

# **Institutionalized Discrimination in the Legal System: A Socio-historical Approach**

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Despite many of the social, political, and economic changes of the 1960s, discrimination is still prevalent in the United States. Increasingly, evidence of discrimination can be seen in our nation's courts, institutions of higher education, in public policy decisions, and every social, political and economic institution. The question of how this can be in these days of ethnic and cultural diversity has aroused considerable interest among social scientists, as well as among the general public. One area that has been the target of considerable research is the criminal justice system. Wilbanks<sup>1</sup> has suggested that it is a "myth" that the criminal justice system is racist and discriminates against blacks and other minorities. This paper argues to the contrary. It is suggested that Wilbanks has inappropriately applied a microlevel analysis to a macrolevel phenomenon. Examining the historical-structural nature of the legal systems points to great disparities in the status quo of US jurisprudence.

## **INTRODUCTION**

This paper seeks to explain, through socio-historical analysis, the continuing persistence of high levels of institutionalized discrimination in the American criminal justice system, in the light of apparently decreasing levels of self-reported racial prejudice. Indeed, it is

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one of our key arguments that the conventional view that prejudice always precedes and accompanies the development of established patterns of discrimination is not adequate to account for the discrepancy between high levels of discrimination in the legal system at the same time that measurable levels of prejudice have been substantially reduced. Macro-social theories of institutional discrimination suggest that while prejudice and discrimination often occur together, it is also true that they may emerge, persist, or disappear independently of one another, and it is one of the purposes of this paper to explain and illustrate why this is so in the criminal justice system.

Thus, by focusing on macro-sociological forms of social control exercised by legal institutions rather than on micro-sociological expressions of prejudice, we reject arguments by Wilbanks and others that reductions in prejudice or the existence of some type of "mythical racism" are indicators of parallel reductions in the discrimination of blacks and other minorities.

A second key argument which closely follows the first is that a covert but pervasive form of racism has continued to infiltrate the American criminal justice system which negatively impacts blacks and other minority groups disproportionately compared to whites. This lack of access to desirable legal outcomes for many minority group members continues in spite of decreasing levels of reported prejudice. To support this argument, a broad theoretical framework will be utilized to explain the concept of institutionalized discrimination and how this can be applied to the socio-historical analysis of the social control functions of law as they apply to minorities.

To argue that a social pattern, such as discrimination, has become institutionalized is to argue that it has become a stable and widely accepted pattern of behavior in a society so fully internalized by a substantial portion of the population that it is rarely questioned or criticized. Generally speaking, when institutionalization has occurred, the resulting modes of organization include the following elements: 1) they serve real functions or perceived needs; 2) they provide a guiding set of values; 3) they consist of a cluster of social roles and expectations; 4) they produce a coordinated network of social groups (primary groups, voluntary associations, bureaucracy, etc.); and 5) they involve the entire community in this network of values, roles, and groups.<sup>2</sup> Since such patterns, once established, are difficult to change, they often persist well beyond their original purposes. Thus, whatever the original causes (prejudice, economic exploitation, social control, etc.), institutional discrimination tends to persist at a level independent of the prejudices or motives of individual actors. Nevertheless, it is important to understand the genesis of structural problems such as institutionalized discrimination, especially when they run counter to our democratic ethos. This is the task of the remaining parts of this paper.

## **Law and Social Control**

Law as a form of social control has been tagged by some as the attempt of powerful groups to maintain their status and position. Roucek, for example, has pointed out that every society is characterized by divergent groups, with subgroups having their own value systems, folkways, mores, ideologies, and patterns of behavior varying from or conflicting, to some degree at least, with the dominant culture.<sup>3</sup> It is the dominant or more powerful groups that get their interests transformed into law. The law is directly at odds against the interests of the less powerful subordinate group (minority) within a society. Under this system, discrimination becomes inevitable. In order for the more powerful, elite groups to maintain control, they must make a concerted and systematic effort to deny minority or less powerful groups access to resources (such as power). However, some authors have argued that racism and discrimination have been “washed-out” of the system, for the most part. Wilbanks, for example, writes that the “perception of the criminal justice system as racist is a myth.” He further suggests that the facts of social science research support this contention. Recent surveys, such as the NRC report *A Common Destiny* (1989) which indicate that the old style negative attitudes have faded significantly and individual levels of prejudice have declined, seem to support Wilbanks’ contentions. However, this report indicts the criminal justice system for the vast disparities in areas such as arrest, conviction, and imprisonment rates—all of which are much higher for blacks (as a proportion of their population) than for whites.<sup>4</sup> Some earlier writers have stated that there still remains the deeply rooted racism of 350 years of apartheid-like jurisprudence.<sup>5</sup>

## **The Traditional View:**

### **Prejudice as the Precursor to Discrimination**

One of the most well established views of discrimination suggests that prejudice is the antecedent to discrimination. This once dominant perspective of discrimination highlights prejudice and intolerance as the causes of discriminatory actions. For instance, one of the most influential works in race relations was written by Gunnar Myrdal in 1944. His book, *An American Dilemma*, tied racial discrimination closely to racial prejudice. Myrdal defined race prejudice as “the whole complex of valuations and beliefs which are behind discriminatory behavior on the part of the majority group.”<sup>6</sup> Katz and Braly established the first empirical links between prejudice or racial attitudes and discrimination. They concluded that “prejudicial attitudes are emotional responses against the target group.”<sup>7</sup> Henri Tajfel described prejudice using a cognitive social psychological theory of intergroup relations, suggesting that the more different or

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“out” a group is from the primary or “in” group, the more likely discrimination against that “out-group” is to occur. His studies added further support for the “prejudice leads to discrimination” hypothesis.<sup>8</sup> Additionally, Allport wrote that:

Attitudes which result in gross oversimplification of experience and in prejudgments are of great importance in social psychology. . . . They are commonly called biases, prejudices, or stereotypes. The latter term is less normative, and therefore, on the whole to be preferred.<sup>9</sup>

These micro-sociological theories pit individual values against the superordinate virtues of the American creed. (Just as a reminder: the American creed is based on the notion that “all men are created equal. . . and are endowed with certain inalienable rights”). As Myrdal stated in 1944, it is still true today that there are discrepancies in the stated policy of the United States and its actions. Burkey maintains that this is especially visible in areas of racial discrimination and public policy.

In an attempt to explain this conflict between the social values of the American creed and individual departures from these norms, as well as social policy, social analysts developed the prejudice causes discrimination mode. Historically, proponents of this approach have been able to find empirical support for its major contentions. Even some of the more recent studies have used the same basic paradigm. For example, studies examining police behavior with minorities have tried to impose a “prejudice leads to discrimination” framework on the results. However, while these studies do indeed indicate discriminatory practices, the individual levels of prejudice for these officers was not at sufficient levels to support the prejudice-discrimination model.

Lundman et al., for instance, in their replication of Black’s and Riess’ 1970 study of police conduct with respect to juveniles, found that there was no evidence of police selection of juveniles for involvement in encounters by reference to race.<sup>10</sup> Put simply, the police did not appear to single out those juveniles with which they had contact based on the race of these youths. The same type of evidence has been shown with respect to judges, juries, social workers, and the like.<sup>11</sup>

Some current social science research, Lundman, Sykes and Clark, for example, indicates that individual levels of prejudice appear to have decreased over the last fifty years. In fact, the levels of professed prejudice are low enough that discrimination should have decreased to a much lower level than it has—if it were only a matter of individual prejudices that led to discriminatory practices. The basic finding in these studies points out that, for the most part, people or individuals are not overtly prejudiced or racist. W.J. Wilson indicated

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that individual prejudices have decreased dramatically since the 1930s and 1940s. What is experienced in contemporary society is a “system” that produces inequitable outcomes that result in disadvantaged people bearing the brunt of social and legal injustices.<sup>12</sup>

### **Pluralistic Conflict View**

The most disadvantaged in our society seem to experience the most vicious injustices. There are a lot of reasons that can be suggested for these inequities. For instance, most neo-conservative perspectives take a laissez-faire approach resulting in a type of “blame the victim” syndrome. That is, the persons who frequent the criminal justice system must have done something to warrant their poor treatment. However, the present essay imposes a pluralistic conflict perspective onto these issues. The historical biases of the majority or more powerful groups within this society have deeply infiltrated the legal system (as well as other institutions such as the educational system, the health care system, etc.). It is these powerful few who get laws legislated that represent the interests of these few and powerful groups. In essence, then, the few powerful elites maintain control vis-a-vis the legal system.

Support for this observation is given by well documented evidence that the disproportionate number of minorities that are disadvantaged and tend to be concentrated in the urban ghettos of our cities are at a loss to change their life situations or even wage an argument for change (Wilson, 1987). These people have been negatively systematized to such a degree that they inevitably are under an extra burden to achieve equity and justice. Leonard Beeghley describes the condition of these disadvantaged persons as analgesic—the people have become “numb” from failed attempts at obtaining the “American dream.” They have fallen into what can appropriately be labeled learned helplessness. The discrimination is so systematized and ingrained that it is self sustaining. The analgesic behaviors are such that these people are brought into contact with the justice system more often than other groups in our society.<sup>13</sup>

Elliot Liebow supports these contentions in his ethnography, *Tally's Corner*, in which he qualitatively demonstrated that the behaviors, while considered deviant by the majority society, are adaptive and functional “in the situation” in which these disadvantaged people are found.<sup>14</sup> In other words, the more disadvantaged persons in our society are seen as behaving outside the bounds of acceptability. By definition, then, these behaviors are in conflict with the “normal” actions (more accurately, norms) of the majority society. As previously mentioned the norms and values of the more powerful, dominant groups are expressed in the laws of the society. And, in order to maintain control, that is, to maintain power and position, the enforcement of the laws is brought to bear upon these

disadvantaged persons.

In direct opposition to the assertions above, Wilbanks suggested that these same studies<sup>15</sup> provide evidence that racism and discrimination are no longer present in the criminal justice system. We hesitatingly accept the social psychological evidence that prejudice has declined significantly over the last few decades. In fact, recent survey data indicate that whites' negative attitudes toward blacks have decreased substantially.<sup>16</sup> However, conditions such as the disproportionately greater number of black males represented in the prisons and on death row attest to the fact that there are major discrepancies in the application (and legislation) of the law.<sup>17</sup> The fact that the great majority of jurors are still white males demonstrates the egregious discrepancy of black and white differences in the justice system. For example, new-conservative commentators conspicuously overlook the fact that only two percent of the legal profession was black in 1965 and that rate has not changed in the 1980s<sup>18</sup>; whereas, blacks' representation in prisons is about four times their representation in the general population.<sup>19</sup>

An approach more oriented to group conflict and structural sources of racial inequities provides a more parsimonious and effective viewpoint on the differentials between blacks and their white counterparts with respect to the criminal justice system. It is to this issue that we now turn.

### **A History of Social Control and Discrimination**

Dominant values and beliefs (social mores), as well as prominent structural arrangements (used to support implementation of the mores), are typically codified into explicit laws.<sup>20</sup> These laws are then enforced by the state. And, once codified and enforced, the law bestows legitimacy on these institutional arrangements, thereby making them resistant to change.<sup>21</sup> Beliefs about black Americans followed this same sort of progression. (However, the codification of negative beliefs into formalized law does not account for all of the discrimination observed against black Americans. At least some of the racial oppression can be seen as uncoded but nonetheless enforced).

By the early 18th century most of the South had a broad legal framework of slavery that was codified into laws and codes of conduct. There was a major distinction made between white servants and black slaves. Slaves and their offspring were consigned to servitude for life. This distinction is important because it creates an atmosphere where white indentured servants are made to feel superior to black slaves because the whites could potentially work themselves into freedom whereas blacks did not have this opportunity.

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This very blatant action against blacks is one of the critical discrepancies that became ingrained into the more subtle discriminatory practices pervasive today.

Continued early inculcation of a superiority-inferiority dichotomy was further enhanced by the development and use of slave codes. Virginia was one of the earliest colonies to enact slave codes which were adapted from earlier codes of the Caribbean states. The codes of Virginia then became the model for most of the slave codes of the other states. Illustrating the constraints on the liberties of blacks were conditions such as: slaves were not able to leave the plantation without written permission, slaves were not permitted to associate with free blacks or whites, no hint of insolence was tolerated and blacks were not permitted to look directly at a white person. Any of these "offenses" was dealt with swiftly and harshly. Accepted reprimands for violation of any of these rules included whipping, branding, and/or maiming. (As recently as the late 1960s, there were federal reports of lynching and burning of blacks for "more serious" violations).<sup>22</sup> These codes were enforced by local sheriffs and courts as well as by the military. On or near plantations, such laws were enforced by slave owners, slave managers, and poor whites. Punishment was almost always administered without the benefit of trial or due process of any kind to the benefit of the accused.<sup>23</sup>

It can be seen from the aforementioned discussion that there appears to be a spiraling effect in operation. As the slave population grew there were more and more slave codes issued and these codes served to reinforce stereotypical beliefs and, in turn, these stereotypes legitimated the necessity of enacting and enforcing these types of laws. Recent empirical evidence supports this notion of the vicarious reinforcement of beliefs. Brigham, for example, in discussing the development of stereotypes, implied that stereotypes develop a type of member validation thus reinforcing the belief system that the stereotype fostered. The stereotype is therefore supportive of the person's social "reality" and the person sees the stereotype as accurate regardless of how inaccurate physical reality may demonstrate.<sup>24</sup>

Societies have arsenals of controls that are remarkable in their scope, variety and nuance. The kinds of control that emanate from a stratification system (such as American democracy) range from the subtleties of etiquette, complement, and earnest advice to deprivation, torture and chains.<sup>25</sup> Law is a very formidable social control agent. Law as structure can be seen as the codification of the desires of the majority (or more powerful) over the desires of the minority (or less powerful). Law as process can be seen as the enforcement of the majority desires over those of the minority. Law can be the framework for guarantee of human rights, but it may also be used to restrict

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and deny basic human liberties. Social control through law can be very effective even when it is directed toward control of a population or subpopulation; this is what occurred historically with respect to black people. Control of blacks was deemed so critical that it was written into the Constitution and into laws of the various states. As Wolf suggested, there is a division and inequality in the acquisition of power and prestige. As part of that structure, social control ensures the maintenance of the system.

The Constitution, as the major document legitimating the system of laws, stated that blacks were to be considered as three-fifths of a white man and therefore were not entitled to the same guarantees as full citizens. Until the time of the Civil War, the Constitution supported the slave economy of the United States (after all, it was written by slave owners). This fact may at first appear trite because the intent of the Constitution superseded any individual prejudices. Incorporating statements of stratification forever established the justification for differential treatment of non-white, non-property holders. John Hope Franklin wrote that

it was doubtless the view of Jefferson and many of his contemporaries that blacks were inferior to whites, and this had much to do with their inability or their unwillingness to take any significant steps against slavery.<sup>26</sup>

Franklin's statement indicates how the attitudes of a few influential people were transformed and transmitted through generations and the legacy of those attitudes are impacting race relations today.

The Civil War was the critical event that caused the demise of the institution of slavery. In 1866 the Thirteenth Amendment to the Constitution was ratified forever abolishing slavery. However, in reaction to the 13th Amendment, southern states enacted "black codes" or "Jim Crow" laws restricting the rights of "free" slaves and segregating blacks from participation in public life, politics, and legal institutions. While differing from state to state there were several commonalities among the codes restricting black access to legal rights: (1) Blacks could not vote; (2) they could not serve on juries; (3) they could not testify against whites.

In order to combat these southern codes, Congress took control of the Reconstruction efforts. Congress divided the South into military districts to ensure adherence to Congressional mandates. The Fourteenth and Fifteenth Amendments were ratified in 1868 and 1870, respectively. The threat of nonadmission and restrictions on who could vote in ratification elections resulted in state constitutions that opened opportunities for blacks in politics, jobs and schooling. These reforms in the South were soon followed by the Civil Rights



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Acts of 1875, which outlawed northern Jim Crow practices.

Changing state and national political conditions, such as the Radical Republicans losing control of Congress and losing the presidency by 1880, however, worked against Radical Reconstruction. In the 1890s the Supreme Court legitimated the re-emergence of Jim Crow practices. The Court declared the Civil Rights Act of 1875 unconstitutional, thereby condoning the denial of blacks access to public facilities. And, in 1896 (*Plessy v. Ferguson*) the Court ruled that segregated facilities for blacks and whites were not in violation of the Thirteenth and Fourteenth Amendments. Justice Brown delivered the majority opinion of the Court:

The object of the 14th Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based on color. . . . Laws permitting, and even requiring their separation . . . have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power . . .

It should be clearly understood that these decisions were reflections of the attempts of the powerful majority to maintain control and status quo. From this pluralistic perspective, the laws merely functioned to serve the concerns of the more powerful interest groups.

The outline above indicates that there are deep rooted conditions that work against equal attainment of desired and valued outcomes by minority groups. The law guarantees "equal" justice for all citizens. As previously mentioned, justice seems to fall unfavorably upon the minority groups of this country. Blacks disproportionately make up the prison population across the country. This is not too surprising when we consider evidence such as black teenagers between eleven and seventeen years of age are seven times more likely to be arrested than their white counterparts.<sup>27</sup> Wilbanks suggested that racism in the criminal justice system is a myth. To the contrary, the mystery is how he fails to deal with great disparities in the justice system.

There is no myth or mystery that the criminal justice system is discriminatory against blacks and other minority groups. The problem evades discernment when individualistic models are applied to a structural, institutionalized condition. An institutionalized discrimination approach can provide a structural analysis and give a more realistic account of the nature of discrimination in the criminal justice system. This structural model provides the framework by which the justice system and laws are seen in their historical contexts. It is in these historical contexts that the institutionalization of

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negative beliefs and traditions about blacks and other minorities has been fostered and legitimated. In the following section, institutionalized discrimination is discussed as a framework for developing a better understanding of the nature of the disparities within the criminal justice system.

### Social Science and Institutionalized Discrimination

Now that the socio-historical context has been examined, the framework for a model of institutional discrimination can be discussed. Throughout the history of black people in America, oppressive acts by agents of social control, such as the educational and legal systems, for example, have been encountered. As previously discussed, these agents have not only been involved in the enforcement of discriminatory laws, but they have been the laws themselves. For example, the three-fifths rule of the Constitution, the one-eighth blood line determining race, the "black codes" of the South and the Jim Crow practices of the North all denote very concerted efforts to control the social, economic, political and educational advancement of black people in this country.

Within the last 150-175 years, blatant *de jure* sources of social control and segregation of blacks have been all but eradicated. There is no more legal segregation of housing, education and public accommodations. Instances of these types of blatant discrimination are even viewed with some amount of public disdain. These obvious, forthright attempts to deny blacks and other minorities access to equal treatment and opportunities have been replaced by a more subtle, invidious type of discrimination. While certainly preferable to slavery and perhaps preferable to "old-style" overt racism, this type of discrimination nonetheless has its roots firmly grounded in the attitudes of nearly three centuries of slave/slave-owner mentalities. The laws have moved from saying that blacks are not allowed to live in certain areas to dubious interpretations of the fair housing laws or redlining by realtors. They have also moved more recently to legal maneuvering to undermine the principles of affirmative action legislation. Formation of "intellectual white rights advocacy groups" can be seen on college campuses in direct opposition to the spirit of restitutive legislation. Recently, in Miami, Affirmative Action set-aside programs have been challenged in the courts by white contractors alleging "reverse discrimination."<sup>28</sup>

While Wilbanks would not consider these activities overtly racist or discriminatory, they are, at the very least, counterproductive and the outcomes are decidedly discriminatory. The individuals involved in these actions may or may not be prejudiced or racist; but, the ramifications of their actions perpetuate a discriminatory system. Hence, the socio-historical aspects of discrimination in the United States suggest that the institutions themselves discriminate by the

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very nature of the system upon which the institution was established.

The notion of institutionalized discrimination<sup>29</sup> encompasses the socio-historical aspects of the contemporary American legal system, as well. That is, the pervasiveness of ideologies that suggest the notion of the inferiority of blacks, which are intrinsically intertwined into the fabric of the society, is reflected in the laws that are instituted and enforced. Institutionalized discrimination provides a valid explanation of the notion of interest groups being able to codify their beliefs into law over less powerful groups. Hence, the legal system discriminates in order to maintain the status quo of the more powerful interest groups.

Feagin and Feagin pointed out an interesting condition when investigating the notion of discrimination. They noted that individual discrimination is not a necessary and sufficient condition to the operation of institutionalized discrimination. Institutionalized discrimination can be defined as the denial of desired and valued outcomes (whether intentional or unintentional) which systematically or consistently singles out a group or subgroup of the society.<sup>30</sup> As previously mentioned, the more different and the more identifiable a group is, the more likely that group is to be discriminated against by the more powerful or by the majority.<sup>31</sup> Feagin and Feagin wrote that "discrimination here refers to actions or practices carried out by members of dominant groups, or their representatives, which have a different and negative impact on members of subordinate groups."<sup>32</sup> Institutionalized discrimination, then, is the imposition of the ideals and mores of dominant groups through the workings of the system of legal bureaucracy in the United States.

The criminal justice system most certainly can be classified as a bureaucracy. As previously stated, there are great disparities in the rates of blacks versus whites in the prison system. Bridges and Crutchfield state:

Over the past decade, racial and ethnic disparities in imprisonment have provoked national concern. While blacks and other racial minorities constitute a relatively small share of the general population, they make up a very large share of federal and state prison populations.<sup>33</sup>

In 1982, the "Bureau of Justice Statistics" reported that blacks made up 12 percent of the U.S. population and 48 percent of the prison population.<sup>34</sup> What accounts for numbers that are greater than what chance occurrences could explain? One of the possibilities lies within the institutionalized discrimination found in the legal system. A re-examination of Clark's (1978) study using an institutionalized discrimination model may provide a more finely tuned result than previously obtained. This new analysis may demonstrate that while prejudice on the part of individual police officers may not be

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indicative of their selection for involvement with black youths over white youths, there may be the subtle department "folk wisdom" that black youths are inherently destructive and a threat so they must be picked up at the least bit of suspicion. Feagin and Feagin describe this condition as direct institutionalized discrimination.

Feagin (1989) also notes that this type of discrimination has recently been referred to as subtle discrimination that is not as blatant as the "door slamming" variety of the not-too-distant past.<sup>35</sup> Fitting Clarke's data to this analysis produced an entirely different conclusion. Actions of this type of discrimination are carried out continually or routinely by a large number of individuals guided by the rules of a large scale organization or bureaucracy where they have internalized the discriminatory behavior as acceptable. Feagin and Feagin point out that this type of institutionalized discrimination can be shaped by informal unwritten rules as well as more formal laws. They point out that both types of rules are often embedded in a bureaucratic system, such as the legal system.

If an individual police officer were asked if he or she is prejudiced against black youths, the response would not doubt be absolute denial of any such attitude. However, as can be seen from the above hypothetical analysis, individual beliefs contribute minutely to the overall discriminatory actions. The systems approach of institutionalized discrimination offers the more robust explanation of questions of inequality in the legal system of this country. This explanation would not be possible if the traditional prejudice-leads-to-discrimination model were applied. Other instances of "hidden" racism, sexism, ageism and discrimination may be overlooked without a sufficiently powerful model that can be applied.

### CONCLUSION

There is discrimination in the criminal justice system. It is not a myth. It is seen in the disparities in rates of arrest and actual arrests, the length of sentences and the greater disproportion of blacks comprising the prison population and death row candidates. The parasitic nature of institutionalized discrimination has equally infested other components of the legal system. For example, the percentage of black lawyers has remained around two percent for the last several decades. Furthermore, the percentage of black law students hovers around five percent. These discrepancies are part of the historical stance of the laws with respect to blacks in this country.

Much social research has used a prejudice-leads-to-discrimination model. This body of research has found that individual levels of prejudice are no longer sufficient to warrant charges of discrimination in the legal system. It was argued here that the use of an individualistic model was inappropriate and that a structural analysis

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would serve to discern the more subtle forms of discrimination prevalent in today's society.

Historical evidence of the founding documents of this republic indicate the deeply ingrained nature of racism and the importance attached to race and skin color. Three hundred years of apartheid-like treatment based on an ideology of innate superiority has left whites in America in a privileged position regardless of the class status in which they find themselves. It is automatically assumed that blacks have some propensity to commit crime and perpetrate violent actions. This "myth" is supported not only by popular media depictions, but within the scholarly press as well. Racism and discrimination are real in the lives of black Americans. The basic guarantee of equal treatment of law is not extended equally in the criminal justice system. The façade of equal treatment is the mythology of the criminal justice system when applied to black Americans.

John Hope Franklin probably states the conditions of race and ethnic relations in this country best. He wrote:

The remarkable thing about the problem of racial equality is the way it has endured and remained topical. It was discussed in the taverns and meeting places of eighteenth-century Williamsburg. It became an obsessive preoccupation of Americans in the nineteenth century. It was discussed at the 1976 meeting of the American Association for the Advancement of Science.<sup>36</sup>

Now, it is current in the headlines of newspapers across the nation. It is one of the top priorities of the Supreme Court to rule on the legitimacy and constitutionality of Affirmative Action legislation. The virus may have been dormant for the decades of the 1960s and the 1970s but it is now more virulent than ever before and deserves much attention. The implications of this strategy are far reaching. Research designed to test these implications is necessary to establish the generalizability of this model to other institutions as well as the legal system. It is hoped that this essay encourages more critical evaluation of the levels of analysis to be used as well as more critical evaluation of the usefulness of theories related to discrimination.

#### NOTES

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<sup>14</sup>Elliot Liebow, *Tally's Corner* (Boston: Little Brown, 1967).

<sup>15</sup>Lundman, 1978; Wilson, 1978.

<sup>16</sup>Jaynes and Williams, 1989.

<sup>17</sup>Bureau of Justice Statistics, *Report to the Nation on Crime and Justice* (Washington, DC: U.S. Department of Justice, 1988).

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<sup>19</sup>Jaynes and Williams, 1989.

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<sup>25</sup>C. Wolf, "Social Class, Status, and Prestige," In *Social Control for the 1980s: A Handbook for Order in a Democratic Society*, ed. J.S. Roucek (Westport, CT: Greenwood Press, 1978).

<sup>26</sup>J. H. Franklin and A.A. Moss, Jr. *From Slavery to Freedom: A History of Negro Americans* (New York: McGraw Hill, 1989).

<sup>27</sup>M.E. Edelman, "Growing Up Black in America," in *The State of Black America* (New York: National Urban League, 1981). See also, Bureau of Justice Statistics, 1985.

<sup>28</sup>See *Crosin v. City of Richmond, VA. 1989* for background legal case.

<sup>29</sup>See J.R. Feagin and C.B. Feagin *Discrimination American Style: Institutional Racism and Sexism* (Englewood Cliffs, NJ: Prentice-Hall, 1978) for an in-depth discussion of this concept.

<sup>30</sup>Feagin and Feagin, 21.

<sup>31</sup>Tajfel, 1969.

<sup>32</sup>Feagin and Feagin, 21.

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<sup>33</sup>G.S. Bridges and R.D. Crutchfield, "Law, Social Standing and Racial Disparities in Imprisonment," *Social Forces* 66, 3 (1988): 699-721.

<sup>34</sup>Bureau of Justice Statistics, 1982. "Prisoners in State and Federal Institutions," December 31.

<sup>35</sup>J.R. Feagin, *Racial and Ethnic Relations* (Englewood Cliffs, NJ: Prentice-Hall, 1989).

<sup>36</sup>John Hope Franklin, 39.