

Disproportionate numbers of African Americans in prison – Why?

Recently there was some controversy over postings on a US based web forum by Icelanders supporting the 'theory' that greater numbers of African American people in custody meant that something in their culture or personalities led to increased criminality. Of course debates about characteristics and behaviors linked to ethnicity have been around for a long time and have, and are, used as a basis for discrimination – it is the essence of slavery, ethnic cleansing, holocaust, apartheid and other shameful aspects of human society both in the past and present. When we define humans as other or lesser it opens the door for subjugation, incarceration and death because their lives are worth less than ours. George Bush opined that Iraqis could not feel the same way about their dead children as 'we' did and we will all be familiar with the headlines in our home countries that announce an incident which has caused the deaths of many 'foreigners' but focuses on lamenting the broken arm of one of 'our own'.

Critical thinking and a little understanding of statistics can guard against susceptibility to such theories. Let us start with a small deconstruction of the nature of statistics. I can say that 100% of all Icelanders are great. That is of course a sample – and statistics are often based on a sample. I have not met everyone in Iceland but everyone I have met has been great. So from my sample I can say it is a 'fact' that all Icelanders are great. Marketing often uses such methods '8 out of 10 cats prefer this cat food' – yes, but to what? no food? Horrible cat food? Having their tails pulled?

It is a fact that more African American people than White American people are in custody or are subject to some control via the US criminal justice system. It is also a fact that more African American people die at the hands of the criminal justice system before they have been found guilty of anything – some might compare this to a contemporary form of lynching and has influenced the growth of the Black Lives Matter movement: (<http://blacklivesmatter.com/>).

There is a growing list of individuals, shot and killed not as possible armed suspects 'in the line of duty' , but killed through beating, shooting, restraint and other methods where witnesses have attested to both the unarmed status of the individual and their compliance with police instructions. Increasingly people can check sites such as YouTube to see such incidents. A blurry and confused video is not in itself proof however there are many documented cases where video evidence supports a narrative which is different to that given by law enforcement agencies.

Criminal justice systems are devised and written by powerful people, even in democracies. They adapt over time, becoming more or less refined and just, dependent on a range of social, economic, cultural, political and global factors. They are systems which encompass both ideological and repressive state apparatus – education, media, family, business, law, politics, psychiatric and health services, welfare and others. None of these are static and all of them are interlinked and subject to ideological changes and power shifts.

In the United States the law has had the effect of: 'distributing benefits and burdens based on race and the assignment of a person to a racial category has often, in the past, determined his or her rights and obligations' (American Anthropological Association 1997). A clear example of this are the Jim Crow laws passed at the end of the Civil War. Michelle Alexander in 'The New Jim Crow' (2010) points to the underlying racism inherent in the War on Drugs and demonstrates how black

communities are targeted leading to a cycle of poverty and prison for millions of young, black men. Mass incarceration arises from a system of laws, rules, policies and customs that control these populations both inside and outside of prison and the result of the War on Drugs is not a reduction in drug use but an increase in social control and imprisonment for black communities. Alexander sees a clear line from Slavery and Jim Crow segregation to the current mass incarceration which masquerades as if operating in a 'color blind' society. Her book provides a range of evidence which shows that poor, black men are stopped more often, arrested more often and imprisoned more often and longer than white offenders based on a range of 'indicators of suspicion' which include walk, dress, location, associates, form of transport. Probable cause is replaced by suspicion and suspicion is driven by stereotypes, media representations and racially skewed statistics. In relation to juvenile crime there is a great deal of discretion permitted on behalf of the criminal justice system and this has a tendency to bring young black men into the system at a very early age and labels them criminal before they have even left school. The label prevents many forms of employment and places a burden on the individual that may not be removed by time or reputation.

Following the Rodney King incident the Christopher Commission (1991) found that the excessive use of force by the Los Angeles Police Department was compounded by racism and bias. One quarter of the officers interviewed had a clear negative racial bias toward minority communities. The Commission also reviewed radio transmissions and noted a disturbing recurrence of racist remarks, verbal and physical harassment, unwarranted vehicle and individual pursuits and beatings based on racist rather than law enforcement motivations.

Data without context has little meaning. Overrepresentation of African Americans subject to Criminal Justice controls, from execution, imprisonment, probation or other strictures has to be seen in relation to a range of other social, economic, political and other structures. Statutes in themselves are ever changing dependent on a range of considerations including social norms and values which change over time. Inequality for women and minorities has been enshrined in law both in the past and for some, in the present. Slavery and racial segregation was legal in America and elsewhere in the past. It could be argued that despite abolition of such laws there has been a shift from explicit codified racism in the Criminal Justice system to de facto racism where the end result is similar but in a contemporary context. The plantation slaves have been replaced with free prison labor carried out by the descendents of slaves, who receive unequal protection under the law, increased surveillance, more punitive sentencing and continued stereotyping as aggressive, violent, criminal individuals who need to be controlled in the name of public safety. Jim Crow never went away it just changed its clothes and so with neo colonialism we have neo slavery.

These issues, combined with poverty has resulted in disproportionate levels of single parent families within the demographic. Single parent families are not in themselves problematic, indeed some sociologists point to the significant rates of matriarchal arrangements for these single parent families and the attendant strengths of this family unit. However, the social structures around such family units such as the replacement of welfare with workfare, reduction in opportunities for education and advancement, housing problems and impoverished childcare arrangements. This means that the families in question are likely to find themselves in poverty, thus the demographic is over represented in poverty measures.

Some research has shown that when poverty is accounted for the rates of criminality between ethnic groups shows little differentiation. There is a tendency for public commentators to propose the straw man argument that not all those in poverty commit crime. Of course this is true, but those

in poverty are more likely to be socially controlled, stereotyped and denied access to justice which leads to data that makes it look as though they are more criminal.

It is worth noting that when it comes to homicide one of the biggest global drivers is not poverty per se or gun ownership but the gap between the rich and the poor that appears to be one of the most important factors. This gap is growing not just in America but in other countries such as the UK where increasingly neo liberal welfare and criminal justice social policy is adopted along with the privatization of previously state run services and agencies.

(https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf.)

An African American is more likely to be born into poverty than a white American and to an extent poverty is becoming criminalized. Delays and failure to pay welfare leads to hunger but to steal food is a crime. It may be that the state has failed its lawful duty to pay the recipient however this fact is unlikely to be accounted for. In recent years the UK has followed the American neo liberal approach to welfare and has seen the growth of food banks, increased rates of malnutrition and suicide rates where vulnerable people have found themselves categorized as undeserving of welfare. In a substantial number of cases these individuals have severe mental and physical health problems and in some cases terminal illnesses. The UK now faces a possible UN inquiry into disability rights violations. In some areas homelessness, begging and street sleeping has become a crime. In America the “three strikes and you are out” approach to sentencing means that some individuals are imprisoned for acts driven by poverty - such as stealing small amounts of food- that match the lengths of sentence others have been given for homicide. The jurisprudential edict which built criminal justice systems on the philosophy that “you may as well be hung for stealing a sheep as a lamb” was a legal direction not to be maintained appears to have been forgotten. <https://www.wsws.org/en/articles/2015/02/05/welf-f05.html>

For a child brought up in an area of social deprivation there are a range of odds that are stacked against them. Crime is likely to be a factor of these areas as it is for all social groups, however, the level of surveillance is likely to be high in areas of social deprivation and the so called ‘War on Drugs’ may target easy wins: the local foot soldier dealer is much easier to pat down than the importer who operates under a veil of middle class norms and respectable business interests. This additional surveillance is often accompanied with a lack of care and protection from the state. The vacuum of care from family, state or social bond may be replaced by gang culture. The sense of security that comes from belonging to a group may not be available in any positive sense and in the same way that a child will settle for negative attention if no positive attention is given an individual may form bonds with a gang that becomes a form of fictive family. <http://ebook.stepor.com/book/gang-leader-for-a-day-a-rogue-sociologist-takes-to-the-streets-69323-pdf.html>

For ‘respectable America’ gang culture is a social ill which needs to be stamped out and is the root of many evils, but for a kid in the projects it may be the only group that can provide any form of social bond however negative, life limiting and destructive that might be...or may not be, as it must be born in mind that the public narrative of what a gang is and does is not written by gang members but by powerful groups with vested interests who may themselves be in groups with all the features of a gang, for example rouge bankers manipulating the Libor rate or media barons attempting to control public and political opinion, or those who gain to make vast profits within the privatized prison sector. The gang when observed in a structured and non sensationalist way often reflects the norms and values of many other social groups and performs the roles of other ‘respectable’ social groups.

As the author of Gang Leader describes a young man who has a talent for maths and who had the skills to be an excellent accountant or banker had received a criminal record before he was 16 thus barring him from entry into either of these professions. He became the gangs accountant.

The state education system in some areas is intrinsically linked with the criminal justice system and it is not unusual to have a police presence on campus and in some areas breaching of school rules can lead to criminalization via juvenile hall. Again socio economic deprivation can lead to enormous strains on the already arguably under resourced public education system and it is likely that many children go through their educational career with undiagnosed learning problems or health problem which added to high levels of social violence and gang tensions make the school far from the peaceful haven it needs to be for learning to take place. Insecure housing and poor health are correlated to poverty and interrupted education. For many the root away from poverty – a good education – is marked with insurmountable hurdles. President Obama recently noted that the issue of overrepresentation in prison does not lie solely within the Criminal Justice System or with racist police officers but across a range of social scenarios including the often cited school to prison pipeline. Racism in its structural, institutional, individual and casual form is found in every layer of society so the over representation of African Americans is not just within the criminal justice system but in homelessness, poverty, mental illness, physical illness, school exclusion, mortality rates and so on. Hispanic Americans experience and are represented statistically in similar ways to African Americans and this narrative can also be seen amongst Afro Caribbean's in the UK, First Nation people in Canada, Australia, New Zealand.

Drug related offences are the source of perhaps most cases of imprisonment and in recent years the declared War on Drugs has led to increasingly severe sentencing. The link between schools and the criminal justice system means that minor drug offences at a young age can mean a criminal record, school exclusion and an almost impossible task to find legitimate employment. Contrast the experience of the British Prime Minister David Cameron when caught with marijuana as a school boy. No police involvement, no criminal record, no official sanction, no school exclusion. In the same country at the same time, others, disproportionately young black men who had precisely the same involvement were excluded from school and given a criminal record. For justice to be just the social demographics of the offender should not be the main driver of the end result.

Ghoulish and sensationalized media coverage of the effects of drugs such as crack cocaine and crystal meth, where users are depicted as having the strength of a lion and the urge to 'eat the faces' of others feeds into a disproportionate fear of crime and gives license to increasingly brutal forms of control. News images of groups of police officers kicking, spraying, beating or shooting during arrest and restraint can be explained away with a narrative of superhuman strength. The underlying data shows that 14 million white Americans are reported as drug users against 2.6 million African Americans yet African Americans are 10 times more likely to be in prison for drug related offences. African Americans make up 12% of all drug users, 38% of those arrested for drug offences and 59% of those in prison for drug offences. In terms of sentencing an African American is likely to spend as much time in prison for a minor drug offence as a White American is for a serious violence offence.

The mandatory sentence for possession of crack cocaine is far harsher than for cocaine powder. Crack cocaine is more likely to be used by urban African Americans than cocaine powder which is predominantly used by middle and upper class white Americans. McDonald and Carlson (1993) found that the average sentence for an African American in connection with crack cocaine was 40% longer than that of a white person imprisoned in connection with cocaine powder offences.

To put this more starkly 75% of crack cocaine users are White Americans yet 80% of those in prison for crack cocaine related offences are African American. (NAACP 2015). The wider social implications of the War on Drugs has led to increased closure of employment opportunities for those with drug offences on record and an increase in adult processes being applied to juveniles. At the same time opportunities for rehabilitation both inside and outside of prison have reduced.

Between 1987 and 2007 the US prison population tripled. This was accompanied by a growth in the private prison as a business. There is profit to be made in prison and lobbyists from the corporate prison sector often present powerful arguments backed by ideas of public safety, fear of crime and public perceptions manipulated by the biased and tabloid, sensationalist 'news lite' media are able to criminalize more social behaviors and to increase both the scope and length of prison sentences. Put simply it is good for business as prisons present a dual profit opportunity, first in payment from the taxpayer for the incarceration and secondly from the free labor gleaned from prisoners. Standards in prison in terms of crowding, facilities, education, and rehabilitation change in light of the profit margin per prisoner. Justice Clarence Thomas (2005) notes that: 'the constitution demands less within the prison walls'. Perhaps the scenes from Abu Ghraib and Guantanamo have led to a form of 'compassion fatigue' and a public acceptance of lowering of standards and increasing brutality in jails.

America has one of the highest rates of incarceration with around 2.4 million prisoners and another 5 million subject to some form of criminal justice control. It is the only post industrial country to retain the death penalty and it was not until the 21st century that the IQ cap for execution was fixed at 70. In terms of the demographics of prisoners Pew (2005) finds:

- 1 in 100 adults are in prison
- 1 in 100 of the prison population are African American women
- 1 in 36 of the prison population are Latino
- 1 in 15 of the prison population are African American men
- 1 in 9 of these men are between the ages of 20 to 34

The National Statistics show:

- 50% of all prisoners are African American
- 30% are white
- 17% are Latino

To conclude from this that the data demonstrates greater criminality within the African American demographic would be as erroneous as concluding Fire Engines cause fires because you generally see them at the scene of a fire. As has already been discussed there is a complex network of social dynamics to be evaluated, understood and taken account of before any conclusions can be drawn. Data from research carried out by NAACP in 2005 shows that African Americans are twice as likely to be arrested than other groups. This is particularly significant for young males where African Americans make up 45% of all juvenile arrests.

Research carried out by Walker, Spohn and DeLone in 2007 found no statistical difference in rates of offending across all demographics and concluded that the end data of criminal justice outcomes had a specific racist dynamic. Rates of offending are not the same as rates of detection, sentencing or imprisonment. This is clearly exemplified in the differences found in the two main sources of crime data in the UK which are the statistics collected by the state agencies of police and courts under the

Home Office and the British Crime Survey which is a self report study which asks respondents about crimes they have both committed and been victims of. One of the key trends found in comparison of these two sets of data is that minority groups are over represented in the Home Office data whereas between group differences in self report studies show little difference in terms of offending. One could perhaps conclude that some people get away with it more than others, with the other side of the coin pointing to some are more likely to be punished than others. The New York State Judicial Commission on Minorities (1991) announced that 'There are two justice systems at work in the courts of New York State; one for whites and a very different one for minorities and the poor'. Georges-Abeyie in Russell Brown (1998) draws attention to the fact that research on racial disparities in the Criminal Justice System often focus on formal, easily observed decision making points and fail to take account of the unobserved, informal law enforcement actions – who is watched, who is stopped, how they are stopped, why they are arrested, what representation they receive, what stereotypes exist in the minds of jurors and other decision makers, what form of sentence and duration of sentence, opportunities for rehabilitation and rebuilding life after sentence. Walker et al (2000) examined 30,000 cases from Los Angeles County and found that the decision to prosecute was based on: 'an unjustifiable standard such as race, religion and other arbitrary classifications'. Beckett, Nyrop and Pfingst (2006) found that 'Race shapes perceptions of who and what constitutes Seattle's drug problem'. Sommers and Norton (2008) found that the force of stereotypes in jurors was such that decisions were most likely to be biased by race.

In relation to the death sentence significant factors are the race of the defendant and the race of the victim. Black offenders found guilty of the homicide of a white person are the category at highest risk of receiving a death sentence, whilst those found guilty of the homicide of a black person are least likely to receive a capital punishment sentence. Lee (2006)

There is a long trail between offence and sentence. First it has to be acknowledged that an offence has taken place. The comments on the US website that prompted this paper included one from Justin who stated:.....'black men commit half of all murders in the US which is astonishing when you consider it is a fact they only make up 12% of the population.' Whilst it may be true to say that half of all those in prison for some form of homicide are African American men there is no logical conclusion that this means they are more criminal than any other group. The final point of the last paragraph applies here. The number of those in prison for murder is not a reflection of the number of murders.

- Not all murders are discovered or reported
- Not all murders are recognized or recorded as murder even when discovered or reported
- Not all murders are subject to the same level of investigation or resources
- Media involvement or co operation with investigations differs dependent on category of victim
- Not all murders are solved or a perpetrator located
- One individual may be responsible for several murdersmost identified serial killers are white
- The persistence of stereotypes leads to confirmation bias amongst witnesses and officials
- The correlation of ethnicity to poverty can mean impoverished legal representation and for wealthy individuals enhanced legal representation
- Evidence of longer sentences for African Americans ensures a greater presence in the system for a longer period

- Lack of official protection from the law for African American populations in areas of socio economic deprivation can lead to violence in the form of self protection and African Americans are 6 times more likely to be victims as whites

So whilst it may be a fact that African Americans are disproportionately imprisoned for murder that fact does not provide evidence that African Americans carry out disproportionate number of murders.

To return to the role of stereotypes and how they are fashioned and maintained in two specific areas relevant to this discussion: Statistics which show on the surface and without context greater rates of criminality amongst some groups can become part of the official folklore about crime and policing. There are many documented studies about the culture of policing both in the UK and America. To contend that all police officers are racist is of course nonsense but all police officers operate in an institution that is racist and in a society that is racist. There is a lack of diversity in the power structures of such institutions and a lack of knowledge about what Philomena Essed calls everyday racism. Without examination of all the underlying factors and debates it is easy to see why stop and search procedures target minority groups when those responsible for the stop and search accept data that shows increased criminality within those groups thus it becomes a self fulfilling prophecy. If people in blue cars were routinely stopped we would soon accumulate data to show people with blue cars committed most motoring offences. If people with glasses were routinely stopped in the street and searched we would soon accumulate data to show people with glasses were more criminal than people without glasses. The experience of routine stop and search can in itself lead to criminalization How many of us would react calmly and politely to our tenth stop when we were a law abiding citizen, and how often can a simple question "why" escalate into an arrest for resistance in co operation?

The Department of Justice found that Black and Hispanic people were 3 times more likely than white to be searched during a routine traffic stop and 4 times more likely to experience some form of force during stop and search procedures. The US Sentencing Commission found that for similar offences African Americans were 20 times more likely to be sentenced to imprisonment and received sentences that were on average 10% longer than white offenders. In 11 states over 10% of African Americans are unable to vote due to felony related disenfranchisement. (Kerby 2012).

To conclude – in response to the debate concerning over representation of African Americans in the US penal system, is that if one fails to examine the various faces of racism present in both US and all societies the wrong conclusion will always be drawn in relation to the how and why, of not just the issues within the criminal justice system, but in all social institutions and activities.

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