

RACE AND THE CRIMINAL JUSTICE SYSTEM:
A STUDY OF RACIAL BIAS AND RACIAL INJUSTICE

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Research Proposal

The goal of my senior project is to study how race influences criminal justice issues such as punitive crime policy, contact with law enforcement officers, profiling, and incarceration, etc. I intend to study the history of crime policy in the U.S. and whether or not racial bias within the criminal justice system exists (especially against African Americans) and if racial neutrality is even possible. I will conduct my research using library and academic sources, such as books and peer-reviewed scholarly journal articles, as well as web sources. I will specifically use sources that highlight the racial disparities found within the criminal justice system, and that offer critical and sociological explanations for those disparities. My hypothesis is that I will find that racial bias in the criminal justice system has created the racial disparities that exist and that racial neutrality within the system is unlikely.

Annotated Bibliography

Alexander, M. (2010). *The new jim crow: Mass incarceration in the age of colorblindness*. New York: The New Press.

Alexander gives an expansive history of the criminal justice system, punitive crime policy and race in the U.S. She details the ways in which U.S. crime policy and mass incarceration have worked together to continue the subordination and subjugation of black Americans. Her central thesis is that mass incarceration is “The New Jim Crow,” or the new system of control used by the government to uphold racial caste in the U.S. Alexander offers a detailed history and hard facts to back up her argument, focusing on several facets of the criminal justice system. This book will be helpful to my research because it directly discusses the topic of race and the criminal justice system and highlights many ways that the system is fraught with disparities and racial bias, thus answering my questions regarding what role race has in the criminal justice system.

Amnesty International. (2003). United States of America: Death by discrimination - The continuing role of race in capital cases. Retrieved November 1, 2012, from Amnesty International website <http://www.amnesty.org/en/library/info/AMR51/046>

In this report Amnesty International discusses the death penalty and how race plays a role in who is sentenced to death and which cases are found worthy of capital punishment. The report argues that white victimization is more likely to result in a death sentence than black victimization. This report will be helpful to my research because it highlights the influence race has in the death penalty and that it is not a racially neutral process.

Baker, P. (2010, August 3). Obama signs law narrowing cocaine sentencing disparities. *The New York Times*. Retrieved November 1, 2012, from <http://thecaucus.blogs.nytimes.com/2010/08/03/obama-signs-law-narrowing-cocaine-sentencing-disparities/>

Baker reports on Obama signing the Fair Sentencing Act in 2010 which reduced the sentencing disparities for crack and powder cocaine offenses. Baker writes that the disparity is now 18 to 1 instead of 100 to 1. This article will be useful for my paper because it is an example of a racially unfair law which thankfully was reformed.

Bobo, L. D., & Thompson, V. (2006). Unfair by design: The war on drugs, race, and the legitimacy of the criminal justice system. *Social Research*, 73(2), 445-472. Retrieved from the Sociological Abstracts database.

Bobo and Thompson discuss how criminal justice policies within the past several decades have perpetuated the link between race and crime. They cite ample evidence that highlights the ongoing disparities found within the criminal justice system and give specific focus to how the War on Drugs has contributed to these disparities. This work will be useful to my research because of its specific focus on the War on Drugs which I will address in my paper as well. The authors cite undeniable evidence that the War on Drugs disproportionately affects African Americans, especially those living in poor communities.

Coker, D. (2003). Addressing the real world of racial injustice in the criminal justice system. *The Journal of Criminal Law and Criminology*, 93(4), 827-880. Retrieved from the JSTOR database.

Coker cites ample evidence which supports the existence of racial injustices within the criminal justice system. She also discusses the Supreme Court's ruling on accusations of racial bias in the system. This article will be helpful to my research because it supports my thesis that race plays a role in the criminal justice system and that black Americans are at a disadvantage when it comes to justice.

Davis, A. Y. (2003). *Are prisons obsolete?* New York: Seven Stories Press.

Davis offers a highly compelling critique of the United States prison system, linking its early origins to slavery and its abolition. Her research indicates that the early prison system was in many ways influenced by the abolition of slavery and that post-slavery laws were enacted to more or less criminalize blacks which often resulted in their incarceration. Davis' book will be helpful to my project because she convincingly links race to the early development of mass incarceration which supports my thesis that race does matter in the criminal justice system.

Hartley, R. D., & Miller, J. M. (2010). Crack-ing the media myth: Reconsidering sentencing severity for cocaine offenders by drug type. *Criminal Justice Review*, 35(1), 67-89. Retrieved from <http://cjr.sagepub.com/>

Hartley and Miller discuss the sentencing disparities between crack and powder cocaine and how the media portrayed crack users and powder users differently during the 1980s. They discuss the media hysteria and "moral panic" surrounding crack cocaine during the decade and how media representations fueled punitive drug policy. They cite evidence from the United States Sentencing Commission that undermines the crack-crime link. This work will be helpful to my project because it gives some support to the argument that punitive drug policy enacted in the '80s was not necessarily a response to reality but to racialized stereotypes fueled by the media. It will be important for me to analyze this point in my paper in order to undermine the argument that drug policy is racially neutral.

Hurwitz, J., & Peffley, M. (1997). Public perceptions of race and crime: The role of racial stereotypes. *American Journal of Political Science*, 41(2), 375-401. Retrieved from the Sociological Abstracts database.

Hurwitz and Peffley hypothesize that stereotypes about African Americans will affect people's attitudes towards crime policy. The authors find that there is a "strong relationship" between how whites view African Americans and crime punishment but only in certain instances. The authors briefly discuss the link between race and crime and how the link has been strengthened through the media. This work will be helpful to my research because the stereotype linking blacks to crime is an important facet to my topic. It will help support my thesis that the criminal justice system cannot be racially neutral because it highlights that the stereotype is perpetuated throughout society.

- Lawrence, K. O. (ed.) (2011). Race, crime, and punishment: Breaking the connection in America. Retrieved October 1, 2012, from <http://www.aspeninstitute.org/publications/race-crime-punishment-breaking-connection-america>
The essays in this report are by various authors whom are very knowledgeable about my research topic. The topics touched upon range from mass incarceration, to structural racism and its effect on crime policy, to discussions on reform within the system. What the essays have in common is that they highlight the strong link between race, crime and punishment in the United States. This report will be helpful to my project because it offers a wealth of statistics and a critical analysis of the criminal justice system which will help me support my thesis that race plays a role in the criminal justice system.
- Levinson, J. D., Cai, H., & Young, D. (2010). Guilty by implicit racial bias: The guilty/not guilty implicit association test. *Ohio State Journal of Criminal Law*, 8, 187-208. Retrieved November 1, 2012, from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1471567.
The authors argue that there needs to be more research conducted on how implicit racism influences criminal law. They create their own Implicit Association Test to gauge the relationship between perceptions of guilt and a defendant's race. The authors find that there is an association between blacks and assumptions of guilt and discuss the implications of their findings. This work will be helpful to my research because it calls into question the ability of decision making within the criminal justice system to be racially neutral, which supports my thesis.
- Mauer, M. (2004). Race, class, and the development of criminal justice policy. *Review of Policy Research*, 21(1), 79-92. Retrieved from [http://onlinelibrary.wiley.com/journal/10.1111/\(ISSN\)1541-1338](http://onlinelibrary.wiley.com/journal/10.1111/(ISSN)1541-1338)
Mauer highlights the vast racial disparities found within the criminal justice system as well as the ways that race and class influence criminal justice policy. He also argues that many facets of the criminal justice system are "racially determined." A brief history of early punitive crime policy indicates that race has long served as a determinant for crime response. This work will be helpful to my paper because it highlights the pervasiveness of the race issue within the criminal justice system.
- National statistics on the death penalty and race. (2012, September 12). *Death Penalty Information Center*. Retrieved October 6, 2012, from <http://www.deathpenaltyinfo.org>
The Death Penalty Information Center is dedicated to issues surrounding the death penalty. Their website offers news, statistics and facts regarding the death penalty. DPIC's statistics on race and the death penalty will be helpful to my project because they are undeniable proof that blacks are disproportionately represented on death row.
- Oliver, M. B. (2003). African American men as "criminal and dangerous": Implications of media portrayals of crime on the "criminalization" of African American men. *Journal of African American Studies*, 7(2), 3-18. Retrieved from <http://link.springer.com/>
Oliver discusses how black men have come to be criminalized and feared in American society. She discusses media representations of black men and how such representations perpetuate negative stereotypes about black men. This work will be helpful to my project

because Oliver convincingly shows how negative stereotypes about black men affect their place in society. This will give credence to my thesis that race plays a role in the criminal justice system.

Quillian, L. (2008). Does unconscious racism exist? *Social Psychology Quarterly*, 71(1), 6-11. Retrieved from <http://spq.sagepub.com/>.

Quillian addresses the issue of implicit racism and argues that its existence is fact and that many individuals are implicitly racist because of the socialization process, media and social environment. His article will be helpful to my project because the existence of implicit racism is an important point to consider when researching how race influences the criminal justice system.

Robinson, M. (2000). The construction and reinforcement of myths of race and crime. *Journal of Contemporary Criminal Justice*, 16(2), 133-156. Retrieved from <http://ccj.sagepub.com/>
Robinson analyzes what he considers the three major myths regarding race and crime. He specifically critiques the myth that African Americans commit more crime than whites do and the claim that the criminal justice system is racially fair. He suggests that crime data should not be accepted unilaterally given that reports on crime may themselves be biased and cites evidence of racial profiling by law enforcement officers as proof of racial bias in the system. This article will be helpful to my project because it challenges many of the arguments that deflect from and justify the racial disparities found in the criminal justice system which will be necessary points for me to address.

Roh, S., & Robinson, M. (2009). A geographic approach to racial profiling: The microanalysis and macroanalysis of racial disparity in traffic stops. *Policy Quarterly*, 12(2), 137-169. Retrieved from <http://pqx.sagepub.com/>
Roh and Robinson offer a micro and macro analysis of traffic stops with regards to race. Their findings support the claim that African Americans are disproportionately pulled over by law enforcement officers and that law enforcement officers use harsher forms of policing depending on their geographic location. This article will be helpful to my project because racial disparity in traffic stops is one of the most salient issues in regards to racial bias in the criminal justice system and I will be better able to address it using the data offered by the authors.

The Sentencing Project. (2012, May 18). Trends in U.S. corrections. Retrieved November 1, 2012, from http://www.sentencingproject.org/detail/news.cfm?news_id=1304.
In this document, The Sentencing Project highlights many statistics and graphs which underline the racial disparities that exist in the criminal justice system. The data offered in this document will be helpful to my project because it makes it clear that punishment for crime is not doled out evenly, which supports my thesis that the criminal justice system is not racially neutral.

U.S. Census Bureau. (2010). *United States Census 2010*. Retrieved November 1, 2012, from <http://2010.census.gov/2010census/data/>
Data includes demographics from the most recent population census. This data will be helpful to my project because it offers breakdowns by race which will help me to uncover the racial disproportionality found in the criminal justice system.

- U.S. Department of Health and Human Services. (2011, September). Results from the 2010 national survey on drug use and health: Summary of national findings. Retrieved November 1, 2012, from <http://www.samhsa.gov/data/NSDUH/2k10ResultsRev/NSDUHresultsRev2010.pdf>
This survey highlights that drug use patterns across racial lines do not vary significantly. These findings will be helpful to my project because it will assist me in my argument that the racial disparities found in regards to the War on Drugs are unjustified.
- Warren, P., Tomaskovic-Devey, D., Smith, W., Zingraff, M., & Mason, M. (2006). Driving while black: Bias processes and racial disparity in police stops. *Criminology*, 44(3), 709-738. Retrieved from the Academic Search Elite database
Warren et al. address the “Driving While Black” phenomenon and analyze the possible causes of racial disparities found in traffics stops in North Carolina in 2000. The authors’ find stronger evidence of racial disparities in vehicle stops made by local law enforcement officers than by state highway patrol, and overall that law enforcement officers in North Carolina were more likely to stop an individual based on his or her driving behavior than on race or some other factor. While the authors’ findings are not directly in support of my thesis, they will be helpful to my project because the authors cite evidence of greater racial disparities in other areas, which do support my thesis.
- Weaver, V. M. (2007). Frontlash: Race and the development of punitive crime policy. *Studies in American Political Development*, 21(2), 230-265. Retrieved October 1, 2012, from http://www.ebonterr.com/site_editor/assets/EBONTERR_41.pdf
Weaver discusses the link between punitive crime policy and the Civil Rights Movement. She argues that minority advancement brought on by the Civil Rights Movements, not an increase in crime, was responsible for the new punitive crime policy and agenda of the time. Weaver’s work will be useful for my project because it highlights that race has long been in a factor in the criminal justice system which supports my thesis.

Outline

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The U.S. has roughly 5 percent of the world's population, but about 25 percent of its prison population. Further, over two million Americans are in prison or jail. Appallingly, of those incarcerated just under half (40 percent), are African American (Lawrence, 2011, p. 4). To put this statistic into perspective, as of 2010, African Americans made up just 12.6 percent of all Americans (U.S. Census Bureau, 2010). This gross disparity may be hard to believe, but it is an unfortunate fact that cannot be denied. For many it is an unacceptable fact, but for others, just a symptom of reality. The question that begs asking is: why? Why are American prisons so disproportionate in their racial makeup? According to Lawrence, for every 100,000 black men, 4,777 are behind bars (p. 4). Further, one out of every three young black men will be incarcerated at some point in his lifetime (The Sentencing Project, 2012).

There are many sociological, academic and political explanations to the above questions. They range from those that blame the above disparities on supposed black criminality to those that look to larger social factors for causation. The one commonality that most of them share however, is their focus on the issue of race, because when discussing the racial disparities in the criminal justice system with regards to incarceration, policing, and the like, it's a highly important factor, no matter the perspective. As within many facets of society, the issue of race in the criminal justice system is like the elephant in the room. Everybody knows it's there, but everybody sees and approaches the situation differently.

For the purpose of this paper I take a critical approach and study the causes of racial disparities in the criminal justice system that go beyond criminality along racial lines. My basic question is this: what role does race play in the criminal justice system and is the system truly colorblind as many whites believe it to be. With this country's shameful past of slavery, the Jim Crow laws, and numerous other racially based injustices, it seems obvious that race plays a

factor in many facets of the criminal justice system, such as who is more likely to come in contact with it and who is more likely to be incarcerated. I begin this paper with a discussion of slavery and its early ties to the criminalization of freed blacks, the Jim Crow laws, and a history of punitive crime policy in the United States and its connection to the Civil Rights Movement. I then study the role race has in two important facets of the criminal justice system: the War on Drugs and capital punishment. I then offer an analysis of implicit/unconscious racism and stereotypes and how they affect and shape the criminal justice system. I argue that it is nearly impossible to claim the American criminal justice system is colorblind and racially fair, as negative attitudes towards African Americans are still pervasive throughout society. I end with a discussion on the criminality argument proposed by many as the cause of the above racial disparities and argue that it is a faulty, oversimplified argument.

Post-Slavery: The Early Beginnings of the Race/Crime Link

A discussion about race and the criminal justice system is incomplete without considering the ways slavery and its abolition played into the relationship. Angela Davis (2003) argues in her book *Are Prisons Obsolete?* that this relationship was forged mainly in the South by those aiming to find new ways to control the black population once they had gained “freedom” from slavery (pp. 28-29). As will later be discussed in regards to the Civil Rights Movement, new forms of control are always created once old ones become socially unacceptable and it was no different in the post-slavery South. The “Black Codes” effectively criminalized being black by making certain behavior illegal *only* for blacks (Davis, 2003, p. 28). These included “vagrancy, absence from work, breach of job contracts, the possession of firearms, and insulting gestures or acts” (Davis, p. 28). These acts were no doubt common at the time making these laws open to interpretation and easy manipulation, meaning that black people became easily targeted and punished. Thus, once legal slavery was no more, the South created a criminal justice system on the basis of criminalizing black people to ensure their continued oppression (Davis, pp.28-29). That punishment of these black “criminals” would often result in their forced labor (Davis, 2003, pp. 28-29) should come as no surprise.

Historian Adam Jay Hirsch has pointed out the similarities between slavery and early imprisonment, highlighting the subordinate, routine, isolating and coercive nature of both (as cited in Davis, 2003, p. 27). Once being black was more or less legally criminalized in the South, the line blurred further as forced labor of black individuals was legally sanctioned as punishment for their criminal behavior (Davis, p. 28). The Thirteenth Amendment, while supposedly ending slavery, made forced labor an acceptable form of punishment for those found guilty of criminal acts (Davis, p. 28). Thus, many black Southerners went from being slaves to “criminals” whose

freedom was easily and legally taken away by the same constitutional amendment that was supposed to have protected that freedom. The number of incarcerated blacks grew and so did the popular belief of black criminality (Davis, p. 29). The racialization of America's criminal justice system had begun.

The Jim Crow Laws

Attempts to criminalize being black continued into the 1900s. As Russell-Brown (2008) notes, the Jim Crow laws that began in the early 1900s legally sanctioned racial segregation. But African Americans were not the only targets of such laws; other non-white groups were singled out as well (Russell-Brown, 2008). The Jim Crow laws so effectively upheld racial segregation that African Americans could, once again, be punished for the most simple of acts; Russell-Brown (2008) writes:

Blacks could be punished for walking down the street if they did not move out of the way quickly enough to accommodate White passerby, for talking to friends on a street corner, for speaking to someone White, and for making direct eye contact with someone white. (Chapter 3, the Jim Crow Segregation Statues section, para. 5).

Thus, the Jim Crow laws both regulated black life and racialized crime, just as the Slave Codes and Black Codes had done previously (Russell-Brown, 2008).

The criminalization of African Americans and the racialization of crime continued through the 1900s culminating during the Civil Rights Movement when racist interests turned to punitive crime policy to thwart the gains being made. A look at the work of Michelle Alexander and Vesla M. Weaver highlights the ways racism played into the punitive crack down on crime that was in many ways a reaction to the Civil Rights movement.

Punitive Crime Policy: A Reaction to the Civil Rights Movement?

The 1950s and '60s were a time of great social upheaval and change. Millions banded together to fight for racial equality and justice at a time when there was relatively little of both.

The times produced such prominent leaders of change as Martin Luther King Jr. and Malcolm X. These two remarkable visionaries with the help of millions of others led the charge in forcing American standards of racism, discrimination and segregation to come under question, fire and challenge. This powerful fight for change would be termed the Civil Rights Movement, and its wins and losses would set the foundation for future American society. While many white Americans supported and even took part in the fight for civil rights, others did not. Racist fervor was as strong as ever, and as the Civil Rights Movement waged its battle, as at any time of social change, a concomitant struggle began to keep things more of the same, just under a different guise (Alexander, 2010, p. 39).

It is during this time that professor and author Michelle Alexander (2010) argues in *The New Jim Crow* that racist white interests began a call for a punitive crackdown on crime which was conveniently linked to the Civil Rights Movement (pp. 40-42). Alexander writes that “conservatives systematically and strategically linked opposition to civil rights legislation to calls for law and order, arguing that...civil disobedience was a leading cause of crime,” (p. 40). Those opposed to equality and change thus used justified civil unrest as a foundation for their “get tough on crime” agenda, a disguise for their desire to stop black advancement. To their advantage, crime rates were increasing in the 1960s, and though caused by complex factors, the new “law and order” bunch conveniently tied increasing crime to black criminality (Alexander, p. 41). Riots and the social unrest following Martin Luther King Jr.’s murder exacerbated this effect, and “the racial imagery associated...gave fuel to the argument that civil rights for African Americans led to rampant crime” (Alexander, p. 41). Even presidential candidate Barry Goldwater pushed the notion when in 1964, he suggested that support for Johnson’s

administration (which was supportive of the Civil Rights Movement), would result in “mobs in the street” (Alexander, 2010, p. 42).

In her article “Frontlash: Race and the Development of Punitive Crime Policy,” Vesla M. Weaver (2007) highlights a variety of the tactics used to further strengthen this tie between black social activism, civil rights and crime. From the introduction and/or passage of legislation seeking to criminalize civil disobedience in the ‘60s, to the blatant suggestions that Southern whites were justified in their opposition to integration because of the violent tendencies of blacks and that black migration would result in an increase in crime around the nation, the intent was obvious (Weaver, pp. 240-242). To many, those pesky ideas of equality and justice espoused by the Civil Rights Movement were doing a lot more harm than good. Southern politicians were unabashedly at the forefront of such beliefs, as Weaver notes “several Congressman campaigned against the passage of the Civil Rights Act of 1964 using...riots as testament to the fact that civil rights bred lawlessness” (p. 242).

The reality of the times must be considered, however. The push to equate the Civil Rights Movement with criminality was not a difficult feat given the social upheaval caused by the status quo coming widely under fire. While blacks and other minority groups and their sympathizers fought hard against inequality and racism, others fought back just as hard to uphold them. The riots and civic disorder rampant during the times were often the result of police brutality, a fact supported by the findings of the National Commission on Civil Disorders, but those wanting to disrepute the Civil Rights Movement gave little credit to such claims and flat out denied them most of the time (Weaver, 2007, p. 248). Thus, a vicious cycle was created in which those claiming the movement violent and criminal were often those causing and perpetuating the violence and so called criminal behavior (Weaver, p. 248).

Racist interests trying to create causality between the Civil Rights Movement and an increase in crime is yet another early example of the issue of race being inextricably linked to crime and thus the criminal justice system. History proves that when the powerless take a stand, the elite always find new ways to remain in control. According to Weaver (2007), it is at this time that so called “frontlash” allows elites to create new systems that while on the outside seem unrelated to upholding the status quo, work together to cunningly perpetuate it (p. 238). The fact that the era of punitive crime policy in the U.S. would find its early foundation in such efforts, and that the criminal justice system has long been used to control African Americans, is undeniable proof that race does matter within the criminal justice system. A look at America’s War on Drugs will further strengthen this argument.

Reagan’s Drug War

In 1982, Republican President Ronald Reagan declared a war on drugs, cementing street crime as the main crime concern of the time (Alexander, 2010, p. 49). By 1984, federal funding for drug enforcement increased astronomically, from a low of \$8 million to a high of \$95 million, and “Department of Defense anti-drug allocations increased from \$33 million in 1981 to \$1,042 million in 1991” (Alexander, 2010, p. 49). Money talks and this type of funding increase made it clear what and who would be law enforcement’s enemy of the 1980s and ‘90s.

The main effect of Reagan’s drug war was seen quickly as incarceration rates in the following years exploded. According to Marc Mauer, between 1985 and 1995, the incarceration rate in the U.S. rose 84 percent, and over half of those being sentenced to prison were sentenced for drug offenses (as cited in Bobo and Thompson, 2006, p. 451). Suddenly, being caught with drugs almost ensured prison time; according to Bobo and Thompson, “there was more than a 400 percent increase between the 1980s and the 1990s in the chances that a drug arrest would

ultimately result in a prison sentence” (p. 451). The effect the drug war had on incarceration is clearly seen when it’s considered that hundreds of thousands were incarcerated between 1980 and 2000 alone (Bobo and Thompson, p. 449) and that since 1980, tens of millions have been arrested (Alexander, 2010, p. 60).

But it is not just about how many were/are incarcerated because of the drug war, it is about who was and is incarcerated. And it is here that we find the critical meeting point of race and the punitive drug policies of the War on Drugs. While incarceration for drug offenses has increased for many racial groups since the ‘80s, for African Americans, the increase has been especially pronounced (Alexander, 2010, p. 98). In fact, the incarceration rate for blacks practically quadrupled during the ‘80s and by the turn of the millennium was “more than twenty-six times the level in 1983” (Alexander, p. 98). Note that the incarceration increase for whites during the same time was comparatively little at eight times the rate of 1983 (Alexander, p. 98). Further, in some states over 80 percent of those incarcerated for drug offenses are black and in others, blacks are incarcerated at a rate “twenty to fifty-seven times” the white rate (Alexander, p. 98).

So do these disparities mean that black people simply use and sell drugs more than white people do? No, though some might like to think so. However, drug use and sale patterns are pretty similar across racial lines (Alexander, 2010, p. 99). Findings of the National Survey on Drug Use and Health (conducted by the U.S. Department of Health and Human Services), support this claim: in 2010, of those surveyed, 10 percent of African American respondents over age twelve had used illicit drugs within the past month, compared to 8.7 percent of whites and 8.4 percent of Latinos (p. 23). While differences of about a percentage point or slightly more do exist, those small differences can hardly account for the gross incarceration disparities listed

above, nor are they statistically significant. Further, Alexander also reports that it is whites who are more likely to sell drugs, not African Americans (p. 99). Clearly, those who place the blame of the above disparities on black drug use and criminality are ignorant. There is another reason at play here and it comes down to race.

Race and the Drug War

The drug war has long been criticized for its racial overtones. To many, the drug war isn't really a war on drugs at all, but instead, a war on African Americans. This belief is supported in numerous books, articles and even popular rap songs. But if one is going to make such a claim there must be evidence to back it up. Nowhere are the racial overtones of the drug war seen more clearly than when it comes to its policies, especially those concerning cocaine. The two forms of the drug- crack and powder cocaine- received vastly different levels of punishment up until 2010 when President Obama changed the laws on crack cocaine (Baker, 2010). Regarding crack cocaine, Alexander (2010) writes "crack is pharmacologically almost identical to powder cocaine, but it has been converted into a form that can be vaporized and inhaled for a faster, more intense (though shorter) high using less of the drug- making it possible to sell small doses at more affordable prices" (p. 51). Or in other words, it's cheaper than powder cocaine, and because many black communities are impoverished, it has become the cocaine of choice in inner cities. But one shouldn't be quick to think that cocaine is a "black" problem, because white people use it too, they're just more likely to use the powder form.

Thus, while both blacks and whites use cocaine, one form received harsher sentencing for years. Before 2010 if an individual was caught with just five grams of crack cocaine it was mandated that they receive a five year federal sentence; an individual would have had to be caught with *five hundred grams* of powder cocaine to receive the same sentence (Mauer, 2004, p.

84). Thus, it is interesting, perhaps convenient, that the form most likely to be used by African Americans was the form that received serious prison time. The case can be made then that it was no mere accident. That the link between blacks and crack cocaine was made so strong (by the media, politicians and use patterns alike) that policy-makers knew just who would be disproportionately affected by their punitive policies and did it on purpose.

After the emergence of crack in inner cities in the 1980s the “media and politicians seized upon the [so called] crack phenomenon and played up its perceived status as a drug used by low-income inner city [black] dwellers” (Mauer, 2004, p. 83). Newspapers and magazines alike reported that it was an “epidemic,” a plague on society, even the “Issue of the Year,” according to the New York Times in 1986 (Mauer, p. 83). Alexander (2010) notes that articles of the time played up racial stereotypes and tended to focus on racial caricatures such as the “black crack whore” or “gangbanger” (p. 52). Hurwitz and Peffley (1997) cite research which studied media coverage of the drug war from the early to late 1980s and found that before the vigilant focus on crack cocaine and the black community began, the media had focused on powder cocaine and “white, suburban drug users in need of therapy” (p. 395). Attention quickly shifted to crack cocaine and black users however, and the focus became inner city violence and punishment rather than rehabilitation (Hurwitz and Peffley, p. 395). The media clearly made crack cocaine a black, inner city problem all the while suggesting through words such as “epidemic” and “plague” that it was only a matter of time before its effects were felt elsewhere. The fear the media created and maintained fueled the punitive policy wave that was taking place at the same time.

In 1986, the Anti-Drug Abuse Act came into law (Alexander, 2010, 53). It would set the foundation for the harsh sentencing mandates associated with crack cocaine mentioned above

and when it was updated in 1988, it took punishment of drug offenders to a new level

(Alexander, p. 53). As Alexander writes:

The new Anti-Drug Abuse Act authorized public housing authorities to evict any tenant who allows any form of drug-related criminal activity to occur on or near public housing premises and eliminated many federal benefits, including student loans, for anyone convicted of a drug offense. The act also expanded use of the death penalty for serious drug-related offenses and imposed new mandatory minimums for drug offenses, including a five-year mandatory minimum for simple possession of cocaine base- with no evidence of intent to sell. (p. 53).

The law passed with majority support, but there were a few critics even then who saw the legislation's bias and what it could mean for black communities (Alexander, 2010, p. 54).

Though President Obama did sign the Fair Sentencing Act in 2010 which reduced the crack/powder sentencing disparity from 100 to 1 to 18 to 1 (Baker, 2010), some may point to crack's supposed connection to crime and violence as justification for the sentencing disparities between the two. Research does not back this up. Reports by the U.S. Sentencing Commission have long disputed the popular myth that crack users have a higher proclivity to violence than powder cocaine users (Hartley and Miller, 2010, pp. 68-69). Its 1995 report stated that there was "little empirical evidence" that users of either form of the drug were especially violent because of their drug use and a more recent report found the same (as cited in Hartley and Miller, pp. 68-69). Thus, the media perpetuated image of the criminal and violent black crack user which fueled punitive legislation was more a reaction based on biased hysteria than on factual evidence.

Profiling: Racializing probable cause. A discussion of the racialization of the War on Drugs is incomplete without the inclusion of law enforcement, and how the practices and policies of law enforcement have contributed to the racialization process. The media and the Anti Drug Abuse Acts (1986, 1988) gave a face to the drug war's number one enemy: black crack users and sellers, but it was and is law enforcement officers who search out and arrest the

individuals who are prosecuted under punitive drug legislation. The racial profiling that became justified and popularized under the guise of the drug war played a large role in the racial disparities that have characterized the criminal justice system for years.

Racial profiling, according to the American Civil Liberties Union, as quoted by Roh and Robinson (2009), is the targeting of an individual by law enforcement on the basis of “his or her race, ethnicity, nationality or religion” (p. 137). It occurs at all levels of law enforcement, from vehicle stops to arrests (Roh and Robinson, p. 137). It became widely used during the 1990s when it was introduced by the Department of Justice and law enforcement officers across the country “were trained to use drug courier profiles” which were based on race (Warren, Tomaskovic-Devey, Smith, Zingraff, & Mason, 2006, p. 713). Race and ethnicity became justifiable cause for suspicion which resulted in the social phenomenon of “Driving While Black.”

The statistics surrounding vehicle stops highlight the vast disparities that exist between races in certain parts of the United States in regards to who has a higher chance of being pulled over. Statistics from the New Jersey Turnpike are often cited as some of the grossest disparities. One study of the New Jersey Turnpike for example, showed that though blacks made up “just under 14 percent of drivers on the New Jersey Turnpike and 15 percent of its speeders, they [made] up 35 percent of those pulled over and 70 percent of those arrested” (Robinson, 2000, p. 143). Further, studies of Maryland’s I-95 found that African American motorists accounted for 70 percent of those stopped and searched by law enforcement officers even though they made up only 17 percent of the drivers in the area (Alexander, 2010, p. 133). Worse, minorities as a group “comprised nearly 80 percent of those pulled over and searched” yet made up only 21 percent of drivers (Alexander, p. 133).

The evidence of discriminatory actions by law enforcement under the guise of “profiling” continues: In California, a study by Gaines of the Riverside Police showed that blacks in the area had a 25 percent higher chance of being stopped than whites did and in San Diego, Berejarano found that black drivers had a 50 percent higher chance of being pulled over compared to other racial groups (as cited in Warren et al., 2006, p. 711). Alexander (2010) notes that in Florida, a reporter studying over a thousand highway stops found that 80 percent of the drivers stopped in the state’s Volusia County were African American or Latino, though they comprised only 5 percent of all the drivers in the area and in Oakland, California, the chance that a black driver would be pulled over was twice that compared to a white driver (p. 134).

Not only are black people more likely to be stopped by a police officer, they are more likely to have their vehicles searched (Coker, 2003, p. 835). A 2005 study by the Bureau of Justice found that white drivers were subjected to a vehicle search less than 5 percent of the time but for black drivers the percentage was over 10 percent (as cited in Roh & Robinson, 2009, p. 141). In certain cities the disparity is even higher. Ridgeway found that in Oakland, California, “Black drivers were twice as likely as white drivers to be searched after being stopped” (as cited in Roh & Robinson, p. 141). Further, a study by Smith et al. of the North Carolina Highway Patrol found that blacks were also more likely to receive tickets (as quoted in Warren et al., 2006, p. 711).

Alexander (2010) notes that profiling is not just about race; law enforcement officers may not approach an individual based solely on the color of his or her skin. Rather, appearance, age, who an individual is hanging out with, as well as the economic make up of a community and its crime rates act as co-factors in making people of color targets for law enforcement (Alexander, pp. 131-132). This makes racial profiling all the more precarious because it allows law

enforcement officers to deny that they profile based on race because they can use factors as innocent as an individual's location in a high crime area as a convenient excuse to approach them, making the color of their skin seemingly insignificant (Alexander, pp. 131-132). Law enforcement officers can also easily find minor offenses to blame their discriminatory actions on, such as an individual not using their turn signal (Alexander, p. 132).

The problem with profiling is not just that it is racist but that it is ineffective. There is ample research that suggests that when law enforcement officers use race as a gauge for possible illegal activity, that they come up short (Coker, 2003, p. 836). According to David Harris, profiling is no more successful at uncovering illegal activity than non-profiling practices are and he goes as far as to suggest that *non-racialized* policing is more "productive" (as cited in Coker, p. 836). Case in point, not only did the aforementioned studies of the New Jersey Turnpike and the Maryland I-95 find that minority drivers were pulled over more often by law enforcement officers, they also found that minority drivers were *less* likely to be transporting contraband than white drivers were (Alexander, 2010, p. 133).

Racial profiling is another clear example that race does play a role in the criminal justice system. The targeting of individuals because of their skin color is as clear a form of discrimination as not hiring a person because of their race. Thus, racial profiling in simplest terms is intentional discrimination based on racial stereotyping. It is disheartening that such intentional discrimination is a widely used tactic by law enforcement officers, whether they openly admit to the practice or not. One must wonder what would happen if the demographics in the U.S. were to suddenly flip and white people found themselves as the minority more likely to be approached (harassed?) by police, if racial profiling would continue to be a viable practice. It's not likely.

But the War on Drugs is not the only example of the racial bias that characterizes the criminal justice system. A look at capital punishment further uncovers its racialized nature. Like the War on Drugs, the history of capital punishment is riddled with racial overtones and blatant racial bias. Numerous studies have uncovered racial bias and disparities in several facets of the capital punishment process, from trial to execution. The race of both defendant and victim matter when it comes to who is more likely to be sentenced to death and who is not. The death penalty process is not colorblind and research on capital punishment in several states supports this conclusion. The following pages take a closer look at this evidence.

Death Penalty: Race, Disparities and Discrimination

“Even under the most sophisticated capital punishment statutes, race continues to play a major role in determining who shall live and who shall die” - (as quoted in Amnesty International, 2003, p. 6).

According to the Death Penalty Information Center (2012), since 1976 35 percent of those who have been executed in the U.S. have been black and 56 percent have been white. Note that as with many other areas of the criminal justice systems, blacks are *overrepresented* in these statistics with respect to their representation in the overall U.S. population, while whites are *underrepresented*. DPIC also reports that of those currently on death row in the U.S., almost 42 percent are black (1,325 individuals) and 43 percent are white (1,371 individuals), practically equal percentages. Yet whites comprise about 72 percent of the U.S. population while blacks comprise only 13 percent (U.S. Census Bureau, 2010). Once again, there is a consistent theme of overrepresentation and underrepresentation along racial lines.

Coker (2003) cites studies at the federal level by the Department of Justice which found that from 1995 to 2000, “682 defendants were charged with death-eligible crimes” and that 48

percent of those defendants were black (p. 838). Further, 68 percent of those awaiting execution at the time were black, but only 21 percent were white (Coker, p. 838). Remember that at the time blacks comprised just over 10 percent of the total U.S. population. Comparatively, at the state level, 55 percent of those on death row were white while 43 percent were black (Coker 838), not as high a disproportion, but still significant.

A look at current death row populations by race uncovers the persistent nature of these racial disparities. As of April 1, 2012, 35 states had inmates on death row (DPIC, 2012). By comparing data from the Death Penalty Information Center and data from the U.S. Census Bureau (2010), I discovered that in *every* state with African Americans on death row that they are overrepresented compared to their makeup in the general population. Here is just a sample of my findings: In Arkansas, blacks make up just over 3 percent of the state population but 62.5 percent of the death row population; in Colorado blacks account for 75 percent of the death row population but just 4 percent of the state population (note that Colorado has just four people on death row, but that three of them are Black is not insignificant); in Ohio almost 51 percent of those on death row are black but blacks account for only 12 percent of the state's population; and finally, in Texas, blacks make up almost 41 percent of the state's death row population but only 12 percent of its general population (DPIC, 2012; U.S. Census Bureau, 2010).

But it is not just racial disparities that plague the death penalty process, but racial discrimination as well. Race of both victim and defendant in a death penalty case has been shown to have a strong influence on sentencing outcomes. The Baldus Study highlights how the race of a victim determines the likelihood of a death sentence and findings from the U.S. General Accountability Office highlight how defendant race also plays a role.

The Baldus Study, Victim Race and Defendant Race

The Baldus Study is important to a discussion on capital punishment because it uncovered clear racial bias in a state's capital punishment cases. Primarily authored by Professor David Baldus (thus its name), the study researched over two thousand murder cases in the state of Georgia (Alexander, 2010, p. 110). The study famously uncovered that those found guilty of killing a white person were eleven times as likely to receive a death sentence as those found guilty of killing a black person and that prosecutors "sought the death penalty in 70 percent of cases involving black defendants and white victims, but only 19 percent of cases involving white defendants and black victims" (Alexander, p. 110). Lest some think these disparities were caused by factors other than race, the researchers controlled for several "nonracial variables" and found that those found guilty of killing whites were still over four times as likely to receive the death penalty compared to those found guilty of killing blacks (Alexander, p. 110).

Similar findings have been found by other researchers as well. In 2003 Amnesty International released a report entitled "United States of America: Death by discrimination- The Continuing Role of Race in Capital Cases" in which it reported that at the time, 80 percent of those executed by the state since 1976 had been sentenced to death for victimizing whites, while only 13 percent had been sentenced for victimizing blacks (p. 5). Not surprisingly, the report affirms that "race...influences capital sentencing" (p. 5). Thus, the death penalty process is hardly colorblind.

What is most significant about the findings reported by the Baldus Study and Amnesty International is that they suggest that human life is quantified along racial lines with regards to which cases are considered "worthy" of a death sentence and which are not. Clearly, the taking of a white life is often deemed more grievous than the taking of a black life. For a criminal

justice system to be considered remotely colorblind it must, at least, value all victim life equally. The fact that capital punishment is in many instances sought for cases involving a white victim but not a black one seriously calls into question its credibility and racial impartiality.

Though victim race is usually cited as the most obvious proof of racial bias in the death penalty process there is also evidence that defendant race influences death penalty sentencing in many instances. In 1990, the U.S. General Accounting Office released a report on race and the death penalty entitled “Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities.” What the GAO found was that not only did victim race matter in sentencing outcomes, but defendant race mattered as well in over half of the studies it evaluated for its report (pp. 5-6). As the GAO report suggests, “race of defendant influenced the likelihood of being charged with a capital crime or receiving the death penalty” (p. 6). I want to note that two-thirds of the studies that found evidence of racial influence were considered to be of medium or high quality by the GAO, meaning that they “included legally relevant variables (aggravating and mitigating circumstances),” and “used statistical analysis techniques to control for variables that correlate with race and/or capital sentencing” (pp. 3, 6). Thus, the findings of these studies should not be taken lightly. The GAO also reported that over 75 percent of the studies that found racial influence on defendant sentencing “found that black defendants were more likely to receive the death penalty” (p. 6). Once again, the credibility and racial neutrality of the death penalty must be seriously questioned.

History of Death as Punishment for African Americans

Before moving on from the topic of the death penalty I find it pertinent to offer a brief discussion about lynching, and America’s dark history of African Americans being executed for supposed crimes. There is a sense of disgusting irony that decades after lynching was a widely

used form of “vigilante justice” for African Americans thought guilty of any number of offenses, which resulted in the unjust and deplorable deaths of literally thousands (Russell-Brown, 2008), that African Americans have made up 35 percent of all individuals legally put to death in the U.S. since 1976 and make up almost 42 percent of those currently on death row (DPIC, 2012) though they comprise only slightly less than 13 percent of the U.S. population (U.S. Census Bureau, 2010).

As Katheryn Russell-Brown (2008) notes in her book *The Color of Crime*, official records indicate that between 1882 and 1964, nearly 5,000 individuals were lynched, 75 percent of whom were African American. Forms of lynching included “hanging, shooting, burning, or a combination of these” (Russell-Brown, Chapter 3, The Lynching Ritual section, para. 1). The horror of being lynched was intensified by the public nature of such an event and by the fact that victims were forced to appear nude and that “black men were usually castrated, and sometimes their bodies were used as target practice” (Russell-Brown, Chapter 3, The Lynching Ritual section, para. 3,6). What is worse, the offenses considered “worthy” of lynching were mostly un-criminal acts and “guilt” was based on perception rather than on fact (Russell-Brown, 2008). Shamefully, between 1890 and 1960 Congress consistently resisted pressure to adopt anti-lynching bills which would have criminalized the act and it was not until 2005 that the U.S. Senate apologized for this callous neglect (Russell-Brown, 2008).

It is precisely this shameful past of lynching that I argue makes the racial disparities and discrimination found in the death penalty process unacceptable. Thousands were wrongfully put to death because of the color of their skin and it is of utmost importance that the U.S. ensures that this no longer continues. The evidence previously cited in this paper makes it clear that racial justice in the death penalty process cannot be guaranteed. Thus, if the U.S. is to create a

new future apart from its past of racial injustice, it must ensure that no one is put to death because of the color of their skin. To do this however, the criminal justice system must be free of racial bias and skin color must play no role in who comes into contact with the criminal justice system and who is punished. It is at this point that I want to discuss unconscious/implicit racism and stereotypes and the roles they may play in preventing true racial justice within the criminal justice system.

Unconscious/Implicit Racism, Stereotypes and Fear of Black Criminality

“...the current literature is sufficient to demonstrate the widespread existence of associations accurately described as unconscious racism” (Quillian, 2008, p. 10).

Unconscious or implicit racism and prejudice are racial biases that individuals are not consciously aware of and that are a result of the socialization process and exposure to racial stereotypes through the media and their social environment (Quillian, 2008, pp. 6-7). What is more, even individuals who suppose “colorblindness” and have an explicit aversion to overt racism can be guilty of this type of racism and prejudice (Quillian, pp. 6-7). This topic is relevant to a discussion of the criminal justice system and race because the existence of unconscious and implicit racism and its degree of prevalence can have an untold effect on our so called “justice” system. If anyone is capable of implicit/unconscious racism, how can it be guaranteed that the criminal justice system is racially neutral? It can't.

The existence of unconscious and implicit racism highlights that no one, not even the most well meaning of individuals, can be perfectly “colorblind” or racially unbiased. What this means for the criminal justice system is that those who work within it, those who are supposed to be fair and unbiased in action and opinion, cannot be fully trusted to be so. Thus, implicit and

unconscious racism threaten the supposed racial neutrality of the criminal justice system because it simply cannot be guaranteed.

In their study “Guilty By Implicit Racial Bias: The Guilty/Not Guilty Implicit Association Test,” Levinson, Cai and Young (2010) set out to study the ways implicit racial bias can affect legal outcomes and what they found suggests that unconscious racism poses a real threat to “racial justice” in the U.S. (pp. 189, 207). As evident in the title of their work, the authors used an Implicit Association Test, which measures implicit bias “by measuring [a subject’s] response speed in a computerized test” to gauge unconscious bias in their subjects (p. 189). As Levinson, Cai and Young note, one of the most well known of these tests is one in which respondents are asked to pair attitudinal words (good vs. bad) with photos of different racial groups (p. 188). The IAT used by the authors however was specifically styled to uncover implicit associations between guilt and race and was thus called the “Black/White, Guilty/Not Guilty” IAT, in order to study whether or not people assume a person’s guilt based on their race (p. 188). They were also curious to find whether the results of their IAT would give them insight into how “ambiguous trial evidence” might be processed by jurors (p. 190).

What Levinson, Cai and Young (2010) found supported a link between an assumption of one’s guilt based on the color of their skin. The subjects of the authors’ study “held strong associations between Black and Guilty, relative to White and Guilty” and the mock jurors the authors studied were unable to separate these racial biases when presented with “ambiguous evidence” (p. 190). Levinson, Cai and Young are not alone in their study of implicit racial biases and how they may affect real world legal outcomes. The authors cite a study conducted by Theodore Eisenberg and Sheri Lynn Johnson in which an IAT was used to measure implicit bias in capital defense attorneys (p. 196). Eisenberg and Johnson found that their subjects were also

guilty of “strong implicit biases against African Americans (p. 196). However, they did not attempt to study whether or not the implicit biases held by the defense attorneys studied affected their performance on a case (p. 196).

The importance of these findings is of course what it means for real world trials in which defendants should be assumed innocent until proven guilty (Levinson, Cai, and Young, 2010, p. 200) and the individuals responsible for their fate are supposed to base their decisions on evidence, rather than on personal feelings towards a defendant. These findings, as well as the existence of implicit/unconscious racism and prejudice, call into question the ability of the U.S. court system to offer truly unbiased trials. But it is not only implicit racism that may act as a barrier to racial equality within the criminal justice system, but stereotypes as well.

Stereotypes and Black Criminality

Stereotypes can fall under the umbrella of both implicit and explicit racism, meaning they may be consciously or unconsciously believed. Stereotypes are beliefs about a group of people based on generalizations and oversimplifications and are generally negative in connotation. Stereotypes can have a powerful impact not only on normal, everyday citizens but on those who make the laws and enforce them. As was discussed earlier with the racialized hysteria surrounding crack cocaine in the ‘80s, stereotypes that are popularized and fed by the media can take on a life of their own and eventually be seen by many as “truth.” Thus, just as with implicit racism stereotypes are important to the current discussion of race and the criminal justice system because the pervasiveness with which they operate in society can have a large impact on the ability of the criminal justice system to be colorblind. Widely held stereotypes about African Americans also give credence to the argument that crime has been racialized and that the criminal justice system is *not* colorblind.

According to Oliver (2003), stereotypes about black criminality have produced fear in many Americans of blacks and especially black men (pp. 3-4). She argues three important points with regards to these stereotypes and how they affect white views of blacks: 1.) that whites feel threatened by black proximity, 2.) that they equate blackness with guilt, and 3.) that they favor more punitive treatment of black suspects than of white suspects (p. 4). The first point is no surprise as “white flight” has been a reaction to the threat of black proximity for years. When black people move into a neighborhood, it is almost guaranteed that white people will move out. The second point is a reiteration of what Levinson, Cai and Young (2010) found in their IAT study and the third point is reflective of the growth in punitive crime policy discussed earlier. But all are equally reflective of the fact that many whites have a fear of blacks which colors their perceptions of black innocence resulting in their support of punitive crime policy.

This idea of black criminality is reproduced and perpetuated by the mass media in order to get ratings. Studies of news coverage have highlighted the criminal tone of news reports featuring African Americans (Oliver, 2003, p. 6). Entman found in a 1990 study of a week’s worth of news coverage that 41 percent of African American focused stories involved crime, and in a 1992 study found that 84 percent of stories about black crime were characterized by violent crime (as cited in Oliver, p. 6). Black suspects were also found to be consistently portrayed as “particularly threatening or dangerous” (Oliver, p.6).

Because the media has a strong influence on the public’s perception of reality, its perpetuation of the black criminality stereotype can be particularly harmful. Gerbner et al. coined the “cultivation theory” to explain the process by which media representations may become real to audiences, no matter how un-factual they may be (as cited in Oliver, 2003, p. 8). Thus, when

the media portrays blacks and particularly black men as criminal or violent it can further strengthen the already negative views that the public holds about them.

Why Unconscious/Implicit Racism and Stereotypes Matter

Because the public can influence crime policy and because those that enforce criminal law, such as judges, police officers, attorneys and jurors are a part of this “public,” it means that the criminal justice system is only as colorblind and racially unbiased as these individuals are themselves. A police officer is just as capable of being biased against black people as a random person on the street is, yet they are the ones to enforce the law and decide who to target and who not to target. Likewise, judges can hold negative views towards blacks just like anyone else can, yet have the power to hold the fate of many in their hands. Because all humans are susceptible to racial bias, whether consciously or not, whether they want to be or not, I argue that it is impossible to deem the criminal justice system as racially fair and unbiased. Try as it might, it is still a system run by humans, and until racism becomes a thing of the past, it cannot, as a whole, be deemed racially neutral. And with the evidence offered in the previous pages, it is clear that it is not, and cannot be with the way it is currently run. I now turn my attention to the argument that black criminality is the cause of the racial disparities found in the criminal justice system, not racial bias.

The Criminality Argument

I end my paper with a discussion on what I call the “criminality argument” which is the belief that the racial disparities found within the criminal justice system are caused not by any racial bias or discrimination, but by the fact that African Americans simply commit more crime and are thus more “criminal” than other races. There certainly are statistics that may “support” this line of thought, yet from a sociological perspective, I find the argument oversimplified and

ignorant of the black reality within the United States. To suggest that there are so many African Americans in prison and in contact with the criminal justice system because blacks are just more criminal is to blatantly ignore the sort of evidence discussed throughout this paper.

According to Robinson (2000), though “official rates of offending are higher in poor minority communities and for African Americans generally” this fact does not justify or explain how vast the racial disparities are (p. 141). And Coker (2003) notes that even accounting for differential patterns of offense does not explain away all the racial disparities in sentencing and incarceration (p. 866). In fact, twenty percent are left unaccounted for, which amounts to about ten thousand black prisoners (Coker, p. 866). As Katherine Russell argues, “Ten thousand Blacks who may have been treated more harshly by the criminal justice system because of their race, constitutes an enormous social problem” (as cited in Coker, p. 866). The point here is that even *if* African Americans do offend at higher rates for certain crimes (more about this next), that does *not* mean the absence of racial bias in the system.

Another reason the criminality argument must be called into serious question is because it is based on crime statistics which are not without their own biases because much of the data on crime is gathered from official reports which are based on “police experience” (Robinson, 2000, p. 141). Thus, Robinson argues that these types of reports are “a more valid measure of police experience rather than crime because it measures the behavior of police rather than criminal offenders” (p. 141). This suggests that just because blacks are arrested more for a certain crime does not necessarily mean that they actually commit that crime more often. Rather, it could be biased police practices that lead to more arrests of blacks than of whites, and true criminality may have little to do with it.

Thus, since the criminality argument cannot account for all the racial disparity found within the criminal justice system, underlining that claims of bias and discrimination cannot be easily dismissed, and since the official reports it may use in its argument can themselves be biased, it should not be accepted as proof that claims of racial bias are wrong. In this way, the criminality argument is shortsighted in its desire to overlook claims of racial bias in favor of criminality. The history of the criminal justice system, its current policies and practices, as well as implicit and explicit racism and stereotypes highlight that race plays a large role in the criminal justice system and that to define the system as racially just ignores ample evidence to the contrary.

Conclusion

To end, I will reiterate some of the statistics cited earlier. Despite comprising less than 13 percent of the U.S. population (U.S. Census Bureau, 2010), African Americans comprise 40 percent of those who are incarcerated and young African American men have a one in three chance of being incarcerated at some point during their life (Lawrence, 2011; The Sentencing Project, 2012). Further, almost 42 percent of those on death row are African American (Death Penalty Information Center, 2012) and the incarceration rate for African Americans is eight times the rate of whites (Bobo and Thompson, 2006, p. 452). These disparities may not prove the existence of racial bias within the criminal justice system, but the evidence cited in this paper, numerous other studies, and the life experiences of black and other minority individuals makes it clear that race does play a role. Racial bias in some form does exist and it is ignorant to deny it.

Americans like to espouse supposed values of equality and justice for all, but until the criminal justice system is truly colorblind, equality and justice will not be reached. As long as young black men must fear police officers and be taught from an early age how to interact with

law enforcement officers so as not to find themselves in a racially charged, dangerous situation, equality and justice is impossible. As long as incarceration is a normal life experience for many young black men, equality and justice is impossible. As long as racial profiling is accepted as a useful form of law enforcement, equality and justice is impossible. And as long as the life of a white victim is valued over the life of a black victim and “Driving While Black” is a social reality, equality and justice is impossible.

But there is cause for hope. Reform of the system or perhaps its complete abolition may be far off dreams of those who know the system is broken, but change can happen. The Fair Sentencing Act of 2010 was a step in the right direction. When California voters approved Proposition 36 to reform the Three Strikes Law it was a step in the right direction. Change may not come easily, and may come painfully slowly, but it is possible. When ignorance is overcome and the white masses put themselves in the shoes of their fellow African American citizens, perhaps change will take place. Martin Luther King Jr. said in his now famous speech: “I have a dream that one day this nation will rise up and live out the true meaning of its creed: “We hold these truths to be self-evident: that all men are created equal” (King, 1963) The criminal justice system must live by this creed as well, otherwise, justice will have little to do with it.

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