Exploring the Inequality Under the Law

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Abstract. As modern society has gradually shifted its focus from materialism to cultural development, equality has always been a universal goal worldwide and an enduring topic provoking heat debate in the academic sphere. It is commonly accepted that the law acts as a leading and pioneering role in the practice of equality, whereas the author disapproves this statement and will evaluate its existing injustice from the angles of ethnicity and gender, extending from previous scholars' studies. This article covers three main sections: introduction, main body and conclusion. Firstly, it judges the phenomenon of ethnicity inequality in the law referencing to the economic position and racial discrimination. The opposing side's analysis of the current improvement and geographical consideration will be reasonably refuted to further support the author's viewpoint. Subsequently, the author analyzes the system of gender blindness exhibited in the judicial system to demonstrate its practice of gender inequality, proposing reference angles and methods for addressing it.

Keywords: Law, judicial system, inequality, gender, ethnicity.

1. Introduction

In front of the Supreme Court in the United States, several words have been prominently displayed, which is also the sole interpretation of law by most of the people in the past few decades, which is named as "Equal Justice Under Law" [1]. Admittedly, the law touches all institutions of human life, playing a crucial role in empowering marginalized groups while challenging existing privileges by structures multiple options and choices. However, it is mainly because of its long-term existence, it becomes harder for people to perceive the injustice within it. Aligning with other critics, this paper deems that the current judicial system is not free of bias, and this argument will be discussed by specifically covering ethnicity and gender with the research loopholes be offered in the conclusion section.

2. Ethnicity

The inequality in terms of ethnicity in the judicial system is mainly reflected in its close connection with economic position. In addition, racial discrimination appears in the trial results. To demonstrate this more conclusively, answers to potential rebuttal are given at last. African American is taken as an example in this whole section.

2.1. Economic position

Above all, the author argues that ethnicity affects an individual's economic position, while there is an undeniable positive correlation between the probability of winning a lawsuit and earning a high income.

According to a survey in 2023, 17.9% of people living below the poverty line in the United States are black people, compared to 7.7% of white people [2]. This disproportionate composition objectively reflects a fact that black people generally share a low economic status in the United States. However, strong financial support is required to win a lawsuit in the United States throughout the judicial process. At the very beginning of employing a lawyer, low-income groups are already been excluded. In the United States, the cost of hiring a lawyer is located at around $150 to $400 per hour, which considerably exceeds the American average hourly earnings, which is at a current level of 35.21 [3, 4]. Subsequently, as defendants, impoverished individuals were placed in an extremely disadvantaged position during the initial interrogation phase, often choosing to confess due to a lack

of legal assistance or facing detention for not being able to pay bail [1]. Finally, relying solely on individual strength is unable to face the experienced prosecutor on the other side in the trial. And if he is convicted by the judge, the defendant holds a right for an appeal to a higher court to ultimately decide whether to be declared as guilty or not, but this needs some legal grounds as well [1].

Thus, the conclusion is reached that the economic position of the defendants is directly contributed to the probability of being afforded justice during the American judicial procedure, and inequality is created since being black is highly related to being poor [5].

2.2. Racial discrimination

Racial discrimination appears based on the offender-victim dyad, demonstrating unequal degrees of severity of treatment among cases that are composed of different ethnicities. The supporting data was summarized by Johnson based on court statistics of murder indictments in North Carolina between the year of 1930 and 1940 [6]. He classified all cases into the following four categories:

Negro offenders and white victims (NW);

White offenders and white victims (WW);

Negro offenders and negro victims (NN);

White offenders and negro victims (WN).

By utilizing the probability of being convicted and condemned to death, as well as the length of the sentence as reference, the order of severity of treatment was NW, WW, NN, WN for 645 cases examined [1, 6]. This conclusion was additionally consolidated by Garfinkel's study using 25% larger sampling than Johnson's, who divided homicide into different levels and found out that in the first degree of murder, 54% of the defendants in NW cases were found guilty, which has decreased to 19% in WW cases, while in NN and WN cases, it merely showed 4% and 0%, respectively [7]. By taking manslaughthers into consideration and applying more dependent variables, this data demonstrates stronger persuasiveness and rigor in arguing the unbalanced power system with higher emphasis on protecting white interests [1, 7]. The similar outcomes have also been obtained by more scholars, such as Bullock, Vines and Jacob [1].

As a result, according to the various past studies, it is clearly seen that racial discrimination distorts the trial results, causing unequal treatment of defendants and victims based on their ethnicities.

2.3. Answers to potential rebuttal

The opposing sides may hold two counter-arguments to oppose the above two viewpoints respectively. They will be appraised separately and then refuted.

Firstly, some people believe that recent developments have witnessed the equalization of the judicial system. With the help of both public and private defender systems, the number of citizens who enjoyed accessibility to Defender's Office in 1960 has doubled compared to the past decade [1]. However, the author holds a skeptical attitude towards whether equal justice has truly been achieved as the rich and the poor defendants are still exposed to differential sentences regardless of the qualification for legal aid. According to the Detroit Study, only 17% of criminals who could pay bail were sentenced to prison, while 67.5% of those who were unable to pay bail received prison sentences [8]. What’s more, people who have court-appointed counsel are twice as likely to be sentenced to prison as those who are capable to secure private counse, that is 57% when comparing to 28% [8]. These figures clearly reflect that even if an impoverished person now has the opportunity to receive legal aid clinic services, the judgment of offenders still presents different results, which is still closely related to the economic status and relative wealth of defenders [1].

Secondly, a strong opposition believes that there is no evidence to prove racial discrimination in court. For example, Green deemed that the reason why the four categories of offender-victims are treated differently is because there are other variables in NN and NW cases rather than racial factors [9]. He listed the percentile of using armed force, holding previous felony convictions, or involving more than one indictment in NN and NW robbery cases, and found that the latter is much higher than the former [9]. When these variables were controlled constant, the disposition of NN and NW cases

turned out to be notably similar, which coincides with the conclusion drawn by Bensing and Schroeder, despite their study of NN and WW [9]. Nevertheless, the author believes that racial discrimination remains stubborn because the disparity of data revealed in these studies stem from geographical differences. The figures from supporters of racial discrimination against black in court comes from southern states such as North Carolina, Virginia and Texas, while opponents typically collect data from northern states like Pennsylvania and Ohio [1]. This geographical consideration in turn further reflects the stereotypical notions of the distinct handling of Negroes between the North and South of the United States, confirming that racial discrimination has not been fully addressed at the societal level and has permeated into the judicial system [1].

3. Gender

The gender inequality in the legal system is mainly embodied in its promotion of gender blindness while ignoring the inequality within structural organization itself, which has brought about the glass ceiling effect and thus the lack of representation of female judges in the Supreme Court. Feasible options for improvement are proposed at the end of this section.

3.1. Gender Blind System

According to an interview with a female judge named Feby, it is known that male and female judges are treated equally in the process of education, training and career promotion [10]. This gender neutrality, however, does not lead to gender equality, but gender blindness which preserves inequality instead. It creates an illusion of meritocracy that makes gender invisible by overlooking the differences in socially-constructed roles, identities, responsibilities, and other aspects between men and women, remaining male standards at a predominant position [10, 11]. For instance, women who aspire to become female judges often face “double-blind dilemma” [12]. Compared to male judges, they face multiple expectations but enjoy less appreciation, since they are often perceived as pleasant, or "too aggressive", but rarely just right [12]. Moreover, studies have shown that not only in Western discourse, but also in Southeast Asian regions such as Indonesia, judges are often associated with male images as symbols of “authoritative knower” [13]. This stereotype based on existing gender hierarchies sets obstacles for the career advancement of female judges by portraying them into the context of “other” in judicial authority [10, 13]. However, the difficulty of solving this problem has significantly increased due to the gender blind system. In the interview data between Kholiq and 20 judges, none of them expressed any awareness of the structural barriers during the promotion, instead they believed that it is because women lack competitiveness and professionalism that men are favoured [10].

Therefore, glass ceiling effect is given rise to. It is illustrated that the percentile of female judges is 18% in the First Instance Court in Indonesia, dropping to 14% in the Appeal court and 9% in the High Court, noticeably, none is in the Supreme Islamic Courts [10]. This set of data adds weight to the invisible barriers women face in the workplace that prevent them from rising to senior-level positions. Additionally, the diversity in the courtroom has been greatly weakened. Female judges, especially when dealing with women's issues such as rape and abortion, provide more depth and richness to the decision-making process by incorporating certain aspects of femininity and women’s experiences into it, such as supportive concern and emotional resonance. This representation of female judges can improve the judicial outcomes by guaranteeing women’s accessibility to justice and enhancing the judges’ gender sensitivity [10].

3.2. Proposal of improvement

Some remarkable aspects and doable methods will be provided to propel the disposal of gender inequality in the judicial system: Simply put, there is a monumental point that needs to be recognized, which is part of Eisenstein's feminist theory that liberalism, capitalism and patriarchal society complement each other [14]. It means that the contemporary calls and pursuits for liberty and equality

are wholly constrained to men's contexts of markets and public sectors while women are rewarded, if and only if, they are behaving like a boy and distant from other women [14, 15]. The neglection of this standpoint precisely contributed to the conflict between the legal promise of gender neutrality and the reality since capitalism is built upon patriarchy, leaving the values of traditional women's work at home and in the wage market to be further devalued [16].

To take a more practical example, the United States has been witnessing a rapid growth of the aging population since 1990, and the speculation suggests that the number of people aged above 65 will reach 22% by 2050 [17]. At the same time, the regular form of support and services for these increasingly large volume of elderly groups are generally undertaken by women due to their internalized identity as caregivers in patriarchal culture, presenting in the vast majority of women's participation in unpaid work at home or paid jobs in institutions for the caring of the old [16]. This task is of high demand for personal cost and sacrifice to ones' own disposable time as huge amount of care arrangement and patience are required which eliminates the probability for women to further pursue other forms of career aspiration. Nevertheless, jobs as nurturing roles are being labeled as the most inferior one in the midst of occupational hierarchy, just like women's roles of childbearing [18, 19]. This typically manifests the predicament of women today as their "feminine" virtue is significantly belittled that people overlook an important fact - women's contributions actually provide an undeniable role in the effective operation of the society as a whole (the same viewpoint can be found from sociologist Ansley's theory of alienation, where female partners absorb their husbands' frustrations in the workplace to ensure a continuous supply of healthy and fit labor). In order to tackle this issue, Eisenstein proposed that the praise for the culture and virtues of female love in the "private" world through channels like poets, movies and networks is not sufficient enough to empower women, as they live in both the private and public sectors [14]. Instead, women's personal struggle and experiences should be regarded as political and resolved through collective action and power such as generating more political advocate for the programme which offers material or financial support to children and the old rather than providing assistance only if all the family-based services have been exhausted [16, 20].

Thus it can be seen that, in order to built a genuine merit-based society and empower women, radical economic and societal changes are in urgent need which the social arrangements should be disruptively challenged and structural overturn should be taken place by extending gender equality from individual claims for fair treatment to a greater societal level [16]. Apart from that, women's consciousness raising should be widely disseminated, objectively accepting that the existence and immutability of gender differences in terms of motherhood and sexuality, so that a policy which not denying biological capacities nor using them as mechanisms for the justification of the prevalent patriarchal culture can be successfully established [16].

4. Conclusion

To summarize, this paper holds an open and critical attitude towards durable institutions in life rather than dogmatically and arbitrarily insist their justification and reaches the conclusion that inequality remains in the judicial system nowadays, taking ethnicity and gender into consideration. Still, there are certain degree of loopholes in this research, specifically reflected in the neglect of other important areas, such as whether the intersection between ethnicity and gender will further strengthen or weaken inequality, as well as the integration of religion, age, education level and so on. Additionally, due to the scarcity of data and past literature, as well as the limited abilities of the author, hybrid in the selection of regions and countries is applied in this paper, leading to a lack of deeper qualitative interpretation of the laws within a specific country. These are all aspects that can be improved.

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