

*Issue 11*

# Race and Crime: Does the Criminal Justice System Discriminate Against Racial Minorities?

- ***“The police framed Lemrick Nelson,” the defense attorney argued to the jury.***
- ***“Wealthy whites are treated better by the criminal justice system than poor blacks,” commented a local resident.***

These two statements summarize the still-controversial trial of Lemrick Nelson, Jr. The setting was Crown Heights, an area of Brooklyn, New York, inhabited by poor blacks (many of Caribbean ancestry) and Hassidic Jews (a fundamentalist group). A runaway car, driven by a Jewish driver, hit two children, killing one. The black neighborhood became enraged when the ambulance took the Jewish driver to the hospital but not the black victims. Amidst cries of “Kill the Jew!” an angry mob formed. Minutes later, Yankel Rosenbaum (a Jewish scholar visiting from Australia) was stabbed to death. A year later the sole person brought to trial (Nelson, who was black) was acquitted in state court. (Subsequently, though, he was convicted in federal court of civil rights violations and he was sentenced to prison.)

The racial tensions apparent in the trials of Lemrick Nelson illustrate that in debating crime, all roads eventually lead to issues of race. Sometimes the path is direct, as in concerns that black defendants are sentenced more severely than others. For example, half of all prisoners in the U.S. are African American, despite the fact that blacks represent only 12 percent of the U.S. population. At other times the highway is indirect, as in concerns that the war on crime and the war on drugs has a black face. For many Americans, fear of crime is an expression of racial fears. In short, it is impossible to talk about many of the questions discussed in this book without also addressing the issue of race. Consider the following:

- Allegations of police brutality are most likely to surface in confrontations between white officers and minority suspects.
- During jury selection, the press often focuses on the demographic characteristics of the jurors.

- About 40 percent of the people currently on death row, and 53 percent of all people executed since 1930, are African American.

To be sure, the issue of race is most publicly associated with African Americans. Some scholars, though, prefer to emphasize the whole spectrum of the color of justice including red (American Indians/Native Americans), black (African Americans), brown (Latinos and Latinas, Hispanics), yellow (Asian Americans) and white (Euro-Americans, Caucasians) (Mann and Zatz, 1998).

That minorities are more likely to be arrested, convicted, and imprisoned is beyond dispute. What is greatly contested, though, is the reason for these patterns. Blacks and whites view the outcomes, processes, and impacts of the criminal justice system through completely different prisms. All too often discussions quickly degenerate into finger-pointing diatribes, reinforcing notions of “us” versus “them.” In these discussions the terms “racism” and “racist society” are often bandied about. Such slogans are useful for calling attention to a problem, but tend to be so elastic and expansive that they lack analytical rigor. In turn, studies disagree whether discrimination persists, and if so, how much impact it has on the criminal justice system.

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<p>Racial prejudice is a preconceived attitude that a racial group is inherently superior or inferior. One in four black citizens believe that half of the white American public share the racial views of the KKK, but only a small percentage of whites expressed such attitudes (Erikson and Tedin, 1995).</p>	<p>Groups openly advocating racial supremacy operate only on the fringes of society. For example, white supremacist groups like the KKK will hold an occasional protest rally and members of the white Aryan nation sometimes are implicated in crimes with a racial motive.</p>
<p>Overrepresentation of minorities reflects imbalances in the criminal justice system, particularly in prison populations. This disproportionality means that racial groups are represented in a much higher (or lower) percentage than in the general population.</p>	<p>Disproportionality is not proof of discrimination. Discrimination refers to illegitimate influences in arrest, prosecution, and sentencing, based on the characteristics of the offender. While race is the most often discussed illegitimate influence, studies emphasize that most disproportionality is due to economic status.</p>

In contemporary America, the issue of racial prejudice focuses on the question of what constitutes fair treatment for blacks. The central question is to what extent the government should help minorities move into the economic mainstream. Whites

typically oppose, and blacks typically support, such efforts. These differences have given rise to racial resentment (the new term for what earlier had been called “symbolic racism”). Whites hold an animosity toward blacks, based not on belief of biological inferiority but on the belief that blacks have not tried hard enough to achieve economic and social success (Kinder and Sanders, 1996). The following two articles probe the touchy topic of race, crime, and justice.

“No Equal Justice” argues that race and class distinctions are the dominant reality of the criminal justice system and corrective actions must be taken.

“Race, Crime, and the Administration of Justice” attempts to marshal the available data on the topic, arguing that race plays a role but not as great a role as some contend.

### World Wide Web Exercises

1. Choose a search engine and use the search term **racial profiling** to locate two or more articles on the topic. How would the authors of the two articles featured in this section react to the issue of alleged racial profiling by the police?
2. Using the search term “**crack cocaine**” and **race**, locate two or more articles that discuss allegations that the penalties against possession and distribution of crack cocaine are racially biased.



### InfoTrac College Edition Exercises

1. Using the search term **discrimination in criminal justice administration** find one article on each side of the debate. Are the views of the authors similar to, or different from, the readings presented in the book? Why do some argue that race is a dominant issue while others argue that it is irrelevant?
2. Using the search term **police, race relations** or **discrimination in criminal justice administration** find two articles in academic journals that analyze the racial divide on criminal justice issues. Do these findings tend to support one side or the other in the debate?

## *No Equal Justice: Race and Class in the American Criminal Justice System*

**David Cole**

The most telling image from the most widely and closely watched criminal trial of our lifetime is itself an image of people watching television. On one half of the screen, black law students at Howard Law School cheer as they watch the live coverage of a Los Angeles jury acquitting O. J. Simpson of the double murder of his ex-wife and her friend. On the other half of the screen, white students at George Washington University Law School sit shocked in silence as they watch the same scene. The split-screen image captures in a moment the division between white and black Americans on the question of O. J. Simpson's guilt. And that division in turn reflects an even deeper divide on the issue of the fairness and legitimacy of American criminal justice. . . .

In some respects, the racially divided response to the verdict was understandable. For many black citizens, the acquittal was a sign of hope, or at least payback. For much of our history, the mere allegation that a black man had murdered two white people would have been sufficient grounds for his lynching. Until very recently, the jury rendering judgment on O. J. Simpson would likely have been all white; Simpson's jury, by contrast, consisted of nine blacks, two whites, and an Hispanic. And the prosecution was poisoned by the racism of the central witness, Detective Mark Fuhrman, who had, among other things, called blacks "niggers" on tape and then lied about it on the stand. To many blacks, the jury's "not guilty"

verdict demonstrated that the system is not *always* rigged against the black defendant, and that was worth cheering.

The white law students' shock was also understandable. The evidence against Simpson was overwhelming. . . . To many whites, it appeared that a predominantly black jury had voted for one of their own, and had simply ignored the overwhelming evidence that Simpson was a brutal double murderer.

But there is a deep irony in these reactions. [I]t took an atypical case, one in which minority race and lower socioeconomic class did *not* coincide, in which the defense outperformed the prosecution, and in which the jury was predominantly black, for white people to pay attention to the role that race and class play in criminal justice. Yet the issues of race and class are present in every criminal case, and in the vast majority of cases they play out no more fairly. Of course, they generally work in the opposite direction: the prosecution outspends and outperforms the defense, the jury is predominantly white, and the defendant is poor and a member of a racial minority. In an odd way, then, the Simpson case brought to the foreground issues that lurk beneath the entire system of criminal justice. The system's legitimacy turns on equality before the law, but the system's reality could not be further from that ideal. As Justice Hugo Black wrote over forty years ago: "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." He might well have added, "or the color of his skin." Where race and class affect outcomes, we cannot maintain that the criminal law is just.

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Equality, however, is a difficult and elusive goal. In our nation, it has been the cause of a civil war, powerful political movements, and countless violent uprisings. Yet the gap between the rich and the poor is larger in the United States today than in any other Western industrialized nation, and has been steadily widening since 1968. In 1989, the wealthiest one percent of U.S. households owned nearly 40 percent of the nation's wealth. The wealthiest 20 percent owned more than 80 percent of the nation's wealth. That leaves precious little for the rest. The income and wealth gap correlates closely with race. Minorities' median net worth is less than seven percent that of whites. . . .

This inequality is in turn reflected in statistics on crime and the criminal justice system. The vast majority of those behind bars are poor; 40 percent of state prisoners can't even read; and 67 percent of prison inmates did not have full-time employment when they were arrested. The per capita incarceration rate among blacks is seven times that among whites. African Americans make up about 12 percent of the general population, but more than half of the prison population. They serve longer sentences, have higher arrest and conviction rates, face higher bail amounts, and are more often the victims of police use of deadly force than white citizens. In 1995, one in three young black men between the ages of twenty and twenty-nine was imprisoned or on parole or probation. If incarceration rates continue their current trends, one in four young black males born today will serve time in prison during his lifetime. . . . Nationally, for every one black man who graduates from college, 100 are arrested.

In addition, poor and minority citizens are disproportionately victimized by crime. Poorer and less educated persons are the victims of violent crime at significantly higher rates than wealthy and more educated persons . . . Homicide is the leading cause of death among young black men. Because we live in segregated communities, most crime is intraracial; the more black crime there is, the more black victims there are. But at the same time, the more law enforcement resources we direct toward protecting the black community from crime, the more often black citizens, especially those living in the inner

city, will find their friends, relatives, and neighbors behind bars.

This book argues that while our criminal justice system is explicitly based on the premise and promise of equality before the law, the administration of criminal law—whether by the officer on the beat, the legislature, or the Supreme Court—is in fact predicated on the exploitation of inequality. My claim is not simply that we have ignored inequality's effects within the criminal justice system, nor that we have tried but failed to achieve equality there. Rather, I contend that *our criminal justice system affirmatively depends on inequality*. . . .

White Americans are not likely to want to believe this claim. The principle that all are equal before the law is perhaps the most basic in American law; it is that maxim, after all, that stands etched atop the Supreme Court's magnificent edifice. . . .

If there is a common theme in criminal justice policy in America, it is that we consistently seek to avoid difficult trade-offs by exploiting inequality. Politicians impose the most serious criminal sanctions on conduct in which they and their constituents are least likely to engage. Thus, a predominantly white Congress has mandated prison sentences for the possession and distribution of crack cocaine one hundred times more severe than the penalties for powder cocaine. African Americans comprise more than 90 percent of those found guilty of crack cocaine crimes, but only 20 percent of those found guilty of powder cocaine crimes. By contrast, when white youth began smoking marijuana in large numbers in the 1960s and 1970s, state legislatures responded by reducing penalties and in some states effectively decriminalizing marijuana possession. More broadly, it is unimaginable that our country's heavy reliance on incarceration would be tolerated if the black/white incarceration rates were reversed, and whites were incarcerated at seven times the rate that blacks are. The white majority can "afford" the costs associated with mass incarceration because the incarcerated mass is disproportionately nonwhite.

Similarly, police officers routinely use methods of investigation and interrogation against members of racial minorities and the poor that would be deemed unacceptable if applied to more privileged members of the community. "Consent"

searches, pretextual traffic stops, and “quality of life” policing are all disproportionately used against black citizens. Courts assign attorneys to defend the poor in serious criminal trials whom the wealthy would not hire to represent them in traffic court. And jury commissioners and lawyers have long engaged in discriminatory practices that result in disproportionately white juries.

These double standards are not, of course, explicit; on the face of it, the criminal law is color-blind and class-blind. But in a sense, this only makes the problem worse. The rhetoric of the criminal justice system sends the message that our society carefully protects everyone’s constitutional rights, but in practice the rules assure that law enforcement prerogatives will generally prevail over the rights of minorities and the poor. By affording criminal suspects substantial constitutional protections in theory, the Supreme Court validates the results of the criminal justice system as fair. That formal fairness obscures the systemic concerns that ought to be raised by the fact that the prison population is overwhelmingly poor and disproportionately black.

I am not suggesting that the disproportionate results of the criminal justice system are wholly attributable to racism, nor that the double standards are intentionally designed to harm members of minority groups and the poor. Intent and motive are notoriously difficult to fathom, particularly where there are multiple actors and decision makers . . . In fact, I think it more likely that the double standards have developed because they are convenient mechanisms for avoiding hard questions about competing interests, and it is human nature to avoid hard questions. But whatever the reasons, we have established two systems of criminal justice: one for the privileged, and another for the less privileged. Some of the distinctions are based on race, others on class, but in no true sense can it be said that all are equal before the criminal law. . . .

Much of this book will be dedicated to demonstrating how the double standards in criminal justice operate. Some readers will need more convincing than others on this score. By a detailed description of the problem, I hope to shake the confidence of those who believe the system is fair. . . .

# Race, Crime, and the Administration of Justice: A Summary of the Available Facts

**Christopher Stone**

We each know about race, crime, and the administration of justice in many ways: from our own experience, through stories we hear, and from our various understandings of history. We may also retain a current statistic or two, especially if we have stumbled on one that reinforces what we already believe. But what does the subject of race, crime, and justice look like if approached empirically, and with reference to all of what we refer to today as racial groups?

At the most general level, we know that many people of color—Native Americans, Asian Americans, Hispanic Americans, black Americans—do not trust the justice system. For example, a study of Hispanic Texans in the mid-1980s found that fewer than 30 percent rated the job performance of their local police as good (Carter, 1985). In a 1995 Gallup poll, more than half of black Americans said the justice system was biased against them. Moreover, two-thirds of black Americans in that same Gallup poll said that police racism against blacks is common across the country, and a majority of white Americans (52 percent) agreed (*Gallup Poll Monthly*, 1995). Social scientists usually explain this broad distrust in two ways: historical experience and present-day practice. The historical experience with the justice system among Native Americans, Asian immigrants, black Americans, and Hispanic Americans is more than enough to provoke distrust, but is it being reinforced by current practice?

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Source: *NIJ Journal*, No. 239, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 27–32.

- How does the pattern of crime and victimization keep us from living as one America?
- How do stereotypes work to cause people of some races and ethnic groups to be unfairly suspected of crime?
- How and when does the justice system itself treat defendants and offenders differently on the basis of race or ethnicity?
- Does a lack of diversity in the justice system add to the distrust?

Social science research has shed some light on each of these concerns, but our empirical knowledge is uneven. We know a lot about some of these issues, but there are great gaps in what we know through research. We know much less about discrimination in judicial decisions regarding Asian-American defendants, for example, than we do about “black and white” discrimination. . . . The lack of data and good research on the experience of Asian Americans and Native Americans in particular is a problem.

## Patterns of Crime Victimization

Consider first the pattern of crime victimization. In general, whites have the lowest victimization rates, followed by Asians, followed by Native Americans, then Hispanics, then blacks. But the differences are dramatic. In 1995, for example, there were 5.1 homicide victims per 100,000 non-Hispanic white males. The rate for Asian-American males was more than one-and-a-half times higher, at 8.3 per 100,000. But the rate for Native-American

males was 18, more than three times the white rate, and the rate for Hispanics was 25.1, almost five times the white rate. And the rate for blacks was 57.6, more than 10 times the white rate (BJS, 1994). . . .

Why the differences? The crudest analyses focus on the offenders, telling us that most crime is intraracial. More than 80 percent of homicides where we know the race of the killer are either white-on-white or black-on-black. Research among Vietnamese and Chinese in California has also shown that most crime there is intraracial (Song, 1992).

Does this mean that groups with high victimization rates also have high offending rates? Yes, but with three crucial caveats. First, it is essential to remember that most crime is committed by whites. Their offending rates may be low, but there are so many of them that they still manage to commit most of the crime.

Second, the chances that a young adult has ever committed a violent offense is roughly equal across races. . . .

Third, community conditions seem to be the reason that crime falls so heavily on some groups. The more sophisticated analyses today focus on neighborhoods, and they show us that the differences in victimization and offending rates between groups may have more to do with neighborhood and community conditions than with race itself. Where people live in neighborhoods of concentrated disadvantage, victimization and offending rates are high. When researchers compare similar neighborhoods of different races, the racial differences seem to disappear (Sampson, Raudenbush, and Earls, 1997). The problem is that researchers cannot find white communities to compare to the most disadvantaged urban communities.

### **Stereotypes and Criminal Profiles**

Most people of all races and ethnic groups are never convicted of a crime, but stereotypes can work to brand all members of some groups with suspicion. These stereotypes may have their roots in past biases, but they also can be reinforced

through broadcast news and newspaper reports. One social scientist, for example, finds that Asians are overidentified with Asian gangs ("Asians Are Automatically Labeled Gang Members," 1994). A team of researchers at the University of California at Los Angeles has found that blacks and Hispanics are overrepresented in TV news depictions of violent crime, while whites are overrepresented in stories involving nonviolent crime (Gilliam et al, 1996).

These stereotypes are bad enough in the culture at large, but they also work their way into law enforcement through the use of criminal profiles, putting an undue burden on innocent members of these groups. A particularly clear example of this phenomenon is found in a study of Maryland State troopers and the searches they made of motorists on Interstate Highway 95 in 1995. On this particular stretch of highway, motorists were found to be speeding equally across races. Black motorists, for example, constituted 17 percent of the motorists and 17.5 percent of the speeders. But black motorists were the subject of 409 of the 533 searches made by the police looking for contraband (Russell, 1998).

Why were black motorists searched so often? The police might justify such practices on the ground that blacks are more likely to be carrying contraband. And the statistics show this to be true: the police found contraband in 33 percent of the searches of black motorists, and in 22 percent of the searches of white motorists. But the mischief in this practice is quickly exposed. Blacks had a 50 percent higher chance of being found with contraband, but were searched more than 400 percent more often. The result is that 274 innocent black motorists were searched, while only 76 innocent white motorists were searched. The profiles apparently used by the Maryland State troopers make 17 percent of the motorists pay 76 percent of the price of law enforcement strategy, solely because of their race.

### **Disparities in Conviction Rates**

The combination of higher rates of crime and higher levels of police attention produce dispro-



portionate numbers of arrests among some groups. Arrest rates for violent crimes among . . . blacks are about five times that for whites. Again, as with crime, the arrest rate for whites may be low, but there are so many whites that they account for 55 percent of all arrests for violent crime (FBI, 1996).

But then what happens? Here is the problem that has attracted more research than any other area under discussion today. Black Americans account for fewer than half of the arrests for violent crimes, but they account for just over half of the convictions and approximately 60 percent of the prison admissions. At the beginning of this decade, the chance that a black male born in the United States would go to prison in his lifetime . . . was more than 28.5 percent. The corresponding chance for an Hispanic male was 16 percent, and for a white male, 4.4 percent (Bonczar and Beck, 1997) . . .

How has this happened? Is this simply the result of fair-minded prosecutors and courts applying the law to disproportionate arrests, or is there bias at work at these later stages of the justice process?

Researchers have looked carefully for evidence of bias, reaching different conclusions. Some of the disparity we see when we visit these institutions is clearly explained by differences in arrest charges, and much more is explained by differences in the prior records of those convicted. There is no evidence of disparity that stretches across the justice system as a whole when we consider index crimes. But studies of individual jurisdictions and specific parts of the court process do find some evidence of race bias in a significant number of cases. . . . [B]lack defendants in some jurisdictions are more likely to receive prison sentences than are white defendants. . . .

Across race and ethnic groups, concerns about both of these kinds of bias are regularly reported: underenforcement of laws within a minority community and overpunishment when that community is seen as a threat to the majority. These two kinds of bias can balance each other in simple studies. . . .

### **Strengthening Diversity Within the Criminal Justice System**

If these biases were eliminated from the justice system, would we still have a problem? If the police abandoned the use of offensive stereotypes, if the remnants of institutional bias were driven from the courts, would the justice system deserve and win respect across lines of race and ethnicity? Or is the sheer volume of black and Hispanic prisoners in America a problem in its own right? . . .

Respect for the justice system can be won or lost not just in its decisions, but in who is making them. Slow but real progress has been made in strengthening the diversity of law enforcement throughout the United States, but some signs indicate that this effort is losing momentum. A recent study . . . concluded that the number of minority law enforcement executives has declined in recent years, after earlier gains. A large percentage of minority officers remain in entry-level positions throughout their careers and the outlook for any change, the researchers concluded, is bleak (NIJ, 1994).

### **Declining Crime Rates: A Reason for Optimism**

If there is a strong reason for optimism among all these data, it is in the steady decline in crime over the last several years in most large U.S. cities. Let me focus here on the often neglected yet dramatic decline in domestic homicide, where we again find a stark difference between blacks and whites. Twenty years ago, white men were rarely victims of domestic homicide. . . . Rates for black victims of domestic homicide were roughly seven times higher 20 years ago, and they have plummeted since. The rate for black male victims has dropped from more than 16 to fewer than three homicides per 100,000; and for black women the rate has fallen from more than 12 to fewer than five (Greenfield et al, 1998).

These declines leave us with two important lessons. First, they remind us of the power of neighborhood disadvantage, for as stark as the

black/white differences are, they disappear when researchers control for housing conditions. Second, they remind us of the power these communities have to help themselves. There are some aspects of the drop in crime for which police can claim the credit, and there is plenty of crime reduction for everybody to claim some, but this drop, occurring over 20 years, exceeds the reach

of any single program or administration. It is an example of cultural change and communities working to heal themselves.

In sum, these declines hold out the promise of a day when race will no longer be a proxy for suspicion, and crime no longer a proxy for concentrated community disadvantage.