Racial Disparities and the Juvenile Justice System: A Legacy of Trauma

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Historical Context

Like many institutional ills that traumatize and otherwise adversely impact youth of color in America, the problem of racial and ethnic disparity in the juvenile justice system has deep roots in this nation's history. Therefore any viable attempt to reduce and prevent such disparity must be informed by the historical processes that serve as the foundation of today's juvenile justice system.

Among the early colonists during the Puritan period (1600-1800), commonly accepted views and treatment of children were grounded in strongly held beliefs. Among those beliefs was the notion that children were born in sin, and that such sin could be eradicated through hard work. As the fundamental unit of social control during this period, the family dispensed justice to its young via various forms of menial tasks, corporal punishment, and even deadly violence.

Eventually, governing authorities began to take more responsibility for dealing with youthful disobedience. As systems began to formalize, laws were passed to govern youthful behavior. In fact, in 1684, Maryland passed the first juvenile justice law—the Stubborn and Rebellious Act—which stated that a person as young as 16 could be lawfully executed if deemed disobedient, incorrigible and/or ungovernable.

With regard to race, the near annihilation and ultimate displacement of Native Americans fed a growing sense of racial and cultural dominance among the colonists. Further, the importation and enslavement of Africans embedded the notion of white supremacy, and the practice institutionalized racism into the very fabric of American culture. Thus the roots of racial bias and unreasonably harsh treatment of young people can both be traced back to the very foundation of American society. Needless to say, at the foundation of what would become the United States of America, young people in general and particularly those of color were routinely subjected to socially accepted, legally sanctioned abuses that by today's standards would be defined as traumatic experiences.

By the 19th century, during the so-called Enlightenment Period, societal beliefs and culture shifted from a reliance on religious doctrine to a focus on science, empirical evidence, and environmental factors. This cultural shift affected various aspects of the social order including the way in which children were viewed by society as a whole. With a primary focus on children's behavior, the previous emphasis on sin was replaced by a new emphasis on environmental impacts. Yet this emerging paradigm shift did not erase old beliefs, habits of thought, assumptions, or fears. This time period, though rich with progressive change, was still affected by many of the practices of old.

Two very important factors would alter the fundamental nature of society and ultimately redefine the treatment of children. One factor was the rise of industrialization, and the other was the process of urbanization. As growing numbers of families flooded into cities, poverty, overcrowding, and other social ills had a particularly devastating impact on children. To deal with the growing number of wandering, hungry, troubled youth, large institutions—beginning with the New York House of Refuge—were created. These institutions were established primarily to house and reform children found to be, in the words of the time, *ungovernable*, *incorrigible*, *delinquent*, or otherwise *wayward*. As a result, children who poured into such facilities now faced dreadful conditions associated with overcrowding, inadequate services, and lack of proper oversight.

Meanwhile, youth of color and their families continued to suffer from the discriminatory policies and practices that emerged in this era. In the North, youth of color were housed in segregated facilities. In the West, Native American youth were subject to forced assimilation and a process of de-culturation. And in the South, where it was believed that Black people were incapable of being reformed, youth of color were excluded from enrollment in large state institutions. Yet, following the legal end of slavery, large numbers of Black males—children and adults—were quickly funneled into a *convict leasing system* that unfairly criminalized and subsequently re-enslaved them in plantation-like work camps.

At the end of the 19th century, a new *child saving* movement emerged with a focus on providing more helpful and caring interventions for troubled children and their families at the local level. This movement was responsible for the creation of the nation's first juvenile court in Cook County, Illinois in 1899. One of the nation's leading advocates for children and a driving force in the creation of the juvenile court, Jane Addams, explained that the social and family context of troubled youth must be understood to properly address their misbehavior. Addams has been quoted as saying that the juvenile court was established to serve and treat children as any "kind and just parent" would treat their own. Thus, while not stated explicitly in more modern terms, the work of Jane Addams and her Hull House associates recognized, responded to, and sought to prevent the traumatization of children.

Unfortunately, the effort to provide kind and just treatment and to prevent children from ending up in large state institutions proved to be a tragic failure. By the early 20th century, nearly every state in the nation had at least one juvenile court, yet these courts would ultimately serve to facilitate and accelerate the placement of "delinquent" youth around the nation into large institutions. Furthermore, as children continued to be adjudicated without legal representation, youth of color were subject to vast disparities in the way they were treated.

Deplorable physical conditions in segregated juvenile court facilities for Black youth were routine. One of many notorious examples of such disparate treatment may be seen in the case of two juvenile courts in Memphis, Tennessee. On one side of the city was a rather palatial structure, fitted with the modern amenities of the day, including a swimming pool. This, of course was for whites only. On the other side of town was a shack-like structure, with no running water, and open sewage in the back yard. The court designated for Black children did not have an actual judge, but appointed a local policeman to make judgments and decisions that would ultimately alter the lives of the children standing before him.

Broadly speaking, as the national juvenile court expansion continued, services for youth of color proved to be a low priority, large state reform schools continued to mistreat children, and the vision of Jane Addams remained unrealized.

It was not until the latter part of the 20th century that significant events would once again alter the landscape of juvenile justice and impact youth of color in very important ways. The first of those events was the Gault case of 1967. Apparently, Gerald Gault and his fellow teenaged buddies engaged in a prank phone call, considered to be obscene by the standards of that time. The police were called. Gault was arrested and eventually sentenced to two years of placement in a state training school. This decision was ultimately appealed and heard by the U.S. Supreme Court, which overturned the ruling and established that children are entitled to the same due process as adults, including legal representation.

The Gault decision, as well as the establishment of federal juvenile justice standards set by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), certainly helped facilitate a quantum leap in the evolution of juvenile justice in the United States. Yet the problem of the over-representation of youth of color in the justice system and the disparate treatment accorded them had yet to reach its apex.

One reason for the enduring existence and practice of racial disparities is the way youth of color are seen, perceived, and characterized. Arguably the well-orchestrated promotion of the myth of the "super-predator" was one of the most damaging influences on the image and perception of youth of color since the Jim Crow era. Influenced by a national shift towards the political right and the declaration of the War on Drugs during the Reagan

administration, a combination of political leaders, social policy "experts," and media organizations created, expanded, and exploited a narrative about youth of color that still has power today.

That narrative spoke of rapidly-growing gangs of young, urban thugs who were responsible for the majority of violent and drug-related crime in the nation. Through print media and nightly news shows, the public was told that bands of "inner city" youth—fatherless, soulless, without conscience, and beyond redemption—were "wilding" their way through the streets committing all manner of horrific crimes. These "super-predators" were defined as "our worst nightmare," as the nation was warned that something drastic had better be done before it was too late. One political leader was quoted as saying that "these super-predators are not just economically poor, but spiritually poor."

Ultimately this media-induced super-predator mythology was proven to be a colossal falsehood. Youth of color were never responsible for the majority of drug and/or violent crime—not even close—and none of the worst fears that had been predicted were ever realized. Yet the damage had been done. A wave of punitive "get tough" legislation was passed, along with juvenile justice policies that further criminalized and institutionalized youth of color. The outcome was profound. In 1985, youth of color accounted for 28% of the nation's public detention center population. By 1997, that number had grown to 63%, and data as recent as 2010 indicate that youth of color represent 71% of the nation's detained children.[1]

Not only are youth of color the vast majority of the nation's detention population, they are also 5.4 times more likely to be detained.[2] In light of this disparity, a fundamental question must be asked: *Are youth of color more inclined toward and/or more actively engaged in delinquent behavior than their white counterparts*? The answer is a resounding "no." The data indicate that youth of color are disproportionately represented in the justice system primarily because they are disproportionately treated more harshly than their similarly situated white counterparts. Thus, a larger, and perhaps more important set of questions is: *What are the drivers of such disparate racial/ethnic treatment?*, *What emotional impact is this treatment having?* and *What are some viable strategies to ensure fair, just, sensible, and effective treatment for all young people, regardless of their race and/or ethnicity?*

The Drivers of Racial/Ethnic Disparity

When viewed within a historical context, it becomes clear that current racial/ethnic disparities in the juvenile justice system are at least partly a legacy of years of racial segregation, discrimination, and mistreatment. These disparities are also based on the belief that youth of color are somehow culturally predisposed to delinquency in a way that their white counterparts are not. While it can be strongly argued that race-based beliefs continue to influence the justice system, what is certain is that the system routinely employs policies and practices that consciously or, often unwittingly, perpetuate racial/ethnic disparities and harmful outcomes for youth of color.

Such policies and practices begin with the way communities of color are policed. Crime data indicates that youth of color are no more involved in delinquent behavior than their white counterparts. Furthermore, communities of color and the schools, neighborhoods, and dwellings that constitute them are no more likely to be the sites of delinquent behavior either. Yet communities of color are policed more intensely and with greater frequency. This differential policing is clearly unfair, but it marks only the first step in the continuum of disparate treatment. The fact is that youth of color are also detained, convicted, and institutionalized at higher rates than white youth, *for the very same crimes*. This is the very definition of disparity, and many systems employ policies and practices that perpetuate such unfair treatment.

Examples of policies that facilitate racial/ethnic disparity range from federal and state drug laws that adversely impact poor communities, to local law enforcement agency practices that fail to consider and acknowledge how they may be contributing to the problem. The general public is relatively familiar with laws that mandate more punitive handling of crack cocaine (prevalent in poor communities of color) and allow more lenient responses to powder cocaine (more often sold and used in affluent, white communities). Yet less is known about differential treatment of youth of color at the various decision points in the juvenile justice continuum. At each of these decisional points, youth of color often find themselves at the mercy of decision makers of various races and

ethnicities who lack the proper assessment tools, training, programmatic options, cultural competence, and pertinent information to make fair, equitable, and appropriate decisions.

Ironically, many juvenile justice decision makers have good intentions, but routinely overreact to the behavior or delinquent act in question. These responses—often framed as "doing what's best for the child"—do not always reflect personal bias, but they are institutionalized and ingrained into the culture of many juvenile justice systems. Youth of color and their communities are often pathologized in a way that creates a narrative about their past, current status, and likelihood of success. In short, with a broad brush stroke, that narrative paints a picture of "deprived" children from "broken" homes with strong "risk factors" for further delinquency and poor life outcomes. Far too rarely is an asset-based, youth development, pro-community lens applied when making critical decisions.

Clearly, many youth of color involved in the juvenile justice system face formidable challenges, but the system routinely confuses personal needs and challenges with actual risks to public safety. This conflation fuels a process of criminalization that feeds racial/ethnic disparity and the over-representation of youth of color in the justice system.

Strategies and Solutions

Perhaps the most important factor in reducing racial/ethnic disparity in the juvenile justice system is the ability to frame and conduct rational conversations on the issue. Many systems and the professionals that lead them have proven to be unwilling and, at times, incapable of confronting the problem in an open and honest fashion. When the issue of disparity is raised, the discussion often fails due to various non-starters and/or distractors. Three classic examples of such barriers include: the *Blame Game*, the *Global Analysis*, and the *Bureaucratic Culture of Politeness*.

For example, starting a discussion on racial/ethnic disparity by assigning blame, whether it's to "racist cops" or "unfit parents," has been shown to derail most efforts to solve the problem before they have begun. Furthermore, the conversation and analysis often remains at the 30,000-foot level, with emphasis being placed on macro-societal issues such as poverty, the media, and single-parent households. These are all relevant issues, but it is necessary to drill down to the tangible drivers of racial/ethnic disparity on a local level if real progress is to be made. Lastly, it is imperative that juvenile justice officials be intentional about breaking old patterns of denial, avoidance, and attempts to sanitize issues that are, in reality, not very clean. Bureaucratic culture promotes such an approach to difficult issues—particularly those dealing with race—and, left unchecked, it can prevent progress towards addressing the problem.

Ultimately, any viable initiative created to understand, reduce, and prevent racial disparity must rely primarily on data. Perceptions and anecdotes sometimes have validity, but in the field of juvenile justice, they more often do not. Thus, reliable data at each decisional point on the continuum of the system must inform the analysis of the problem as well as possible solutions. It is one thing to perceive that "most of these kids are violent" and quite another to analyze local arrest and detention data to better understand how and why, in fact, the young people in question are being charged. One very effective way to begin addressing racial/ethnic disparity is to collect and analyze data that are disaggregated by race, ethnicity, geography, gender, and the particular offense being alleged. Armed with this level of data, justice systems can at least begin to gain traction on what has proven to be a very slippery issue.

Finally, arguably the most important factor involved in addressing racial and ethnic disparity is that juvenile justice officials need to willingly and openly collaborate with community stakeholders. Juvenile justice systems are not designed or equipped to correct this problem alone, and there is a wealth of insight, expertise, and resources that community representatives can bring to the table. In the handful of jurisdictions where racial /ethnic disparity have been tackled and reduced over time, a healthy system-community relationship has been established. This relationship is not always pleasant or without conflict, but it has proven to be a necessary ingredient in the recipe for real progress in addressing this extremely difficult issue.

The Emotional Impact

If trauma is accurately described as an event or experience involving the threat of or actual physical and/or psychological harm that adversely impacts one's capacity to feel secure and function effectively, then the history of racial and ethnic disparity in the juvenile justice system must be associated with the high percentage of justice-involved youth who are challenged with trauma-related issues. Thus a major challenge facing the juvenile justice system nationally is the need to become aware of and equipped to engage youth in ways that do not cause trauma or re-traumatization and that help them to overcome traumatic experiences. In short, it is incumbent upon juvenile justice systems to become trauma-informed.

A trauma informed system is one in which the various semi-autonomous functions and agencies that comprise the system—from the police to probation officers to correctional institutions—all have a clear set of policies and practices, backed by well-trained staff and community-based partners, in place to appropriately respond to the trauma-related issues presented by the youth they encounter. This process is not unrelated to the array of steps that juvenile justice systems need to take to address racial and ethnic disparity. On the contrary, to be trauma-informed as a system is to be culturally competent, objective, data-driven, and collaborative in all efforts to best serve system-involved youth and their families.

References

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