

WHERE DID BLACK JURORS GO? A Theoretical Synthesis of Racial Disenfranchisement in the Jury System and Jury Selection

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The jury system evolved as an essential ingredient of America's judicial framework. In recent years, however, frailties of the jury system in respect to its lack of fairness for women, Blacks, Latinos, and the poor have increasingly become the center of controversy. Federal law is clear that these groups have the right to participate in court as jurors, according to two key concepts: There must be a random selection of jurors, and it must be representative within specified geographic districts wherein a particular court convenes (U.S. 90th Congress House Report, 1968: Section 1961). The logic is that qualified residents of a given geographic domain should be part of the pool from which a jury is selected — on the basis of a chance-opportunity for each to serve on a jury panel. Recent U.S. Supreme Court decisions have held that any substantial violation of these basic requirements of representativeness in jury selection is a *prima facie* case of discrimination (Alker & Barnard, 1978; Fukurai & Butler, 1987; Fukurai, Butler, & Krooth, in press; Horowitz, 1980).¹

Challenges concerned with the underrepresentation of minorities have been brought claiming violation of the Sixth Amendment, which requires a representative jury selection from a fair cross-section of the community (Burns, 1987; Jalee, 1968).² Yet, the lack

of a fair cross-section has been shown in a variety of cases. Careful research indicates that discrimination in jury selection procedures occurs by gender, age, race, and socioeconomic status (Carp, 1982, pp. 257-277; Chevigny, 1975, pp. 157-172; Diamond, 1980, pp. 85-117; Fukurai, Butler, & Huebner-Dimitrius, 1987; Fukurai, Butler, & Krooth, 1991).³

In terms of the race of empanelled juries, however, the literature deals almost exclusively with the *surface* phenomenon of the lack of adequate Black representation. Clearly more elaborate research on judicial disenfranchisement is needed to examine the social mechanisms that produce and maintain the subservient condition of Black people, women, and other U.S. citizens with Third World backgrounds. This is particularly important because there has been a paucity of research examining the impact of the social and structural mechanisms that historically have perpetuated the subordination of Blacks in the jury system and jury selection.

The next section provides the theoretical synthesis to the problematique of judicial inequities in the jury system and jury selection by examining four specific determinants of disproportionate racial representation on juries: (a) racial discrimination in jury selection procedures, (b) socioeconomic barriers preventing full-community participation by Blacks and other racial minorities, (c) judicial discrimination that allows racially demarcated jury representation, and (d) institutional racism and bureaucratic discrimination in perpetuating judicial inequality. The remainder of this article, then, demonstrates that there still exists a racially demarcated jury system that systematically discriminates against Blacks and their full jury participation.

RACIAL DISCRIMINATION IN JURY SELECTION PROCEDURES

Jury selection procedures have long established effective mechanisms for racially demarcating jury participation. Here, then, are several of the legal mechanisms used to subjugate Blacks. An example in ensuring underrepresentation of racial minorities is the

use of registered voters' rolls (ROV) as source lists from which potential jurors are to be selected. ROV lists provide a legal mechanism effectively enforcing the "rule of exclusion," because minorities are less likely to register to vote, and, thereby, jury pools consist primarily of Anglos (Butler, 1980; Fukurai & Butler, 1987; Fukurai, Butler, & Krooth, 1991).

Administration of qualification questionnaires also helps eliminate racial minorities from serving on juries. Psychological qualification examinations to select jurors in some counties in California have eliminated a large number of potential Black jurors (Boags & Boags, 1971, pp. 48-64).⁴ Other subjective criteria and language requirements are also used to limit full community participation by eligible Black jurors. There also are various different statutory qualifications at the state level to serve on juries. Those are:

1. mentally sound, 38 states
2. no conviction, 35 states
3. physically sound, 33 states
4. age, 30 states
5. ability to read, write, and speak English, 27 states
6. prior jury service, 27 states
7. key-man characteristics, 26 states
8. resident or citizen of the state, 24 states
9. resident or qualified elector, 23 states
10. resident or citizen of the country, 22 states
11. U.S. citizen, 17 states
12. jury solicitation, 8 states. (Benokraitis, 1975)

The important notion here is that some of these mandatory qualifications (1, 3, and 7) are subjective criteria. Past jury research has pointed out that, of the 11 southern states, 10 require that a prospective juror be mentally sound; eight require physical soundness; and eight states stipulate that prospective jurors have "key man" qualifications of "good character," "sound judgment," and "intelligence" (Benokraitis, 1975, p. 38). California law similarly reiterates the subjective discretion by stating "the qualified jury list . . . shall include persons suitable and competent to serve on juries. In making such selections there shall be taken only the names

of persons . . . who are in the possession of their natural faculties, who are of fair character and approved integrity, and who are of sound judgment" (CA. 1981, Section 17.205 (a)). Those subjective criteria are used to impose a limit on Black participation on juries. Because of a variety of selection criteria involving subjective qualifications, it is expected that greater disproportionate racial representation is found where jury commissioners and district clerks have substantial discretion regarding both the sources and methods of selection.

Personnel involved in the jury selection process, thus, play an important role in generating Black underrepresentation on juries. For instance, the systematic selection by jury clerks has been found to be an important factor in maintaining disproportionate jury representation. In *Avery v. Georgia* (1953), the U.S. Supreme Court found that jury panels in Georgia were drawn from a jury box that contained county tax returns with names of prospective Anglo jurors printed on White tickets and names of potential Black jurors printed on yellow tickets. Jury clerks consciously sought White jurors for trials, excluding potential Black jurors from serving on juries.

Jury commissioners also played a crucial role in limiting the full-community participation of Black jurors. Review of litigated cases by the Supreme Court has overwhelmingly revealed an implicit view of Blacks as inferior, reaffirmed by the limitations imposed to manipulate the jury selection process. In *Akins v. Texas* (1954), testimony revealed that all three jury commissioners in Dallas County consciously sought only one Black grand juror. Consequently, Black participation on grand juries was severely limited. Further, in *Cassell v. Texas* (1950), the Court discovered evidence of systematic selection exercised by jury commissioners. The statements of jury commissioners revealed that they chose those they knew for grand jury service, and that they knew no eligible Blacks in a county where Blacks made up approximately one seventh of potentially eligible jurors. The systematic selection by jury commissioners was further compounded by the manipulation of selected Black jurors to set a proportional limit on Black jury participation. For instance, in *Smith v. Texas* (1940), the Court

found that between 1931 and 1938, a list for grand jurors had 512 Anglos and only 18 Blacks. Of them, 13 Blacks were at the bottom of the list; only one was put among the first 12. Further, only five Blacks took places in the grand jury room, and the same individual served in three separated instances. In the same period, 379 Anglos were allowed to serve as grand jurors.

The racial composition of the jury is also affected by lawyers using peremptory challenges in voir dire (Blauner, 1972). Because so many different persons are allowed to use individual discretion in deciding who should be excused and who should serve, the possibility of individual prejudice influencing excuses and exemptions is great (Van Dyke, 1977, p. 391). Some of the uncharted consequences may be corrected by recent U.S. Supreme Court rulings (see *Batson v. Kentucky*, 1986), but eliminating peremptory challenges and replacing them with reasons for all challenges will still not guarantee that the parties challenging minorities will give the real reasons: racism, sexism, xenophobia, and ageism.

Minorities have to operate within the framework of a racially oppressive institutional system. As a result, Blacks and other racial minorities have learned to mistrust the fairness inherent in most Anglo-dominated institutions of power, such as law enforcement agencies and courts that make decisions via racially disproportionate juries (see *Batson v. Kentucky*, 1986; Van Dyke, 1977, p. 32). One dominant ideological underpinning suggests that criminality is inherent in minority groups, and they need to be controlled by the legal system (Cullen & Link, 1980; Hepburn, 1978; Kramer, 1982). In modern phraseology, the "black community takes a permissive view of crime within its border. As a result, the black community is vulnerable to its own criminal element as well as to the criminal element of the white community" (*Yale Law Journal*, 1970, p. 534).

Crimes, criminals, and trials of those accused are also obviously linked. Those accused of crimes may defend themselves, but courts, judges, and juries seem locked into legal structures handed down from a past of discrimination and racism. This past has in fact contoured the underrepresentation of minorities on jury panels in

our time. And such racial prejudgment generates different outcomes in various trials. In at least one Black Panther murder trial, the contention was made that the race of the defendant itself predisposed certain jurors to a negative verdict (Rokeach & McLellan, 1970). Studies covering the psychology of juries provide numerous examples of racial prejudice impacting verdicts (*American Criminal Law Review*, 1980; Hans & Vidmar, 1986; Lipton, 1979; Starr & McCormick, 1985; Wishman, 1986).

A wall of hatred and noncommunication is put up between Black and Anglo populations, despite — and because of — such ideological justifications and structured practices like underrepresentation of minority jurors (Kairys, Kadane, & Lehoczky, 1977). Through their nonparticipation, however, racial minorities are forced to participate in strengthening the legitimation of Anglo-dominated judicial systems. And without such participation, racial supremacy is structurally reinforced by the dominant population, perpetuated by individual racism and the withdrawal of support by minorities. In fact, the large proportion of Blacks who do not respond to jury qualification questionnaires or summonses have been classified as “recalcitrants” and eliminated from subsequent jury selection procedures (Fukurai, 1985; Fukurai et al., in press; Van Dyke, 1977).

SOCIOECONOMIC BARRIERS AND HANDICAPS

The economic life of a disenfranchised people makes that of the colonizing people possible. If the disenfranchised must be moved physically to make the colonizers' labor system efficient, the stability of residence and life of the colonized can be disregarded. In the oppressive legal system set up in the United States, indentured servants and slaves were replaced by new sources of cheap labor, with unsteady migratory labor uprooting large segments of the Black and other minority populations.

Obviously such labor market positions are closely related to residential mobility and affect jury representation by racial minorities. Since jury summonses and qualification questionnaires are

generally sent by mail, one's labor market position as a migrant enhances the probability of being excluded from a jury pool, as those who move and fail to receive jury summonses (called "undeliverables") or to return jury qualification questionnaires ("recalcitrants") cannot qualify for selection. In fact, such persons are systematically eliminated. Thereby a potential juror who has just entered the job market and/or is placed in a secondary labor market tends to be eliminated long before being called into the courthouse for jury service. Even those who make it into the courthouse are likely to be granted an excuse for reasons of economic hardship.

Two principal factors explain the high residential mobility among unskilled minority laborers. First, their position in the labor market involves low wages, seasonal work, and thus a high degree of occupational instability (Featherman & Hauser, 1978; Lipset & Bendix, 1959). Unstable job markets and economic shifts in production location and volume are conducive to a high level of geographic mobility in search of steady employment (Edward, Reich, & Gordon, 1975; Gordon, 1972).

An internal labor market that calls up temporary or seasonal workers also makes sedentary life impossible for colonized labor. The migratory search for jobs is the lifebread of the nation's poorest, hence its Blacks, other minorities with a Third World background, and women. The high geographic mobility of racial minorities creates the largest segment of those who do not receive jury qualification questionnaires and who are thereby classified as undeliverables (Fukurai, 1985). Forcing jury commissioners to track down those undeliverables is rare, even though such follow-up is required by law (CA. 1981, Sec 13. 204.3 (b)).

Those who must move often to find work are more likely to be renters than owners of a residence (see Butler & Kaiser, 1971; Butler et al., 1969; Sabagh, Van Arsdol, & Butler, 1969). Low residential ownership plays an important role in generating high incidences of residential mobility among Blacks and other members of racial minorities.

The results are that youths, laborers with low income and education, and particularly Blacks are mobile workers subject to sys-

tematic jury exclusion and thus are underrepresented on jury pools (Fukurai et al., 1991; Zeigler, 1978). For example, for a three-year interval, using national data, a study found that 48.0% of Blacks moved, while 25.2% of Anglos moved (McAllister, Kaiser, & Butler, 1971). During a one-year time period in Los Angeles County, 49.8% of the age group between 15 and 29 moved, while only 12.8% of those 60 and over moved. The mobile groups were predominantly members of racial minorities (Feagin, 1984; Fukurai et al., in press; Van Arsdol, Maurice, Sabagh, & Butler, 1968).

This is in contrast to prospective jurors who work in large companies and are more likely to be reimbursed for jury service. They usually have a greater chance of surviving the jury selection process; and, in the world of job-structured benefits, they are predominantly Anglos (Fukurai et al., in press).

JUDICIAL DISCRIMINATION AGAINST BLACK AND MINORITY JURORS

In a racially demarcated society, oppressive institutions use restrained power and regimented administrations to benefit one group at the expense of others. The racially demarcated society can be based on overt violence, such as slavery, or on covert structures that brandish the symbols of freedom but establish conditions for subjugation. The institutions of the greatest legitimation of authority and discrimination are the systems of laws and courts.

Echoes of such institutionalized inequality in the United States today appear as four judicial dimensions that set limits on racial participation on juries. First, there is the "blue ribbon jury," which systematically and disproportionately excludes minorities. Second, juries of unusually small size undercut minority participation. Third, jurors may be empowered to enforce less than unanimous decisions, so that minority opinions can be disregarded, and fourth, in selecting jurors, the process of constructing gerrymandered judicial districts may systematically exclude minority-dominant neighborhoods but include majority-dominant areas.⁵

Under a blue ribbon system, special jurors are selected from the general panel based on perceived special qualifications to hear important and intricate cases. Narrowly qualified jurors present an insurmountable fairness problem. Jury studies indicate that homogeneous panels selected with certain criteria may be less adept at reaching reasonable verdicts than are the heterogeneous ones. The latter bring to the decision-making process a rich mix of points of view and life experiences, and they are more likely than the homogeneous jury to recognize and offset one another's biases (Van Dyke, 1977).

Although the blue ribbon jury has not met the "fair cross-section of community" criterion demanded by the Sixth Amendment (*Fay v. New York*, 1947), the Supreme Court has nevertheless given constitutional sanction to the practice. Blue ribbon juries are thereby still empowered to parade their constitutionality and give judicial justification to the systematic exclusion of racial minorities from juries (Mills, 1969, pp. 338-339; *Yale Law Journal*, 1970).

Nor does the Constitution require a jury of 12; a state may use a jury of 6 in criminal trials, even when the sentence is as severe as life imprisonment, the U.S. Supreme Court declared in *Williams v. Florida* (1972). Numerous studies show that without an adequate theory of group dynamics, the Supreme Court was in error in assuming that there are no differences in the behavior of 12- and 6-member juries (Kaye, 1980; Roper, 1980). The fact is that smaller juries have a greater propensity to be controlled by a dominant group or person. A change of verdict may sometimes be attributed to an authoritarian personality who can control and influence small groups easier than large groups (Goffman, 1959; Hastie et al., 1983). Distinct or authoritarian personality traits are often characterized by the dominant ideology that shapes perceptions and affects everyday interactions (Hans & Vidmar, 1986). Because the prevailing ideology is likely to reflect the dominant group in society, the minority's alternate view — once formulated — may be side-stepped by controlling participation in judicial decision-making processes or disregarding their opinions.

A clear pattern of racial discrimination is found in death penalty cases. Blacks are more likely to receive the death sentence than

Whites, particularly if the victim was White. In Florida, for example, if a Black person killed a White person, the chances of receiving a death sentence were about 1 in 5; if a White killed a White, the chances were about 1 in 20; if a Black killed a Black, the chances were about 1 in 167; and if a White killed a Black, the probability of a death sentence was zero (Bowers & Pierce, 1980). When a large number of extraneous factors was controlled (e.g., crime severity, past criminal records, and the number of charges), the basic pattern of racial discrimination remained. One explanation is simple racism; a White life is more valued than a Black life. Another explanation is that Whites are much more supportive of the death penalty than Blacks, and the White community therefore may pressure the prosecutor to ask for the death penalty when a White victim is killed (Baldus, Pulaske, & Woodsworth, 1983). Given the prevalence of White overrepresentation on juries and the impact on the jury decision-making process, a smaller size jury exhibits a greater propensity to be controlled by the dominant ideology reflected by White jurors.

Less than unanimous decisions also pose problems for racial minorities. In *Apodaca v. Oregon* (1972) and *Johnson v. Louisiana* (1972), the Court voted by a narrow margin not to apply the unanimity rule to state jury cases, concluding that the rule lacked constitutional authority.⁶ Rejecting the previous pronouncements on unanimity requirements as inconclusive, the Supreme Court majority upheld verdicts in which the juries had voted 11-1, 10-2, and 9-3 for conviction. One study shows that the elimination of the unanimity rule favors the prosecution and increases the conviction rate (Kalven & Zeisel, 1966, p. 466). It is clear that relaxing the unanimity rule allows the opinions of racial minorities to be ignored and undermines the nature of justice and fairness in the judicial system. The new rule becomes especially problematic in cases of possible hung juries. In some capital punishment cases, for instance, the discrepant initial vote on the verdict, which eventually led to a final unanimous decision, was racially demarcated (*Harris v. People of California*, 1984).⁷ Thus, frequent incidents of racially disproportionate votes in deliberation can be used to empower the racial majority ideologically (Fukurai et al., in press).

Racially demarcated points of view are found in cases involving interracial sex. A study found that White jurors were more likely to find a defendant culpable of rape when he was Black and the victim was White than in other racial combinations. Blacks, on the other hand, were more likely to judge that a White defendant was culpable when the victim was Black (Ugwuegbu, 1979). In a rape simulation study, Black defendants were treated more harshly than White defendants (Feild, 1979). Further, race was a significant factor when the evidence was more clear-cut in favor of guilt or innocence. Less than unanimous votes, thus, become particularly problematic because relaxing the unanimity rule is likely to disregard votes by racial minorities. Racially demarcated votes in deliberation can be used to delete the power of racial minorities.

Another effective mechanism in maintaining the racially dominant judicial institution is the construction of gerrymandered judicial districts. How this has been done is an adventure in mental and legal gymnastics. To begin, it is known that vicinity requirements are an essential ingredient of the Sixth Amendment. As a prime example, the legislature in California long ago defined a judicial district in Los Angeles County as the area within a 20-mile radius of each courthouse. Early in the 1970s, the Los Angeles County Board of Supervisors adopted this rule because Los Angeles County had wide geographic boundaries. The Senate approved the bill, A.B. 1454, which added the 20-mile rule to the *California Code of Civil Procedure*. Research has demonstrated that in fact the 20-mile rule for judicial districts has not been followed. Rather, systematic inclusion and exclusion of certain neighborhoods has led to a significant underrepresentation of minority populations (Fukurai, et al., 1991, in press). By regulating the degree of minority participation on jury panels, and thus ultimate judicial decision-making, the dominant population's control over the political and judicial apparatus creates an effective mechanism for gerrymandering geographic definitions of judicial districts. Particular neighborhoods with a high concentration of Blacks and other racial minorities have simply been excluded from the defined boundary of judicial districts (Fukurai & Butler, 1987).

INSTITUTIONAL DISCRIMINATION: SUBORDINATING BLACKS

Numerous Supreme Court decisions have also perpetuated and legitimized the domination and racial supremacy of the majority in both judicial and political spheres. The very apparatus of law regulates racial participation, and Court decisions reify the dominant bureaucratic system, elevating the "rule of law" while degrading rights of Blacks.

In *Carter v. Jury Commission of Greene County* (1970), for example, the petitioner claimed that the entire state apparatus—which included the county jury commissioners, their clerks, the local circuit judge, and even the governor of Alabama—was in conspiracy in perpetuating racial inequality in jury selection. The appellant (*Carter v. Jury Commission of Green County*, 1970) sought to establish three principles in the case:

1. A *declaration* that qualified Blacks were systematically excluded from grand and petit juries in Greene County, making the Alabama statutes unconstitutional, and that the jury commissioner operated illegally through his deliberate segregation of a governmental agency.
2. A *permanent injunction* forbidding the systematic exclusion of Blacks in juries, thereby requiring all eligible Blacks to be placed on the jury roll.
3. An *order to vacate the appointment* of jury commissioners and to compel the Alabama governor to select new members without racial discrimination.

Further, *Turner v. Fouche* (1970), announced the same day as *Carter*, also argued the notion of institutional discrimination against potential Black jurors. The petitioner alleged that the county board of education, which consisted of five freeholders, was selected by the grand jury, which in turn was drawn from a jury list selected by the six-member county jury commission. The commissioners were appointed by the judge of the state superior court for

the circuit in the county. The problem here is that all board of education members were White, selected by all-White grand juries, which in turn had been selected by all-White jury commissioners. Because of racial oppression against Blacks, the petitioner alleged that "the board of education had deprived the Negro school children of text books, facilities, and other advantages" (*Turner v. Fouche*, 1970).

The notion of a racially discriminatory judicial system is also reported elsewhere. In the Huey Newton trial, for instance, ethnographic research confirmed the notion of White supremacy in the criminal court system. The study notes that:

a black man like Huey Newton is tried under a system of law developed by white Western European jurists. He is confronted in the black ghetto by white police officers, then indicted by an all-white, or predominantly white, grand jury, prosecuted by a team of all-white district attorneys, tried by a white judge, convicted by a predominantly white jury, and denied bail on appeal by white state appellate courts and a white federal judge. It is not simply the color of the principals that is at issue, but the more profound point that the various officials and processes in the system represent institutions that reflect and are responsive to values and interests of the white majority — a power structure and a community that benefit from keeping black people in "their place," namely, in the ghetto and without power. (Blauner, 1972, p. 253)

Elsewhere we have documented the precise way in which this was done (Fukurai & Butler, 1987; Fukurai et al., in press). Yet, this is only a single case, and further evidence of institutional racism is required of future investigators.

In the view of those who feel they are oppressed, the judicial and legal structures are grounded upon Anglo supremacy and create the opportunity to maintain oppressive social conditions that — while gradually undergoing change awarding minorities some rights — continuously reproduce the subordination of Blacks. The theoretical tenet of discrimination against Blacks in the jury system and jury selection is summarized in Figure 1.

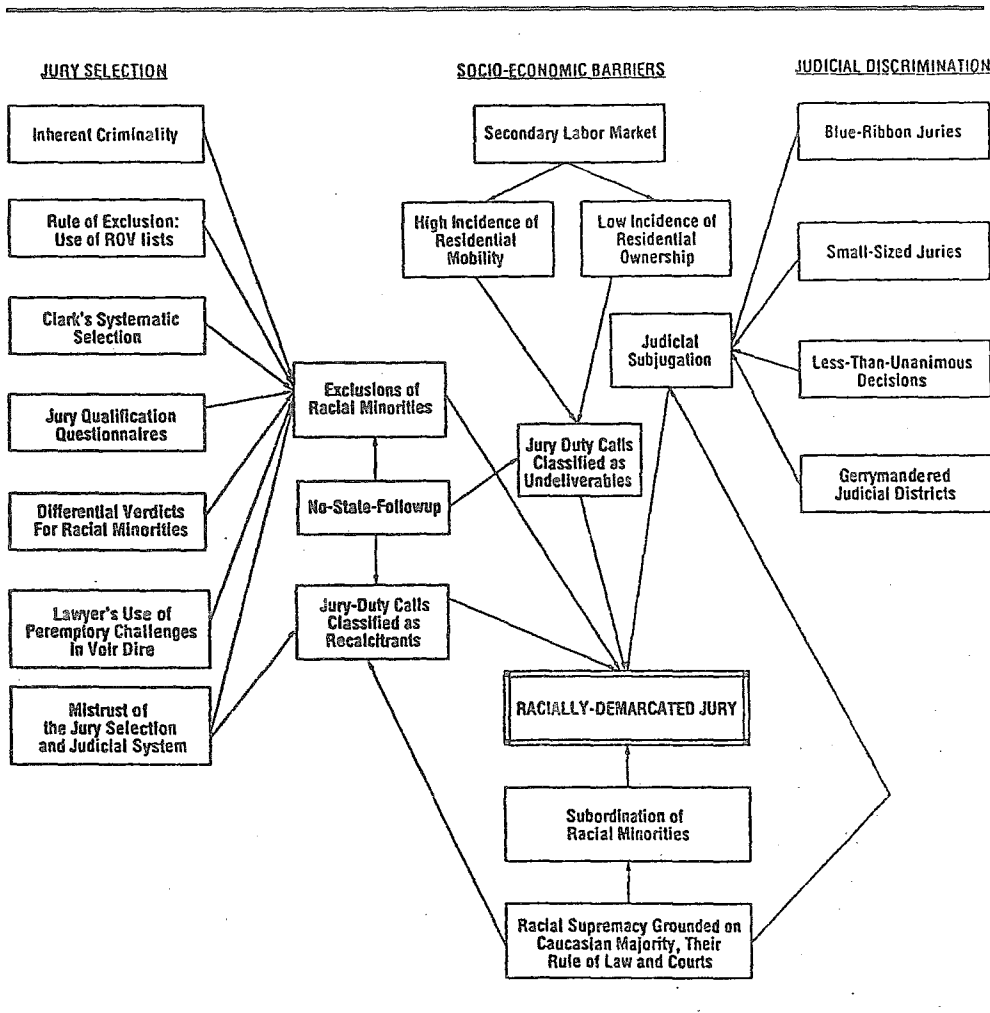


Figure 1: Racial Disenfranchisement in the Jury System and Jury Selection

CONCLUSIONS

This article argued that the racially demarcated social system in the United States still exists in the form of oppressive legal and judicial structures that continuously reproduce, maintain, and perpetuate the subordination of Blacks. Historically they are discouraged, if not prevented, from full-community participation in labor markets, political structures, courts, and the judicial decision-making processes. Up until the last few decades, the jury-participation privilege was largely reserved to the Anglo majority.

Specific mechanisms still exist today and are used to sculpt systematically a racially demarcated jury. Potential sources of institutional biases in jury selection include various forms of structural and individual racism that prevent full-community jury participation, thereby perpetuating and maintaining racially demarcated juries. Labor market characteristics also set limits on racial minorities, who are likely to be in secondary markets with a high degree of residential mobility, so that the call to jury service legally become "undeliverable" and they become "recalcitrants" who do not respond. As well, judicial discrimination points to various strategies that regulate the degree of minority participation on juries: the use of blue ribbon juries, a smaller-size jury, less than unanimous decisions, and gerrymandered judicial districts.

Perhaps more important is the notion that the entire jury system and jury selection are grounded on Anglo-controlled institutions and structural ideas of supremacy. Only time will reveal if the United States can free itself of such powerful forces, which set limits on the rights of Black people and curtail their freedom to participate equally in the judicial decision-making process. What can be said, though, is that until it overturns the past, such a society will be the target of those still unfree who view its courts and other institutions as chains to be broken not to be shackled by.

NOTES

1. For additional information, see Benokraitis, 1975; Butler et al., in press; Erlanger, 1970, pp. 345-370; Fukurai et al., 1987; *Iowa Law Review*, 1973, pp. 401-419; *The Yale Law Journal*, 1970, pp. 531-550.

2. Also see Cromer, 1910; Krooth, 1975, 1980; Lewis, 1984.

3. For additional information, see Alker, Hosticka, & Mitchell, 1976, pp. 9-41; Brady, 1983, pp. 241-263; De Cani, 1974, pp. 234-238; Finkelstein, 1976, pp. 338-376; Heyns, 1979; Kairys, 1972, pp. 771-806; Kairys et al., 1977, pp. 776-827; Mills, 1969, pp. 329-339; Morris, 1965; Roberts, 1939; Robinson, 1950, pp. 73-78; Staples, 1975, pp. 14-22; Summers, 1961, pp. 35-42; *U.S. 90th Congress Senate Report No. 891*, 1967; *U.S. 90th Congress House Report No. 1076*, 1968; Whyte, 1956.

4. Research in Oakland found that 81.5% of Blacks and 14.5% of Anglos failed to qualify as jurors; in central Los Angeles, 38% of Blacks and 8.5% of Anglos failed the examination; and in Long Beach failure rates were 40% for Blacks and 13% for Anglos.

5. The cumulative effect of institutional racism is crucial in eliminating racial groups during the jury selection process. For example, research in Maryland found substantial bias against those with less than 12 years of formal education. Because inequality in the quality and accessibility of education leads to fewer Blacks finishing high school, and because most jurors are expected to have a high school education, many Blacks are disqualified from jury lists.

6. Rulings in both *Johnson v. Louisiana* (1972) and *Apodaca v. Oregon*, (1972) were by 5-4 votes.

7. Postverdict interviews revealed that the first vote on the penalty was 9-3 in favor of death. The three jurors who voted against the death penalty were Black. The second vote resulted in a unanimous decision in favor of life without possibility of parole. Postverdict interviews also indicated that one Black male juror walked into the deliberation room after hearing all the penalty phase evidence and said: "I'm not going to vote for the death penalty and no one is going to change my mind." Ultimately, the assertiveness of that one Black juror, working his chemistry with the others, significantly affected their final verdict, changing the first vote of death to life without possibility of parole (for more detailed descriptions of the case, see Fukurai et al., in press).

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