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RACIAL DISCRIMINATION IN THE CRIMINAL JUSTICE SYSTEM: FINDINGS AND PROBLEMS IN THE LITERATURE

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ABSTRACT

Race-based conflict theory predicts substantial, institutionalized discrimination against minorities within criminal justice systems. This article examines the nature and extent of racial discrimination by police, courts, and correctional agencies in the United States. The body of research analyzed points to racial effects at certain points in the criminal justice system and in certain social contexts, but it also suggests that discrimination is less extensive than what is anticipated by conflict theory. In critically evaluating the literature, the article also points to a number of methodological and analytical deficiencies that require attention in future research—problems, which, if rectified, may lead to documentation of more subtle forms of discrimination and identification of important contextual factors.

INTRODUCTION

One of the most important questions in the field of criminology has been whether criminal justice agencies operate in a discriminatory fashion toward racial and ethnic minorities. This article revisits this issue by examining the evidence of discrimination against African Americans and Hispanics in the United States, highlighting some deficiencies in the empirical literature, and assessing the explanatory power of the most popular theoretical perspective in this area, conflict theory.

In its original formulation (Quinney, 1970, 1977; Chambliss and Seidman, 1971) the conflict perspective centered on social class rather than on race or other statuses. Discrimination

against minorities was explained as a function of their generally low socioeconomic position rather than their racial/ethnic status per se. This *class-based* version of the theory is distinguished from a *race-based* variant (Hawkins, 1987), in which racial and ethnic inequality and discrimination are the prime predictors of disparities between racial and ethnic groups in their treatment by criminal justice agencies. This article examines the empirical literature¹ to address two tenets of race-based conflict theory: (1) that there are substantial disparities in the criminal justice system's treatment of Whites and minority groups and (2) that these disparities are due to racial discrimination rather than some other factors. The theory predicts that discrimination is not only statistically significant,

but also institutionalized and pervasive throughout the various stages of the criminal justice process. Hawkins (1987:724) describes the central proposition of race-based conflict theory as the prediction that “nonwhites will receive more severe punishment than whites for all crimes, under all conditions, and at similar levels of disproportion over time,” and Mann (1993:ix, 160) claims that racial discrimination is “endemic” to, “ingrained” in, and “permeates” the American criminal justice system.

The article also draws attention to several methodological and analytical problems in the literature, problems that may have a distorting effect on assessments of the nature and extent of racial discrimination in criminal justice processing. Such problems include insufficient analysis of subtle or indirect forms of bias, inappropriate aggregation of data, and inattention to the influence of contextual factors.

POLICING

Surveys have consistently shown that members of minority groups are more likely than Whites to believe that police are prejudiced and discriminate against minorities. The existence of police prejudice has been documented in research dating from the 1950s (Skolnick, 1966; Bayley and Mendelsohn, 1969; Westley, 1970). A classic study of Boston, Chicago, and Washington, DC (Black and Reiss, 1967) found that 79 percent of White officers and 28 percent of Black officers working in predominantly Black neighborhoods expressed prejudice against Blacks while in the company of researchers. (Fewer of their counterparts working in racially mixed areas expressed anti-Black prejudice.) More recently, a survey of 650 officers in the Los Angeles Police Department found that one-fourth agreed that “racial bias on the part of officers toward minority citizens currently exists and contributes to a negative interaction between police and the community” (cited in Christopher Commission, 1991).

The existence of police prejudice toward minorities should not be surprising. American police officers live in a society with a long history of racism, and they frequently come into con-

tact with persons in high-crime, minority neighborhoods. Over time, officers working in these neighborhoods tend to typify residents as being “troublesome,” “belligerent,” or “anti-police.” When this happens, police lose sight of the fact that many residents of these communities are law-abiding and positively disposed toward the police.

Prejudice leads some police officers to engage in discrimination against minorities (i.e., less sensitive or more punitive treatment), but discrimination may also be due to other factors. These include institutionalized language barriers between police and some ethnic groups (such as Hispanic immigrants: Hogan and Hartson, 1991), cumulative police experiences with disrespectful or hostile residents in certain minority neighborhoods (Piliavin and Briar, 1964; Wallach and Jackson, 1973; Weitzer, 1995), and the low costs to police officers of aggressive actions in these communities, costs that arguably would be higher (in terms of citizen complaints or other actions) if they occurred in White neighborhoods. Each of these factors may lead even unprejudiced officers to act in a discriminatory manner.

One method of measuring police discrimination is the observational study in which police officers are accompanied on routine patrols by researchers who take detailed fieldnotes of their observations. Black and Reiss (1967) studied 3,826 police–citizen interactions in Boston, Chicago, and Washington, DC and found that prejudiced officers generally did not discriminate against Blacks; an observational study in London produced similar results (Smith and Gray, 1983). Other research reaches contrary conclusions, however. Observations of 5,688 police–citizen contacts in Rochester, St. Louis, and Tampa/St. Petersburg found that police were significantly more likely: (1) to arrest suspects of whatever race in poor neighborhoods than in more affluent ones, and since poor communities are disproportionately Black this generated more Black arrestees; (2) to arrest suspects identified by White complainants more often than those identified by Black complainants, perhaps because police may see Black complainants as less worthy of legal protection or because they have stronger doubts about the credibility of

Black complainants; and (3) to threaten or use force in poor Black or racially mixed neighborhoods than in other neighborhoods (Smith, 1986; Smith and Visser, 1981; Smith, Visser, and Davidson, 1984). Another study (Piliavin and Briar, 1964) found that Black youths were more likely than Whites to be stopped and interrogated by police and that Blacks who were suspected of law-breaking were treated more harshly (citations, arrests). Some of these actions appeared to be unjustified, but it was also the case that Black youths were twice as likely as Whites to be uncooperative or disrespectful toward police. Other observational research (Black and Reiss, 1967; Sykes and Clarke, 1985) has similarly found that non-White citizens were more likely than Whites to show unilateral disrespect toward police officers or to engage in bilateral, mutual insults with officers.

It should be noted that findings from observational studies may be skewed by the very presence of observers; police officers may be on their good behavior when under observation, fearing that any misconduct would reflect poorly on the department or come to the attention of superiors. The building of rapport between observer and officers can minimize researcher reactivity, but it is still likely that the amount of mistreatment of civilians is higher under normal conditions, when observers are not present. Conclusions about the frequency of discrimination based on observational studies should, therefore, be treated with some caution.

It is well known that intrusive and disruptive police actions take place more often on the streets of minority neighborhoods than in White neighborhoods. The President's Commission on Law Enforcement (1967) noted that "aggressive preventive patrol" and field interrogations—where officers stop, question, and sometimes search persons on the street—occurred most often in minority neighborhoods.² A survey of 437 police officers working in Black neighborhoods in eleven cities found that one-third admitted to frequently stopping people for questioning and one-fourth said they frequently searched people (Groves, 1968). African Americans and Hispanics are more likely than Whites to report that they have been stopped and questioned at some time in their lives (e.g., Bayley and Men-

delsohn, 1969:116). Such contacts sometimes involve gratuitous, obnoxious behavior on the part of police officers, particularly those who are members of special units looking for drugs or weapons on the street. While neither Blacks nor Whites like to be stopped and searched, Whites are more likely to see it as justifiable, whereas Blacks more often define it as harassment and leave the situation angry (Bordua and Tifft, 1971).

Police harassment may also take the form of arrests. While it is difficult to prove that harassment is the motive for an arrest, it perhaps can be inferred from certain police practices. In at least some jurisdictions, Blacks and Hispanics are more likely than Whites to be freed after arrest (Petersilia, 1983; Hagan and Zatz, 1985; Barnes and Kingsnorth, 1996). Research on arrests that result in prosecution—a rough measure of whether police had good grounds for the arrest—found that for the less serious, Part II offenses (but not the more serious, Part I, Index offenses) non-White arrestees were more likely than Whites to be released without charge (Hepburn, 1978). The most significant differences were for the offenses of prostitution, gambling, vagrancy, and public drunkenness. Neighborhood context also made a difference; for both Part I and II offenses, the proportion of cases dropped for non-Whites was higher than for Whites in neighborhoods where the non-White population was large. In neighborhoods of low or medium non-White populations, non-Whites were not treated significantly different than Whites.

These studies suggest *not* that police and prosecutors were discriminating *in favor* of African Americans and Hispanics by releasing them, but rather that the original grounds for arrest were, in general, weaker for African Americans and Hispanics. The arrest-release dynamic has led some authors (Zatz, 1987) to conclude that these arrests are made for deliberate harassment purposes, especially with regard to those individuals who are repeatedly arrested and released.

The most serious police action is the shooting of a citizen. American police are more apt to shoot (and to fatally shoot) minorities than Whites (Milton et al., 1977; Blumberg, 1989).³

Between 50 and 60 percent of the persons killed annually by police are minorities. Of the 223 civilians killed by the police in New York State from 1981 to 1985, the vast majority were Black (39 percent) or Hispanic (34 percent).⁴ In Los Angeles from 1974 to 1978, 50 percent of the persons killed by police were Black (18 percent of L.A.'s population) and 16 percent were Hispanic (24 percent of the population; Meyer, 1980). Some scholars believe that police are actively discriminating against minority citizens, with "one trigger-finger for whites and another for blacks" (Takagi, 1974), but most researchers point to factors other than racial bias to account for the disparity between White and non-White victims. A key determinant is said to be African Americans' disproportionate involvement in violent crime, which increases their chances of being encountered and shot by police. This argument is plausible in general terms, but what is needed is careful examination of the specific circumstances and larger contexts of shooting incidents.

The few studies in this genre provide mixed evidence of a race effect. Blumberg's (1981) examination of Atlanta and Kansas City found that circumstances (victim assault on officer, possession of weapon, firing of a gun) did not differ significantly for Black and White victims of police shootings. Blacks and Whites in the same situation were treated similarly. A race effect has been found, however, in some other jurisdictions. A Los Angeles study (Meyer, 1980) examined victims' "precipitating actions," such as using or displaying a weapon, assaulting an officer or another civilian, appearing to reach for a weapon, and disobeying a command to halt. A greater proportion of Blacks than Whites or Hispanics were shot for the last two reasons, the most questionable of the circumstances examined. A study of Memphis and New York City (Fyfe, 1981, 1982) examined whether victims were engaged in a violent crime, carrying a weapon, or had attacked a police officer at the time of the shooting. In New York, these factors, not the victim's race, explained most shootings, but in Memphis there was, indeed, evidence of racial bias. There, unarmed and nonassaultive Blacks were shot and killed at a rate eighteen times higher than Whites; un-

armed but assaultive Blacks were killed at a rate five times higher than Whites; and Blacks armed with guns were killed at twice the rate of Whites. Fyfe (1982:721) concludes that the Memphis police did "differentiate racially with their trigger fingers," and he suggests that the difference between Memphis and New York was a function of the presence of clear departmental shooting guidelines in New York, absent in Memphis. The introduction of restrictive firearms policies has been cited by other researchers (Meyer, 1980; Sherman, 1983; Blumberg, 1989) as a factor reducing the frequency of police shootings.

In conclusion, it is clear that police are involved in *at least some discrimination* against members of racial and ethnic minorities, and probably more than what has been detected in the studies reviewed above. Most police practices are of low visibility and are infrequently monitored by superior officers or researchers. Patrol officers have great discretion in how they deal with civilians on the street, and they may discriminate, occasionally or routinely, overtly or covertly, along racial lines without anyone finding out. Having said that, the extant literature suggests that both the frequency and scope of police discrimination may be less than what is anticipated by race-based conflict theory, which predicts fairly extensive and systematic bias.

THE COURTS

Research on racial disparities in the judicial system is abundant in comparison to our other two arenas: policing and corrections. Black defendants are more frequently convicted and more harshly sentenced (by both White and Black judges) than White defendants (Uhlman, 1978). Social class appears to explain much of this disparity. First, Black defendants are more apt than Whites to have prior criminal records for more serious crimes, which increases the chances of longer sentences if convicted. Second, Blacks are more likely to lack resources and, thus, are less able than Whites to make bail, leaving them in jail until trial (Lizotte, 1978). Poor Blacks are no more likely than poor Whites to fail to make bail, but, because Blacks are more likely than

Whites to be poor, they are effectively discriminated against—by virtue of social class, not race per se. We know that capacity to afford bail has a ripple effect on a person's fate at later stages of the judicial process. Persons who do not make bail are in a weaker position to prepare a defense and, thus, are more likely to be convicted than similarly-charged defendants who make bail (Mann, 1993:167–70).

Third, minority defendants are more apt than their White counterparts to be unable to afford private counsel, which makes them eligible for public defenders or court-appointed attorneys. By virtue of their high caseloads and, as employees of the state, a tendency to identify with prosecutors and judges in the court “workgroup,” public defenders generally provide a lower caliber defense than what private attorneys offer.⁵ In many jurisdictions, public defenders and state-appointed attorneys are grossly underpaid, poorly trained, or simply lack the resources and time to prepare for a case—a pattern documented in cases ranging from the most minor to the most consequential, capital crimes (Bright, 1994). Because minority defendants are more likely than Whites to be indigent, they are more likely to have poor-quality legal representation, which increases the chances of unfavorable outcomes (Lizotte, 1978; Spohn, Gruhl, and Welch, 1981).

Whites appear to enter into plea bargains more frequently than minorities, and to get better deals from prosecutors. An analysis by the *San Jose Mercury News* (December 8–10, 1991) of 683,513 criminal cases in California found that, “At virtually every stage of pre-trial negotiation, whites were more successful than non-whites.” Whites were more successful in getting charges reduced or dropped, in avoiding “enhancements” or extra charges, and in getting diversion, probation, or fines instead of incarceration. At the federal level, White defendants in drug cases are more likely than Blacks and Hispanics to plea-bargain and thereby avoid mandatory minimum prison sentences for drug offenses, according to a 1990 study of 1,165 cases by the U.S. Sentencing Commission (Thompson, 1991). Twenty-five percent of Whites, 18 percent of Blacks, and 12 percent of Hispanics were able to reduce their sentences in this manner. It is unclear whether the disparity is due to

Blacks’ and Hispanics’ distrust of the criminal justice system or because prosecutors were less inclined to offer them attractive deals.

Sentencing is one of the most important stages in the criminal justice process and it is well-established that there are disparities, overall, in the sentences given to Whites, Blacks, and Hispanics in the United States. Here, the distinction between *disparities* and *discrimination* is important. Disparities in the treatment of racial groups may be explained by factors other than racial bias, such as the legal factors of offense seriousness or defendants’ prior criminal record. If a race difference remains after controlling for legal factors, it may be due to discrimination by criminal justice officials.

Is there evidence of racial bias at the sentencing stage? Comprehensive reviews of the older literature (Hagan, 1974; Kleck, 1981) found that when offense type, prior record, and other legal factors were controlled, support for the racial discrimination thesis in noncapital sentencing was virtually nil.

What about the more recent studies? A review by Chiricos and Crawford (1995) of thirty-eight sentencing studies published since 1975 (yielding 145 estimates of the race/incarceration relationship) found that, when prior record and seriousness of crime were controlled, Blacks were at a disadvantage in terms of *length of sentence* in only 15 percent of the estimates. In most cases, Blacks did not receive longer sentences than Whites for the same crime and with the same criminal record. African Americans were at a greater disadvantage, however, on the *incarceration* variable—that is, whether or not the offender was incarcerated at all. Blacks were at a disadvantage in 41 percent of the estimates, whereas Whites were at a disadvantage in only 4 percent.

Chiricos and Crawford (1995) examine racial effects in three different contexts: southern versus nonsouthern states; places with high and low unemployment; and places with high and low percentages of Blacks in the population. Examining those findings that were both positive and statistically significant and controlling for criminal record and crime seriousness, they found that Black defendants were more likely to be incarcerated in the South (53 percent of the

time), than outside the South (34 percent of the time). In no cases were Whites incarcerated more often in the South, and in only 7 percent of cases outside the South. Regarding unemployment, Blacks were disadvantaged 58 percent of the time in cities and states whose unemployment rate was greater than the national average, compared to 38 percent of the time in areas where unemployment was less than the national average. Regarding racial composition, Black defendants were about twice as likely to be incarcerated in states with a high percentage of Blacks in the population (50 percent of the time) than in states with a low percentage of Blacks (27 percent of the time). (Whites were at a disadvantage only 8 percent of the time in states with a high proportion of Blacks and in no instance in states with a low proportion of Blacks.) This lends support to the “threat hypothesis,” which holds that the size of the minority population is related to a dominant group’s perception of threat and its efforts to control the threatening minority group (Jackson and Carroll, 1981). High proportions of Blacks in a state may be construed as a threat to Whites (the dominant group), generating higher Black incarceration rates.

The three variables examined by Chiricos and Crawford (1995) are obviously not exhaustive of the possible forces at work, but the authors’ *contextual* analysis does advance our understanding of the structural arrangements shaping racial outcomes in incarceration. Although the theoretical implications are not developed by the authors, the findings lend support to race-based conflict theory: they indicate tighter control of Blacks in the South, consistent with traditional racial domination in that region; intensification of controls over disadvantaged groups where unemployment is high; and greater controls on minorities when their “threatening” presence in a population is high.

One type of differential sanctioning that has recently become a matter of controversy is the treatment of cocaine offenders. Under federal law there is a 100:1 disparity in the amount of the drug necessary to trigger mandatory sentences for powder and crack cocaine trafficking: it takes 500 grams of powder, but only five grams of crack to generate a five-year manda-

tory minimum prison sentence. A ten-year mandatory minimum sentence awaits persons convicted of trafficking 5,000 grams of powder and fifty grams of crack. Simple possession of five grams of crack draws a five-year sentence, while possession of the same amount of powder brings no more than a one-year sentence. Because Blacks are overrepresented among crack defendants, they are much more likely to receive stiff mandatory sentences than Whites and Hispanics, who are more likely to be prosecuted for powder cocaine offenses. According to the U.S. Sentencing Commission (1995), of offenders convicted of powder cocaine offenses in federal courts in 1993, 27 percent were Black, 32 percent were White, and 39 percent were Hispanic. Of those convicted of crack cocaine offenses, however, 88 percent were Black, 4 percent were White, and 7 percent were Hispanic. In 1995, the Sentencing Commission recommended that Congress reduce the penalty for crack offenses to make it consistent with the penalty for powder cocaine—a recommendation that was rejected by Congress and President Clinton on the grounds that crack is more addictive and has a more devastating impact on neighborhoods.

What about sentencing in capital cases? The death penalty, historically, has been disproportionately imposed on Blacks. Over one-half (54 percent) of the 3,859 persons executed between 1930 and 1972 were Black, more than four times their percentage of the population. Since 1976, when capital punishment was reinstated by the Supreme Court, 232 persons have been executed, ninety-one of whom (39 percent) were Black. Again, this does not, in and of itself, indicate racial discrimination, since Blacks also account for 39 percent of those on death row (Mann, 1993:202). To better judge whether discrimination has occurred, we need to control for legal factors and to examine both the race of the perpetrators and the race of the victims.

In the American South, historically, the death penalty was meted out for rape. Here, the evidence of racial discrimination is overwhelming: Blacks accounted for 405 of the 455 persons executed for rape between 1930 and 1972 and most of them had raped Whites (Wolfgang and Riedel, 1973; Kleck, 1981). This kind of dis-

crimination has now disappeared because of a 1977 Supreme Court ruling that a death sentence for rape (of an adult) was an excessive punishment and, thus, unconstitutional.

Then there are capital murders: Early studies that produced findings of discriminatory application of the death penalty were typically based on older data from southern states and each failed to control for prior record or other potentially influential factors (Kleck, 1981). Does more recent research paint a different picture? A seminal study by Baldus, Pulaski, and Woodworth (1983) of 2,484 murders in Georgia in the 1970s found that defendants whose victims were White were 4.3 times as likely to receive a death sentence as defendants whose victims were Black. Blacks who killed Whites were most likely to receive the death penalty: 22 percent of these cases resulted in the death penalty compared to only 1 percent of the cases involving Black offenders and Black victims.

Other research has confirmed that race of victim is a better predictor of sentences than race of defendant. In Florida, Blacks who killed Whites were forty times more likely to be sentenced to death than Blacks who killed Blacks and five times more likely than Whites who killed Whites (Bowers and Pierce, 1980).⁶ A study of eight states found that Blacks who killed Whites were by far the most likely to receive a death sentence (Gross and Mauro, 1984). A comprehensive review of the death penalty literature found a clear pattern of racial disparity in death sentences: In twenty-three of the twenty-eight studies reviewed, “race of victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty” (General Accounting Office, 1990:5). Persons who murdered Whites were consistently more apt to receive a death sentence than persons who killed Blacks, whereas race of defendant was less strongly associated with outcomes. This is also true for executions. Over two-thirds of the African Americans executed since 1976 killed Whites (Bohm, 1991)—although most capital murders are intraracial—whereas only two Whites have been executed for killing a Black person, one in 1991 and one in 1995.

How can we explain this disparity? Prosecutors are the key decision makers in this area.

They set the original charge (which determines whether the death penalty will be possible after conviction); they can negotiate plea bargains (allowing death-eligible offenders to avoid a death sentence); and they have discretion in requesting the death penalty if the case goes to trial. Studies of South Carolina, Florida, Georgia, Kentucky, New Jersey, and some other states have consistently found that prosecutors were significantly or substantially more likely to seek the death penalty for Blacks who murdered Whites than for Blacks who killed Blacks (Radelet, 1981; Paternoster, 1983; Bohm, 1991). It is possible that White prosecutors, judges, and jurors are more horrified by murders of Whites than non-Whites, especially when a minority offender kills a White person, and that this affects prosecutorial decisions and sentencing patterns. In other words, the killing of a White person may be a *de facto* aggravating circumstance influencing death penalty decisions, whereas non-White victims are apparently devalued (Gross and Mauro, 1984; Hawkins, 1987). It may or may not be a matter of conscious or intentional racial bias by these court actors, but the outcomes nevertheless appear discriminatory.

The literature reviewed above has addressed overall patterns or *aggregate effects* in sentencing—that is, findings on the combined decisions of actors in a particular locale. The problem is that aggregate findings can mask important individual-level differences among judges; a finding of no racial bias at the city or state level does not necessarily mean that no discriminatory decisions are being made, though that is a common inference from aggregate findings. Some judges treat Whites and minorities equally; others are more lenient toward Whites or more lenient toward minorities. If one looks at an entire court or several courts, the actions of individual judges may cancel one another out, leaving the impression of racial impartiality in that locale. Gibson’s (1978) study of Fulton County, Georgia shows how this dynamic can work. Reviewing 1,219 felony cases from 1968 to 1970, Gibson found no evidence of discrimination by the court as a whole (i.e., the court meted out similar sentences to Blacks and Whites), but he did find substantial variation among the eleven judges. At one end of the spectrum, a judge

gave 56 percent of Blacks and 24 percent of Whites severe sentences, while at the other pole a judge gave 67 percent of Whites but only 11 percent of Blacks severe sentences. Many defendants, thus, seem to have received unfair treatment from individual judges. Gibson argues that Blacks were indeed discriminated against by some judges and Whites were discriminated against by other judges, but this produced a “canceling out” effect that gave the appearance of broad impartiality by the court. The reasons for discrimination were suggested in interviews with the judges: their social backgrounds and attitudes about crime, punishment, and race were associated with their sentencing decisions. Gibson makes a compelling case for examining individual actors, in addition to the court as a whole.

In sum, while there appears to be less support for the racial discrimination thesis, in non-capital cases, than some believe, the amount of bias may be greater than what the research literature suggests, for several reasons. First, a finding of a small *aggregate* race effect at a particular point in the criminal justice system can still translate into a substantial number of *individuals* who are treated unfairly. Second, small or even statistically insignificant amounts of discrimination at different stages of the criminal justice process (bail or pretrial detention, type of legal representation, prosecution, conviction, sentencing) can add up to significant inequalities in final outcomes, what has been called “cumulative disadvantage” (Zatz, 1987). Third, discriminatory actions at early stages may have undetected effects on later decisions. Some defendants have already experienced disadvantages before they face a (fair) sentencing judge, but this will remain hidden in a study confined to the sentencing stage. Fourth, aggregate findings can obscure discriminatory practices of individual criminal justice agents. A prosecutor or judge may have a record of acting against or in favor of minorities, on the basis of personal prejudice or social background, but this discrimination may not be captured in analyses of overall court outcomes. We should, thus, be cautious in drawing conclusions from studies that report group patterns unless the decisions of individual officials are also examined.

With regard to sentencing in the most important, capital cases, there is overwhelming evidence of bias against defendants with White victims and, to a lesser degree, Black defendants irrespective of victims’ race. Race of victim may be a strong predictor of sentences in noncapital cases as well, but, unfortunately, studies of non-capital cases have rarely examined this variable (one exception being LaFree, 1980).

CORRECTIONS

Historically, the majority of prisoners in the United States were White. Today, the majority are non-White. In 1993, 50 percent of state and federal prison inmates were Black, four times their proportion of the population, and 14 percent were Hispanic; Blacks and Hispanics are also overrepresented in jails and other correctional settings (Bureau of Justice Statistics, 1994). Even more startling is the large and rising proportion of young Black males who are incarcerated or under correctional supervision. In 1989, 23 percent of Black males between twenty and twenty-nine years of age were in jail or prison or on probation or parole, which jumped to 32 percent in 1994; for Whites the figures were 6 percent and 6.7 percent, respectively, and for Hispanics, 10 percent and 12.3 percent (Mauer 1990, 1995). Figures are especially striking for certain areas. In California, 40 percent of Black men in their twenties (compared to 5 percent of Whites and 11 percent of Hispanics) are now incarcerated or under correctional supervision (Claiborne, 1996), and in Baltimore in 1991, 43 percent of Black males aged eighteen to thirty-five were similarly under correctional control (Miller, 1992).

These disparities in incarceration are due to several factors: (1) minorities’ greater involvement in and arrests for violent crimes;⁷ (2) minorities’ greater lack of resources to mount a quality defense in court; (3) racial bias, at least in some jurisdictions, at pre-incarceration stages of the criminal justice process; and (4) the enforcement of racially discriminatory drug laws. The first factor explains much of the overrepresentation of minorities in correctional institutions (Hindelang, 1978). Comparing arrests with

imprisonment rates for eleven crimes, Blumstein (1982) concludes that “racial differences in arrests alone account for the bulk [80 percent] of racial differences in incarceration.” Subsequent research (e.g., Crutchfield, Bridges, and Pitchford, 1994) indicates that 90 percent of the Black/White imprisonment disparity is explained by the Black/White arrest disparity for violent crimes. Some important qualifications are necessary, however. First, for some crimes (homicide, assault) the disproportionate incarceration of Blacks is almost entirely explained by arrests, while for other crimes (burglary, larceny, drug offenses, auto theft) the unexplained variation is substantial, almost 50 percent for drug offenses. Second, national figures need to be disaggregated by state, an important contextual factor. In some states, the arrest rate accounts for only a modest percentage of the imprisonment rate. These states (e.g., Alabama, Louisiana, Maryland, Massachusetts, Washington) imprisoned substantially more Blacks than their violent-crime arrest rates would seem to justify (Crutchfield, Bridges, and Pitchford, 1994). Other states, by contrast, imprisoned fewer Blacks than expected. The pronounced variation within the country in racial patterns of incarceration suggests that differential involvement in crime is too simplistic an explanation, and that one or more of the other three factors cited above may be salient in particular locales.

Involvement in violent crime, moreover, does not explain the *sharp increase* in the Black proportion of prisoners in the 1980s and 1990s. Arrests of Blacks for violent offenses did not rise appreciably during this period (it was 44.1 percent in 1979 and 44.8 percent in 1991), but the percentage of Blacks among new arrivals to prison did increase, especially since the mid-1980s: from 46 percent in 1986 to 53 percent in 1991. The rise has been attributed to the War on Drugs (Tonry, 1994), which disproportionately targeted inner-city neighborhoods, where drug arrests on the street are much easier than in middle-class communities free of street-level drug dealing. Blacks accounted for 22 percent of the persons arrested for drug offenses in 1979, which climbed to 41 percent in 1990 (Tonry, 1994). Many of these arrestees ended up incarcerated. In 1992, for instance, Blacks made up

35 percent of arrests, 55 percent of convictions, and 74 percent of those receiving prison sentences for drug possession, even though they constitute only about 13 percent of regular drug users (Mauer, 1995). Much of the rising Black proportion of prisoners is explained by the differential enforcement of drug laws in Black and White communities and disparities in prescribed penalties for crack and powder cocaine offenses (and for some other types of drug offenses, which tend to favor White defendants) (Barnes and Kingsnorth, 1996).

Moving from the question of who goes to prison, we need to examine the conditions inside correctional institutions.⁸ Approximately two-thirds of correctional officers working in adult prisons are White. Although the number of minority staff has been growing, this does not necessarily affect relations between staff and inmates. A survey of 231 White and Black guards at the Stateville and Joliet prisons in Illinois found little difference in their attitudes toward prisoners. Although answers to questionnaires do not necessarily reflect behavior on the job, there was “nothing in these responses to suggest that black guards treat inmates with greater respect or sensitivity” (Jacobs and Kraft, 1978:317). Individuals who are especially sympathetic to prisoners may be screened out when they apply for jobs as correctional officers or during their probationary period and, once on the job, guards’ occupational culture and reward system are likely to supersede racial identity in relations with inmates, which means that guards’ primary affinity is with other guards, not inmates of the same race.

Do correctional officers treat minority inmates differently than their White charges? Prison guards routinely make decisions that affect inmates’ living conditions, giving them many opportunities to discriminate on the basis of race and ethnicity. Bias may manifest itself, for instance, in disciplinary actions, preferential treatment (e.g., better cell assignments or desirable jobs), and opportunities to partake of rehabilitative programs. Staff might have compelling interests in compounding racial divisions among inmates, as a means of “dividing and conquering” them and enhancing their control. On the other hand, dividing inmates may do lit-

tle to “conquer” them, and may instead intensify overall disorder and violence throughout the prison and endanger guards’ own safety.

Unfortunately, there are few studies of racial discrimination by correctional authorities. In a survey of inmate opportunities to enroll in vocational training, education, and alcohol and drug treatment programs in California, Michigan, and Texas, inmates needing these programs were identified and then interviewed about their reasons for participating or not participating (Petersilia, 1983). Those who declined to participate did so for personal reasons, not because staff discouraged them. On the question of whether racial bias shapes the distribution of inmate job assignments, data are very scarce. One study found that Black inmates were more likely to be denied the best jobs as well as the most desirable cell assignments (McDonald and Weisburd, 1992), and a British study found that Whites were significantly more likely to hold the best jobs and that this was a function of the preferences of supervisors and pressures from White inmates (Genders and Player, 1989:124–27). With regard to disciplinary actions against inmates, a review of the American literature (Goetting, 1985) reported that seven studies found higher rates of write-ups for Blacks than Whites, while seven other studies found no significant racial differences in write-ups. Of the studies that did find a racial disparity, it was not possible to determine whether this was due to staff discrimination, higher rates of violations by Blacks, or a combination of the two.

Any comprehensive analysis of racial discrimination in correctional institutions must examine not only the authorities’ actions toward inmates but also discrimination *among* inmates. Social relations among inmates have changed in major ways over the past three decades. The classic research of the 1940s and 1950s on the “inmate subculture” and the “prison community” focused less on differences between inmates than on their similarities. In reaction to the deprivations of prison life and the authoritarian rule of the guards, inmates, it was argued, developed a cohesive and protective subculture with an “inmate code” whose norms shaped behavior among inmates and toward the prison administration. Because these studies ignored race

relations, it is not possible to tell whether minority convicts were integrated into the inmate subculture and committed to the inmate code or whether there existed differential involvement in the subculture and conflict along racial lines.

In the late 1950s, the Black Muslim movement surfaced in America’s prisons, with important consequences. The Black Muslims attempted to recruit and organize Black prisoners by preaching Black pride and the need for revolutionary change in American society and by fighting for inmates’ rights. This activism earned them the enmity of the prison administration, but they succeeded in politicizing and radicalizing many Black inmates and may have contributed, along with changes in race relations outside the prison, to growing tensions between Blacks and other inmates. In the late 1960s, the Black Panthers played a similar role in arousing the political militancy of Black prisoners.

At the same time, a succession of reforms since the 1960s have diluted the traditional, highly authoritarian prison regime and contributed to the empowerment of contending groups of prisoners, many of whom are organized along racial lines (Carroll, 1977; Jacobs, 1979). The traditional inmate subculture has been irreparably fragmented; inmate solidarity has given way to cleavages. Racial polarization is now widespread in the nation’s correctional institutions, and may be the single most important factor shaping relations among inmates.⁹ As a rule, inmates voluntarily segregate themselves from members of other races; fraternization across racial lines is limited; and distrust is normative. According to John Irwin (1980:182) “The races, particularly black and white, are divided and hate each other.” Indeed, the conditions of imprisonment appear to breed bigotry, even among individuals who were not particularly racist prior to incarceration (Irwin, 1980:183).

As a general rule, Black inmates have become the dominant group in correctional institutions (whether or not they are in the majority), Whites wield little influence over daily affairs and are vulnerable to attack and exploitation, and other groups fall somewhere in between (Carroll, 1974; Bartollas, Miller, and Dinitz, 1976; Jacobs, 1979). Although inmates have increasingly organized themselves along the lines

of racial cliques or gangs (Irwin, 1980), White cliques tend to be weaker than others. Much of the physical violence in prison is racial in nature, with Blacks more likely to attack Whites than vice versa. Research on a North Carolina prison found that 56 percent of the assaults involved Black aggressors and White victims, while 16 percent of the attacks on Blacks were by Whites (Fuller and Orsagh, 1977). In New York State, four-fifths of the victims were White and the same proportion of aggressors were Black (Toch, 1976). Juvenile institutions show similar patterns (Bartollas and Sieverdes, 1981).

Racial disparity is also evident in sexual assaults. Lockwood's (1980:28) major study of prison rape in New York State found that 80 percent of the aggressors were Black, 14 percent Hispanic, and 6 percent White, while 83 percent of the victims were White, 16 percent Black, and 2 percent Hispanic. Carroll (1974, 1977) found that 75 percent of the sexual attacks in a Rhode Island prison were by Blacks against Whites, though Blacks constituted only 24 percent of the inmate population. Other studies have found similar disparities (Davis, 1968; Scacco, 1975).

Analysts have attempted to explain the Black-on-White violence in terms of the greater collective power (organization and solidarity) among Black inmates, Black-White population ratios in some prisons, and retaliation by Blacks for their victimization outside prison. In a number of institutions, Whites find themselves for the first time in a minority position. For Black inmates, majority status may give them a sense of power typically absent in the wider society, and the exercise of this power can heighten racial conflict inside prison.¹⁰ Black retaliation against Whites for the former's treatment outside prison may be a contributing factor, but it should also be noted that imprisonment itself may magnify racial tensions; incarcerated racial and ethnic groups are forced into closer proximity than in civil society, under conditions of deprivation, overcrowding, and chronic boredom.

Several important points can be made with regard to the literature examined in this section. First, judging from aggregate national data, racial discrimination might appear to be a fairly weak determinant of who goes to prison. Disag-

gregation of the data by type of crime and by state, however, suggests the possibility of greater racial bias in particular contexts, arguably lending greater support to race-based conflict theory. Second, the increasing proportion of Blacks among new commitments to prison is largely accounted for by the racially discriminatory implementation of the War on Drugs, which has disproportionately targeted inner-city Black neighborhoods. Third, the extent of racial discrimination by prison officers is unknown because data are so scarce. The few studies that have been done provide only mixed support for the discrimination thesis, but much more research is needed. With regard to relations among inmates, the data appear quite contrary to orthodox conflict theory, with its emphasis on White domination of non-White populations; there is considerable evidence of Black hegemony within the inmate population. If the theory is broadened to include discrimination and exploitative relations between dominant and subordinate groups irrespective of their racial composition, it would be quite consistent with patterns in contemporary correctional institutions.

CONCLUSION

Several analytical and methodological points in the above analysis can be highlighted:

- Documenting racial discrimination in criminal justice institutions is no simple task, particularly in the low-visibility arenas of policing and corrections. Moreover, institutional bias may take rather subtle forms, with race influencing outcomes indirectly or in combination with other factors (Zatz, 1987). Most of the literature focuses only on the overt forms of bias, which may result in underreporting the amount of discrimination.
- In view of the possibility of aggregation bias, it seems necessary to study both aggregate data and data on particular jurisdictions or individual decision makers. Subaggregate-level discrimination may be hidden in aggregate figures if a "canceling out" effect is present.
- It is important to examine multiple stages in the criminal justice process. Caution is required in drawing conclusions from research limited to a single stage. A finding of "no discrimination" at

one stage may be deceptive if prior bias has already disadvantaged an individual.

- More research is needed on the influence of contextual factors on criminal justice outcomes (Hagan and Bumiller, 1983; Zatz, 1987; Chiricos and Crawford, 1995)—factors such as state, region, local unemployment rate, proportion of minorities in a locale, and so forth. One major advantage of this approach is that it promises greater theoretical insights than studies that neglect social contexts.

There is no simple answer to the question of whether minorities experience discrimination within the American criminal justice system. The data do not support the argument that discrimination is negligible, as Wilbanks (1987) claims in his *The Myth of a Racist Criminal Justice System*. But neither is there evidence of pervasive, institutionalized bias, as some authors claim.¹¹ Discrimination has been documented at certain points in the criminal justice system and in certain jurisdictions, but not in others. After controlling for legal factors such as offender's criminal record and seriousness of offense, racial differences remain in some studies but disappear in others. The evidence reviewed here suggests that discrimination is less extensive than predicted by race-based conflict theory. Having said that, the net amount of racial bias found in the literature is certainly greater than what we would expect to find in a system purporting to dispense equal justice for all, and it is likely that a greater amount of discrimination will be uncovered in studies that take into account the four points above.

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NOTES

1. The literature is too voluminous for an exhaustive survey here; instead, the major studies are reviewed in order to highlight larger methodological, analytical, and theoretical issues raised by this body of literature.

2. It has been claimed that one kind of police bias against minorities has to do with *differential deployment* of officers in minority and White neighborhoods. Police

patrols tend to be more heavily concentrated in minority neighborhoods than in most White neighborhoods, and this, it is claimed, is due to police interest in oppressing or controlling minority populations. It may also serve the organizational interests of police departments. By virtue of their presence in minority areas, police are in a position to make arrests for various offenses, which is rewarded by superiors and helps to inflate police clearance rates (see Chambliss and Seidman, 1971). What we need, and lack, however, is concrete evidence that police deployment in minority communities is actually driven by these kinds of interests. A competing argument is that police deployment is largely determined by public demand, which is a function of objective levels of street crime in a locale. Most police actions are in response to calls from the public; much less of their work is proactive. In other words, the police presence in minority communities is roughly proportionate to the level of street crime and other problems in these areas. Having said that, it is clear that this pattern of deployment increases the *likelihood* that police encounters with civilians may turn nasty and gives officers *greater opportunities* to engage in harassment and arrests for petty offenses. The latter may not be the intent of the department, but may well be a consequence of a high police presence in minority neighborhoods.

3. Police shooters are rarely prosecuted for these killings, and there is virtually no research on police officers who are prosecuted. On criminal trials of police in South Africa, see Weitzer and Beattie (1994).

4. New York State Commission on Criminal Justice and the Use of Force (1987:172, 187–88). The race of the police shooter did not make a difference: Blacks and Hispanics accounted for 73 percent of those killed by White officers and 79 percent of those killed by non-White officers.

5. This point certainly does not apply to all public defenders and private attorneys. Because of their extensive courtroom experience, some public defenders are able to provide a better defense for their clients than some private attorneys. However, structural constraints (time pressures, poor resources, poor training) continue to hamper many public defenders to a significantly greater degree than private lawyers.

6. The study also found a race-of-victim effect in Georgia, Ohio, and Texas, but the differences in sentences for killers of Whites and Blacks were smaller than in Florida.

7. It should be noted that one of the main reasons for Blacks' higher rates of offending lies in conditions outside the criminal justice system, in the socioeconomic deprivation that is conducive to higher crime rates among disadvantaged groups.

8. Unfortunately, the literature on race and corrections is much more limited than for preincarceration stages of the criminal justice process, and much of the extant literature

appeared in the 1970s and early 1980s. For a recent book-length study of three British prisons, see Genders and Player (1989).

9. This discussion applies to institutions for men. Women's prisons appear much less racially polarized, with greater interracial friendships (Kruttschnitt, 1983).

10. By contrast, a study of three English prisons, where Blacks constituted a minority of the inmate population, found that the majority of inmates (64 percent) believed that no one racial group dominated the prison, and virtually all inmates reported that racial violence was rare, although verbal aggression was common (Genders and Player, 1989:91).

11. See, for instance, Mann's (1993:160–61, 219) polemical conclusions regarding the extent of discrimination, which are inconsistent with the mixed evidence cited elsewhere in her book.

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