

Chapter 5

The Impact of Marginalization on Relations With Law Enforcement and the Criminal Justice System

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ABSTRACT

This chapter provides an overview of how critical race theory (CRT) has provided an important context for the racial disparities in the criminal justice system. CRT has promoted teaching the history of the criminal justice system in the United States of America (USA) and abroad from a racial perceptive. CRT scholars emphasize race because of how race and racism have shaped and impacted our society and institutions. CRT has been used to understand issues from police violence, sentencing disparities, school-to-prison pipeline, prison abolitionism, and much more. The CRT framework is especially important when it comes to understanding the disparities and history of the American criminal justice and legal system which was based on racist beliefs, institutions, and laws.

HISTORY

Since the establishment of the United States (US), the government and European settlers before have put the indigenous people and those of African descent into marginalized societal categories. Whites throughout history have benefited from race-based laws at the expense of minority groups especially African American and

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Indigenous peoples (Chandler, 2010). Without this education, people are more likely to blame the problems within these communities on individual factors and not on societal and governmental factors that limited certain groups from achieving success. The policies and practices of colonial governments including the US government led to many atrocities. This chapter will mostly focus on the US and the impact of racism on the justice system from African Americans being enslaved and later segregated, to the Native Americans being killed, raped, and put into reservations, and the Japanese Americans being sent to concentration camps (Okihiro, 1973).

Many native Americans resisted the government from taking their children, which ended up with various acts of violence, and parents being sent to federal maximum-security prisons when they refused to send their children to boarding schools where they would be beaten, molested, and told their culture was wrong and savage (Lin, 2017). They were seen as lesser than those of European descent because of their culture and race. This has created a lot of trauma that impacts Native American communities to this day which are plagued with high levels of poverty, violence, substance abuse, and other societal issues. Native Americans have been killed by police at significantly higher rates than most other groups in the country (Edwards et al., 2019).

Racist Laws and Society

The American justice system was first established to uphold racial segregation, state violence, and slavery. The first law enforcement agents in the country were known as slave patrols who helped catch runaway slaves (Turner et al., 2006). Later on, other law enforcement agents were involved in the kidnapping of Native American children to force them into boarding schools (Booth, 2009).

The country was established with various laws to ensure racial hierarchy (Hutchinson, 2022) including the Black Codes, Jim Crow Laws, Chinese Exclusion Act, and Indian Removal Act (Wong, 2012). Racial categories have predominately shown White as good and Black as bad in Western society (Battalora, 2013; Stevenson & Stevenson, 2014). Many laws have been only applied to African Americans laws including the infamous “Pig Laws” which created severe penalties of prison sentences of up to five years for stealing 10 dollars worth of animals or other property (Hutchinson, 2022). And other laws have specifically been used for other groups for example the Chinese Exclusion Act was specifically used to exclude Chinese immigrants. This was at a time when anti-Chinese sentiment was prevalent throughout the Western US. People would go to Chinese communities and beat Chinese people, including burning down their buildings and even killing them.

One infamous hate-driven racial incident was the Rock Springs massacre when dozens of Chinese immigrant miners were murdered by a group of White miners in

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