



RACE, CONVENTIONAL CRIME, AND CRIMINAL JUSTICE: THE DECLINING IMPORTANCE OF SKIN COLOR

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ABSTRACT

Blacks in the United States are arrested, prosecuted, convicted, and incarcerated in numbers disproportionate to their percentage of the population. One explanation is that racial discrimination against Blacks pervades the American system of criminal justice. This study examined the nature and extent of racial discrimination in the criminal justice system by evaluating five propositions using data from extant literature. Little evidence was found to support the allegation that the criminal justice system systematically discriminates against Blacks. © 1999 Elsevier Science Ltd. All rights reserved.

INTRODUCTION

The relationship between race, conventional or street crime, and the criminal justice system in the United States has been studied for many years.¹ Research studies reported that Blacks were more likely than Whites to commit conventional crimes. The arrest ratios by race (Black/White) were particularly significant for the violent crimes of murder (8:1), forcible rape (5:1), robbery (10:1), and aggravated assault (4:1) (U.S. Department of Justice, 1997a). Official data indicated the incarceration rate per 100,000 adults in 1996 was 289 for Whites and 1860 for Blacks (Kennedy, 1997). The chance of a Black male going to prison during his life-

time was greater than one in four (29 percent), while a White male only had a one in twenty-three (4 percent) chance of being incarcerated. The Black/White ratio for women serving prison time was roughly the same. Black women were seven times more likely than White females to be incarcerated sometime during their lives (U.S. Department of Justice, 1997b).

The disproportionate involvement of Blacks, particularly young males, in the criminal justice system may constitute a national crisis (Chiricos, Eschholz, and Gertz, 1997; DiIulio, 1994; Noguera, 1997). Some criminologists blamed the disparities on racial discrimination (Baer and Chambliss, 1997; Gordon, 1988; Hogan, 1995; Lynch and Patterson, 1991; 1996; Maden,

1993; Morris, 1988; Petersilia, 1985; Short, 1997), while others asserted that social class biases accounted for the differences (Blau and Blau, 1982; Hagan, Gillis, and Simpson, 1985; Tittle, Villimez, and Smith, 1978). The latter believed that the greater involvement of Blacks in street crime was due to their abject poverty. The statistical evidence in support of this last argument was substantial. At every level of educational attainment, Whites earned more money than Blacks. A greater percentage of Whites than Blacks earned high school diplomas, college degrees, and advanced degrees.² Nearly 9 percent of Whites lived below the poverty line, compared to 28 percent of Blacks. Blacks were more than twice as likely as Whites to be classified as working poor (U.S. Bureau of the Census, 1997).

Fueling the racial/social class discussion was the controversy over which data best described the relationship, since the manner in which variables were measured would influence a study's findings (Farnworth and Leiber, 1989; Menard, 1995). Official data indicated that Blacks were overwhelmingly more likely to be arrested for street crimes than were Whites. On the other hand, self-report data demonstrated sharp reductions in race differentials. Even self-report data indicated that Blacks were more involved in conventional crime than Whites (Elliott, 1994; 1995). Victimization surveys reported large race differentials in offending (Hindelang, 1978; 1981; Hindelang, Hirschi, and Weis, 1979; Laub and McDermott, 1985), as well as in criminal victimization. Blacks were more likely to be crime victims than were Whites, particularly for the violent crimes of murder and non-negligent homicide, forcible rape, robbery, and aggravated assault (U.S. Department of Justice, 1997c).

Each method of data production has its own unique strengths and weaknesses, though criminologists are puzzled about which source of data is best for explaining the problem at hand. If official data involve inflated race differences, perhaps that is because of invalid or biased police reporting practices. If self-report and victimization studies point to fewer racial differences in offending, some possible explanations may be that: (1) people do not recall when and

whether they were an offender or victim (despite the visceral nature of criminal victimization), (2) respondents remember events as occurring more recently than they did because the events remain fresh in their memories (increasing measurement error), and, most simply, (3) offenders and victims lie to criminologists. For example, Hindelang, Hirschi, and Weis (1981) reported that Blacks minimized self-reports of criminal offending, thereby reducing reported race differentials. Self-reported error may also vary by age. Elliott (1994) discovered that during the adult years, self-reported race differentials were similar to official arrest data for serious criminal crimes.

Regardless of the technique used to produce the data, Blacks were found to be more involved in conventional crime than Whites (Elliott, 1994). The authors of the current study were uncomfortable assuming, *prima facie*, that a racist criminal justice system explains race differentials.³ Such an explanation is problematic for three reasons. First, conceptions of the criminal justice system as racist retard the implementation of policies, such as community policing, which may improve the criminal justice system generally. Racial antagonism complicated the implementation of community policing (see Skogan, 1990). Second, the perception of the criminal justice system as racist, aggravates the relationship between the public and those criminal justice agents whose job it is to serve the community. Third, the allegation of racism diverts attention from crime victims who are disproportionately Black.

METHODS AND PROPOSITIONS

Secondary analysis of the extant criminological literature was used to examine five hypotheses. The literature included studies employing official data (e.g., *Uniform Crime Reports*), self-report data (e.g., National Youth Survey), and victimization data (e.g., National Crime Victimization Survey).⁴ The analysis was used to address questions that these original data sets never intended, incorporate several different data sets and studies in order to address a com-

plex research question, and examine, in a larger scope, a criminological phenomenon (Senese, 1997, p. 200).

1. Police discretion is racially biased, resulting in higher Black arrest rates.
2. The arrest setting is an example of the practice of racial bias.
3. Incarceration rate differentials indicate racial bias.
4. If racial bias does occur, racial victimization rates should not be commensurate with racial arrest rates.
5. The "war on drugs" is biased against Blacks.

FINDINGS

Little evidence was found to support the assertion that the criminal justice system exercises systematic racial discrimination against Blacks.

Proposition 1: Police Discretion

Do police discriminate against Blacks who are suspected of a criminal offense? A common perception is that police generally discriminate against Blacks. For example, 31 percent of Blacks, compared to only 8 percent of Whites, believed police had very low moral or ethical standards (U.S. Department of Justice, 1997a), which may manifest in discriminatory practices. To assess whether the police discriminate against Blacks, the current study examined arrest data for a crime where police exercise extraordinary discretion and, implicitly, have tremendous opportunity to discriminate: driving under the influence of alcohol (DUI). Seemingly benign infractions, such as expired plates, disengaged taillight, nonilluminated license plates, obstructed view, swerving, driving too slow, and speeding offer probable cause for police to stop a motorist.

If police were intent on a racist application of the law, Blacks should constitute a disproportionate number of DUI offenders. They do not. In two separate studies, with more than 5000 people participating, it was reported for both adults and juveniles, that Whites were nine

times more likely than Blacks to be arrested for DUI offenses (U.S. Department of Justice, 1992a; 1997a). It is plausible that motor vehicle ownership and registration, as a function of socioeconomic status, were greater among Whites than Blacks.⁵ For a crime where it would be very easy for police to discriminate, Whites, not Blacks, were disproportionately arrested.

Proposition 2: Arrest Setting

The validity of arrestee accusations of police bias may be challenged since police often are responding (via 911 emergency calls) to highly volatile situations where offenders are frequently under the influence of drugs and alcohol. For example, 75 percent of spousal abuse victims reported that the arrestee was drinking alcohol. Thirty-six percent of the more than five million convicted offenders in the United States were drunk at the time of their arrest (U.S. Department of Justice, 1998a). Alcohol use by the offender, victim, or both preceded 50 percent of all violent criminal events (Roth, 1993).

The drug-crime link presents a logical dilemma for criminologists who blame race differentials in criminal offending on racial discrimination. First, police usually react to victim and/or witness calls for service; police do not typically patrol to exact a racist agenda. Claims that they do are largely anecdotal. Second, the arrest suspect's interpretation of what occurred during a police-citizen encounter is often clouded by drugs and alcohol. Who is more likely to misreport, the intoxicated offender or the police? Third, claims that police (at the point of arrest) exaggerated, inflated, or overcharged Blacks compared to Whites (e.g., Baer and Chambliss, 1997; Huizinga and Elliott, 1987) lacked empirical evidence, and, again, were largely anecdotal. Finally, what is the motivation for police to discriminate against Blacks? If the arrest scenario is a chaotic, visceral event almost always aggravated by drug and alcohol use, do police really have much of an opportunity to be racially selective in who they arrest? The current study does not dispute that some police discriminate against some Blacks, though whether they do varies among

individual officers and by jurisdictions (Black and Reiss, 1970; Piliavin and Briar, 1964).

Proposition 3: Incarceration

In his presidential address to the American Society of Criminology, Charles Wellford (1997) cautioned that a mostly Black prison population was evidence of racial bias in the criminal justice system. In a study of the interaction between race and sentencing, Jendrek (1984) found that Blacks received longer sentences than did Whites. Petersilia (1983) reported that minorities in Texas and California (states with the two largest prison populations) served longer sentences than Whites convicted of identical crimes.⁶ Bias may also be practiced behind prison walls. In a study of a medium-security prison, Poole and Regoli (1980) discovered that Black inmates were stereotyped by corrections officers as more dangerous and subsequently more likely to be officially reported for rule infractions than were White inmates.

Other evidence suggested that the criminal justice system is more lenient with Blacks than with Whites. Blacks were more likely than were Whites to receive nonfinancial release from jail for felony offenses despite anecdotal claims to the contrary (see Zatz, 1987, p. 84). Of all personal recognizance bonds received for felony cases, Blacks received 61 percent of them and Whites received 38 percent. Of all unsecured, nonfinancial felony releases from jail, 63 percent were Black and 37 percent were White. Of those rearrested for new felony cases while on felony bond, 12 percent were Black and 8 percent were White (U.S. Department of Justice, 1994a). Bond release was contingent on seriousness of offense (Lynch and Patterson, 1991), and Blacks were more likely than Whites to be arrested for serious violent crimes.

The administration of the death sentence is profoundly marked by alleged racial inequalities, yet Whites are executed more quickly than Blacks. The average elapsed time from conviction to execution from 1977–96 for Whites was 110 months; for Blacks it was 117 months. The evidence presented here suggests that when it comes to the contemporary application of the

death penalty, Blacks are not discriminated against.⁷

Proposition 4: Criminal Victimization

One fact often lost in statistics, reporting an overrepresentation of Black criminal offenders, is that there are relatively more Blacks than Whites who also are crime victims, particularly at younger, more criminogenic ages. In 1993, the homicide rate for Black males 12–24 years old was 115 per 100,000; the comparable rate for Whites was 12 per 100,000. For Black males age 25 and older, the homicide rate was 68 per 100,000; for the comparable group of Whites the homicide rate was only 8 per 100,000 (U.S. Department of Justice, 1994b). For handgun victimizations, Black males were four times more likely than Whites to be victims. Black females were almost four times more likely than White females to be crime victims. For Blacks of all ages, homicide was the fourth leading cause of death. For 15–24-year-old Black males, homicide was the leading cause of death (U.S. Department of Justice, 1994b). Nearly 80 percent of Blacks, compared to 59 percent of Whites, felt handgun laws should be more strict (U.S. Department of Justice, 1997a).

Substantial race differentials exist not only in criminal victimization, but also in concerns about becoming a crime victim. In 1997, it was reported that 24 percent of Blacks but only 6 percent of Whites worried about being murdered. Twenty-six percent of Blacks but 9 percent of Whites expressed concern about being seriously assaulted, stabbed, or shot. Thirty-two percent of Blacks, compared to 14 percent of Whites, experienced some distress about being sexually assaulted. Finally, 23 percent of Blacks and 18 percent of Whites worried about their homes being burglarized. For every year from 1982 to 1996 (except 1985), Blacks were more likely than Whites to report that they did not believe enough money was being allocated to reduce the rising crime rate (U.S. Department of Justice, 1997a).

Criminologists are often too busy worrying about criminal offenders to notice that “racist” policies, such as mandatory crack-cocaine laws (see Proposition 5 following), actually benefit

crime victims who are disproportionately Black. Criminologists generally ignore the racial epidemiology of criminal victimization, though the general public does not. Among others, present and former Black police chiefs in Baltimore, New York City, Cleveland, Detroit, Chicago, Philadelphia, and Houston have expressed concern about Black victimization. Former Washington, DC, Mayor Sharon Pratt Kelly asked President Clinton to employ the National Guard in the nation's capital to control the crime problem. In a recent national poll, 25 percent of Blacks reported crime to be the fundamental American social problem, while only 8 percent of Blacks stated that racism was the most serious social problem (Kennedy, 1997). Research has shown a drastic racial (Black/White) convergence in punitive attitudes toward crime and justice measures (DiMaggio, Evans, and Bryson, 1996).

Proposition 5: The War on Drugs

The impact of the war on drugs on Black neighborhoods has been substantial (Palermo, 1996). In each year from 1982 to 1996 (except 1985 and 1987), Blacks were more likely than Whites to report that more spending was needed to address the nation's drug problem (U.S. Department of Justice, 1997a). Some criminologists (Chambliss, 1994; 1995; Tonry, 1994; 1995) pointed to the sentencing of persons to mandatory prison terms in federal prisons, as evidence of racial bias in the criminal justice system. Offenders in federal prison were almost three times as likely to be incarcerated for drugs than were state inmates (U.S. Department of Justice, 1992b).

The "casualties" of the war on drugs, primarily federal inmates, were typically older, better educated, and from more stable home environments than were state inmates. Fifty-eight percent of federal inmates were drug offenders (21 percent of state inmates were drug offenders). Forty-three percent of federal inmates had never been incarcerated or on probation prior to their current sentences, while 47 percent of state inmates were incarcerated for violent convictions. Casualties of the war on drugs appeared to be

less dangerous than state prison inmates (U.S. Department of Justice, 1992b).

An additional debate regarding the war on drugs revolves around the disparity in sentencing for offenses involving powder cocaine (most often used by Whites) and crack-cocaine (most often used by Blacks). The penalties for possession of crack-cocaine are much greater than are the penalties for powder cocaine. Federal mandates established a 100:1 quantity ratio between the amount of powder and crack-cocaine needed to trigger mandatory minimum sentences (Kennedy, 1997). The average possession amount of powder cocaine for federal inmates was 183 pounds, for crack-cocaine, it was only 2 pounds (U.S. Department of Justice, 1992b). Some criminologists interpreted this disparity as proof of racial bias (Tonry 1994; 1995). Perhaps a different interpretation should be considered. First, the sizable weight disparity between powder and crack-cocaine was illustrative of the differences in how the two drugs were purchased and distributed. Crack is cheaper, sold in smaller quantities, and often sold in more volatile settings than powder cocaine (U.S. Sentencing Commission, 1995). Second, though no pharmacological differences exist between powder and crack-cocaine, the effects of the drugs are very different. Smoking crack immediately affects the lungs and brain, while intranasal ingestion of powder cocaine takes three to five minutes before psychoactive effects occur. The duration of the "high" from powder cocaine is approximately 20 minutes, for crack it is only about 10 to 12 minutes (U.S. Department of Justice, 1998b). Once the psychoactive effect is over, a dysphoric crash occurs characterized by fatigue, depression, and most importantly, the insatiable need to have more of the drug. Crack is a more transitory and compulsive drug than powder cocaine. Third, crack, not powder cocaine, is a criminological enterprise for the most criminogenic group in the United States, young males. From 1985 to 1992, the juvenile homicide rate, number of juvenile handgun homicides, and non-White juvenile drug arrest rate doubled (Blumstein, 1995; Travis, 1998). As crack-cocaine use proliferated in American cities, young males became more involved in an illicit drug economy characterized by violent

crime and guns (Blumstein and Cork, 1996). The disparity between powder and crack-cocaine may not be a consequence of race, but of the criminogenic differences between the drugs. Drug sales and consumption patterns depend on the substance. Crack-cocaine users are more likely than powder cocaine users to know numerous dealers, to be transient, and to purchase the drug in their own neighborhoods. These differences shaped the way police, service providers, and policymakers addressed the problem (Riley, 1997).

After all this discussion of racial disparities in drug sentencing, who actually was in federal prison? The racial composition of federal prisons was 38 percent White, 30 percent Black, and 28 percent Latino (compared to state prisons which were 35 percent White, 46 percent Black, and 17 percent Latino). More than 80 percent of the Latinos in federal prison were drug offenders and 18 percent of federal inmates were not United States citizens. Whites and Latinos were most victimized by the war on drugs (because of their disproportionate numbers in federal prison), therefore, it may be argued the greatest casualties of the war on drugs were Latinos and Whites, not Blacks.

DISCUSSION

Many criminologists assumed racial disparities in the criminal justice system were the product of racism, however, three viable alternative explanations existed. First, the overinvolvement of Blacks in the criminal justice system reflected actual offending patterns, not systematic racial bias (Cohen and Kluegel, 1978; Hindelang, 1978; LaFree, 1995; cf. Chambliss, 1994; 1995). Myriad studies (e.g., Blau and Blau, 1982; Hagan, Gillis, and Simpson, 1985; Short, 1997; Tittle, Villimez, and Smith, 1978) demonstrated that the Black involvement in conventional crime was largely a function of class position and poverty, yet, at the same time, many criminologists refused to believe that Blacks were actually committing various street crimes. They believed instead that a racially biased criminal justice system was systematically and unscrupulously forcing Blacks

into jails and prisons. Second, racial involvement in conventional crime was not an essentialism argument. The epidemiological data indicated that crime was primarily the activity of young males (Hirschi and Gottfredson, 1983). Discussions of "Black crime" ostensibly denoted young, Black male crime. The same holds for "White crime," "Latino crime," and "Asian crime." Crime is neither a Black problem nor a White problem, it is a young male problem. Even though a distinct segment of any racial or ethnic population is more involved in crime, would not systematic racism on the part of the criminal justice system punish all segments of a minority population equally? Or, are young males (of any race or ethnic group) overrepresented in official crime data because, as previously mentioned, they commit more crime? Third, racial disparities in the administration of justice should be greatest during periods of American history when racial discrimination has been most virulent. Such disparities were common during the slave era, the period of Reconstruction, and Jim Crow segregation. For example:

- In slave-era Virginia, Black slaves were subject to the death penalty for seventy-three separate capital offenses. Whites were subject to the death penalty for one offense, first-degree murder (Kennedy, 1997, p. 77).
- During the Reconstruction, the Mississippi Black Code made it a criminal offense for Blacks to make "insulting gestures" or to function as ministers of the Gospel without a license from some regularly organized (i.e., White) church (Kennedy, 1997, p. 85).
- In 1936, the Supreme Court ruled in *Brown v. Mississippi* that Blacks had the right to be free of torture used to coerce forced confession (Kennedy, 1997, p. 104).

The racial gap (Black/White) in state prisons in 1932 was approximately 4 to 1, in 1979 the gap was 8 to 1 (Wilbanks, 1987). Today there are more Blacks (506,950) than Whites (394,760) in state prisons despite the fact Whites comprise over 82 percent of the U.S. population and Blacks comprise only 13 percent (U.S. Department of Justice, 1997a). Does this mean the contemporary United States is more racist than it was during the Great Depression? Similarly,

the state prison racial gap varies by region. Minnesota had the greatest Black/White ratio (23:1) while Mississippi had the second lowest (3:1) (Stark, 1987; Wilbanks, 1987). Does this mean Minnesota is roughly eight times more racially biased than Mississippi? It is naive to look at race differentials in arrest rates (Huizinga and Elliott, 1987) or incarceration rates (Wellford, 1997) and hastily conclude that racial bias accounts for the unexplained variation in any given research study. The evidence reported here suggests that racism does not pervade the American system of criminal justice to the degree suggested by some criminologists (Arrigo, 1998; Morales, 1978; Skolnick, 1996).

This study hesitates to conclude that racism is not practiced *at all* by the criminal justice system. There are reasonable alternative interpretations of this study's findings. For example, even though Blacks were proportionally less likely than Whites to be arrested for DUI offenses, Blacks were more likely than Whites to be stopped and questioned by police (Kennedy, 1997), as well as stereotyped and suspected of more serious violent crimes (LaFree, 1995). For these reasons, Blacks may be deterred from driving under the influence of alcohol or drugs since research indicates that increasing the certainty of apprehension deters unwanted behavior (Reynolds, 1996).

Though Whites were executed more quickly than Blacks, the crimes they committed may have been more heinous, thereby reducing the amount of time needed for appeals. For example, nearly all serial killers were White (Hickey, 1997). What this suggests is that there may be less doubt about the guilt of Whites convicted of death penalty crimes than there is for Blacks.

Some criminologists (Baer and Chambliss, 1997; Chambliss, 1994; Quinney, 1970) conceptualized racism as dichotomous, though the authors of this article believe racism is a continuous variable (Hindelang, 1978). In this sense, racial bias has continuous, qualitatively different levels of measurement. In earlier historical periods, racial bias in all social institutions, including the criminal justice system, was quite pronounced, however, this has changed. Racial bias in the criminal justice system and racial differences between Blacks and Whites have

experienced a sharp diminution (Crank, 1998; DiMaggio, Evans, and Bryson, 1996; Hall and McLean, 1998; Kennedy, 1997; Pruitt and Wilson, 1983; Zatz, 1987). The findings presented here indicate the criminal justice system does not systematically discriminate against Blacks.

NOTES

1. The present discussion of race was restricted to Blacks and Whites. Latinos were excluded because of the low reliability in criminal justice classification of persons of Hispanic heritage. Asian/Pacific Islanders and American Indians were excluded due to their low numbers in arrest and incarceration data. The present discussion of "crime" was confined to conventional or street crime. Political, organized, and white-collar or corporate crime were not included. The authors of this study acknowledge that offender and victim epidemiological data for these other types of crime are different from street crime.

2. The race-education gap, however, is converging. For example, from 1973–93, the high school dropout rate for Whites fell from 5.7 to 4 percent, while the high school dropout rate for Blacks fell from 10 percent to 5.4 percent (U.S. Bureau of the Census, 1995).

3. A racist criminal justice system was defined as the systematic discrimination against Blacks when compared to the nondiscriminatory practices against Whites.

4. This article is descriptive in the sense that it is not concerned with causality, rather with the empirical operation of the criminal justice system. This article is exploratory because it examines a rather uncommon, if not unpopular, idea of a nonracist criminal justice system. As a consequence, the study is methodologically incapable of generalization in a statistical sense. Analyzing existing statistics and extant literature has validity and reliability limitations (see Babbie, 1992, p. 329–36), though the substantive benefits of such a method are useful.

5. This study was unable to find vehicle registration data for Blacks and Whites and thus could not control for population representation. It should be noted, however, that the purchasing power of Blacks has doubled since 1990 (Sewell, 1998), therefore, the lack of Black DUI arrests were not necessarily a function of socioeconomic status. For example, Blacks were less likely to be involved in automobile accidents than Whites, Asian/Pacific Islanders, Latinos (regardless of race), and American Indians (U.S. Department of Transportation, 1998).

6. Klein, Petersilia, and Turner (1990) later found prior record was the best indicator of prison sentencing when controlling for a variety of demographic variables such as race. Hindelang, Hirschi, and Weis (1981) also found prior criminal record, not race, was most important in predicting prison sentencing. Others found legal factors, not race, best explained prison racial disparities (Spohn, Grohl, and Welch, 1981).

7. For a review of the historically racist application of the death penalty, see Kennedy (1997). Research on racial victim-offender pairings has shown systematic bias against

Black offenders killing Whites. The majority of these executions, however, have occurred in the "Death Belt" stretching from Texas to Virginia. This article mentions and acknowledges the historically racist practices of states in the southern United States.

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