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Race and Crime

Analyzing Race in the United States Criminal Justice System

Andrew Mintz
3-25-2016

A. Introduction and Thesis

The United States criminal justice system is currently facing scrutiny from much of the general public concerning the issue of race and sentencing. It is not difficult to see the disgust of many simply by using popular media newspapers and websites such as The New York Times and The Huffington Post. ^(the Post) As explained in the Post a recent survey from 2011 conducted by the Substance Abuse and Mental Health association explained that 20 percent of White Americans had used cocaine compared to 10 percent of Latino and Black Americans. Yet Black Americans are three times more likely to be arrested than whites (Knafo, 2013). Statistics such as these are being seen currently as a flaw in the American criminal justice system and have led to groups on ^{the development of} the ~~web~~ ^{internet} such as the Black Lives Matter movement. It can easily be seen through these news ^{describe who they are or what this} sources and activist groups ^{that group is about} many of the American people are upset about the current racial disparity in sentencing.

The attention that the public eye is giving this event is well needed. The justice system in the United States is at an important point in its existence and will need to define and reform its policies regarding racial disparities in the system. One focus of the difference is on drug-related crime. Drug abuse has become a well-^{examined} ~~reviewed~~ concept in the past thirty to forty years and will likely continue to be ^{re}examined. It is important that the issue is examined because there are noticeable racial differences in incarceration rates for drug-related offenses (Alexander, 2012). Authors such as Alexander, ^(need yrs) Bekket, and Welsh elaborate on drug and crime disparities between races starting ^{by examining} ~~at~~ the war on drugs and leading into the modern era.

It is suggested that the race of an individual has no effect on the amount of crime that they commit. ^{it is stated} Instead there is the bias in the criminal justice system against racial minorities ~~in~~ as

well as higher rates of poverty that increase the risk ~~for~~ ^{of racial} higher representation as criminal offenders.

B. The Cocaine Predicament

The war on drugs in the United States began in the 1980's and has led to high incarceration rates that (Welsh, 1998). The intent of the "War" was to have the justice system take a punitive stance on drug-related crime in order to prevent further crime. It was implemented by politicians as a way to look tough on crime, which was a heated issue at that time (Alexander, 2012). This derived from what was called the "Drug Scare" which was directly related to crack cocaine, a newer drug that many believed was the highest form of addictive drug at that time (Alexander, 2012). A majority of the use of crack cocaine was in the inner cities and ghettos. The fear was that the drug would spread from those parts of the country to middle class suburbia. This begot laws that focused on shutting down the use of crack cocaine in order to stop the progress of the drug to middle class children (Welsh, 1998).

A large consequence of this crack scare was an increased police presence in inner cities and ghettos. In the 1980's, as well as today, many of these areas are predominantly black and many of the middle class suburban neighborhoods are predominately White. Thus the increase in apprehension of crack cocaine users became focused on black gangs in the ghettos. The prevention tactic may have stopped the crack cocaine from getting to middle class homes however, a closely related drug, powdered cocaine soon became the drug of choice. Thus, from the inception of the war on drugs, the justice system took a more punitive stance of crack cocaine compared to powdered cocaine, which in the future caused disparities in sentencing.

Drugs in the inner cities had become known as a way to quickly improve a previously bleak and moneyless lifestyle. Many young men especially saw the benefits of the quick cash

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and increased amount of respect. However it was a very disturbing fallacy. Drug related crime is one of the most arrested offenses in the United States (Alexander, 2012). Furthermore the arrests that are made are most often on the small time players. Men who deal drugs but still have someone else selling to them often are the first arrested. Most often the kingpins of the drug trade go unpunished. One of the demographic issues with the arrests in the inner cities is that, once again, they are young minority men (Census, 2016).

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The importance of the war on drugs and its effect on minorities is most severely felt at the sentencing of guilty individuals. At this stage a judge or jury has found that the suspect is guilty of the crime and thus deserves punishment. During the tough on crime period in the late 1980's the United States came up with mandatory sentences that were to serve as a template for judges to hand out punishments to offenders. The sentencing guidelines would take an offense and classify it into a certain level that was previously prescribed. Then the outstanding characteristics were added to the sentence such as previous offenses and injuries to innocents. This baseline has caused an increase in the amount of people in prison for drug related offenses (Alexander, 2012).

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To minorities, mainly Black Americans the sentencing guidelines have struck much more

harshly. Crack cocaine which was being hailed by many as the worst drug at the time gave mandatory sentences that were 100:1 times more severe than powdered cocaine. This was seen being as blatant racism by many due to the conviction rate of individuals for crack cocaine being 93 percent Black (Alexander, 2012). Powdered cocaine offenders were predominantly White offenders. This has caused a huge increase in the amount Black inmates in prison systems throughout the United States (Alexander, 2012). The reasoning for the vast difference in sentences came from Congress believing that crack was more dangerous to society than powdered

as

cocaine. Most of the evidence for a large difference between the two forms of cocaine has since been discredited (Alexander, 2012).

Since learning about the difference in sentencing of minorities, many have seen the need for change. In recent years guidelines have been passed such as the Fair Sentencing Act of 2010 that takes the 100:1 ratio of crack to powder cocaine down to a ratio of 18:1. However with the lack of evidence that crack cocaine produces much more harm to a user than powdered cocaine and that offenders that are arrested for crack cocaine are still predominantly Black there is still a major problem in sentencing against the Black offenders. This has caused many more black individuals to be incarcerated for longer periods of time, resulting in a perceived notion that Black people end up ^{committing} ~~doing~~ more crime.

C. The Role of Discretion in the Justice System

→ A heavily reviewed and often debated idea in the criminal justice system is the roll of discretion according to Michael Welsh. ^(W) This term ~~is~~ used to describe the ability that an individual has to decide whether or not they want to pursue a notion. ^{Discretion is a} This can happen in every facet of the justice system starting with patrol officers. They may decide whether to question a person about suspicious activity or drop it. Many times personal bias comes into play and either intentionally or unintentionally racial prejudice often plays a role. Often this leads to a gap in the number of arrests of minorities causing the perspective of many to believe that minorities commit more crime (Alexander, 2012). [?]

In a survey that was done in 1995 a group was asked to imagine what a drug dealer looked like. Ninety-five percent of the group imagined a black individual and only 5 percent imagined someone of a different color. Included in this survey were people in the criminal justice system, such as patrol officers (Alexander, 2012). Many believe ^{this} ~~the~~ perspective is caused by the

media and politics that started in the early 1980's during the Reagan administration.

Discretionary actions ^{committed} ~~done~~ by members of the justice system directly affect who ends up in prison. Thus, with many arrests being made and either conscious or unconscious bias being held many are left with an impression that drug crime is committed by people Black or Brown in color ^{need a para format} (Beckett, 2006).

The unconscious discrimination that many Americans have, including police officers is what is called implicit bias. The theorist behind implicit bias suggest that race indicates a person's perceptions on issues such as crime through emotional cues. These cues often enforce racial stereotypes in a person's cognate understanding. Kathrine Beckett, a leading criminologist, suggests that these stereotypes are impacted heavily by the media. One study that reflects this ^{idea / perspective} ~~opinion~~ has showed that when exposed to news stories about crime, 60 percent imagined a picture of a culprit when none was given. Furthermore, 70 percent of that group imagined that the culprit was Black (Beckett, 2006). Beckett attributes this finding to the familiarity that many people have with news stories that focus on a defined "script" that was imposed by crime news. The same "script" is imagined when the group was asked about what a typical drug user looked like. Ninety-five percent of the group imagined an African American (Beckett, 2006). The unfortunate circumstance with studies such as these is if this is the way that Americans see drug and crime it is almost certain that the opinion ^{and colleagues} ~~bled~~ is into the minds of patrol officers.

The importance of discretion does not stop with arrests made by patrol officers. Almost every part of the criminal justice system uses discretion at some point. Often before a case is held or has a preliminary hearing the prosecutor will have the choice to drop a case or continue with ~~it~~ ^{if} ~~into~~ court proceedings. Furthermore, a prosecutor also has the opportunity to suggest a punishment for the defendant based on their discretion and the facts of the case. The prosecutor

in both of these cases has immense power over whether a defendant will be imprisoned (Alexander, 2012).

No one in the criminal justice system has more power than a prosecutor. Not only are there very few rules that a prosecutor must follow, but the prosecutorial discretion applies to almost every part of the case. Even before the preliminary hearing a prosecutor has the power to suggest plea deals to the defendant. Also, they have the power to move a case from juvenile court to adult court. To further the issue there is no uniform book or case that a prosecutor is supposed to follow.

United States v. Armstrong (^{need a format} United States v. Armstrong, 1996) is a key case to understanding discrepancies in the prosecutor's office due to race. In 1992, Chris Armstrong was staying at a hotel with four others. His room was raided by a drug team. They were arrested and prosecuted for the intent to distribute more than fifty grams of cocaine. The public defender's office was disturbed when another ^{defendant?} minority was brought in on a case. At that time there were fifty three cases that were sent through the office, none of them being white defendants. The federal public defenders thought that the white offenders were being sent by federal prosecutors to the state system. In state court systems the penalties for the distribution of cocaine are much less severe. The case was brought to the Supreme Court under the pretense that the federal prosecutors were using selective prosecution to target minorities (United States v. Armstrong, 1996).

The outcome of the case was a dismissal of Armstrong's lawyer's motion to discover the prosecutor's files. The court explained that there was not enough evidence for the facts presented in the case. The evidence that was brought to the court was labeled as hearsay evidence and based on the opinion of the author of the evidence and not on the numbers represented.

Michelle Alexander author of “The New Jim Crow” disputes this case essentially saying that it was a dilemma that could not be remedied due to the conflict of the need for evidence that white defendants were in the same circumstance and were not prosecuted and the only place to find that evidence was the prosecutors (Alexander, 2012). Essentially, the evidence that ~~was~~ needed to be provided in the hearing was also the evidence that was asked for by the federal defendants in the first place (Alexander, 2012).

Judges have a lot of discretion that directly impacts defendants. Judges can do a number of things during the trial to have evidence thrown out or an argument from either side shut down. *avoid will.* Furthermore a judge often decides if and how long an offender will be imprisoned. This decision is based off of the evidence that is presented in the case and the recommendations of the prosecutor. Together with the reasoning of the judge the defendant receives their penalty (Bekket, 2006).

One issue with judges currently throughout the United States is the lack of minority representation on the bench. Currently there are only 15 percent of federal judges that are minority races. That is nearly half the percentage of minorities currently living in the United States (Chew, 2010). The importance of having minority judges plays into the concerns of racism in the court system. It is difficult to achieve a rounded opinion about a subject without a proper sample of people. The view of minorities cannot be properly represented if those deciding laws are of the majority race. It is imperative the courts are both fair and disperse the law equally to all races.

The lack of diversity on the bench often leads to the lack of a diverse opinion. The narrow opinion will not have the considerations of all other ethnic groups. This will lead to more discrimination for those that are not represented. Often laws decided at the federal level directly

influence those who enter the justice system. Once again revisiting the issue of crack and powder cocaine, ^{if} the courts do not have a second voice telling the impact that laws like the cocaine law will have on community's it is likely that they will continue happening causing the minorities to once again have the possibility at higher incarceration rates.

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One of the final parts of the criminal justice system that uses discretionary decisions and can ultimately ^{determine} ~~define~~ when someone is ^{released} ~~expelled~~ from prison, is parole. First there is a parole board that determines when a person is qualified to have a parole hearing and further ~~on~~ decides if the inmate can be released back into society on parole. Many factors do play into the ability of an inmate on parole such as good behavior inside the prison and whether the crime was violent. However one of the largest factors that a parole board must decide is the danger that the inmate will be to society. Often ^{time} race does play a large ^{factor} ~~role~~ in the decision. Like the patrol officers many on the parole board are affected by ^{implicit?} implicit bias. The perceived danger of an inmate may unconsciously be decided by race, or like any other part of the system may be decided by conscious racism.

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In every facet of the criminal justice system there are discretionary choices that are made. Each one of them directly impacts the defendant. It only takes one part of the system to either have a conscious or unconscious bias in their discretion cause the defendant to have a penalty that is unfair or unreasonable. This practice, although essential to the process, can cause contrast in the conviction of many. This impact provides a reason that many minorities are overrepresented in the justice system. Most likely it will continue to be a recurring issue thus driving this contrast and the concern that minorities commit more crime.

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D. The Problem of Poverty and its Implications ^{for} ~~with~~ Crime

The justice system is not the only thing that drives the percentage of minorities higher in the court system than those of whites. A large issue currently is the income gap of many minorities. For example, Black Americans are currently around 13 percent of the nation's population. However, the poverty rate of black Americans is nearly double that at around 26 percent (Census, 2016). The Hispanic population in the United States constitutes nearly 17 percent of Americans. However, the poverty rate for Hispanic's is nearly 24 percent. The average poverty rate in the United States currently is around 15 percent (Census, 2016).

The ^{relationship between} ~~importance of poverty with respect to~~ crime is a well-documented ~~circumstance~~. Many studies have been released regarding the effect poverty has on those who commit specifically violent crimes, crimes usually regarded as the most heinous. One such instance comes from the study done by Lynne Vieratis who partly examined crime in the 1980's (Etile, 2003). The ^{large number} ~~mass of~~ people that lived impoverished during the 1980's was on a quick increase.

This was partly the reasoning behind the get tough on crime legislature previously talked about. Also on a steep increase was the violent crimes being committed (Etile, 2003).

Studies done in the 1960's also found a direct correlation between poverty and crime ^{need for mat} (Bekket, 2006). Minorities in this context have essentially the odds against them. Many cannot get out of poverty due to prejudices in the work place or the lack of opportunity afforded by the means in which they were born. Many cannot get out of poverty due to their lack of education opportunities. For example, a teen growing up in an impoverished area may need to drop out of school in order to provide rent for his family that are already struggling financially. Furthermore he will not have the time nor the money to obtain a college education, something that is recently becoming mandatory in order to have a job above the poverty line.

Often young individuals must turn to local organizations to get them past unforeseen problems that pop up in their lives. Most of the time these organizations are credit agencies or gang afflictions that ask much more in return for the payments that they give out (Etile, 2003). *affiliations?* *need APA format*

To further complicate the process, some of the agencies deploy strong arm tactics that can lead a person to be unable to work. Thus, they are presented with the choice of either living in poverty for the rest of their lives or trying to make money a different way. Most likely this represents the perceived fast cash of illicit activities such as drug dealing. *what does this mean*

Socioeconomic circumstances also play heavily on the perception of an individual. For example, a patrol officer is more likely to search a young man that is wearing tattered clothing than a young man dressed in semi-causal clothes such as dress pants and a polo. This leads to a much higher arrest rate for impoverished citizens. Furthermore once inside the justice system if a defendant cannot make bail and must instead be incarcerated they have a much higher chance of getting convicted of their crime.

One of the most important issues that impoverished minorities face is the inability to hire a good lawyer. Often when a public defender gets a case, they have many more that they must also pay attention to. This limits the efforts that they can spend on that case and is also a reason that an impoverished minority may lose a case. Furthermore, public defenders are usually one of the lowest paying law jobs, usually leaving some of the worst lawyers (Welsh, 1998). *specify* *need APA format*

E. Conclusion

The United States criminal justice system currently has a large amount of problems with differences in the incarceration of minorities compared to Whites. The war on drugs and the continued disparity in sentencing has caused many minorities to receive longer punishments. *sentences*

Furthermore both the conscious and unconscious racism employed by patrol officers has driven

the amount of incarcerated minorities up. The prosecutors have driven the amount of minorities incarcerated higher both with longer sentences and by raising minority cases to federal cases instead of state. Judges also have impacted the minority incarceration problem by enacting laws such as the 100:1 ratio of crack to powder cocaine and still upholding the 18:1 ratio. Parole board also have been seen to classify certain races as more dangerous to the public than other races. Furthermore, the media's view of a drug user or offender has been projected into the minds of many Americans causing, in the least, an unconscious racism. Lastly, socioeconomic standards that minorities struggle with nearly twice as much as White individuals have caused many minorities to once again be misrepresented in the justice system. Through all of these, it can be seen that it is not the minorities that are committing more crime. Rather it is the prejudices and unfortunate poverty that instead has increased the minority offense rate.

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Literature Review Rubric¹²

$$\frac{34}{48} = 71\%$$

Professor (Evaluator) Jones
 Student (Person Evaluated) A. Huntz

| Criteria | | | | | |
|--------------|---|---|--|---|--------|
| | Exemplary 4 | Good 3 | Acceptable 2 | Unacceptable 1 | Points |
| Purpose | The writer's central purpose or argument is readily apparent to the reader. | The writing has a clear purpose or argument, but may sometimes digress from it. | The central purpose or argument is not consistently clear throughout the paper. | The purpose or argument is generally unclear. | |
| Content | Balanced presentation of relevant and legitimate information that clearly supports a central purpose or argument and shows a thoughtful, in-depth analysis of a significant topic. Reader gains important insights. | Information provides reasonable support for a central purpose or argument and displays evidence of a basic analysis of a significant topic. Reader gains some insights. | Information supports a central purpose or argument at times. Analysis is basic or general. Reader gains few insights. | Central purpose or argument is not clearly identified. Analysis is vague or not evident. Reader is confused or may be misinformed. | |
| Organization | The ideas are arranged logically to support the purpose or argument. They flow smoothly from one to another and | The ideas are arranged logically to support the central purpose or argument. They are usually clearly linked | In general, the writing is arranged logically, although occasionally ideas fail to make sense together. The reader is fairly | The writing is not logically organized. Frequently, ideas fail to make sense together. The reader cannot identify a line of reasoning and loses | |

¹² Adapted from course.l.winona.edu.

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| | are clearly linked to each other. The reader can follow the line of reasoning. | to each other. For the most part, the reader can follow the line of reasoning. | clear about what writer intends. | interest. | |
| Feel | The writing is compelling. It hooks the reader and sustains interest throughout. | The writing is generally engaging, but has some dry spots. In general, it is focused and keeps the reader's attention. | The writing is dull and unengaging. Though the paper has some interesting parts, the reader finds it difficult to maintain interest. | The writing has little personality. The reader quickly loses interest and stops reading. | |
| Tone | The tone is consistently professional and appropriate for an academic research paper. | The tone is generally professional. For the most part, it is appropriate for an academic research paper. | The tone is not consistently professional or appropriate for an academic research paper. | The tone is unprofessional. It is not appropriate for an academic research paper. | |
| Sentence Structure | Sentences are well-phrased and varied in length and structure. They flow smoothly from one to another. | Sentences are well-phrased and there is some variety in length and structure. The flow from sentence to sentence is generally smooth. | Some sentences are awkwardly constructed so that the reader is occasionally distracted. | Errors in sentence structure are frequent enough to be a major distraction to the reader. | |
| Word Choice | Word choice is consistently precise and accurate. | Word choice is generally good. The writer often goes beyond the generic word to find | Word choice is merely adequate, and the range of words is limited. Some words are used | Many words are used inappropriately, confusing the reader. | |

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| | | one more precise and effective. | inappropriately. | | |
| Grammar, Spelling, Writing Mechanics (punctuation, italics, capitalization, etc.) | The writing is free or almost free of errors. | There are occasional errors, but they don't represent a major distraction or obscure meaning. | The writing has many errors, and the reader is distracted by them. | There are so many errors that meaning is obscured. The reader is confused and stops reading. | |
| Length | Paper is the number of pages specified in the assignment. | | | Paper has more or fewer pages than specified in the assignment. | |
| Use of References | Compelling evidence from professionally legitimate sources is given to support claims. Attribution is clear and fairly represented. | Professionally legitimate sources that support claims are generally present and attribution is, for the most part, clear and fairly represented. | Although attributions are occasionally given, many statements seem unsubstantiated. The reader is confused about the source of information and ideas. | References are seldom cited to support statements. | |
| Quality of References | References are primarily peer-reviewed professional journals or other approved sources (e.g., government documents, agency manuals, ...). The reader is | Although most of the references are professionally legitimate, a few are questionable (e.g., trade books, internet sources, popular magazines, ...). The | Most of the references are from sources that are not peer-reviewed and have uncertain reliability. The reader doubts the accuracy of much of the material presented. | There are virtually no sources that are professionally reliable. The reader seriously doubts the value of the material and stops reading. | |

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| | confident that the information and ideas can be trusted. | reader is uncertain of the reliability of some of the sources. | | | |
| Use of Most Recent Edition of the Publication Manual of the American Psychological Association (APA) | APA format is used accurately and consistently in the paper and on the "References" page. | APA format is used with minor errors. | There are frequent errors in APA format. | Format of the document is not recognizable as APA. | |
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