

White Privilege in an Unjust Justice System

Privilege is a sinister force in society. Privilege lies at the intersection of prejudice and power. Privilege plants its roots in prejudice. To one without a prejudiced mindset, it is illogical to advantage one over another without merit. On the other hand, one with a prejudiced mindset is blind to the fact that privilege exists at all and that it is steeped in injustice. Those with prejudice perpetuate privilege, consciously or subconsciously reaping its benefits and denying its existence to maintain power in a society already designed to empower some over others. Unfortunately, as privilege breeds power, it is not surprising those in the highest positions of power are so entrenched in their privilege and prejudices that they fail to see fault and therefore fail to promote change. When one is the beneficiary of injustice, it is not difficult to adopt the mindset that the injustice does not exist.

One of the most prevalent examples of privilege in the United States is white privilege. In “Whiteness as Property,” Cheryl Harris examines white privilege by framing whiteness as a form of property. Harris presents this notion dating back to slavery, transforming during times of segregation, and remaining today in more subtle yet undoubtedly present ways. Harris argues the core characteristic of this theory is the upholding of the power and privilege of whiteness and masking this as a neutral baseline, in turn creating implicit legal upholding and justification for the maintenance of white privilege (Harris 1714). In effect, white privilege is seen as a right rather than a privilege and therefore is left unaddressed. Attempts to remove this privilege are seen as infringements, as though one is trying to violate a right such as the right to property.

This legal perpetuation of subtle stratification is the basis for the rampant white privilege in the criminal justice system. In examining privilege in the criminal justice system, there are two facets to take into consideration. Those who are given this privilege and those who are

disadvantaged by lacking this privilege. White privilege in the justice system often expresses itself in discrepancies among sentences given to people of color in comparison to white individuals. This has led to disproportionate numbers of people of color incarcerated in the United States and greater leniency in sentencing given to white individuals.

While the concept of privilege is often misunderstood and debated, studies in relation to incarceration rates and sentencing make the presence of privilege undeniable. Studies have evidenced direct racial discrimination in regards to minority sentencing, especially at the federal level. People of color are more likely to be incarcerated and, once incarcerated, they are more likely to be given longer sentences (Kansal). White individuals are more likely to hire private attorneys linked to achieving lesser sentences. Some may argue other background factors unrelated to race must be to blame for these discrepancies. However, when looking at white individuals who are unemployed, young, or have serious criminal records, black and Latino individuals in comparable situations are consistently given harsher sentences (Kansal). Even when controlling for major background factors, racial discrimination is still present. From a quantitative standpoint, African Americans are 5.9 times more likely to be incarcerated in comparison to white individuals. Hispanic individuals are 3.1 times more likely than whites (Rovner). While it is somewhat dehumanizing to reduce this atrocity down to numbers, for some this quantitative representation is most striking.

For those still doubtful, it is extremely revealing to look at specific cases in which this privilege is personified. This is clearly seen in the case of Brock Turner, a white, male, affluent swimmer and student at Stanford University. Turner was accused of sexual assault and convicted on three counts of sexual assault including sexual assault of an unconscious person, sexual assault of an intoxicated person, and sexual assault with intended rape (Bosman). While his

sentence could have been up to fourteen years, the judge granted him six months of jail time and three years of parole. Further, Turner was released after only three months for “good behavior” (Dastagir). Turner’s case clearly embodies white privilege as this leniency given to him by the judge is likely a result of his affluence, attendance to an elite institution, and ultimately his white skin.

When looking at similar cases with defendants of minority races, this privilege and leniency is clearly absent. One of the most striking examples of this is the case of Cory Batey. Batey was a student at Vanderbilt as well as a member of the football team. Batey was similarly accused of sexual assault on an unconscious individual. Like Turner’s case, ample evidence supported this. He was convicted on three counts including aggravated rape and aggravated sexual battery (King). Unlike Turner, Batey was sentenced to fifteen years and will serve the entire sentence (King). As Turner’s case clearly embodies white privilege, Batey’s case starkly shows the opposite. Batey was not able to draw on this sort of property value granted to Turner’s white skin, therefore disadvantaged and deprived of the leniency Turner was so willingly given.

Of course, as in any comparison of cases, there are many variables that differ between these two cases. The individuals were tried in different states and faced slightly different charges. Laws and sentencing guidelines can vary widely between states. With that being said, one must step back and look at whether or not these confounding variables constitute a 14.5 year difference in incarceration time. The point being made is not at all that Batey should have been given greater leniency. His offense was absolutely deserving of a sentence that correlates with the nature of his crime. That said, the point is that Turner was given too great of leniency while Batey received none. Turner faced just six months in prison for a similar crime to the one that

leaves Batey incarcerated for fifteen years. There is no clear justification for this wide discrepancy without taking prejudice into account.

It is also important to take the rhetoric surrounding these cases into account. The judge in Turner's case publicly voiced his concerns that a longer sentence would hinder Turner's future (King). The same rhetoric and sympathy was not used around Batey. However, both defendants were college athletes at elite universities. One could absolutely argue each of them had bright futures in front of them. One could then go on to argue that each of their actions would greatly hinder these futures. With that being said, this is not a factor to take under consideration in the context of sentencing. Turner was clearly privileged by the criminal justice system due to his perceived plentiful potential and the presumption that he made a mistake that is not reflective of his overall character. This is a prime example of the intersection between privilege and prejudice. Whether consciously or subconsciously, this judge presumed Turner to be good at heart and full of potential, likely in part due to his race and status. Turner did not fit the image in the heads of many in regards to what a rapist looks like as a white, male, affluent student athlete. This is a preconceived notion, a prejudice, that Batey was not able to benefit from as a black man. This made Turner the beneficiary of a privilege Batey could never attain.

One of the largest problems in this case as well as many others is the vehement defiance by the legal system and the leaders within it that this problem is nonexistent. This is a problem Peggy McIntosh addresses in her renowned piece, "White Privilege: Unpacking the Invisible Knapsack" by Peggy McIntosh. McIntosh asserts that white people are conditioned not to acknowledge the presence of white privilege (McIntosh 1). This is where the idea of the "invisible knapsack" comes from, and this invisibility is a large part of the problem with white privilege. People, especially those in power, take privilege's invisibility and reduce it to

nonexistence, disrespecting those whom it affects so greatly and inhibiting change from occurring as one argues change is unnecessary. It is ludicrous to assert privilege and prejudice are nonexistent in the criminal justice system, the way this has presented itself has only changed to be more sinister and divisive than the blatant laws that have been overturned.

As a whole, sentencing practices within the United States criminal justice system are flawed and too often draw on the power of privilege. The problem can no longer be solved as easily as making legislative changes; the problem is one of deep rooted prejudice that requires an entire shift in mindset of the system as well as each and every individual involved in it. Leaders must first recognize and then commit themselves to addressing the sinister presence of white privilege that undermines true equity within the criminal justice system. The connection between privilege, power, and prejudice must be severed.

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