

Crime and Punishment in a Divided Society

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“The degree of civilization of a society can be judged by entering its prisons”

Fyodor Dostoyevsky (1862)

If a nation can be judged by the state of its prisons, then a divided nation can surely be judged by the identities of those it chooses to incarcerate. And in the case of the United States, this population is not just staggeringly large but also disproportionately black. This disparity has deep historical roots and, until recently, has been widely tolerated. We are concerned here with the reasons for the existence and tolerance of this disparity.

Prior to the late 1970s, the incarceration rate in the United States rate was roughly stable for several decades at less than 200 per 100,000 (National Research Council, 2014). Then began a steady climb that took the country into uncharted territory. At its peak in 2008, the total number of inmates in jails and prisons stood at 2.3 million, or approximately 760 per 100,000 residents. A further five million individuals were under probation or parole. With the possible exception of Russia, no economically advanced country comes remotely close.

Although the growth of federal prisons was far from negligible over this period, the overwhelming majority of the incarcerated population is held in state and local facilities. Meaningful reversal of these trends is therefore impossible without changes in state laws and policies. As we note below, some states have begun to take significant steps to reduce their prison populations.

What were the main drivers of the rise in incarceration? A number of factors that combined to make the system more punitive were at work: an increased number of admissions for drug crimes, harsher sentences, higher rates of parole revocation, and substantially greater admissions per arrest for violent and property crimes (Raphael and Stoll, 2009). The last of these factors was due, in part, to a sharply increased willingness on the part of prosecutors to file felony charges for acts that were previously treated less punitively (Pfaff, 2012).

Even as the incarceration rate was rising sharply, the incidence of crimes was falling. For at least twenty-five years, index crimes have been in decline across all

categories. Figure 1 shows this trend for homicide, burglary, robbery, and motor vehicle theft, all of which follow roughly the same pattern. There was a sharp rise in all categories from 1960-1980, and a steady decline from 1990 onwards. All four are at or close to the lowest levels attained over the past five decades, although homicide rose quite substantially in percentage terms in 2015, and is projected to do so again in 2016 (Friedman et al., 2016).

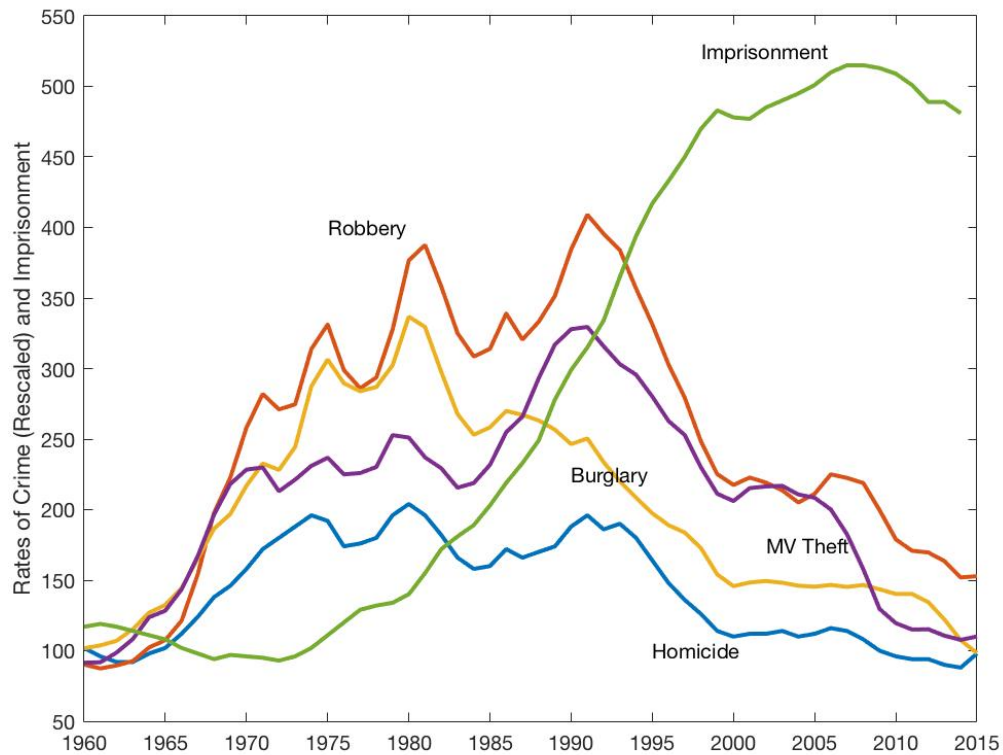


Figure 1. Trends in Crime and Imprisonment, 1960-2015. The imprisonment rate refers to those in state and federal prisons (but not local jails) with sentences of a year or more, per 100,000 persons in the population. Crime rates per 100,000 persons have been rescaled as follows: Homicide (x20), Robbery (x1.5), Motor Vehicle Theft (x0.5) and Burglary (x0.2) as in National Research Council (2014).

The figure also depicts the imprisonment rate, which appears to have become untethered from the rate of offending at around 1990, continuing to rise inexorably for two decades with a momentum of its own.

The population behind bars is demographically quite distinct from the rest of the US population along a number of dimensions. Prisoners are overwhelmingly

young and male, have fewer years of schooling than the general population, and are disproportionately black and Latino. For instance, about 93% of prisoners were male in 2010, and the imprisonment rate—measured as the number of individuals sentenced to at least a year in state or federal facilities, per 100,000 in the population—was around 70 for women overall, 450 for white men, 1250 for Hispanic men, close to 3,100 for black men, and 7,300 for black men aged 30-34 (Guerino et al., 2011).

At the most superficial level, the composition of the prison population simply reflects the degree to which members of different groups engage in activities deemed criminal by the state, as well as biases in the application of the law. Popular interpretations of the staggering racial disparity in incarceration rates fall broadly into two categories, depending on which of these factors is given prominence.

One narrative emphasizes inequality across groups along dimensions such as income, wealth, employment status, and environmental factors such as childhood lead exposure. These disparities are large, but do not come close to matching those in rates of imprisonment. Allowing for biases in the application of the law can, in principle, bridge the gap. Such biases can arise not just out of racial animus, but also through the operation of incentive structures that result in the targeting of dense urban populations and the especially severe sanctioning of black offenders (Harcourt 2008; Alexander 2012). In addition, facially neutral laws such as those targeting drug use, even if enforced without bias, might disproportionately disadvantage black populations because of offending patterns based on the racially segregated social organization of drug markets. That is, there might be some racially disparate incidence of a racially neutral policy of law enforcement.

A very different narrative focuses directly on disparities across groups in rates of offending, attributing these to different propensities for criminality (Bennett et al, 1996). The emphasis here is on cultural breakdown and moral poverty as root causes, rather than differential incentives or opportunities. We refer to this below as an *essentialist* account, since it relies on a belief in differences across groups that are deep, fundamental, and largely impervious to policy in the short run. This narrative leads to mass incapacitation as the only viable remedy.

Both the essentialist account of disparities in offending, and the narrative based on economic and social inequality, predict similar racial disparities in offending across a broad range of crimes. This is not what we see. For instance, as shown in

Figure 2, the black share of total arrests for robbery is about twice as great as that for burglary or larceny, even though all of these crimes are primarily motivated by the acquisition of property. Similarly, among violent crimes, the black share of total arrests is much greater for homicide than for aggravated assault.

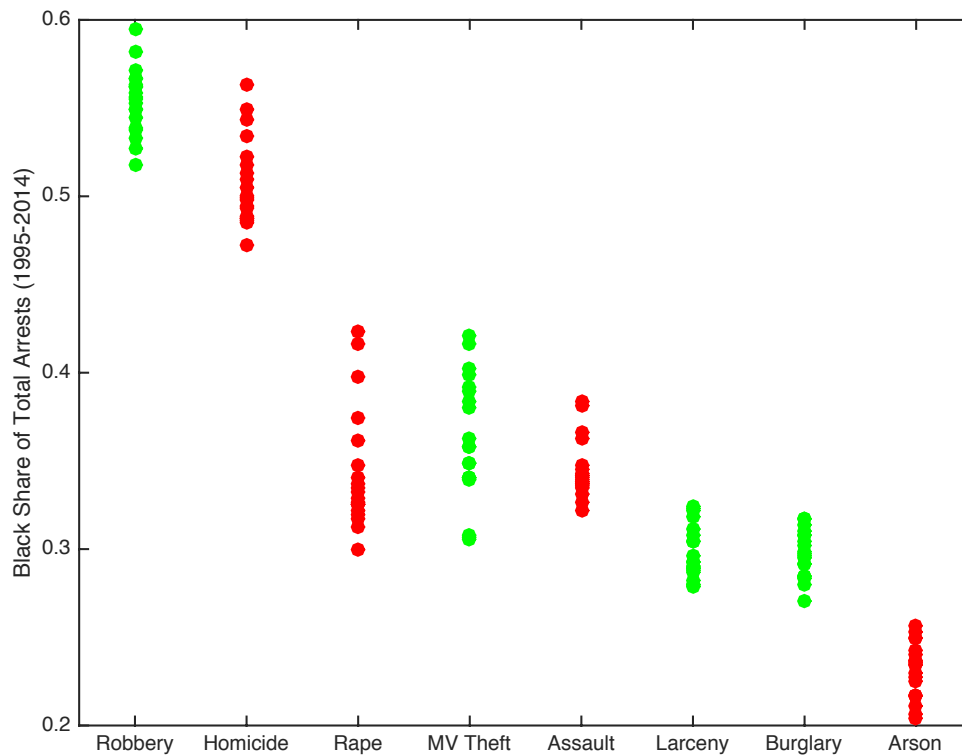


Figure 2. Black share of total arrests for index crimes, 1995-2014. Crimes motivated primarily by the acquisition of property are shown in green, even if they involve the threat or use of force (as in the case of robbery).

In fact, differences across groups in arrest rates for burglary, larceny, or assault can be accounted for by differences in poverty or employment status, and arson seems to have a lower rate of black then white offending, once these other dimensions of inequality are taken into consideration. But this is not the case for robbery and homicide, which are characterized by significantly higher rates of black offending. Any adequate theory of criminal offending must account not only for the overall incidence of involvement with crime, but also the distribution of offending across crime categories.

We argue here that understanding differences across groups in offending and victimization requires attention to a particular set of incentives created by the existence of stereotypes. Robbery is quite different from larceny and burglary because it involves face-to-face interactions in which stereotypes can come into play. And homicide is unique among serious crimes in that it can be motivated by preemptive concerns, driven by the fear of being killed. This fear is contingent on visible characteristics of parties to escalating disputes, and here again stereotypes can loom large, affecting the likelihood of lethal violence.

Similar effects arise in interactions between suspects and law enforcement officers. Fears for one's own safety or that of others typically justifies the use of lethal force by the police, and these fears can also be sensitive to visible characteristics of the parties involved in a manner conditioned by stereotypes.

Looking at crime through the lens of stereotypes allows us to see rates of offending and victimization as incentive-driven phenomena. This "endogenous" account of racial disparity is distinct from (biological or cultural) essentialism, and also from a crude environmental determinism.

Even so, casual observers often interpret the data generated by the operation of incentives in essentialist terms. This is especially the case when patterns in the data fit prior conceptions of group differences. From this perspective, mass incarceration was allowed to build and tolerated for so long precisely because its impact was felt with disproportionate force within a stigmatized group. Ironically, stereotypes held by the general public have inhibited a serious exploration of the role of stereotypes in shaping the countless small-scale interactions that give rise to rates of offending, victimization, arrest, and incarceration in the aggregate.

Stereotypes and Robbery

When strangers interact, stereotypes inevitably come into play. This is especially the case when the outcome of the interaction can result in significant profit or damage, as in the case of an attempted robbery or an escalating dispute that could turn violent. Under such conditions, visible traits—including but not limited to racial markers—can become salient.

Consider the case of robbery, which begins with a victim selection decision. Among the most important considerations for a potential offender is the likelihood of victim resistance. In fact, ethnographic studies of active robbers

suggest that beliefs about resistance are given considerably greater weight than beliefs about the amount of cash and valuables that a potential victim may be carrying (Wright and Decker, 1997). And such beliefs lead offenders—regardless of whether they are black or white—to exhibit a preference for white victims, who are thought to be more compliant on average.

Indeed, white victims do resist robbers at lower rates, and are accordingly targeted with greater frequency, even though they tend to carry smaller amounts of cash and valuables than black victims (O’Flaherty and Sethi, 2008). One reason for lower resistance is that whites are more affluent on average, so the cash on their person is small relative to their overall wealth. But another reason—of which offenders are well aware—is that they are especially fearful of violence from black offenders. This leads black offenders to prefer white victims, in effect because of a stereotype about a stereotype.

As one active offender puts it in Wright and Decker’s ethnographic study: “[Whites] got this stereotype, this myth, that a black person with a gun or knife is like Idi Amin or Hussein. And [a] person [who believes] that will do anything [you say].” And another: “Whites accept the fact that they've been robbed... some blacks would rather die than give you they bucks and you damn near have to be killing [them] to get it.”

These are just anecdotal accounts, but suggest that white and black victims on average hold different beliefs about the likelihood that a black offender will try to force compliance in the face of resistance, and that offenders are alert to these differences. Indeed, such differences also show up in the data on implicit association tests, which reveal that about four-fifths of whites and one-third of blacks hold pro-white and anti-black implicit preferences (Banaji and Greenwald, 2013; Lai and Banaji, this volume).

The anecdotal and ethnographic evidence on stereotypes is confirmed by data from victimization surveys, which includes both reported and unreported robberies. These data indicate that white offenders almost exclusively target white victims while the victims of black offenders are about equally likely to be white or black (O’Flaherty and Sethi, 2008). As a result, black-on-white robberies are about twenty times as frequent as white-on-black robberies. This is consistent with the hypothesis that white offenders face unusually high resistance from black victims, while black offenders face high rates of compliance from white victims.

Stereotypes about black male violence also make robbery in general more lucrative relative to burglary or larceny for black offenders. All of these crimes are motivated by the acquisition of property, but since there is no direct contact between victim and offender in the latter cases, stereotypes do not enter the picture. As a result, there is no racial difference in incentives to offend when it comes to burglary or larceny. This helps account for the striking difference in arrest rates seen in Figure 2, which shows that black representation in the pool of arrested robbers is twice as great as that in the pool of arrested burglars and thieves.

There are, of course, several confounding factors. It is possible that burglaries that are never reported or never solved could have a greater share of black offenders than those resulting in an arrest. One plausible reason for this is that burglaries involving black victims are less frequently reported and less aggressively investigated. Given existing patterns of residential segregation, such burglaries are disproportionately likely to involve black offenders. But segregation cannot explain why robbery so often crosses racial lines when the offender is black but very rarely does so when the offender is white.

Note that the salience of stereotypes is not confined to interactions that cross group boundaries. One implication of our reasoning is that in areas with significant class differences among whites, where visible markers such as tattoos can serve as credible signals of class background, robbery rates should be higher than in areas with limited differences. Again, there are some obvious reasons why this should be the case, since more affluent individuals are more attractive targets and the poor have stronger incentives to offend. But these effects are amplified if stereotypes based on visible markers are salient.

This incentive-based account of robbery offending and victimization has other implications. The most desperate offenders do not have the luxury of picking and choosing their victims, and these are also the most likely to try and force compliance through violence if resisted. If less desperate offenders avoid black victims, then whites will face a less desperate pool of offenders than blacks on average. As a result, white resistance will be *less* likely to result in violence. This is precisely what one sees in the data on victim resistance and injury: whites resist less often but conditional on resistance face injury with lower likelihood (O'Flaherty and Sethi, 2008).

Stereotypes and Homicide

Similar considerations can shed light on the sharp difference between homicide and aggravated assault seen in Figure 2. Homicide is unique among serious crimes in that it can sometimes be motivated purely by preemption: one may kill simply to avoid being killed. Fearful individuals have strong incentives to kill preemptively, and feared individuals are most likely to be killed for this reason. But the level of fear itself depends on prevailing homicide rates, so both high and low rates of killing can be sustained in otherwise similar environments. A significant proportion of homicides arise from escalating disputes between strangers or loose acquaintances, where these effects are most relevant, and this is why homicide rates tend to be so variable across time and space (O'Flaherty and Sethi, 2010b).

The level of fear in an interaction depends not only on the homicide rate in the general area, but also on attributes of the individuals involved. In disputes involving strangers or casual acquaintances, visible characteristics such as tattoos, clothing, and racial markers can affect the outcome, just as they can in the case of robbery.

In particular, laxity of enforcement against homicide offenders whose victims are black can have significant effects not only on the rate at which blacks are killed, but also on the rate at which they kill preemptively. These effects are especially stark when both parties to a dispute are black: if each believes that the other can kill with impunity, then both have preemptive motives to kill. Recognizing this only further amplifies the preemptive motive. As noted by Schelling (1960): "Self-defense is ambiguous when one is only trying to preclude being shot in self-defense."

Leovy (2015) describes several individual murder investigations in Los Angeles, and makes an explicit connection between low homicide clearance rates and high levels of killing. The communities she describes are simultaneously over-policed and under-protected. With most killings remaining unpunished, conditions are created for both preemptive and retaliatory murder.

Gang symbols and colors can be triggers for violence, sometimes involving tragic misattributions. But gangs as social organizations capable of centralized coercion can also play a role in containing preemptive violence by affording protection to prospective victims, and by making more credible the likelihood of retaliation. In fact, many homicide reduction initiatives such as *Operation Ceasefire* in Boston may be viewed as attempts to secure a coordinated change in beliefs about the

likelihood of being killed, thus lowering risk perceptions and preemptive killing (Braga et al, 2001).

These effects do not arise in the case of aggravated assault, which helps explain the fact that black involvement in homicide is much greater than black involvement in assault, with respect to both victimization and offending (O’Flaherty and Sethi, 2010a). It also sheds light on the recent empirical finding that the expansion of “stand-your-ground” laws causes homicide offending to rise (Cheng and Hoekstra, 2013). At first glance this finding is puzzling, since these laws contract the set of killings that are deemed to be legally unjustified, and should therefore mechanically reduce *measured* homicide rates. But by raising the likelihood of being killed with impunity, they also increase the likelihood of preemptive killing. The empirical finding that the passage of such laws raises measured homicide is therefore quite unsurprising. More generally, the argument that stand-your-ground laws should reduce crime in general by making criminals more fearful of lethal victim responses is naïve at best, and fails to take account of the fact that making people fearful also raises their incentives to kill.

Stereotypes and Law Enforcement

On September 4, 2014 man by the name of Levar Jones, having just left work, got into his white pickup truck, drove slowly around the corner, and pulled in to a gas station. He did not notice that Sean Groubert, a South Carolina trooper, had observed him driving without a seat belt and had pulled in behind him. After both had exited their respective vehicles, the officer asked Jones for his license and registration. Jones reached back into his vehicle to grab his wallet, at which point he was shot at several times and suffered a non-fatal bullet wound.

The entire incident was captured on the officer’s dashcam video. In a statement announcing the termination of his employment with the South Carolina Department of Public Safety, the director of the agency explained: “Mr. Groubert reacted to a perceived threat when there was none.” The officer would later plead guilty to charges of assault and battery.

Whether or not Jones would have been shot if he were white, or if the officer in question had been black, is impossible to know. But the video of the incident does appear to corroborate the view that the shooting was preemptive and driven by fear. This raises the possibility that the very same stereotypes that

make white victims especially fearful of (and hence especially attractive to) black robbery offenders may have been implicated here, in a very different context.

The claim that exaggerated fears of black male violence have led to deaths at the hands of law enforcement officers has been made frequently—from the 1999 killing of Amadou Diallo clutching a wallet mistakenly thought to be a firearm, to that of 12-year old Tamir Rice holding a replica pistol in 2014. Sworn statements by officers in such cases, if taken at face value, suggest an extraordinary level of fear. To take one example, Officer Darren Wilson—himself six feet four inches in height and weighting 210 pounds—testified that he “felt like a 5-year-old holding onto Hulk Hogan” when struggling with Michael Brown, whom he subsequently shot dead. The expression on Brown’s face was likened to that of a “demon.” Incidents such as this currently animate the *Black Lives Matter* movement.

If exaggerated fears of black male violence are routinely implicated in police killings, then this effect should be discernible in aggregate data. While there is no comprehensive official data on such killings, news organizations such as the *Guardian* and the *Washington Post* have constructed data sets based on public reports. According to the former source, there were a total of 1,145 police killings in 2015 alone, about half of which involved suspects armed with a gun. A further 13% of those killed were armed with a knife. Slightly more than half of those killed were white, 27% were black, and 17% Latino.

The proportion of black victims of police killings is roughly comparable to the proportion of arrestees who are black. Mulainathan (2015) interprets this as reflecting an absence of significant racial bias in police killings. However, this argument assumes that the qualitative nature of encounters between police and citizens does not differ systematically across groups. If police encounters with blacks are more likely to be frivolous and not objectively threatening, one would expect differences in killing rates even in the absence of bias.

In fact, there is some evidence that encounters are indeed qualitatively different across groups. In the *Guardian* data, 18% of whites killed by police in 2015 were unarmed while 52% had a gun; the corresponding figures for blacks were 25% and 46%. This suggests that within the set of encounters that result in police killings, those involving black suspects are less objectively threatening to the officers involved. One possible explanation is that any given encounter is more likely to be perceived by the officer as threatening when the suspect happens to be black.

But this inference must be treated with caution, since the armed/unarmed distinction is a very crude control for the objective danger faced by an officer; other relevant factors include the neighborhood, time of day, report of suspect's criminal activity prior to the encounter, and so on. Furthermore, a convincing analysis requires that one consider not only the interactions that resulted in a killing, but also those in which lethal force might have been justified but was not, in fact, used.

Such data is hard to come by at the national level, but Fryer (2016) has constructed and examined a data set for the city of Houston that merges information on officer-involved shootings (including both hits and misses) with records of arrests in categories generally associated with a higher likelihood of justified lethal force. He finds that 58% of arrest suspects are black, while 52% of suspects shot at by an officer are black. This immediately implies that in the raw data, blacks are *less* likely to be shot in any given encounter. But not all encounters are equally threatening—in the arrest data about half of black suspects “attacked or drew a weapon” while the corresponding proportion for whites was above two-thirds. Once such differences in contextual and behavioral factors are accounted for, Fryer finds no statistically significant effect of suspect race on the likelihood of a weapons discharge.

What Fryer does find, however, is statistically significant differences across groups in the use of *non-lethal* force. Using data from New York City's Stop, Question and Frisk program, he finds that blacks and Latinos are more likely to be held, pushed, cuffed, sprayed or struck than whites who are stopped. This remains the case even after controlling for a broad range of demographic, behavioral, and environmental characteristics. And using data from a nationally representative sample of civilians, which does not rely on officer accounts, he finds evidence of even larger disparities in treatment.

Such disparities in the use of non-lethal force are important contributing factors to distrust between police and citizens in high crime neighborhoods. They make it less likely that civilians will step forward to serve as witnesses in the prosecution of homicides and other major felonies. And the belief that others will not come forward as witnesses further reduces the incentive for any one person to testify, since conviction is much less likely without corroboration. This can lead to *collective silence*—no witness testifies because none expects his testimony to be corroborated (O'Flaherty and Sethi, 2010c). Clearance rates are accordingly lower, killing occurs with relative impunity, and pre-emptive motives for killing

start to matter. The excessive and discriminatory use of non-lethal force by police thus ends up having indirect lethal effects.

Essentialist Casual Misattributions

What we have done to this point is to provide an incentive-based account of disparities across groups in offending, victimization, and incarceration. These are not just economic incentives, such as access to labor market opportunities or to resources for human capital development. The structure of incentives includes the manner in which individuals are *categorized* and *stereotyped*. Incentives to engage in criminal activity are affected, but differentially for different crimes. Racial boundaries will be crossed for some crimes (such as robbery) but not for others (such as homicide). From this perspective, observed racial differences in offending and victimization need not reflect deep differences in preferences or values between groups. Rather, such disparities may well be the consequence of differences in the strategic situations that members of distinct groups confront.

But unlike behaviors, incentives remain hidden from plain sight, and this can result in *essentialist causal misattributions*. That is, behavioral differences across groups can come to be attributed to deep and largely immutable differences in their nature, rather than to flexible and malleable responses to incentives. When confronted with the stark racial disparities in arrest and incarceration, the cognitively simplest reaction is to simply ascribe to different groups different propensities for criminality, thus interpreting incentive-driven phenomena in essentialist terms. This tendency to impute group differences that are actually endogenous to the system to causes taken to be exogenous and intrinsic to the groups who lag behind is an instance of *biased social cognition* (Loury, 2002).

The point may be illustrated by contrasting racial disparities in imprisonment with gender disparities in education. An underrepresentation of women in science and mathematics is widely viewed as a social calamity, calling for intervention and public action. In contrast, the “underrepresentation” of women in prison (relative to men) is understood in essentialist terms, and does not give rise to calls for urgent corrective measures. The overrepresentation of blacks in prison is widely viewed through the latter essentialist lens, rather than the former structural and incentive-based perspective.

In the context of crime and incarceration, biased social cognition arises not just because it is cognitively less demanding, but also because it is consistent with a superstructure of beliefs that was essential to justifying and legitimizing a system

of racial hierarchy, beginning with slavery and continuing through the period of mandated segregation. The formal repeal of these hierarchical systems did not instantly erase the superstructure of beliefs that once gave them legitimacy (Patterson, 1980).

This has implications for the manner in which the general public responds to the size and composition of incarcerated population. There is a close connection between social epistemology—what people think they know about causation of some social outcome—and social policy—what people are prepared to support in terms of altering the structures that engender the disparity. Essentialist interpretations of criminal offending make it easier for staggering disparities in rates of offending, victimization, and incarceration to be tolerated with acquiescence, instead of giving rise to restless calls for corrective action.

We claim that in the absence of essentialist interpretations of the data on criminal offending, the stark racial disparities in incarceration rates, and the high levels of confinement in the aggregate, would not have enjoyed popular support. That is, the rise in American incarceration would have been considered intolerable were it not for its racial character. Policies serve expressive as well as instrumental ends and the popularity of vigorous enforcement and harsh sentencing may be due, in part, to the fact that these initiatives have had a disproportionate impact on blacks (Loury, 2008).

The very same stereotypes that shape the behavior of victims and offenders, or parties to a dispute, or police-citizen interactions, can result in apathy on the part of the general public to the phenomenon of mass incarceration. But this apathy has started to subside, and we consider the reasons for this next.

The Push for Decarceration

Over the past decade a number of states have taken steps towards substantially reducing their prison populations. In some cases, such as California, reforms have been forced on the state by lawsuits alleging prison overcrowding and inadequate prisoner health provision (Lostrom and Rafael, 2016). But in others, such as Texas and Georgia, reform has been driven by a rather remarkable change in the conservative orthodoxy on positions related to criminal justice.

Dagan and Teles (2016) describe this transition, which involves think tanks and political entrepreneurs with strong conservative credentials who have been able to make a case for a less carceral state. The steep decline in crime across all

categories since the early 1990s has facilitated this shift, as has the strain on state budgets in the wake of the financial crisis and the associated collapse in tax revenues. As a consequence, both major political parties have come to support reforms aimed at fewer admissions, earlier release of nonviolent offenders, and more meaningful prisoner reintegration.

Given our claims of essentialist causal misattributions, how are we to interpret this recent emergence of a bipartisan consensus on criminal justice reform, and the significant steps taken by many states to initiate a process of decarceration? If support for mass incarceration were grounded in its racial character, then how does one account for the loss of support in recent years?

A first step is to note that prosecutor discretion, which was a significant factor in accounting for the rise in incarceration, can also be a force for decarceration. If prosecutors can adopt more punitive postures relative to the past, they can also reverse course and become less punitive. In fact, the decline in incarceration seen nationally since 2008 was foreshadowed by earlier declines in a handful of states. New York and New Jersey led the way with recorded declines of 19% and 16% respectively in their prison populations over the period 2000-2010 (Guerino et al., 2011). Much of this decline came before formal reforms were in place, which Pfaff (2014) interprets as evidence of the importance of prosecutor discretion. More generally, such discretion allows for the local exercise of power in ways that can resist and reverse national trends (Gerken, this volume).

But what accounts for the spread to other states of a less punitive regime? One possibility is the changing demographics of prison admissions, which suggest a narrowing of the racial divide, especially in the case of women (Mauer, 2013). Figure 3 shows percentage changes in the prison population by race and gender over the period 2000-2010. The starting values have been normalized to equal 100 for all categories, so the values for subsequent years are relative to this baseline. The change in relative fortunes of white and black women has been dramatic, with the population of white women behind bars rising 40% even as that of black women declined by 30%.

Similar but more modest trends can be seen among the population of male inmates. And since men constitute the vast majority of the imprisoned population, changes in total incarceration by race closely track changes in male incarceration. Even as arrests for violent, property and drug crimes fell for blacks during the first decade of this century, property and drug crime arrests increased for whites (Mauer, 2013).

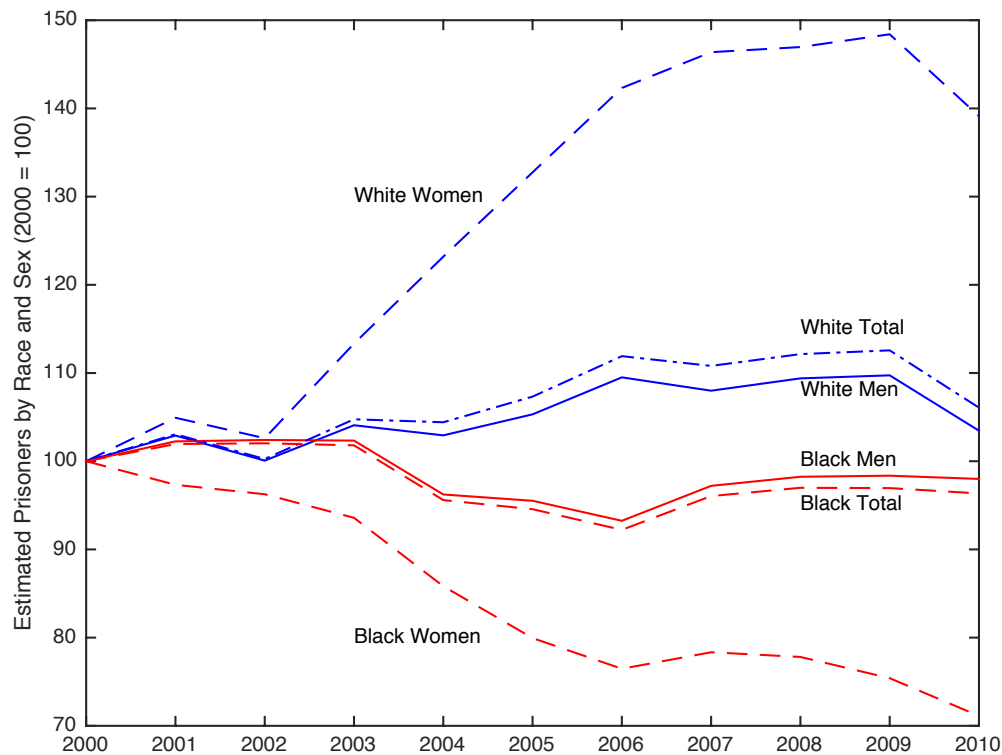


Figure 3. Trends in imprisonment by race and sex, 2000-2010, scaled to equal 100 initially in all categories.

These changes mirror declines in other measures of welfare among whites with a high-school education or less (Murray, 2013; Putnam, 2015). Case and Deaton (2015) report declines in life expectancy for middle-aged whites without a college education, and again the effect is strongest for women (Gelman and Auerbach, 2016). The rise of single-parenthood among whites now exceed the levels that Daniel Patrick Moynihan found so disturbing among blacks fifty years ago.

Once laws and mandatory sentencing requirements are in place, their impact cannot be restricted to particular groups; the demographic reach of these policies will shift over time. For instance, drug laws that initially trap urban users of one drug may subsequently snare rural users of another. And once the demographics of prison admissions are altered, the tolerance for high levels of incarceration may itself diminish, as legislators and prosecutors are forced to reassess their understanding of the root causes of criminal offending. It is conceivable that we are witnessing something similar to reform efforts of the 1930s, in which excessive punishment primarily affected white offenders (Muhammad, 2013).

While women remain a small part of the total prison population—less than one in ten—they are part of virtually every family in the country. Social segregation by race continues to be extreme, while segregation by gender remains negligible. The rise in white female prison population has undoubtedly touched households and communities that were previously at some distance from the phenomenon of mass incarceration. It has made it tangible and personal. And through chains of social affiliation, these changes in attitude have percolated up to prosecutors, legislators and governors.

Clearly, the changing composition of the offending class is not the only force driving the movement to soften incarceration policy. Budgetary considerations are clearly significant, as is the small government philosophy that has allowed decarceration to become acceptable within conservative circles. This is especially true in states with limited electoral competition, where there is little need to characterize opponents as being weak on crime (Dagan and Teles, 2016). Nevertheless, to some degree, decarceration initiatives could well be a response to facts that challenge an essentialist view of criminal offending.

Mass incarceration may be viewed as a stereotype trap, in which all actors in the system, from low-level offenders and their victims, to prosecutors and legislators, act on beliefs that find some confirmation in the data that they observe. An unexpected change in the underlying facts can give rise to a perceptual disequilibrium, as people try to adjust the causal structure they place on the world. These changes reveal themselves not only in shifting laws and explicit policies, but also in routine decisions by prosecutors on countless individual cases. This is the largely untold part of the mass incarceration (and incipient decarceration) story.

What Can Be Done?

At the heart of our argument here is that an understanding of trends and patterns in American criminal justice is woefully incomplete without attention to the role of stereotypes at every level of the system. Stereotypes affect victim responses to offenders, and for this reason affect offender selection of victims. They affect the extent to which disputes escalate to deadly violence, and the extent to which preemptive motives for killing become salient. They shape interactions between police and citizens, and the use of lethal and non-lethal force. As a result, they affect the willingness of witnesses to come forward;

leading some in our society can be killed with impunity. And stereotypes among the general public can feed apathy in the face of mass incarceration.

One approach to breaking out of this trap is to focus on changing beliefs when these are at variance with the underlying facts. Lai and Banaji (this volume) argue that black-white differences in implicit associations arise, in part, from the fact that black respondents have more positive exposure to black friends and family, and “the ultimate source of experience: themselves.” This suggests that segregation in social contact is a key driver of differences across groups in beliefs. In fact, significant belief differences across groups exist on a number of issues, including the religion and birthplace of Barack Obama, the existence of racial discrimination in everyday life, the origins of the AIDS virus, and the selective targeting of black public officials for prosecution (Sethi and Yildiz, 2012). These differences are held in place by social segregation in everyday life.

Policy interventions that target social segregation in a free society are not easily conceived. But there is considerable heterogeneity *within* groups in levels of exposure to other groups, and screening for such attributes, or building them through training programs, could make stereotypes less salient in law enforcement practices. Lowering discrimination in the use of non-lethal force, while simultaneously increasing the clearance rate for homicides and other serious felonies would have clear benefits. These two initiatives are intertwined: less harassment of innocents should make witnesses more likely to step forward. But as long as stereotypes drive a wedge between the beliefs of different groups, they will continue to affect incentives for offending and victimization, and a transition to more civilized levels of incarceration will remain out of reach.

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