than white suspects (Sealock and Simpson, 1998)). In a national survey of driving practices data, Engle and Calnon (2004) found that young African American males and Hispanics are more likely to be stopped by police and cited, searched, and arrested; even though, they are no more likely to be in the possession of illegal contraband than whites. In this paper, the authors assert that race is a determinant used by police officers to stop, arrest, and use deadly force. The authors also purport that race is embedded and widespread in the society’s social structure.

**Theoretical Consideration:**

Structural discrimination is used as an explanation to explain police behavior in the arrest and use of deadly force against, people of colors, especially African American males. Structural discrimination is more subtle, less obvious, and more indirect in application. Today, discrimination is unintended (Marger, 2009). Structural discrimination is culturally transmitted to generation to generation, especially as it relates to race. The issue of race is entrenched in customs, laws, and practices, these discriminatory patterns exist in banking, criminal justice, employment, education, health care, housing, and many other areas in the private and public sectors (Parrillo, 2014). Critical to understanding of structural discrimination is that the practices are so interwoven in society and that individuals helping to perpetuate these customary practices may be unaware of their existence (Parrillo, 2014). Instead of industry locating and creating jobs in urban areas, where there is high unemployment and under-employment, companies build in the suburbs. The locations of these jobs, affects a large portion of African Americans who may qualify for them (Marger, 2009). Conversely, living in an urban city, which may have high crime rate, African Americans and Hispanics are likely to be stopped and frisked, arrested and jailed than whites accused of similar offenses, and their arrest and conviction are then used as a method of exclusion for employment (Knowles and Prewitt, 1969). Structural discrimination is difficult to observe; it does not use ethnicity as the subordinating mechanism instead it uses other devices to affect minority group members. The intent of laws and policies may give the appearance equity for all, but in reality, once implemented, the policy mostly affects minorities, especially African American males.

**Structural Discrimination in the United States Constitution:**

Regardless of race, incidents of racial profiling support DuBois’ claim that “The problem of the twentieth century is the problem of the color line” (DuBois, 1969) remains a polemic issue for the twenty first century. Issues of race and race ideology is proliferated through the adherence of the laws of U.S. Constitution, coupled with the decisions mandated through the U.S. courts in order to further suppress and subordinate African American and people of color.

To be sure, the subordinate status of African Americans in America was laid in the foundation of the United States Constitution. As a document that defined the organization of government and group relationships to this government and within society, one need only review critical articles in the Constitution that establish Africans as a subordinate group upon the founding of this country. From the outset Africans were marginalized as part of a compromise for congressional representation. In Article 1, Section 2 of the U.S. Constitution the Founders wrote:

Representatives and direct taxes shall be apportioned among the several States which may be included within the union, according to their respective numbers, which shall be determined by adding the whole number of free persons, including those bound to service for a term of years and excluding Indians not taxed, three- fifths of all other persons.

The position of Africans in the Constitution is further defined in Article 1 Section 9. Here the Founders establish in law that states could import “such persons as any of the states now existing shall think proper to admit shall not be prohibited by the Congress prior to the year 1808; but a tax or duty may be imposed on such importation, not exceeding $10 for each person.”

Article Four, Section 2 which established state’s relations and the full faith and credit clause went on to create a condition of servitude for Africans that defined this population as chattel. The Constitution states that:

…No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in the consequence of any law or regulation therein; be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

The Founders were committed to freedom, but they had no intention of providing a universal vision of it. By 1857, the Supreme Court, in the Dred Scott case did not hesitate to establish the dominant political ideology of white supremacy and African subordination. Chief Justice Rodger B. Taney gave a clear focus to race and its place in American society when he wrote the majority opinion for the court. Chief Justice Taney wrote:

In the opinion of the court, the legislation and histories of the time, 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 part of the people, nor intended to be included in the general words used in that memorable instrument.

As a social – political construction, racial profiling has been codified in policy through a history of cultural and political domination. Consequently prior to the Civil War, black rights were suppressed time and again. In *Prigg vs. Pennsylvania* (1842) the U.S. Supreme Court upheld the Fugitive Slave Act requiring slave-owners human property be returned (Pohlmann, 2008). Then, in Jones *v. Van Zandt* (1847) the court staggered into defining slavery as a “scared compromise “in the constitution. (Pohlmann, 2008)

The status of newly freed blacks after the Civil War was even more precarious. Judge Leon Higginbotham, Jr wrote extensively on this condition in his classic Shades of Freedom (1996). Judge Higginbotham outlines how the United States Supreme Court sanctioned racial hatred by establishing public policy in the 1883 Civil Rights Cases.

In this regard, Rep. Hiram P. Bell of Georgia speaking before the Congress on the Civil Rights Cases said:

This bill seeks to coerce an unnatural alliance between the races, unpleasant to them and disgusting to us, in our social relationships…You cannot control taste, revolutionize habits, nor change color by legislation… You cannot benefit him by dragging the white race down to his degraded level, and enforcing the degradation by the infliction of penalties (Higginbotham, 1996).

Even in the context of those times, these are powerful words that resonate across the pages of time and place into historical context conditions that lay a foundation a continued struggle for equality. Even after the Civil War the Court continued to favor policy grounded in the inferiority black people and the legitimization of racism through the establishment of “separate but equal” accommodations (Civil Rights Act of 1875 and *Plessey v. Ferguson*, 1896). By the Twentieth Century a black politics emerged with themes focused on freedom and equality as concepts that were to be contested at every turn by the dominant society. Consequently, issues of civil liberties and civil rights define the boundaries of a new stage in the struggle of equality before the law (Walton and Smith, 2003). The United States Constitution is one of the first official documents that used race to excluded Africans as citizens. Today, the issue of race continues to be a determinant in most venues in society; however it is much more subtle.

Arrest of Black males

James B. Comey, the Director of Federal Bureau of Investigation, noted how people use “race” unconsciously in making decisions. He stated that research points to the widespread existence of unconscious bias. “Many people in our white-majority culture have unconscious racial biases and react differently to a white face than a black face”( ‘Hard Truths’ and Calls for ‘Open Discussion’ Federal Bureau of Investigation, February 12, 2015). Many individuals who believe they have positive attitudes about racial minorities harbor unconscious racial prejudices ( Leland Ware, 2015).

To amplify this race unconscious spoken of by the Director of the FBI, prejudice and stereotypes are culturally transmitted at an early age. In a study conducted by CNN, researchers asked children, between the ages of 5 and 10 years old, a series of questions. The researchers found that white children, as a whole, responded with a high rate of what researchers call "white bias," identifying the color of their own skin with positive attributes and darker skin with negative attributes (CNN, Study: White and black children biased toward lighter skin, May 14, 2014). University of Chicago professor, Margaret Beale Spencer, a leading researcher in the field of child development, was hired as a consultant by CNN. Spencer noted that black children, as a whole, have some bias toward whiteness, but far less than white children. "What's really significant is that white children are learning or maintaining those stereotypes much more strongly than the African-American children. Spencer (2010) concluded that "we are still living in a society where dark things are devalued and white things are valued" ( CNN, Study: White and black children biased toward lighter skin, May 14, 2014)

Race is deep-rooted into how society functions, and as such, African Americans are far more likely than Whites to have negative encounters with law enforcement and express more discontent (Weitzer and Tuch, 2005; Weitzer and Brunson, 2009). African Americans consistently report that they believe that the police treat them unfairly or have experienced unfair treatment themselves (Walker et al., 2007). The Gallup Poll (2003) found also that 37 percent of African Americans said that they had been “unfairly stopped by police,” compared with only 4 percent of whites (Gallup Poll, 2003). Similarly, the Washington Post (2001) found that more than half of African Americans (58 percent ) felt that the police in their community did not treat them fairly, compared with only 20 percent of whites ( “Discrimination in America” Washington Post, 2001 ). **Moreover, a**s a strategy for political candidates to exploit white fear of crime, they use racial code words in speeches, as an illustration of structural discrimination, implying that African Americans are dangerous criminals to be feared and incarcerated. It is these tactics that exaggerate the extent of Black involvement in criminal activity and amplify the illegal practice (Rome, 1998) to stop arrest and use deadly force against African American males.

Proponents of racial profiling argue that profiling is an effective method in the fight against crime and it permits officials to focus on those they believe to be suspects of crimes. New York Police Department (NYPD) initiated a stop and frisk policy in 2002, this policy profiled suspects the officers believed to be suspicious and involved in crime. This practice raised concerns over racial profiling, illegal stops and privacy rights. The NYPD stop and frisk report indicated the majority of those affected by this practice were African Americans and Latino. Additionally, their overall report indicated that majority of stop and frisk of African American did not support their contentions of criminal suspects. In 2012, for instance, the NYPD police offers stopped 532,911 citizens in the city of New York, 473,644 were totally innocent (89 percent), 284,229 were African American (55 percent), 165,140 were Latino (32 percent) and 50,366 were white (10 percent). Additionally, in 2013, there were 191,558 times New Yorkers were stopped by the police; 169,252 were totally innocent (88 percent), 104,958 were African American (56 percent), 55,191 were Latino (29 percent), and 20,877 were white (11 percent) (New York Civil Liberties Union 2014). The New York Civil Liberties Union (2014) also found that innocent New Yorkers have been subjected to police stops and street interrogations more than 5 million times since 2002, and that the African American and Latino communities were target of these stop and frisk tactics.

Similarly, the Meehan and Ponder study found that police officers were likely to use racial profiling to stop African American motorists traveling in predominantly white neighborhoods. To white police officers, a African American motorist driving in an all-white neighborhood sends up a “red flag”; they are “out of place” (Weitzer and Tuch, 2002). An overview of studies on race and the criminal justice process concluded that “most studies reveal what police officers freely admits that race is independently significant, if not the determinative, factor in deciding whom to follow, search, or arrest” (cited in Reiman, 1998, p. 108).

Moreover, in Los Angeles Gilliam and Shanto (1998) found local news broadcast feature crime stories that imply that crime is violent and criminals are nonwhite. For example, one crime broadcast, where the race of the suspect was not known, viewers tended to remember seeing a black suspect. When researchers used digital technology to change the race of certain suspects as they appeared on the screen, a little over a half of those who saw the "white" perpetrator recalled his race; however, an overwhelming two-thirds remembered the race when the criminal was depicted as black, ninety percent of the false recognitions involved African-Americans and Hispanics (Gilliam and Shanto, 1998).

Research shows that a person’s color and physical attributes are important factors in shaping police officers discretion and decision-making to stop and arrest people of color. Numerous studies have also shown that African Americans are far more likely to be stopped and searched, arrested, jailed, denied bond, convicted and sentenced than whites (Steffensmeier and Demuth 2001; Sealock and Simpson 1998; Miller 1996; Lizotte, 1978). These practices lead to a higher concentration of African Americans in arrest data and the over-representation of blacks in the criminal justice system (Amnesty International USA, 2004).

**Police Officers shooting and killing of Black Males**

Whenever race guides the operation of any social institution to the disadvantage of a minority, it is discrimination. For instance,  *white police officers use of deadly force on an alleged African American male criminal suspects demonstrate the belief that black lives are not highly valued*. In Donald Black’s (1989) provided data that suggest that black life are not highly valued in society. Donald Black noted that when people offend a social superior or inferior, different pattern emerges. Those accused of offending persons above them in social status (Whites) are likely to be handled more severely than those accused of offending someone below them (Blacks). Those victimizing a white, inhabit a legal space all their own, with a risk of severity greater than anyone’s. For example, when a black is convicted of killing a social superior (white), the risk of capital punishment leaps far beyond any other racial combination (Black, 1989). In Ohio, capital punishment is nearly 15 times higher than when a black is convicted of killing a fellow black. In Georgia the likelihood of such is over 30 times higher; in Florida, nearly 40 times higher; in Texas, nearly 90 times higher (Bowers and Pierce, 1982). When a white is convicted of killing a black, for example, the risk of capital punishment is approximately zero (Black, 1989).

Levine and Montgomery (2003) also found that African Americans who killed whites are four times as likely to get a death sentence as a black who kill black. Data also exist to indicate that whites on death row were more likely to have their sentences commuted than black (Parker; DeWees, and Radalet (2003). The aforementioned data provides subtle but continual messages that African American lives are not highly valued. This insidious message authorizes police officers toutilize deadly force against African American males. Not only does it authorize deadly force, some police departments have incorporated race as a determinant of guilt or innocence; that is to say, in some police departments the workplace culture or the unofficial policy of the department is to consider black males more dangerous than whites. To this end, police officers may be quicker to draw their weapons when confronting African Americans with deadly consequences (Macionis, 2015).

Numerous studies of police use of deadly force show that blacks are more likely than whites to be shot by the police (Reiman, 2007). Fyfe found that blacks were 10 times more likely than whites to have been shot at by police, 18 times more likely to have been wounded, and 5 times more likely to have been killed (Fyfe, 1984). In recent years, however, African Americans have turned out to be neither armed nor guilty of any crime, but have been killed by police who may well have reacted at least partly to their skin color (Macionis, 2015). Over the last two decade, a number of shootings involving unarmed African American males received national attention, prompting political leaders and civil rights activists to call for diversity training and increase diversity in law enforcement agencies. In spite the call for reforms and training of police, the issue of being an African American male continues to be problematic for police officers. Amadou Diallo, a black, for instance, was shot 41 times by plain clothed police officer in New York in 1999. According to officers, Diallo looked like he was committing a crime (Fritsch, 2000). Patrick Dorismond, who was suspected of being a drug dealer, was also unarmed and shot by undercover New York police officers (Carlson, 2000). Other police shootings of unarmed black males received national attention are as follows: Ousmanec Zongo and Orlando Barlow in 2003; Timothy Stansbury, Jr. in 2004; Tavares McGill, Aaron Campbell, Ronald Madison and James Brissette in 2005; Sean Bell in 2006; Victor Steen and Oscar Grant in 2009; Steven E. Washington in 2010; Alonzo Ashley in 2011; Ervin Jefferson, Wendell Allen, Ramarley Graham in 2012.

A more notable case occurred in 2012 that did not involve law enforcement, but a person acting as a peace officer in the form of a neighborhood security. George Zimmerman, a security guard, called 911 because he believed that a suspicious black man was in the wrong place. Zimmerman was unaware that the unarmed suspicious black male, he had shot and killed Trayvon Martin lived in the neighborhood. The Trayvon Martin case had significant social and political consequences that caused the United State Senate to investigate and address issues of racial profiling in America (Silverstein, 2012).

In Ferguson, Missouri, Michael Brown, an unarmed black male, was walking down the street with a friend when he was shot to death by a white police officer. The facts of the case were ultimately decided by the grand jury, which issued a No Bill, not to prosecute the white police officer. The killing of Michael Brown, however, set off civil unrest and a national debate over what residents called a pattern of police brutality against young black men (New York Times, Ferguson Michael Brown Grand Jury, 2014). In response to a call to Cleveland 9-1-1, a man seating in a park, noted that a black juvenile was pointing a gun at people. The caller noted twice the gun may be fake. Upon the Cleveland Police officers arrival in the park, two second later a police officer shot and kill 12-year-old Tamir Rice, a black youth, who was playing with a toy air gun ( Hanna, CNN, November 27, 2014)..

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