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Racialized Mass Incarceration Poverty, Prejudice, and Punishment

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This essay maintains that the United States has developed a new, decidedly punitive law and order regime that at its core features racialized mass incarceration. We will show that over the past thirty years the United States has gone on an incarceration binge, a binge that has fallen with radically disproportionate severity on the African American community. The rise of the racialized mass incarceration society is attributable to the simultaneous processes of urban socioeconomic restructuring that produced intensified ghetto poverty and severe social disadvantage and dislocations through the 1980s to the present, on the one hand, and a series of social policy actions (and nonactions) that made jail or prison among the primary responses to urban social distress, on the other hand. During this time, social policy took this deeply punitive turn in substantial measure as a result of the effects of anti-black racism in American culture and public opinion. One result of these circumstances is a serious problem of legitimacy for the criminal justice system in the eyes of many Americans, especially but not exclusively African Americans.

ALTHOUGH A SMALL TOWN WITH A POPULATION OF LESS THAN 5,000, Tulia, Texas, is now a truly notorious place. In the summer of 1999, undercover police operative Tom Coleman, later named Texas Lawman of

the Year, led a sting operation that resulted in forty-six arrests. Coleman testified in numerous trials in connection with these arrests though there were usually no corroborating witnesses, no tape-recorded or videotaped drug sales, no weapons confiscated, no piles of money seized, nor great supplies of drugs ever found. Indeed, the story ends badly for Coleman, once considered a symbol of a virtuous and aggressively pursued War on Drugs (so named by the federal government). He was recently convicted of perjury and placed on ten years' probation by the courts.¹

Why such notoriety? Tulia and Officer Coleman are now the penultimate symbols of a drug war run amok and of deep-seated racial bias in the criminal justice system. Forty of the arrested townspeople were black and the remaining six were either Latinos or otherwise close to the black community (i.e., whites married to blacks). Most significantly, all of those incarcerated—more than twenty people spent time in jail, whereas many others were intimidated into taking plea deals—were ultimately pardoned by the then Republican governor, received significant cash settlements from the local government, and ultimately won \$5 million in damages against the now disbanded Federal Drug Task force for which Coleman worked.²

Of course, from one vantage point, Tulia is a great aberration attributable to the overzealousness of one rogue cop. We reject this interpretation. This would be a more credible position if one or two rather than more than twenty people had not been wrongly imprisoned. Or, perhaps, if lower-level officials had intervened to prevent a travesty of justice rather than creating a context wherein the state legislature and governor were finally compelled to act as a result of legal and political pressure. From the very outset, indeed, aspects of the case itself cast doubt on such a generous interpretation (i.e., the lack of evidence Coleman provided, several early instances of dismissed charges when his allegations were easily proven to be complete fabrications, and the routine way in which all-white Tulia juries repeatedly convicted their arguably well-known black neighbors and sent them off to prison despite dubious charges). From another and more credible vantage point, however, Tulia is another example of the

¹ See the following news reports by Adam Liptak: "Texas Governor Pardons 35 Arrested in Tainted Sting," *New York Times*, August 23, 2003; and Steve Barnes, "National Briefing|Southwest: Texas: Ex-Narcotics Agent Gets 10 Years' Probation," *New York Times*, January 19, 2005.

² See Adam Liptak, "\$5 Millions Settlement Ends Case of Tainted Texas Sting," *New York Times*, March 11, 2004; NAACP Legal Defense Fund, 2006, "Bad Times in Tulia: An African-American Community in Texas Is Victimized by the 'War on Drugs,'" www.naacpldf.org/printable.aspx?article=64; and Jennifer Gonnerman, "Tulia Blues: How the Lingering Effects of a Massive Drug Bust Devastated One Family in a Small Texas Town," *The Village Voice*, July 31, 2001.

ways that profound racial bias is routinely mobilized into the operation of the modern criminal justice system.

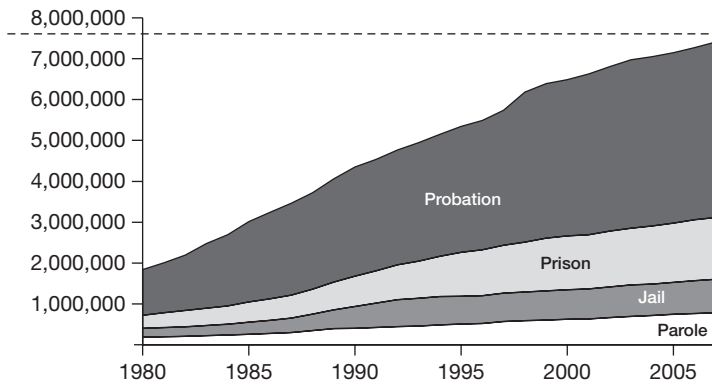
**RACIALIZED MASS INCARCERATION:
ROUNDING UP THE USUAL SUSPECTS**

An enormous social change has steadily occurred in the arena of criminal justice. The United States is generally a far more punitive society today than it was just three decades ago. This change has been marked or designated with several different labels. These designations include the emergence of a “prison industrial complex,” of a “carceral state,” or the “mass incarceration society.” All of these terms refer to a large-scale shift toward formal incarceration as our collective social response to crime.

The full reach of this change was captured in headlines from the *New York Times* in February 2008 that declared, “1 in 100 U.S. Adults behind Bars, New Study Says.” The meaning of such a declaration is hard to judge without some more complete context for interpretation. As Figure 12.1 shows, since 1981 there has been a steady rise in the number of people in jail or prison, on parole, or on probation, with the numbers on probation or actually in prison undergoing the sharpest increase. In 1980, for instance, fewer than 300,000 people were in prison. By 2000, however, that number had risen to over 1 million. And by 2007 that

FIGURE 12.1 | ADULT CORRECTIONAL POPULATION, 1980–2007.

There were 7,328,200 adults under correctional supervision in 2007.



SOURCE | U.S. Bureau of Justice Statistics Correctional Surveys; totals for 1998–2007 exclude probationers in jail or prison.

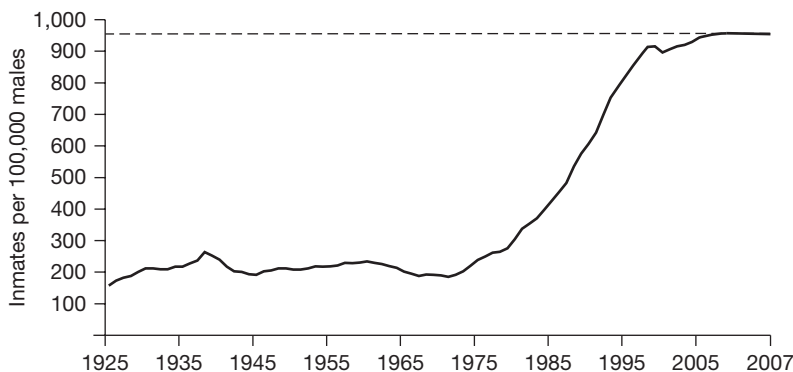
number had reached above 1.5 million. If you include the number of people in jails, the total population behind bars in the United States was more than 2.3 million. All told, as the figure shows, by 2007 there were more than 7.3 million people under some form of “state supervision,” a figure more than three times the rate observed in 1980. Recent reports by the Bureau of Justice Statistics suggest that trend for growth continues, though at a slightly slower rate of increase.

The trend in Figure 12.1 is striking but it also understates the magnitude of the change. Not evident in this figure is the fact that a prison population below 300,000 characterized most of the twentieth century in the United States. Starting as it does in 1980, this figure does not fully capture the extreme and abrupt character of the underlying social change, which can be traced mainly to post-1980 policy reforms. The sharp rise in reliance upon incarceration is more readily visualized in Figure 12.2, which traces just the number of male prison inmates in the United States from 1925 to 2006. A more than fifty-year period of relative stability in the rate of male incarceration in the United States is followed by a sharp and largely unabated climb in the post-1980 period.

The headline from the *New York Times* noted above (“1 in 100 U.S. Adults behind Bars”) signals, first, the high absolute number of people now swept up by the criminal justice system and second, the dramatic break with a very long stretch of prior practice that the recent period

FIGURE 12.2 | PRISON INMATES PER 100,000 MALES, 1925–2007.

As of 2007, nearly 1 in 100 males were in prison (955 per 100,000).



SOURCES | Data from Pastore, Ann L., and Kathleen Maguire, eds. 2005. *Sourcebook of Criminal Justice Statistics*. www.albany.edu/sourcebook/pdf/t6282007.pdf

represents. Crime policy scholars Henry Ruth and Kevin Reitz help put these trends in perspective in their recent book *The Challenge of Crime*.

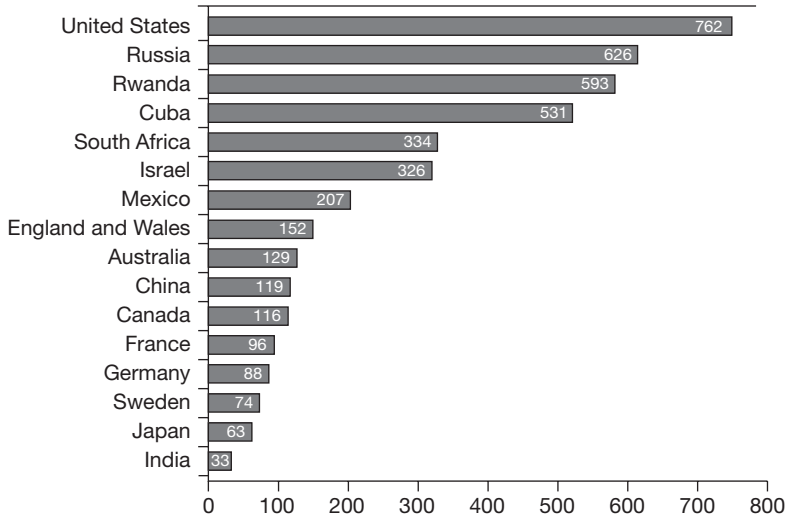
Over a one hundred year period, 1880 to 1980, the nation added a total of about 285,000 inmates to the prison systems. During just the ensuing twenty years, from 1980 to 2000, the nation added about 1.1 million inmates. From 1850 through 2000, the nation's prison system expanded about 206 times over, during a period of only about twelve-fold population growth. Total people on probation or parole status rose almost nine-fold between 1965 and 2000. (Ruth and Reitz 2003, 283)

Not captured by these numbers is also a lengthening of the average amount of time served. Mandatory minimum sentencing guidelines, three-strikes laws, various special enhancements (i.e., selling drugs near a school), and truth in sentencing provisions ensure that people convicted of crimes are not only more likely to end up in prison but are there for much longer periods of time. Likewise, the number of prisoners incarcerated under extremely harsh conditions, such as isolation and severely limited hours of physical mobility, has also risen while access to rehabilitative programs and educational opportunities has declined (Whitman 2003; Irwin 2007).

The U.S. rate of incarceration is now also arguably of historic proportions for a developed modern democracy. On an international scale, as Figure 12.3 shows, the rate of incarceration per 100,000 citizens in the United States far exceeds that of all other Western industrial nations. The ratio ranges from a low of roughly four to one when compared to our closest neighbor, Mexico, to very nearly twelve to one when compared to places like Sweden and Japan. Only Russia comes close, where the most recent data show an incarceration rate of 626 per 100,000 as compared to a U.S. rate of 762 per 100,000 in 2008. Even the Communist regime in Cuba, at 531 per 100,000, fails to reach the U.S. standard when it comes to incarcerating its population. As the *New York Times* editorial declared on March 10, 2008, "Nationwide, the prison population hovers at almost 1.6 million, which surpasses all other countries for which there are reliable figures. The 50 states last year spent about \$44 billion in tax dollars on corrections, up from nearly \$11 billion in 1987. Vermont, Connecticut, Delaware, Michigan, and Oregon devote as much money or more to corrections as they do to higher education. These statistics . . . point to a terrible waste of money and lives."

From one vantage point of observation this transformation can be accurately labeled "mass incarceration." Legal scholar and sociologist

FIGURE 12.3 | INTERNATIONAL INCARCERATION RATES (PER 100,000), 2008.



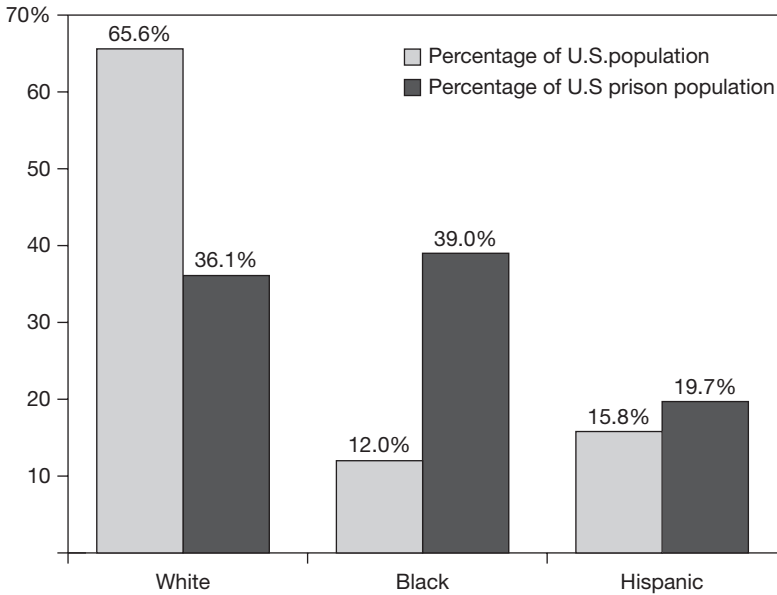
SOURCE | U.S. data from U.S. Bureau of Justice Statistics. West, Heather C. and William J. Sabol. 2008. *Prison and Jail Inmates at Midyear, 2008*. International data from the International Centre for Prison Studies. 2008. *World Prison Brief* (online version).

David Garland defined the mass imprisonment society as having two features: first, “a rate of imprisonment that is markedly above the historical and comparative norm for societies of this type,” and second, “the social concentration of imprisonment effects,” such that incarceration “ceases to be incarceration of individual offenders and becomes the systematic imprisonment of whole groups of the population” (Garland 2001, 5–6).

From a different vantage point, however, the label “mass incarceration” obscures the role of race in this social concentration of imprisonment. The “1 in 100” headline we quoted could just as easily, drawing figures from the same Pew Center Report (2008), have been “1 in 15 African Americans behind Bars,” or even more distressing, “1 in 9 Black Men, age 20 to 34 behind Bars.” That is, while the overall U.S. rate of incarceration is up very substantially, this shift has fallen with radically disproportionate severity on African Americans, particularly low-income and poorly educated blacks.

Indeed, the end result has been a sharp overrepresentation of blacks in jails and prisons. In 2007, as Figure 12.4 shows, black males constituted roughly 39 percent of incarcerated males in state, federal, and local prisons or jails, though representing only 12 percent of the total adult male

FIGURE 12.4 TOTAL POPULATION AND PRISON PERCENTAGES BY RACE FOR MALES, 2007.



SOURCE | Data from U.S. Bureau of Justice Statistics. West, Heather C. and William J. Sabol. 2008 *Prison and Jail Inmates at Midyear, 2007*.

population. White males, on the other hand, constituted just 36.1 percent of the male inmate population in 2007, well under their 65.6 percent of the total male population. The Hispanic population, which constitutes about 20 percent of the total inmate population, is also overrepresented but is much closer to its relative share of the total population of about 16 percent.

Again, these “one slice in time” numbers, even as extreme as they are, may fail to convey the enormity of the transformation that has taken place. In both absolute number and in terms of over-time change, the incarceration of African Americans has reached extraordinary levels. In 1954, there were only about 98,000 African Americans in prisons or jail (Mauer and King 2004). By 2002 the numbers had risen to 884,500, an increase of 900 percent. Today the number is nearly 1 million (913,800). In some states, such as California, blacks are incarcerated at a rate of 2,992 per 100,000 compared to 460 per 100,000 for non-Hispanic whites and 782 per 100,000 Hispanics.

To state the matter differently, current rates of incarceration are a recent phenomenon. As distinguished criminologist Alfred Blumstein (2001)

has documented, the black incarceration rate nearly tripled between 1980 and 2000 and is now over eight times that for non-Hispanic whites. Indeed, fully 2 percent of the black population was incarcerated in 1999 and one in ten black males in their twenties were under some form of criminal justice supervision. This change has reached such a level that a black male born in the 1990s faced almost one in three lifetime odds of ending up in jail or prison as compared to well under one in ten lifetime chances for non-Hispanic white males (Blumstein 2001). This is not merely a story of mass incarceration: it is one of racialized mass incarceration.

**STRUCTURAL CHANGE AND PUBLIC POLICY:
RE-INSCRIBING RACE IN THE CRIMINAL
JUSTICE SYSTEM**

Distinguished legal scholar Randall Kennedy (1997) identifies unequal protection of the law and unequal enforcement of the law as the principal means whereby African Americans were discriminated against in the legal system. By unequal protection he means routinization of lesser protection by the legal system, particularly lesser protection of blacks when victimized by whites. By unequal enforcement Kennedy means the acceptance of arbitrary, capricious, and openly discriminatory treatment of those African Americans designated as crime suspects. Notorious cases in the unequal protection category would include condoning or ignoring physical violence by white slave owners against blacks, including sexual assaults and the rape of black slave women by their white male slave masters. The latter category of unequal enforcement includes mob rule and a rush to judgment in the face of a lynching mentality, tortured confessions, nonexistent or incompetent legal counsel, and direct government subversion of black social and political activism as occurred during Operation COINTELPRO. COINTELPRO was a Federal Bureau of Investigation program of surveillance and destabilization of domestic political activist groups. The Black Panthers became one of its principal targets, and in this case the FBI's activities reached far beyond monitoring to include sparking conflicts with rival political groups and having agents penetrate groups in order to act as advocates or provocateurs for committing crimes (Kennedy 1997, 111–113).

Kennedy traces the historical development of legal rulings and legislation, suggesting that these most egregious, fairly overt, and at one time common expressions of racially discriminatory bias in the law

have largely been resolved in favor of a more race-neutral or color-blind regime. He writes:

the administration of criminal law has changed substantially for the better over the past half century and that there is reason to believe that, properly guided, it can be improved even more. Today there are more formal and informal protections against racial bias than ever before, both in terms of the protections accorded blacks against criminality and the treatment accorded to black suspects, defendants, and convicts. That deficiencies, large deficiencies, remain is clear. But comparing racial policies today to those that prevailed in 1940 or 1960 or even 1980 should expose the fallacy of asserting that nothing substantial has been changed for the better. (Kennedy 1997, 388–389)

To wit, the burden to make the case is on those who wish to charge that racial bias remains a significant factor in the criminal justice system.

Yet, if Kennedy is correct, this pushes to the forefront the question of why African Americans end up so disproportionately behind bars. Do blacks commit more crime and, therefore, deservedly find themselves more often behind bars? Or has the operation of racial bias in the criminal justice system taken on a new guise?

Black Poverty and Public Policy

It is beyond the scope of this essay to develop a full sociological account of what may be differential levels of black involvement in crime, but it is important to put this common perception in some perspective. At a minimum it is essential to recognize that any evidence of differential black involvement with crime reflects the interplay of key economic, political, and cultural factors. From our perspective, such outcomes stem from the joint effects of what the eminent sociologist William Julius Wilson (1987, 1996) has called the new or intensified ghetto poverty and the patterns of social adaptation it has spawned, on the one hand, and what social policy changes did to foster patterns of social disorganization, on the other hand. The latter includes sharp reductions in federal aid to cities and the panoply of policing and legal changes that made up the War on Drugs. That is, differential black involvement with criminal behavior is primarily traceable to differential black exposure to structural conditions of extreme poverty, extreme racial segregation, changed law enforcement priorities, and the modern legacy of racial oppression (Massey 1995; Wilson 1987; Sampson and Wilson 1995).

Wilson (1987) shows that massive economic restructuring, in the form of the de-industrialization of the American economy (i.e., shift from heavy goods manufacturing to a service-oriented and information processing economy) and the de-concentration of industry (i.e., a shift of goods manufacturing from cities to suburban or ex-urban rings), combined to create new, persistent, and intensely high rates of poverty and unemployment for inner-city African Americans, particularly those of low education and skill levels. As Massey (1995) has shown, when the class segregation of neighborhoods combines with extreme racial segregation of neighborhoods, the result is areas of intensive social disorganization and dislocation when severe economic contractions or downturns occur. In particular, the persistent weak attachment to the labor force among many prime working-age adults and a common experience of poverty and economic hardship in urban black communities create social spaces where bonds of family and community begin to fray and fall apart (Wilson 1996). Such an environment is ripe for higher levels of juvenile delinquency, drug use, and even violent crime (Massey 1995).

In short, macro-social transformations (i.e., major economic restructuring) usher into place differential meso-level or proximate social conditions and environments for blacks and whites (i.e., uniquely heightened rates of community levels of poverty and unemployment for blacks), which, in turn, transform micro-level experiences, processes, and outcomes (i.e., individual family disruption, welfare dependency, and greater susceptibility to involvement in crime). Critically, the depth of disadvantage experienced in many urban black environments should not be underestimated. As Sampson and Wilson explain:

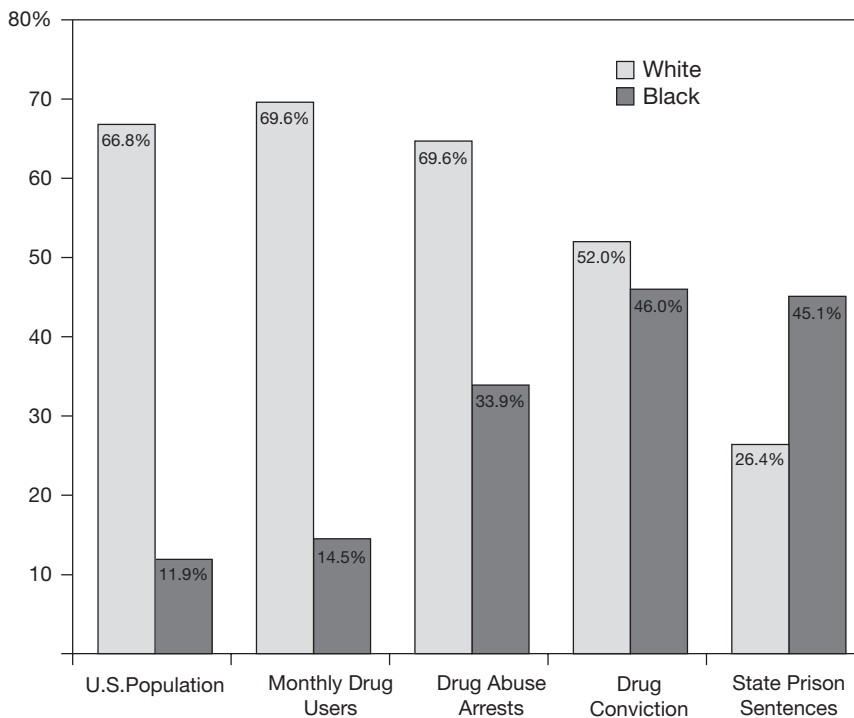
Although we knew that the average national rate of family disruption and poverty among blacks was two to four times higher than among whites, the number of distinct ecological contexts in which blacks achieve equality to whites is striking. *In not one city over 100,000 in the United States do blacks live in ecological equality with whites when it comes to these basic features of economic and family organization. Accordingly, racial differences in poverty and family disruption are so strong that the "worst" urban context in which whites reside is considerably better than the average context of black communities.* (1995, 42; italics added)

There is fundamentally a structural and ecological basis to the association between urban ghettos and a problem of social disorganization and crime.

The War on Drugs

Intense urban black poverty and unemployment is not the whole story. Aggressive pursuit of the War on Drugs plays a large role in the disproportionate incarceration of African Americans. The process involves many different actors at different points in the system. In Figure 12.5 we attempt to capture elements of this process and explain why we believe it represents racial bias. The figure shows the percentage of the total U.S. population that is white at 66.8 percent, and the percent that is black at 11.9 percent. The next set of figures reports the percentage of white and black adults, respectively, who report some *illicit* drug consumption during the average month from the 2005 National Survey on Drug Use and

FIGURE 12.5 | THE WAR ON DRUGS AND RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM.



SOURCES | U.S. population data from the American Community Survey, 2006. Monthly drug users data from U.S. Department of Health and Human Services, National Survey on Drug Use and Health, 2005. Drug arrest data from Federal Bureau of Investigation, *Uniform Crime Reports, Crime in the United States, 2005*. Drug convictions data from U.S. Bureau of Justice Statistics, National Judicial Reporting Program, 2004. Prison sentences data from Harrison, Paige M., and Allen J. Beck for the U.S. Bureau of Justice Statistics, *Prisoners in 2005*, NCJ 215092.

Health. While reported usage rates of illicit drugs vary slightly between blacks and whites (9.2% for blacks compared to 8.1% for whites), it is important to note that the overall differences in the distribution of illicit drugs deviate very little from the overall white and black percentages in the population as a whole. That is, at least by this yardstick, there is no evidence of radically disproportionate representation of blacks among those Americans engaged in illegal drug consumption.

Once we shift our attention to drug-related arrests, however, we begin to discern one of the critical differences by race in how the War on Drugs is pursued. Blacks are almost 34 percent of those involved in drug-related arrests though only 14 percent of those among regular illegal drug users. The disparity grows even sharper as we switch attention to those who receive drug charge convictions—blacks constitute almost half of such cases. Likewise, blacks end up as nearly half of those serving state prison sentences for drug offenses compared to just 26 percent for the white population. Illegal drug consumption seems to know no race. Incarceration for drug-related charges, however, is something visited in a heavily biased manner on African Americans.

The Tulia, Texas, case is actually an illustrative if extreme instance of the type of biases at work to produce these sort of cumulative racial disadvantages and gaping disparities. First, local law enforcement aggressively pursued what, even in the most generous interpretation, were fairly low-level drug arrests and prosecutions (Provine 2007). Specifically, police, prosecutors, and judges repeatedly accepted the claims of a lone undercover operative, even when several cases of glaring falsehoods and lack of supporting evidence should have raised doubts about officer Coleman's claims. The three examples of glaring falsehoods are telling. Coleman brought charges against Tonya White. The prosecutor ultimately dropped the charges when it was established that she was at a bank in another state more than 300 miles away on the day and time Coleman had accused her of being involved in drug dealing. Billy Don Wafer produced employee time sheets establishing that he was at work when Coleman claimed he had sold him drugs. And charges against Yul Bryant were dismissed when Coleman's description of him as "a tall black man with bushy type hair" was contradicted by the fact that Bryant was only 5'6" and had been "bald for years."

Second, white public opinion supported the police and court actions. As the *New York Times* reported in one of its first major pieces on the Tulia case, "The reaction among most whites has been unflinching support of the operation and local officials. . . . The sheriff and the district

attorney, who defend Mr. Coleman, also deny that the sting was racially motivated or that the town is biased” (Yardley 2000).

Third, the local media played a role in supporting the criminal justice official’s claims and stigmatizing at least the individuals charged if not, in fact, the entire black community.³ Again, as the *New York Times* reported, “The town’s two newspapers had carried the story of the arrests on the front page, with the *Tulia Sentinel*, which is now defunct, describing the suspects as ‘drug traffickers’ and ‘known dealers.’ Television stations, tipped by the sheriff, had filmed the suspects as they were taken to jail after the sunrise arrests” (Yardley 2000). The racially charged character of this news coverage is difficult to deny. According to *The Village Voice*:

Shortly after the arrests, *The Tulia Sentinel* ran a story on its front page with the headline “Tulia’s Street Cleared of Garbage.” A reader skimming the newspaper might have thought the article had something to do with local sanitation efforts. In fact, the first paragraph stated that the arrests of the town’s “known” drug dealers “had cleared away some of the garbage off Tulia’s streets.” (Gonnerman 2001)

Perhaps what does make this case exceptional is that officer Coleman did ultimately confess that he “frequently used a racial epithet,” namely, the N-word, though “he denied that he was a racist” (Liptak 2004).

Why regard the Tulia case as at all illustrative of a general set of processes?

As we have already discussed, the best credible evidence suggests that there is no gaping black-white difference in rates of illegal drug consumption, yet there are gaping differences in the rates at which blacks and whites end up behind bars. This strongly implies that something about law enforcement practices influences whether law-breaking behavior results in official actions and in particular whether it results in the most severe of available criminal sanctions. Those practices are clearly operating in a racially differential manner at least in effect if not in design and intent.

More than a decade ago Michael Tonry (1995) argued that it was completely foreseeable that the War on Drugs would be waged in a racially biased manner. This was so, he maintained, because much of the rhetoric and ambition of the drug war focused on cocaine and especially the trade

³ Research has shown, in general, that local news media engage in a number of routine practices that at once play upon and reinforce anti-black stereotypes, particularly in the arena of crime news reporting. Entman and Rojecki (2000) show, for example, that black criminal defendants are more often shown in prison gear (e.g., orange jumpsuits) than white defendants, more often shown on a “perp-walk,” less likely to be given a name, and so on.

in crack cocaine. This emphasis almost foreordained a heavy focus on urban, black environments as the front line of this new anti-crime crusade. Furthermore, it would be a much simpler task for police to pursue open-air, public space drug trafficking than the drug trade that took place behind closed doors, since the former is much more readily observable by police than the latter. Likewise, police would have a much easier task of inserting themselves into personal and community networks of interaction in disadvantaged black communities than in relatively stable and densely networked working- and middle-class white communities. And given political pressure to “show results,” police could more and more rapidly show evidence of arrests by focusing on low-income black communities where the drug trade was more often done in more easily penetrated public spaces.

Carefully designed research by sociologist Katherine Beckett and her colleagues has yielded some of the most compelling evidence on just how substantial and institutionalized this racial bias is in actual practice (Beckett et al. 2005; Beckett, Nyrop, and Pfingst 2006). Specifically, they argue that the highly racialized discourse and politics that led to the War on Drugs has become institutionalized in street-level law enforcement practices. To wit, police selectively focus their attention on enforcement and arrests on the public space drug trade of crack among blacks and Latinos. Their own systematic observation of known drug-trading locations showed that police are more likely to pursue the black and Latino suspects in the area than the white ones. As Beckett and colleagues explain:

Our findings indicate that the majority of those who deliver methamphetamine, ecstasy, powder cocaine, and heroin in Seattle are white; blacks are the majority of those who deliver only one drug: crack. Yet 64 percent of those arrested for delivering one of these five drugs is black. . . . Predominantly white outdoor drug markets received far less attention than racially diverse markets located downtown. . . . The overrepresentation of blacks and under-representation of whites among those arrested for delivering illegal narcotics does not appear to be explicable in race-neutral terms. (2006, 129)

Or, as criminologists Janet Lauritsen and Robert Sampson put it: “while ‘crack’ cocaine has generated an intense law enforcement campaign in our nation’s black ghettos, ‘powder’ cocaine use among whites is quietly neglected (perhaps even portrayed as fashionable). These differences cannot be attributed to objective levels of criminal danger, but rather to

the way in which minority behaviors are symbolically constructed and subjected to official social control” (1998, 79).

Some scholars suggest that anti-black racial bias is a key element in the emergence of the new law and order regime (Marable 2002; Soss, Fording, and Schram 2008). For example, David Jacobs and colleagues have shown that those states and jurisdictions with larger numbers of blacks—a condition that arguably fosters a greater sense among many white of competition and threat from minorities irrespective of the actual crime rate—adopt more punitive crime and social spending policies (Jacobs and Carmichael 2002; Jacobs and Tope 2007; see also Soss, Fording, and Schram 2008). Loic Wacquant (2001) has eloquently argued, in fact, that the emergence of the carceral state constitutes a fourth stage of racial oppression in the United States following on the legacy of first, slavery; second, Jim Crow racism; and third, the creation of the modern urban ghetto. He sees each institution as a distinctive way of controlling, regulating, and in a word, “oppressing” the black population.

Neither Soss and colleagues nor Jacobs nor Wacquant, however, provides a clear explication of the full sociocultural environment that makes racialized mass incarceration possible. To do that, one needs a more complete assessment of public opinion at the place where the problems of race and crime meet.

PUBLIC OPINION, PREJUDICE, AND PUNITIVENESS.

A troubled and troubling link between race, crime, and the functioning of the legal system is not a new condition for American society. Early statements of this troubled nexus can be found in the work of W. E. B. Du Bois ([1899] 2007) and of pioneering criminologist Thorstein Sellin (1928, 1935). Both argued that blacks are disproportionately swept into the criminal justice system but that this circumstance could not be understood apart from the systematic operation of a larger pattern of anti-black racial prejudice. Is anti-black racial prejudice a key component of the new law and order regime and of the emergence of racialized mass incarceration in the United States? We believe the answer is an unequivocal “yes.”

Punitiveness and Racial Prejudice

One of the primary sociological foundations of the new law and order regime and of the racialized mass incarceration society is the decidedly

punitive tilt of U.S. public opinion. One indication of the degree of popular support for these policies is provided in Figure 12.6. It reports on the percentages in a major national survey of white and black Americans who support the death penalty, three strikes and you're out provisions, and the trying of juveniles as adults if accused of a violent crime. Two patterns stand out. First, for each of these policies—including the penultimate symbol and act of punitiveness, the death penalty—there is clear majority support for the punitive policy among both blacks and whites. Second, African Americans are uniformly less supportive of these harsh criminal justice policies than are their white counterparts, even though they too show a clear majority support for each. It is no mistake or exaggeration to characterize U.S. public opinion on crime and crime policy as decidedly punitive.

A punitive tilt in public opinion, especially one that largely includes both white and black Americans, is scarcely a sign of anti-black racial bias. We stress the logic of such bias, however, because these punitive crime policy outlooks are strongly rooted in anti-black racial prejudice (Bobo and Thompson 2006b). To prove this point, we examined the correlation between punitive crime policy outlooks (a measure that combines responses to the death penalty, three strikes, and juvenile offenders questions shown in Figure 12.6) and a series of different indicators of racial attitudes.⁴ The racial attitude indicators included simple anti-black stereotypes,⁵ of intergroup affect or basic socioemotional feelings toward blacks,⁶ and of collective racial resentments of blacks.⁷ Each of

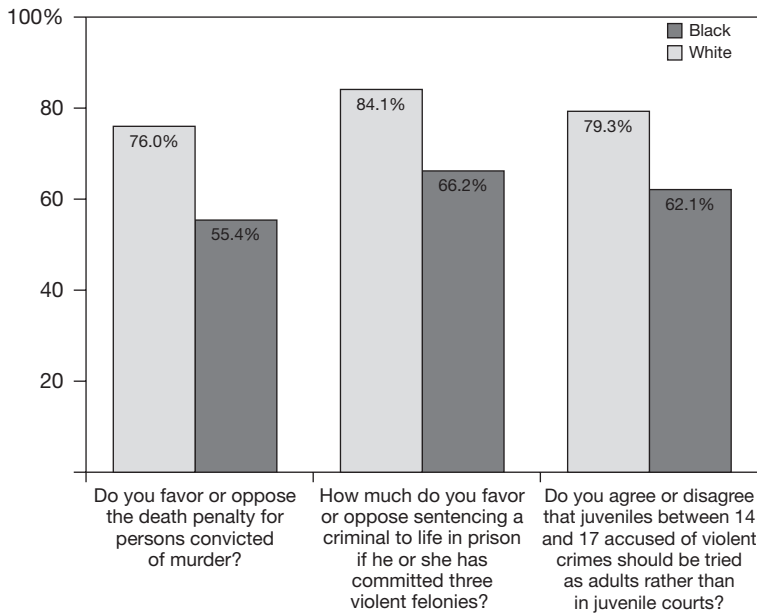
⁴ Respondents were asked if they “Strongly Oppose,” “Somewhat Oppose,” “Somewhat Favor,” or “Strongly Favor” the death penalty or three-strike laws. Similarly, respondents were asked if they “Strongly Disagree,” “Somewhat Disagree,” “Somewhat Agree,” or “Strongly Agree” that juveniles should be tried as adults. A final “Punitiveness” scale was created based on the average scores of these three items (Cronbach’s alpha = .63).

⁵ Respondents were asked to rate on a 10-point scale the degree to which they thought the following words/phrases accurately described blacks: “law-abiding,” “good neighbors,” “lazy,” “hard working,” “violent,” “intelligent,” “welfare dependent,” or “complain a lot.” The final responses were combined into a single “stereotype scale” (Cronbach’s alpha = .87).

⁶ Affect is the combination of two questions: “How often have you felt sympathy for blacks?” and “How often have you admired blacks?” (Cronbach’s alpha = .72).

⁷ The “racial resentment scale” is the combined average of six questions that asked respondents to agree or disagree with the following statements: “Irish, Italian, Jewish and many other minorities overcame prejudice and worked their way up. Blacks should do the same without any special favors,” “Over the past few years, blacks have gotten less than they deserve,” “Government officials usually pay less attention to a request or complaint from a black person than from a white person,” “Most blacks who receive money from welfare programs could get along without it if they tried,” “If blacks would only try harder, they could be just as well off as whites,” “Generations of slavery and discrimination have created conditions that make it difficult for blacks to work their way out of the lower class” (Cronbach’s alpha = .77).

FIGURE 12.6 PERCENT OF BLACKS AND WHITES WHO “STRONGLY FAVOR” THE DEATH PENALTY, LIFE IN PRISON FOR THREE VIOLENT FELONIES, OR TRYING JUVENILES AS ADULTS FOR VIOLENT CRIMES.



SOURCE | Data from *Race, Crime, and Public Opinion Survey*, 2001. Bobo, Lawrence, and Devon Johnson, Harvard University.

these measures has been used in a variety of previous studies and all have been shown to be reasonably reliable and valid measures of significant forms of racial prejudice.

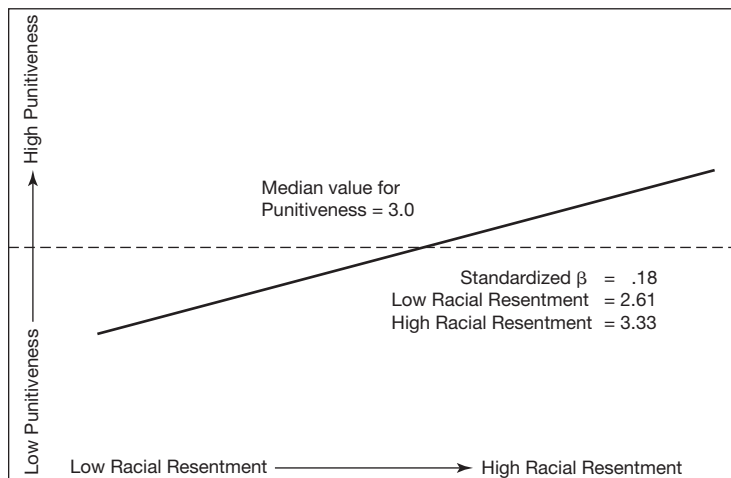
Negative racial stereotypes, anti-black affect, and collective racial resentments all are positively correlated with criminal justice policy punitiveness. These correlations exist among both white and black Americans, though they are usually much stronger among whites. Our analyses, however, did not settle for merely examining correlations. We sought to determine whether demographic background characteristics—such as level of education, age, urbanicity, or region of the country—sometimes associated with levels of prejudice might account for these prejudice-to-punitiveness correlations. We also sought to determine whether alternative potential sources of punitive crime policy outlooks mattered. Among the competing hypotheses we considered were the possibility that conservative social values (indicated by conservative political ideology, Republican Party identification, and frequent church attendance),

highly individualistic and dispositional views about the causes of crime, and other factors such as fear of crime, actual criminal victimization, actual levels of violent crime, or the number of blacks living in a respondents area, could better explain support for punitive crime policy preferences.

Our results consistently showed that collective racial resentment was an important predictor of support for punitive crime policies regardless of the control variables (e.g., demographic characteristics) or alternative explanations (e.g., social conservatism, crime causation beliefs, or other material social conditions) we also took into account. Indeed, no other variable aside from race itself mattered so consistently. The key relationship is shown graphically in Figures 12.7a and 12.7b. Figure 12.7a summarizes the effects of racial resentment on support for punitive crime policies. Even after controlling for every potential intervening variable in the relationship between racial resentment and support for punitive crime policies, we find overwhelming support for our thesis that when it comes to punishment, racial attitudes matter. Respondents

FIGURE 12.7a | EFFECT OF RACIAL RESENTMENT ON PUNITIVENESS

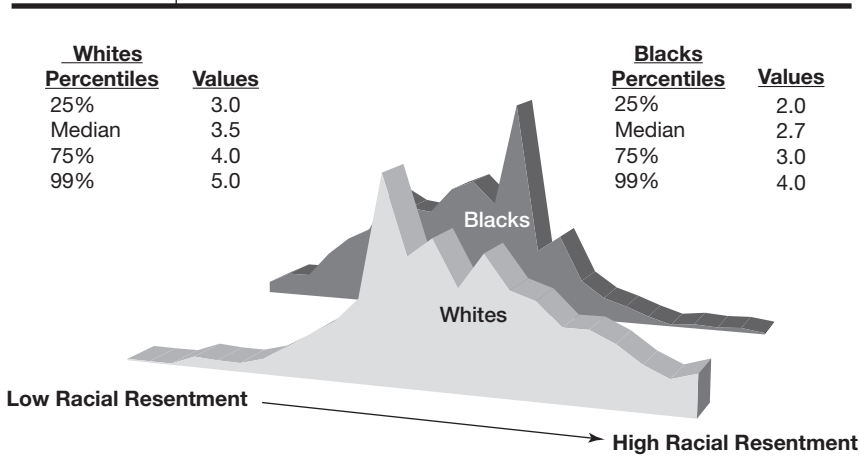
Punitiveness and Racial Resentment were each measured on a scale from 1 to 5.



NOTE: Results from regression models that control for race, stereotypes, racial affect, age, sex, education, urbanicity, region, political ideology, church attendance, neighborhood context, fear of crime, and beliefs about why people commit crimes.

SOURCE | Data from *Race, Crime, and Public Opinion Survey*, 2001 and 2002. Bobo, Lawrence, and Devon Johnson, Harvard University.

FIGURE 12.7b | DISTRIBUTION OF BLACKS AND WHITES BY RACIAL RESENTMENT



SOURCE | Data from *Race, Crime, and Public Opinion Survey*, 2001 and 2002. Bobo, Lawrence, and Devon Johnson, Harvard University.

with the lowest values of racial resentment were consistently below the median score of punitiveness (at 3.0 this roughly equates to “Somewhat Agree” with, or “Somewhat Favor” the policy). Comparatively, respondents who had high levels of racial resentment were much more likely to “Strongly Agree” with and “Strongly Favor” a more punitive course of action when it comes to dealing with criminal behavior.

We include Figure 12.7b to underscore an important set of ideas. Levels of collective racial resentment are much higher among white Americans than among black Americans. But we also want to point out that these are nonetheless culturally prominent ideas that are articulated through the media and from various both elite and lay sources. As a result, both whites and blacks have extensive exposure to such ideas, though these ideas encounter greater challenge, resistance, and alternative accounts among blacks than is likely to occur among whites.

This is an instance when it is of value to reflect carefully as much on what the findings did *not* show as on what they did show. Specifically, our results indicate that such factors as an individual’s personal fear of crime, actual criminal victimization in the past, the actual rate of homicide in a respondent’s larger community, and even the individual’s own broad social values were not as important in predicting support for punitive crime policies as the degree to which she or he held strong collective resentments toward African Americans. To wit, a significant

portion of the public appetite for harsh crime policies has its roots not in features of the crime problem itself or in the triumph of conservatism per se but rather in the prevailing and deeply troubling cultural legacy of anti-black racism in America. It seems unlikely to us, on the basis of these results, that the racialized mass incarceration society could or would have emerged, much less been sustained for as long as it has, absent a widespread cultural pattern and practice of contempt and derision toward African Americans.

A Crisis of Confidence

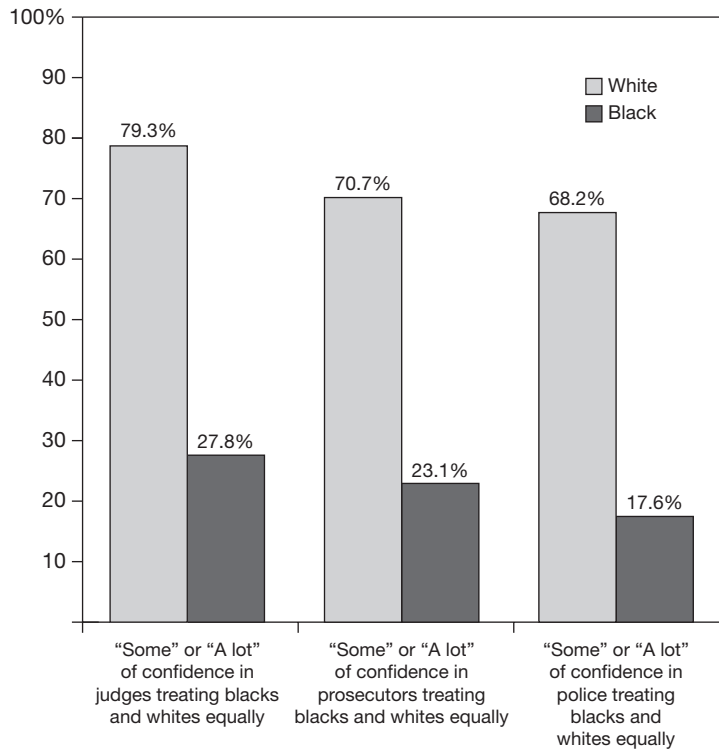
One feature of the new law and order regime is deep black-white polarization over the fairness and legitimacy of the legal system. This problem of legitimacy is not merely a vague sentiment that something is not quite as it should be. Whether we focus on police, prosecutors, or judges, we find that black and white Americans are very far apart in their assessments of whether agents of the criminal justice system treat people equally without regard to race. Figure 12.8 reports data on the degree of expressed confidence in judges, prosecutors, and police. In each instance two-thirds or more of white Americans expressed “some” or “a lot” of confidence that judges, prosecutors, and police, respectively, will treat blacks and whites equally. Just as consistently, fewer than one in three African Americans expressed such a viewpoint. Across the three items, the black-white difference averages a full fifty percentage points. Blacks and whites occupy profoundly different worlds when it comes to expectations for the performance of the criminal justice system.

We were particularly interested in determining whether this perception of race bias in the criminal justice system would have consequences. To examine this possibility we conducted two further experiments within the context of our national surveys both aimed at determining whether the perception of race bias would encourage blacks (or whites, for that matter) to engage in jury nullification. Jury nullification occurs when members of a jury panel, in effect, ignore the evidence and existing law in a case when they return a verdict in order to make a statement about what they see as a larger source of unfairness in the legal process. Indeed, some prominent legal scholars have called for just such behavior with regard to the incarceration binge and African Americans (Butler 1995).

In general, consistent with the expectation that perceived racial bias in the legal system predisposes individuals to act in ways that undermine the legal system, we find strong evidence of readiness to engage in jury

FIGURE 12.8 | **PERCENTAGE OF RESPONDENTS WHO HAVE “A LOT” OR “SOME” CONFIDENCE IN JUDGES, PROSECUTORS, AND POLICE.**

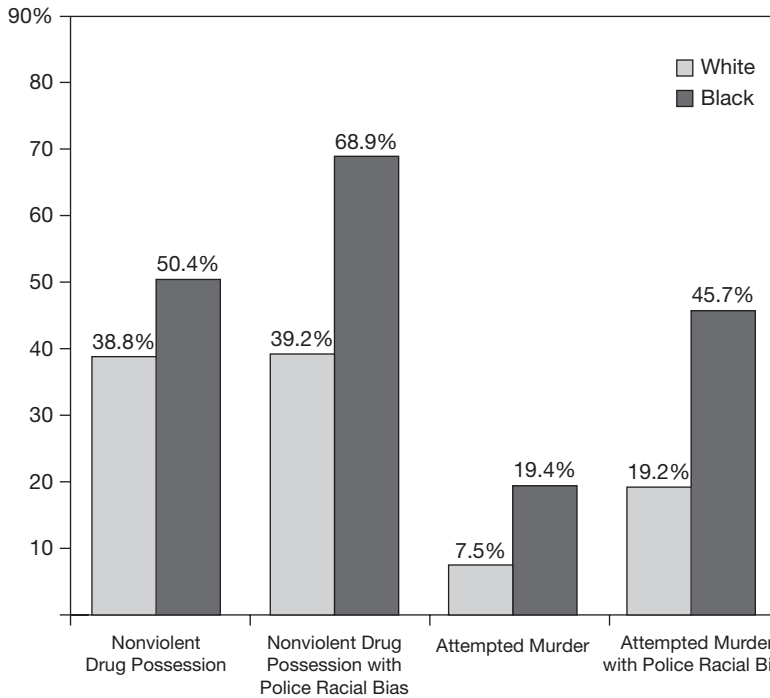
Respondents were asked how much confidence they had that judges, prosecutors, and police treat blacks and whites equally. There were four responses: “A lot of confidence,” “Some confidence,” “A little confidence,” or “No confidence.” This graph shows the combined responses for “A lot of confidence,” and “Some confidence.”



SOURCE | Data from *Race, Crime, and Public Opinion Survey*, 2001 and 2002. Bobo, Lawrence, and Devon Johnson, Harvard University.

nullification, particularly among African Americans but also among a nontrivial number of sympathetic whites. In one question we asked respondents to consider the hypothetical case of an African American male on trial for the first time for a nonviolent drug charge. We asked a randomly selected half of the respondents if they would be willing to let the individual go free even if the evidence presented tended to point toward his guilt. The other half of the respondents were asked if they would let the individual go free if his defense claimed that the arresting officer had been motivated by racial bias. A second experiment shifted

FIGURE 12.9 | **PERCENTAGE OF RESPONDENTS WHO WOULD BE WILLING TO ENGAGE IN JURY NULLIFICATION GIVEN THE FOLLOWING SCENARIOS.**



NOTE: Includes respondents who said they would be “Mostly willing,” or “Very willing” to engage in jury nullification.

SOURCE | Data from *Race, Crime, and Public Opinion Survey*, 2001 and 2002. Bobo, Lawrence, and Devon Johnson, Harvard University.

to a case of an attempted murder charge, but otherwise paralleled the nonviolent drug possession experiment. Results for both are shown in Figure 12.9.

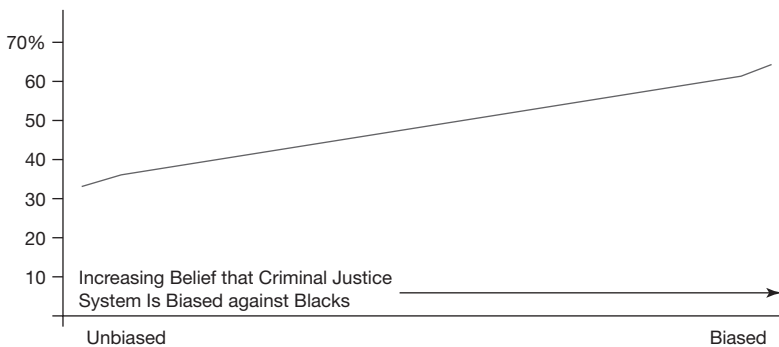
In both experiments these national sample survey data show, especially for the drug possession case, that large fractions of the African American population are ready to engage in jury nullification. Even when there is no mention of racial bias on the part of the arresting officer, fully 50 percent of blacks say they would consider voting to let the suspect go free if they were on a jury, as did nearly 20 percent of blacks in the case of an attempted murder charge. When the experimental manipulation explicitly raises the possibility of racial bias in the case readiness to engage in nullification rises in both cases. More than two-thirds support nullification in the drug charge case (up from 50 percent) and just

under half (up from 20 percent) in the attempted murder charge report a higher level of readiness to engage in jury nullification. We found no experimental effect among whites in the drug charge case, though there was a high baseline level of support for nullification at approximately 39 percent.

We tested two more direct types of evidence to bear on the claim that it is the problem of perceived racial bias in the operation of the legal system that is responsible for these experimental results. We combined responses to the three questions on judges, prosecutors, and police treating blacks and whites equally to create a measure of perceived racial bias in the criminal justice system. This measure proves to be strongly related to a respondent's readiness to engage in jury nullification. Figure 12.10a maps the relationship between the perceived racial bias measure and willingness to engage in jury nullification regarding the drug charge case.

This perception of bias in the functioning of the criminal justice system takes on a special edge with regard to the war on drugs. We asked a separate series of questions specifically about the extent to which the conduct of the War on Drugs was carried out in a racially biased manner. Substantially more blacks than whites agreed with each of three statements concerning race bias in the war on drugs. For example, 66 percent of blacks but only 21 percent of whites agree with the statement that "drug laws are enforced unfairly against black communities" (Bobo

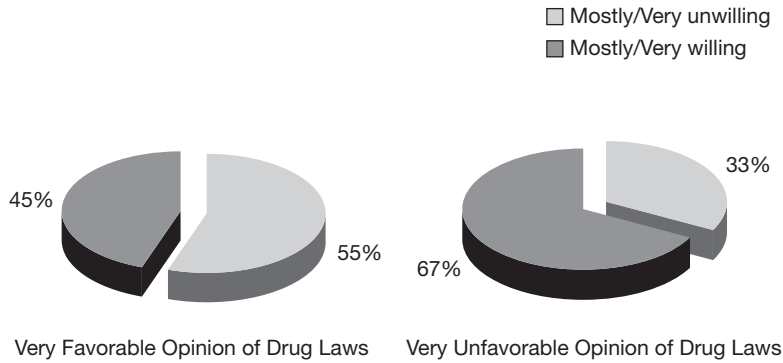
FIGURE 12.10a | **PERCENTAGE OF RESPONDENTS WHO WOULD BE "MOSTLY/VERY WILLING" TO ENGAGE IN JURY NULLIFICATION FOR DRUG POSSESSION CHARGES BASED ON THEIR BELIEFS ABOUT RACIAL BIAS IN THE CRIMINAL JUSTICE SYSTEM, AFTER CONTROLLING FOR RELEVANT VARIABLES**



SOURCE | Data from *Race, Crime, and Public Opinion Survey*, 2001 and 2002. Bobo, Lawrence, and Devon Johnson, Harvard University.

FIGURE 12.10b

PERCENTAGE OF RESPONDENTS WHO WOULD BE “MOSTLY/VERY WILLING” OR “MOSTLY/VERY UNWILLING” TO ENGAGE IN JURY NULLIFICATION BASED ON THEIR OPINIONS ABOUT DRUG LAWS



NOTE: See Bobo and Thompson (2002) for a more complete discussion of variables used in these models.

SOURCE | Data from *Race, Crime, and Public Opinion Survey*, 2001 and 2002. Bobo, Lawrence, and Devon Johnson, Harvard University.

and Thompson 2006a, 461). Figure 12.10b shows that this measure too is clearly related to readiness to engage in jury nullification in our hypothetical drug charge case. Sixty-seven percent of respondents with a low opinion of the War on Drugs (i.e., who believed it is racially biased) were “mostly” or “very willing” to vote to acquit someone they thought was probably guilty of a nonviolent drug charge as compared to only 45 percent of those with a high opinion of the War on Drugs.

In a democratic society the legitimacy of the legal system is of great importance (Blumstein 2001; Tyler and Huo 2002). People who see law enforcement and application of the law as fair are more likely to comply with the law and to be supportive of law enforcement efforts. It is also and perhaps more tellingly important because, according to basic democratic theory, individuals should stand equal before the law and the coercive powers of the state. Indeed, this is one of the fundamental expectations of any citizen in a democracy. The current punitive law and order regime and condition of racialized mass incarceration has created a real crisis of legitimacy for the legal system in the eyes of most African Americans and a nontrivial number of whites as well. These perceptions of serious racial bias are likely to have real consequences for how individuals engage and interact with agents of the criminal justice system.

A Durable Taste for Punishment?

Given our argument about the central sociological importance of public opinion as an underpinning of the racialized mass incarceration regime, it becomes urgently important to identify those strategies that might make it possible to move the mass public in less punitive, more preventative, and potentially more reintegrative directions with regard to criminal offenders. That is, we sought to determine whether criminal justice policy issues could be contextualized or “framed” in ways that would encourage less uniformly punitive reactions from the mass public. We conducted a series of four controlled “framing” experiments in national surveys to begin testing the limits of the taste for punitiveness. Our results, summarized in Table 12.1, have been only modestly reassuring about the potential to move public opinion.

Our initial experiment, which we labeled “The Death Row Demography” experiment, sought to determine whether drawing attention to the statistical fact of the mere overrepresentation of blacks on death row would be enough to weaken public support for the ultimate penalty. The experiment had three conditions that involved a standard

TABLE 12.1 | PUNITIVENESS ISSUE FRAMING EXPERIMENTS

Experiment	Manipulation	Effect
Death Row Demography	Blacks are about 12% of the U.S. population, but they [are almost half (43%) of those currently on death row] OR [were half of the homicide offenders last year.	None
Murder Victim Race Bias	At present, someone who murders a white person is much more likely to be sentenced to death than someone who murders a black person.	None
Innocent on Death Row	Since 1976, seventy-nine people convicted and sentenced to death were later found to be innocent and have now been released from prison.	None
Crack versus Powder Cocaine	Most of those convicted for crack cocaine use are blacks and most of those convicted for powder cocaine use are whites.	Approximately a 20 percentage point increase in disapproval for both blacks and whites

SOURCE | Bobo and Johnson 2004.

question on support for the death penalty, a second condition involving a pre-question declaration that almost half of the people on death row are black though blacks are only 12 percent of the population, or a third condition involving a pre-question declaration that blacks commit almost half of the nation's homicides though blacks are only 12 percent of the population. This experiment yielded no change across the three conditions in levels of support for the death penalty. This is a useful case to consider because in recent memory, the then-governors of Illinois and Maryland imposed brief moratoriums on application of the death penalty. They justified their actions at least partly on the basis of black overrepresentation and the potential appearance of bias that such overrepresentation created.

In the second experiment, which we labeled "The Murder Victim Race-Bias" experiment, we drew attention to the one way in which there is still clear evidence of race bias in the application of the death penalty. Compelling evidence has been amassed that in the United States someone who murders a white person, irrespective of all other features of the criminal suspect and of the crime itself, is a good deal more likely to receive a death sentence than someone who murders a black person, suggesting a clearly higher value placed on white lives than on black lives. This experiment, in the main, yielded negative results as well: drawing attention to bias on the basis of the murder victim's race did not substantially alter support for the death penalty.

In the third experiment, which we labeled "The Innocent on Death Row" experiment, we attempted to draw attention to the risk of executing an innocent person. That is, this experiment made no explicit reference to race but rather to the fact that a large number of people actually sentenced to death have been exonerated (79 such cases at the time the experiment was conducted and over 100 as of this writing). In this case we asked respondents if they would be more or less likely to vote for a gubernatorial candidate if that person called for a moratorium on the death penalty because of the risk of executing innocent people. A randomly selected half of the respondents got only this question whereas another randomly selected half were first told of the number of convicted death row inmates who had been exonerated. Strikingly, drawing attention to the risk of this irreversible and grave error did not significantly move public opinion.

In our fourth and final experiment, which we labeled "The Crack vs. Powder Cocaine" experiment, we drew attention to the differential sentencing penalties attached to these two forms of illegal drug

consumption. In particular, we asked people whether they approved of substantially stiffer penalties attached to crack cocaine as compared to powder cocaine. One-half of the respondents, however, were informed that most of those arrested for powder cocaine use were white whereas most of those arrested for crack cocaine use were black. In this instance, we found a large 20 percentage point drop among both white and black respondents in support of the sentencing differential when the racial consequences were pointed out.

Taken as a whole, these results suggest both the strength of the punitive ethos in the mass public at present and the possibility of change with regard at least to some cases with drug-related charges. The latter result is particularly encouraging since the sort of violent crime to which the death penalty applies is not a major component of the racialized mass incarceration problem.

CONCLUSION: RACISM AND THE NEW LAW AND ORDER REGIME

Writing in 1899 in his magisterial work *The Philadelphia Negro: A Social Study*, the great sociologist W. E. B. Du Bois declared:

“Thus the class of Negroes which the prejudices of the city have distinctly encouraged is that of the criminal, the lazy, and the shiftless; for them the city teems with institutions and charities; for them there is succor and sympathy; for them Philadelphians are thinking and planning; but for the educated and industrious young colored man who wants work and not platitudes, wages and not alms, just rewards and not sermons—for such colored men Philadelphia apparently has no use.” (Du Bois [1899] 2007, 243)

For Du Bois, Philadelphia at the dawn of the twentieth century was greatly concerned with how to respond to a problem of crime, particularly to what was regarded as “Negro crime.” But at the same moment, little if anything was taking place to more fully include and make a place for the many blacks coming to the city merely hoping to lead decent lives. Had he lived to the present day, Du Bois might well sense a disturbing parallel between our times and this now century-old circumstance.

Beginning in a serious fashion in the 1980s, the United States embarked on a series of legal reforms that have made us a far more punitive society. Mandatory minimum sentences, three strikes and you’re out laws, trying juveniles as adults, truth in sentencing practices, and a variety of

other policies and practices contributed to an unprecedented rise in the reliance upon formal incarceration as our collective response to crime. In theory, these changes were neutral as to race. Moreover, they were largely implemented in the post–civil rights era when the most egregious forms of racial bias in the law and law enforcement had largely been wiped away. Nonetheless, the reach of an increasingly punitive state was not felt evenly across American society but instead fell with heavy disproportion on African Americans, particularly those of low income and education. We are thus prompted to modify the increasingly conventional social science wisdom that describes these changes as the emergence of the “mass incarceration” society to instead describe what has happened as the emergence of “racialized mass incarceration.” As legal scholar Dorothy Roberts puts it: “African Americans experience a uniquely astronomical rate of imprisonment, and the social effects of imprisonment are concentrated in their communities. Thus, the transformation of prison policy at the turn of the twenty-first century is most accurately characterized as the mass incarceration of African Americans” (Roberts 2004, 1272–1273).

A critical element of our claim for racialized mass incarceration is the structure of and effects of public opinion. A necessary and constituent element of the development of the punitive law and order regime and of attendant patterns of racialized mass incarceration has been a set of anti-black attitudes and beliefs that are a significant element of the public appetite for punitive crime policy. Indeed, measures of anti-black racial prejudice are far more potent predictors of public support for the death penalty, three strikes and you’re out provisions, and trying juveniles as adults than conservative social values, levels of violent crime, size of the black population, or beliefs about the fundamental causes of criminal behavior. The cultural legacy of anti-black racism is a major bulwark of the punitive law and order regime.

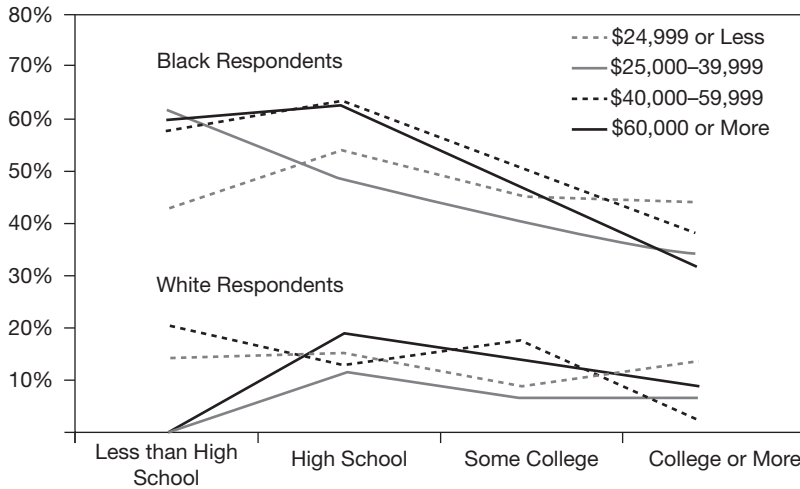
More than this, it is important to bear in mind how racialized mass incarceration has transformed life in many African American communities. Legal scholar Roberts summarizes it well: in “African American communities where it is concentrated, mass imprisonment damages social networks, distorts social norms, and destroys social citizenship” (2004, 1281). It damages networks by removing fathers, brothers, uncles from a web of mutually supportive family and community relationships. It damages broader social norms in two ways. First, it creates conditions wherein it becomes customary or ordinary for youth, especially young men, to expect to spend some time in jail or prison because they

observe that a high fraction of the adult males in their lives and communities are incarcerated. Second, it creates a sense of contempt and illegitimacy toward law enforcement personnel who come to be regarded as an oppressive force in the community rather than partners in maintaining a high quality of life. And it undermines social citizenship by both profoundly stigmatizing those with criminal records and frequently expressly stripping even ex-felons of the right to vote.

The usual sociological inclination is to stress the class character of a form of social inequality, including the development of mass incarceration. And without doubt there is a critical sense in which levels of education and income play a crucial role in defining who is highly susceptible to incarceration and who is not, regardless of race. Yet, there is no sense in which the expansive reliance on incarceration has transformed the fabric of white communities, even working-class ones. For African Americans, however, the situation is quite a bit different. As sociologist Bruce Western puts it: “The criminal justice system has become so pervasive that we should count prisons and jails among the key institutions that shape the life course of recent birth cohorts of African American men” (Western 2006, 31).

The impact of racialized mass incarceration reaches across boundaries of class in black America. In our national surveys we asked respondents whether they had a close friend or relative who was “currently incarcerated.” We found that only one out of ten whites responded affirmatively to this question in 2001–2002. In contrast, fully half of African Americans responded positively to the question, for a ratio of black to white of more than four to one. In Figure 12.11 we examine responses to this question by a combination of levels of education, income, and race. Even more striking is that among those whites with incomes below \$25,000 a year and who had not completed high school, we still find just one in five responding “yes” to the friend or relative incarcerated question. However, that number is just below 60 percent (or more than five out of ten) among comparable blacks. If we shift attention to the high end of class hierarchy, we find among high-income whites (\$60,000 or more) with a college education (or greater), less than 5 percent respond yes to the incarcerated friend or relative question. That is, virtually no high-status whites have such personal exposure to the carceral state. In sharp contrast, fully 31.7 percent of high-income high-education blacks responded yes to this question on personal exposure to the carceral state, for a black to white ratio of seven to one. Strikingly, the rate of such exposure for the very highest status African Americans exceeds that of the very lowest status whites, roughly one in three as compared to only one in five!

FIGURE 12.11 | FRIEND OR RELATIVE INCARCERATED, BY EDUCATION, INCOME, AND RACE



NOTE: Whites were only asked this question in the 2001 *Race, Crime, and Public Opinion Survey*.

SOURCE | Data from *Race, Crime, and Public Opinion Survey*, 2001 and 2002. Bobo, Lawrence, and Devon Johnson, Harvard University.

From our perspective on social policy choices and institutional practices, neither the nature of crime itself nor the distribution of who engages in law-breaking behavior produced the racialized mass incarceration society. Consequently, policy choices can also point us in a very different direction. Ruth and Reitz (2003) articulate a well-crafted set of high-level goals and more immediate reform considerations that should guide policymaking in this domain. In terms of high-level goals, they suggest that crime policy be formulated and routinely evaluated against five key ambitions: (1) the reduction of crime; (2) the reduction of public fear of crime; (3) justice for victims, offenders, and the larger community; (4) law and law enforcement practices that foster perceived legitimacy “within all relevant communities”; and (5) avoidance of the extension of law beyond those actions truly necessary to “address serious harm faced by society.” Their analysis suggests that political entrepreneurs and short-term response to political- and media-manipulated “moral panics” have all too often been the impetus for major criminal justice reform (see Chambliss 1995; Beckett 1997), not careful research- and evidence-based criteria.

Ruth and Reitz also outline seven specific reforms to address the excesses of the current incarceration binge, all sensible recommendations

from our perspective: (1) prioritize the use of incarceration primarily for a response to grave violence; (2) charter a permanent sentencing commission to reintroduce expert judgment and planning into law enforcement; (3) reverse policies of more and longer sentences for drug offenders; (4) conduct a national audit of the use of incarceration to determine whether the current massive level of intervention by the criminal justice system can withstand close scrutiny (against the standards outlined above); (5) promote effective helping programs for offenders to better assure their reintegration after a period of incarceration; (6) review policies dealing with those who are incarcerated since they are rarely involved in violent crimes, but their rates of incarceration are rising rapidly; and (7) *require that changes in punishment laws be preceded by a statement of the racial, ethnic, and financial changes that may result.* The latter point is of special concern to us. More serious and principled attention to the degree of extreme racial imbalance in the experience of incarceration should have taken place long ago. It is time to begin an honest discourse on the magnitude and fundamental source of racialized mass incarceration, perhaps the great social policy setback of the post-civil rights era.

We began by drawing attention to the Tulia, Texas, drug arrests that proved to be essentially fraudulent and racially motivated. We could just as easily have chosen any of several other prominent cases to highlight the problem of punitive excess in the legal system where African Americans pay a disproportionate price. Among the other high-profile cases to which we could have pointed are the “Jena 6” case in Louisiana; the police shootings of Abner Louima and Sean Bell in New York, or of Oscar Grant in northern California; or the general pattern of trying juvenile offenders as adults and sentencing them to life without the possibility of parole. Tulia is special because it represents such an extreme without being all that exceptional; because it involves the War on Drugs, which is such a crucial element of the problem of racialized mass incarceration; and because, in hindsight, we can fairly say that any justice system not already suffused with anti-black bias would have stopped such an outrage before routinely and methodically imprisoning more than a dozen people (more than 10 percent of Tulia’s black population). As the NAACP Legal Defense Fund declares, “The Tulia ‘sting’ is representative of the failed ‘War on Drugs,’ which disproportionately targets minorities, and also often includes racially-biased police practices and secures convictions only after prosecutorial misconduct” (NAACP-LDF 2006, 1). Or, to quote Sammy Barrow, a black Tulia resident with four relatives swept up by the sting operation and who could just as well have

been speaking about a national problem, “They declared war on this community” (Yardley 2000).

A long problematic connection between race and the functioning of the criminal justice system has been re-forged in the post-civil rights era. Instead of arriving at a circumstance of clear equal treatment before the law without regard to race, a set of social polices and institutional practices has emerged over the last three decades that has resulted in a new, deeply punitive law and order regime and a condition of racialized mass incarceration in the United States. These circumstances should trouble all those interested in racial justice and a fuller realization of the fundamental principles and promises of a democratic society.

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