

Race, Ethnicity, Crime and Criminal Justice in the Americas

Edited by
Anita Kalunta-Crumpton

Race, Ethnicity, Crime and Criminal Justice in the Americas

Also by Anita Kalunta-Crumpton

RACE AND DRUG TRIALS: The Social Construction of Guilt and Innocence

PAN-AFRICAN ISSUES IN CRIME AND JUSTICE (*co-edited with B. Agozino*)

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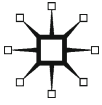
RACE, CRIME AND CRIMINAL JUSTICE: International Perspectives
(*editor*)

Race, Ethnicity, Crime and Criminal Justice in the Americas

Edited by

Anita Kalunta-Crumpton
Texas Southern University, USA

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Acknowledgements

Upon the completion of *Race, Crime and Criminal Justice: International Perspectives* (2010), I had thought that I would not embark on such a project again, principally because of the very arduous task involved in conceiving and birthing edited collections of this kind. However, it was not long after the painstaking conclusion of *Race, Crime and Criminal Justice: International Perspectives* that I developed a desire to extend my inquiry into the relationships among human physical variations, crime and criminal justice to some of the hitherto untapped societies in this international criminological enterprise.

A number of countries in Latin America and the Caribbean attracted my interest and the subsequent interest of Palgrave Macmillan. I thank Palgrave Macmillan for indulging my desire to produce *Race, Ethnicity, Crime and Criminal Justice in the Americas*. As with the 2010 book, it was a taxing journey to bring it to fruition. I express my sincere gratitude to the efforts and dedication of each of the 13 authors whose individual contributions made this possible. I give my warm thanks to Daniel Georges-Abeyie, whose expert statements on ethnicity in the Foreword represent a call to academics and policymakers to devise a comprehensive approach to analyzing and understanding the subject of race, crime and criminal justice.

My special and heartfelt thanks go to my children Ezinwa and Nkemjika, and to David for their unlimited and unconditional patience while once again I was working on another edited book.

As always, I owe *all* to God's grace and blessing!

Anita Kalunta-Crumpton

Foreword

Race, Ethnicity, Crime and Criminal Justice in the Americas, edited by Anita Kalunta-Crumpton, is not simply a sound contribution to the academic literature on race, ethnicity, crime, and criminal justice. It is an important and timely contribution to the academic literature on the intersection of race, ethnicity, social-economic class, social distance, crime, criminal victimization, criminal justice, and juvenile delinquency, especially violent adult criminality and violent juvenile delinquency. It introduces – as do too few other academic treatises – two frequently overlooked components. One, the significance of ethnicity, site, and situation, in the epistemological understanding of the relation among race, ethnicity, social distance, criminogenics, crime associative factors, criminal victimization, juvenile justice, and the adult criminal justice systems operative in the western hemisphere. Two, it notes, as this writer – a criminologist-forensic psychologist-geographer of crime and criminal justice – has noted for more than 30 years, that the masked component in the study of African Diaspora criminality and juvenile delinquency, whether criminogenic or associative, is ethnicity, usually subsumed under the racial component in such analyses as if a black racial monolith exists, as if race equates to ethnicity. The erroneous holistic concept, Hispanic, is bedeviled by many of the same, or similar, analytical problems. This could be said of the terms Asian, indigenous, aboriginal, and Native American. The misnomer that race equals ethnicity and the misconception that a racial monolith actually exists are challenged by Dr. Kalunta-Crumpton. In my writings, I note that each of these categories subsumes distinct social-cultural biological entities, that is, self-identifying communities or externally identified entities such as tribes, ethnic groups, and so forth, with distinct national and international histories, role-sets, and multidimensional value-space, with mores and associated norms that are similar to, or the same as, the dominant role-sets. Simultaneously, others may also be subcultural (different but not in conflict with the dominant role-sets) or contracultural (different and in conflict with the dominant, or so-called mainstream, role-set), as noted in the “Theory of Multidimensional Value Space” introduced by Lynn A. Curtis in 1975.

Race is not ethnicity

Race and ethnicity are distinct theoretical delineators. Race theoretically focuses on biology, genetics, chromosomal outcome in terms of phenotype and biologically induced behavior, with phenotype including, but not

limited to, physiognomy, phrenology, somatotype, skin color, congenital temperament, or personality. Ethnicity theoretically focuses on social interaction, culture and nation-state of birth or origin, or place of origin, in the case of diaspora Africans in the western hemisphere. Ethnicity implies shared histories, shared group dynamics, shared awareness, shared fears, shared collective hatreds and shared group experiences due to role-sets, real or imagined, as perceived by those who share these role-sets, or are believed to share these role-sets, by those external to these self-identifying or externally identified social-cultural entities. The practical delineation of race and ethnicity in criminal justice and juvenile justice literature and research is, of course, very different from theoretical formulation, with race categorization over-empathizing some phenotypic factors, while ignoring or de-empathizing others (those due to distinct local, regional, national and international histories), justifying, rationalizing or explaining "contingent facts of history": for example, physical exploitation and even the genocidal exploitation of distinct identity groupings via pogroms and exploitative work histories, ranging from indentured servitude to slavery. At the same time, ethnic categorization has been marred by ethnocentrism, to the near total devaluation or annihilation of distinct cultures considered primitive, atavistic, criminogenic or not contributing to the national welfare, sexually exploitive and predatory toward females of the dominant culture, and given similar attributions of negative social distance.

Throughout this volume, regardless of the nation-state being discussed, ethnicity is usually subsumed under the category of race, an unfortunate misnomer. In some nation-states, national mandates for political correctness have resulted in very limited accurate statistics on race-based crime, criminal victimization, juvenile justice, and criminal justice, much less detained ethnic-based statistics. Nation-states such as Canada, Mexico, Cuba and Argentina have official national policies that stress the "melting pot" model of racial and cultural assimilation, or the "European cultural dominance" model of racial and cultural assimilation, even when reality is closer to the "cultural diversity" and "cultural pluralism" models. The cultural diversity model is one in which residential segregation exists when the distinct social-cultural entities *are not* considered of equal value or worth. In cultural pluralism residential segregation exists when the distinct social-cultural entities *are* considered of equal value or worth.

Nonetheless, these chapters are important. They, as well as the other chapters on Brazil, Trinidad and Tobago, the United States, Colombia and Jamaica, clearly document the centrality of *low socio-economic status* as either a criminogenic or as a crime associative factor, regardless of nation-state in the western hemisphere. Especially disturbing throughout the thorough analysis of the interface of race, ethnicity, socioeconomic well-being,

poverty, actual and perceived crime and delinquency, and actual and perceived social distance between agents of the criminal and juvenile justice systems, and the residents of various nation-states, is the belief and the possible actuality that diaspora Africans are generally the most criminal and delinquent sector of the nation-states with diaspora African populations, with whites and other non-white populations generally less criminogenic and crime associative than diaspora Africans.

The contingent fact of history: the result was not predestined

A “contingent fact of history” is a unique historical occurrence that resulted in, or results in, a sequence of events that were not predestined; simply stated, the event and the outcome did not have to occur; once the event occurred, there were other possible outcomes, at least theoretically. European colonization of the western hemisphere coincided with the exploitation and colonization of Africa. The colonization and exploitation of African human and material resources coincided with, and made possible, the colonization of the western hemisphere with the concurrent rationalization of the enslavement and brutalization of millions of diaspora Africans. The outcome of the exploitation of the African mainland resulted in the importation to the western hemisphere of millions of politically, socially, economically and culturally diverse peoples organized into tribes on the African mainland – what geographers refer to as nations – with shared cultures and social interaction networks. From Africa came Akan, Congolese, Ibos, Yoruba and thousands of other culturally distinct people whose cultures were only partially eradicated via the unique European slave trade systems, which included capture; transit to the coast; enslavement in holding facilities (pens) similar to Elmina and Cape Coast Castle; the Middle Passage; and distinct breeding and/or work systems. Some of these systems were genocidal, such as the Barbadian slave system – which was prevalent along the Angolan Coast of South Carolina and to a lesser extent in coastal Georgia – in which one out of three slaves died every three years.

It stands to reason that remnants of the microlevel and macrolevel slave resistances continued long after the emancipation of slaves in the western hemisphere, similar to that theorized in my “Theory of Social Cultural Resistance: Afrocentrism.” This theory alleges that the elevated differential antebellum African Diaspora crime rates and specific offending behavior have their origins in social distance; cognitive dissonance; and conscious, preconscious, subconscious, and unconscious motivation, which resulted in instrumental as well as dysfunctional subcultural and contracultural role-sets transmitted among and between generations of antebellum

diaspora Africans, via mores and related norms. The theory contends that the “Theory of Multidimensional Value Space,” noted in Lynn A. Curtis’s profound but infrequently cited *Violence, Race, and Culture*, is applicable to criminal behavior by antebellum diaspora Africans. I note that slave resistance manifested in microlevel and macrolevel antebellum slave resistance, some of which was and remains subcultural and legal, while other manifestations were, and continue to be, contracultural and illegal – that is, different from but not in conflict with, or different from and in conflict with, the dominant culture, respectively.

My “Theory of Social Cultural Resistance: Afrocentrism,” which I first postulated in detail at the 2010 annual meeting of the Academy of Criminal Justice Sciences, alleges that antebellum African Diaspora slaves overcame the cognitive dissonance integral to the physical and psychological brutalization of enslavement. The theory notes role-sets borne of capture, confinement, forced labor, torture, mutilation, and physical and psychological criminal justice sanctions, which ranged from the separation, disintegration and isolation of nuclear and extended families, to forced confinement, beatings and mutilations, including amputations and branding, and threats against family members, that is, negative sanctions, which ranged from individual punishments to collective punishment, including execution (see archival information at the Penn School National Historic Landmark District on St. Helena Island, commonly referred to as the Penn Center, and at the City of Charleston Old Slave Market Museum, or via the Internet at info@penncenter.com and <http://www.charlestonlowcountry.com/about/slaveMart.html>, respectively). Extensive information on individual and collective punishment is also archived at the extensive slave documentary repository at the Avery Research Center for African American History and Culture, College of Charleston, at <http://www.avery.cofc.edu> and at the Slave Voyages web site, <http://www.slavevoyages.org>, sponsored jointly by Emory University, the National Endowment for the Humanities, the W.E.B. Du Bois Institute, Harvard University, Libraries USA, the University of Hull, Universidade Federal do Rio de Janeiro, and Victoria University of Wellington.

Microlevel and macrolevel resistance by enslaved Africans likely varied by form as well as by distinct ethnic groups; many scholars of the antebellum North American diaspora African experience in the western hemisphere refer to the Akan as the most “unruly of the unruly,” along with slaves from the kingdom of the Kongo. Microlevel resistance role-sets, which alleviated the cognitive dissonance of the enslaved antebellum North American diaspora African, was highly functional in enslaved communities, but is likely to be dysfunctional in contemporary societies, communities and nation-states. Structural-functionalist theory postulates, among

other theorems, that structure remains after its initial function is no longer necessary, that is, no longer functional; that is, behavior continues after the original reason for the behavior is gone. Microlevel resistance role-sets could be noncriminal, such as work slowdowns, or criminal, such as theft, destruction of property, arson, assault, poisonings, murder (and various forms of homicide and manslaughter), “running away”/escaping, larceny, robbery, physical and verbal sabotage, and so forth, including escapist activities, such as excessive or “therapeutic” alcohol consumption and drug use. If my “Theory of Social Cultural Resistance: Afrocentrism” has merit, the theory may be just as applicable to the experience of other exploited peoples in the western hemisphere discussed in this book, regardless of nation-state: that is, aboriginal or native peoples (of whatever nomenclature), indentured immigrants, such as East Indians in Trinidad and Tobago, and the like. The theory contends that those with the most severe colonial or neocolonial experience of European exploitation, including slavery, indenture and contemporary or recent agrarian capitalist exploitation, coupled with a history of social cultural resistance, both or either, microlevel resistance and/or macrolevel resistance, would result in differential social cultural resistance as well as differential levels of positive and negative social distance. Thus, identified and self-identifying blacks in Jamaica should, and do, apparently have elevated crime, delinquency, and victimization rates as compared to whites and other identifiable communities based on place of origin or phenotype, including color. The same is true for blacks, Indo-Trinidadians, Indo-Tobagonians, mixed-race, and whites in Trinidad and Tobago. Similar statements can be said for blacks and other non-whites in the United States, or the other nation-state identified in this study.

The analysis of the ethnic and spatial components goes almost missing

Virtually every tourist or visitor to various nation-state in the Americas is warned not only about the poor, but also about specific ethnic communities, such as the Coromantee and other maroon communities in Jamaica and Colombia, the Angolan coastal communities/barrios of Peru, and the Angolan maroon communities of interior Bolivia and Peru. Visitors are told to avoid, if possible, the spatial entities, the dangerous locations within cities, towns and rural districts, with those spatial domains referred to as *barrios*, “garrison communities,” “the ghetto,” slum-ghettos, slums or *favelas*. There is a dearth of race-based data, which is a result of national policies of political correctness and/or fantasized assimilation that in Canada, Mexico, Cuba and Argentina avoids the term “cultural dominance” or Europeanization. Race-based data is limited or nonexistent on all but aboriginals and

undifferentiated gross racial categories, such as white, European, black, brown and so forth; while ethnic data is essentially nonexistent. Yet ethnicity/culture based on alleged place of origin or current residence and crude phenotypic distinctions, such as color (note numerous words in Spanish for brown-complexioned people), is commonly acknowledged with positive or negative social distance outcomes, that is, advantages and disadvantages, in terms of courtesy, power, privilege, prestige and so forth.

Virtually every visitor to nation-state with color-blind, race-blind and ethnic/nationality-blind data collection is warned about site and situational factors of crime occurrence in relationship to racial and ethnic factors/identities of likely alleged assailants. Yet, these national policies, which espouse social-cultural blindness, fail to acknowledge reliance upon "categorical knowing," or sophisticated geographic information system analysis, such as the P.O.E.T. analysis, that is spatial analysis, which is cognizant of the ecological fallacy that results in the assumption that if some individuals are criminal or delinquent within a spatial domain, then it is safe or logical to assume that all, or most, individuals are criminal or delinquent. P.O.E.T. analysis, that is spatial analysis that is cognizant of site and situation (with *P* referring to the people/racial/ethnic/social/human factor; *O* referring to the social organization of the crime/delinquent act/criminal victimization; *E* referring to the environs/site/situation; and *T* referring to the temporal factor) notes criminogenics and crime associative factors are also likely to differentiate between race and ethnicity.

Conclusion

Race, Ethnicity, Crime and Criminal Justice in the Americas is an important book for several reasons. It documents the unfortunate shared experience of diaspora Africans in the western hemisphere, and to a lesser extent, other non-whites, especially "Original People"/aboriginal people/native people, as disproportionate victims of crime and delinquency as well as disproportionate perpetrators of crime and delinquency. It documents the undeniable relationship, whether criminogenic or crime and delinquency associative, between disproportionate crime perpetration, delinquency and criminal victimization with poverty and the lack of wealth, regardless of the socio-economic system or systems, which dominate that nation-state. Examples range from socialism and alleged communism (as in the case of Cuba, where at least 90 percent of the imprisoned are of identifiable African heritage), to nation-state such as the United States, which are dominated by capitalist economies and impoverished, highly incarcerated and/or detained African and other so-called non-white populations. This book clearly documents the dearth of spatial and ethnic-based data, and therefore the absence of

site and situational analysis. It implies, as I have repeatedly stated in my scholarly works, that a reformulated contemporary concept of ethnicity is needed for the analysis, not only of African Diaspora related crime, delinquency, and victimization data, but also of data on other distinct non-white and white self-identifying and externally identified communities, subsumed within overly inclusive demographic categories, such as black, white, brown, Hispanic, native, aboriginal, American Indian, Asian, East Indian, and so forth. The classic Eurocentric definition of ethnicity, introduced by Milton Gordon in 1964, which emphasized race, religion, and nation-state of origin, is of limited utility in the analysis of crime, delinquency, criminal victimization, and the criminal and juvenile justice system processing, and of diverse African Diaspora and native peoples. *Race, Ethnicity, Crime and Criminal Justice in the Americas* is important in that it succinctly notes that political correctness on race and ethnicity, while meritorious in its desire to prevent ethnic and racial scapegoating, can and has handicapped social science research on the etiology of crime, juvenile delinquency, criminal justice and juvenile justice processing of offenders of varied race and ethnicity. Political correctness limits or prevents sound research on “Petit Apartheid” within the criminal justice and juvenile justice systems, that is, when discretion mutates into discrimination within the adult criminal justice system and juvenile justice system due to social distance between alleged and actual offenders and systems operatives. *Race, Ethnicity, Crime and Criminal Justice in the Americas* is important, in part, because of what it cannot do: that is, provide a microlevel ethnic-based analysis of offenders by, for example FBI Index Crimes or criminal and juvenile victimization, and provide a microlevel ethnic-based analysis for self-identifying and externally identified ethnic groups, cognizant of “contingent facts of history” that resulted in unique individual and group experiences and acceptance or rejection of the power and authority of the state and its laws and other institutions, including its enforcement apparatus. Thus, this book alerts the academic community to refocus its analysis to not just the issue of race, but to the equally significant social-cultural and spatial variable of ethnicity if a more comprehensive and realistic understanding of the intricacies of majority “race” and minority “race” data is to become normative, with race and ethnicity as distinct variables.

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Contributors

Marika Dawkins is a doctoral student in the College of Juvenile Justice and Psychology at Prairie View A&M University, Texas, United States, where she is also a research and teaching assistant. She was born in Jamaica and moved to the United States in 2003 to pursue higher education. She earned an MS in juvenile justice and a BS in criminal justice from Prairie View A&M University. Her research interests are in delinquency, female offenders, competency in juveniles, the role of race and ethnicity in justice, and prevention programs for juvenile offenders. Her most recent publication on Texas gangs appeared in the *Journal of Knowledge and Best Practices in Juvenile Justice*. She has publications forthcoming on telemarketing fraud and international scams.

Kingsley Ejiogu is a doctoral candidate in the Department of Administration of Justice, Texas Southern University, United States, where he has served as a research assistant for two years. He also interned with the Southwest Region of the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Hazardous Materials Enforcement, Houston, Texas. Prior to enrolling in the doctoral program, Kingsley worked for the Region of Peel in Ontario, Canada, on the development of wastewater media projects. Kingsley has 11 years of experience in ecology, environmental biotechnology and toxicology, environmental control, and waste water treatment research. However his interest in social and environmental justice across race, class and social stratifications stimulated his curiosity in the administration of justice. Kingsley has earned a BS in biology, an MS in biotechnology, and a postgraduate diploma in environmental control. He is a member of the American Society of Criminology.

Gabriel Ferreyra-Orozco studied Law and Philosophy at the University of Michoacán, México. He practiced family and property law in Mexican courts for several years before moving to San Antonio, Texas, where he earned an MA in Cultural Anthropology at the University of Texas. He moved to Arizona to pursue his doctorate at the School of Social Transformation at Arizona State University and is researching the Mexican federal judicial system and the challenges of the twenty-first century. His research interests include corruption in the judicial system in Mexico and drug trafficking between Mexico and the United States.

Daniel E. Georges-Abeyie is a professor of Administration of Justice at Texas Southern University. Dr. Georges-Abeyie, affectionately known as Dr. Dan, to his students and colleagues, earned his doctorate in the Geography of Law,

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Akwasi Owusu-Bempah is a doctoral candidate at the Centre of Criminology, University of Toronto. Akwasi's research interests are varied but focus mainly on the intersection of race, ethnicity, and criminal justice. His Social Sciences and Humanities Research Council (SSHRC) funded doctoral research focuses on black males' perceptions of and experiences with the criminal justice system in Canada. Akwasi's work has appeared in the *Canadian Journal of Law and Society* and the *Journal of International Migration and Integration*. He is the recent recipient of awards from the Association of Black Law Enforcers and the American Society of Criminology.

James E. Palombo is a social worker, retired professor in Criminal Justice and Sociology, world traveler, and writer. He has a BA in Political Science, an MSW in social work, an MA in Criminal Justice, and a PhD in Criminal Justice Management. He has taught nationally and internationally for over 25 years, and worked at community programs for over 30 years. He is currently involved with projects in the United States, Mexico, and Cuba, and, as his contribution to this book demonstrates, he is particularly interested in ideological considerations tied to the "American experiment." He is the politics editor at Ragazine.cc and his latest book is titled *Criminal to Critic – Reflections Amid the American Experiment*. James divides his time between San Miguel de Allende, Mexico, and Endicott, New York.

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Scot Wortley is a professor at the Centre of Criminology, University of Toronto since 1996. In 2007, he was appointed by Metropolis Canada to the position of National Priority Leader for research on Justice, Policing and Security. Scot also recently served as the research director for two major government commissions exploring youth violence in the Canadian context. His current research projects include a study investigating the extent and nature of street gangs in Toronto; two studies investigating the effectiveness of specific gang intervention/gang prevention programs operating in the Toronto area; a general population survey examining the extent of criminal offending and victimization in Jamaica; a general population survey of Toronto residents that is examining racial differences in perceptions of and experiences with the Canadian criminal justice system; and a study examining racial profiling and police use of force in Ontario. He has published in various academic journals and recently published an edited volume on Crime and Criminal Justice in the Caribbean with researchers from the University of the West Indies.

Introduction

Anita Kalunta-Crumpton

In his foreword to my earlier book, *Race, Crime and Criminal Justice: International Perspectives*, Michael Tonry wrote: “Interactions among race, ethnicity, immigration, and crime present difficult social and political challenges in every country. The challenges are the same – assuring equality before the law for all people... And the challenges are different, varying with the particular histories of particular places and changing over time” (Kalunta-Crumpton, 2010: x). Indeed, until we move outside of our country of residence to explore how physical human differences are negotiated in other countries, we cannot appreciate the global reach of physical variations in determining relations across influential institutions, and specifically in the criminal justice systems. We will neither understand the challenges that this situation poses for different societies nor the commonalities and differences in the challenges. Often, we limit our research on race and crime to our comfort zone, that is, to our country of residence. And when we venture to look beyond our comfort zone, we not only stay within a particular region, but we also stay within those countries that share the same language as we speak – be it English, Spanish, French, and so forth. Thus, scholarly information sharing at the international level is severely limited.

As I noted in my aforementioned book, it is taxing to research a “sensitive” topic. It is extremely tasking when one has to leap over language barriers to research such a topic, and these factors seem to contribute to why we have very limited scholarly knowledge of this topic as it is studied and understood in countries where English is not the first language. Nonetheless, the completion of such a task harbors the promise of producing a rich body of knowledge that is exceedingly illuminating and rewarding. *Race, Crime and Criminal Justice: International Perspectives* illustrates an example of such a wealth of knowledge borne out of perspectives relating to 13 countries – encompassing a variety of languages and across a number of continents. The book is an eye-opener as to how race is conceptualized and contextualized in different societies, and how these feed into discourses on crime

and criminal justice. Historical, political, economic, and social influences are played out in these interactions in different countries and in differing contexts. No wonder Tonry adds, that “studying race, ethnicity, immigration, and crime is exceedingly difficult, especially cross-nationally and comparatively. Nowhere have criminal justice data systems been designed to monitor differential experiences of minority group members” (Kalunta-Crumpton, 2010: xi). A fundamental reason for this, as demonstrated in my 2010 book, lies in what race means to different countries and how that meaning is translated in official data and in discourses. In some countries, racial differences are accounted for in official data; in others, they are not. In both scenarios, we witness mostly a monolithic and incomprehensive classification of human variations. Despite this, we find that in discussions in which references are made to specific nationalities, much is revealed and learned about phenotypical variations in crime and criminal justice through narratives about ethnic groups (including white ethnicities) than about racial groups. By this I mean that ethnicity-based data and analyses may throw up different, but more constructive, approaches to researching and debating race with regard to crime and criminal justice concerns.

Thus, my inclusion of “ethnicity” in the title of the present book, *Race, Ethnicity, Crime and Criminal Justice in the Americas*, is a reflection of my call for a relatively comprehensive and deeper understanding of the role of white and non-white racial backgrounds in crime, and in encounters with the criminal justice system. Ethnicity-focused research is that which would aim to study the several heterogeneous populations – identified, alongside physical characteristics, by for example, nationality, culture, language, and lifestyle – that make up a homogenous racial group. This way, I have argued (Kalunta-Crumpton, 2010: 325) that we may be able to “differentiate between the possible role of *ethnicity* (that is, ethnicity-based discrimination which may be experienced by certain white ethnic groups and may not be experienced by all non-white ethnic groups) and the possible role of *race* (that is, discrimination that cuts across all ethnic groups of a particular race).” Ethnicity is included in the current title in the hope that perspectives from the Americas would give contextual recognition to the concept in its own right.

Why the Americas? As in parts of Europe, the Americas illustrate relations between whites and non-whites that date back through history, encapsulated in colonialism and slavery. In essence, this collection may serve as an extension of my 2010 book, which had as its aim to explore contemporary interactions of race, crime, and criminal justice in countries with historical white and non-white relations. My desire to reach as many countries as possible gave birth to *Race, Ethnicity, Crime and Criminal Justice in the Americas*. Since many societies in the Americas are not English-speaking, we

are exposed to very little of their scholarship on crime and criminal justice let alone the relationship of these subjects to race or ethnicity. Yet again, in some English-speaking countries in the Americas, the amount of literature on race-crime-criminal justice is nowhere near the expansive literature in North America, that is, Canada and the United States, particularly the latter. Because of the comparative framework that Canada and the United States offer for alluding to other countries in the Americas, these two countries, although covered in the 2010 book, are again included in this collection. In addition, this collection draws contributions from five Latin American countries, and two countries from the Caribbean. In total, nine countries are foci of interest in this book. In alphabetical order, the countries are: Argentina, Brazil (also covered in the 2010 book), Canada, Colombia, Cuba, Mexico, Jamaica, Trinidad and Tobago, and the United States.

These countries have different racial populations that have their origins in history. Despite what seems to be a significant commonality in race-related historical experience among the selected countries, human diversity is contemporarily perceived differently in the differing countries and so is the notion of race or ethnicity – terms which are used individually or interchangeably in the discussions. However, in the overall content of the book, human physical differences are captured in their general, monolithic form, although some chapters are much more homogenous in their categorization than others. In other words, heterogeneity in the form of ethnic grouping is not commonly found in this book. And this outcome is seemingly the product of how human groups are defined and classified in each of these societies. Also, how the differing societies recognize and treat human differences are reflected in how these differences are negotiated and applied in crime and criminal justice situations.

Structure of the book

This collection is structured in four parts, with the first three parts devoted to North America, Latin America, and the Caribbean, respectively. With the exception of Part II, in which the Cuba chapter is first, all chapters are arranged in alphabetical order of countries. Part I is composed of Chapter 1, Canada, and Chapter 2, the United States. The North American chapters precede the contributions from Latin America and the Caribbean principally because of the aforementioned lead position that the United States (in particular) and Canada occupy in public and scholarly debates on issues of race, crime and criminal justice. Scot Wortley and Akwasi Owusu-Bempah's in-depth account of how offending, criminal victimization and criminal justice interact individually and collectively with race indicates that this topic arouses intense debate in Canada. Even Canada's ban on race-based

crime statistics forms a part of the critical debate. Despite the race–crime statistics ban, which the authors acknowledge to be an impediment to accurate documentation of offending and victimization patterns, Wortley and Owusu-Bempah nevertheless provide the reader with a wide-ranging body of knowledge on the relationships between Canada’s minority racial groups and criminality, victimization and various stages of the criminal justice system. These interactions, the authors make clear, can also be understood from the contexts of the contemporary ramifications of Canada’s historical legacy of racial discrimination, structural inequality and social exclusion for certain racial groups, notably blacks and Aboriginals.

Wortley and Owusu-Bempah’s approach to the issue of race–crime–criminal justice resonates with the traditional US scholarly framework for addressing *why* and *how* certain racial groups make a quick entry into the criminal justice system. Anita Kalunta-Crumpton and Kingsley Ejiogu’s US account, in Chapter 2, is a departure from this traditional approach, which nevertheless has generated an extensive literature in its own right. Rather than join the conventional and ongoing debate, the authors draw attention to some of the problematic aspects of the existing race, crime and criminal justice data and debate, which if addressed are likely to advance the discussion constructively. These relate primarily to the utilization of the race monolith in crime (and victimization) data and analyses, the emphasis on “street” and intra-racial crimes and the marginalized interest in “crimes of the powerful” and interracial crime in victimization data and study, and the limited challenge to criminal justice policy in the race and crime controversy. The authors raise critical questions about these concerns and consider an examination of such issues and, in particular, the need to embrace heterogeneity (i.e., ethnic groups) in data and research as a positive way forward for the debate.

Cuba is the first of the chapters in Part 2 – made-up of Chapters 3–7. The reason for this slight break with the alphabetical ordering is because the Cuba chapter (Chapter 3) draws heavily from the US political and economic ideological framework, and needed to be situated adjacent to the US chapter for an enhanced understanding. In fact, the discussion of “Race, Ethnicity, Crime and Criminal Justice in Cuba” has its foundation on this US agenda, from which emerged James Palombo’s observations about the Cuban situation. The chapter is more of a commentary than a chapter discussion in its traditional sense. And this is because Cuba’s political status quo limits access to pertinent data, or even renders access nonexistent. Thus, Palombo approaches the topic from the standpoint of Cuba’s ideological frames, identified in her political and economic principles. But to make sense of Cuba’s ideological principles, the author comments firstly on the US ideological framework upon which its capitalist political economy is based, and which essentially drives crime policy and practice and their interactions with race

and (in)justice. From a critical commentary of the US ideological concern, the author comments on the rationale behind the birth of communist Cuba, its oppositional perspectives of capitalism, and how the communist/socialist ethos might intersect with Cuba's crime policy/practice – from which one might interpret the representation of racial groups in Cuban criminal justice system.

Chapter 4 is a narrative of Argentina's perceptions and interpretations of human differences, and their influences on crime and criminal justice discourses, policies and practices. Daniel Miguez alerts us to the complexities of studying race or ethnicity in Argentina, a society in which these variables are not considered, in their own right, a legitimate target of discriminatory actions within the broader social structure and the narrow confines of the criminal justice system. This is because Argentina operates on a policy of "one nation, one culture," and while racial classification seems to assume a broad category of whites/Europeans and non-whites/non-Europeans, this factor by itself is irrelevant to the dynamics of discrimination. As Miguez argues, discrimination tends to be an indirect consequence of wider institutional strategies and actions that impact negatively on certain sections of society. It is from this background that Miguez charts the significance (or insignificance) of race or ethnicity in crime and criminal justice in Argentina.

The idea and practice of marginalizing the influence of racial or ethnic differences in popular and official discourses of crime data is common to many Latin American countries. Brazil is one such country. As Mark Harris argues in Chapter 5, race is downplayed by many Brazilians who operate on the belief or perception that Brazil is a mixed-race nation (through miscegenation), and therefore race is less likely to be the cause of any forms of social discrimination against visible racial groups. Instead, a social variable considered to be the most likely precipitator of discrimination is class. Harris is uncomfortable with the key position that class occupies in discourses of race, crime and criminal justice. In a critique of this standpoint, he argues that race does indeed matter, giving a detailed narrative of the use of deadly force in the policing of impoverished areas of Brazilian cities, occupied mostly by black and brown residents. Such violence, Harris narrates, is not only racialized but it also is carried out with impunity and outside the confines of due process and police accountability.

In Chapter 6, violence constitutes a pivotal subject in Fernando Urrea-Giraldo's narrative of race in Colombia's crime and criminal justice scene. In this country, racial groups are defined in two broad classifications: Afrodescendant and non-Afrodescendant. Central to Colombia's violence (including homicide) are drug trafficking, organized crime, gangs, guerrillas, paramilitaries, and politics. Usually, most of these types of violence are exhibited in socioeconomically disadvantaged urban areas, particularly the

segregated areas where a high proportion of Colombia's Afrodescendant population reside. In a vicious cycle of events, violence and (in particular) homicides, draw its perpetrators and victims (often young Afrodescendant males) from these residential urban areas. Relationships between Afrodescendants and the criminal justice system form a part of Urrea-Giraldo's discussion. These include an account of the aggressive and militarized-style policing that confronts segregated urban areas.

Chapter 7, the last but not the least of the Latin American chapters, is authored by Gabriel Ferreyra-Orozco. The chapter is primarily an exploration of the experiences of Mexico's indigenous and Afro-Mexican populations (especially the former) as crime victims and as suspects and offenders in the criminal justice system. Even though Mexico embraces a mixed-race nation philosophy whereby racial or ethnic differences do not have legitimacy in official and public arenas, the country's visible racial groups are marginalized across social institutions, including the justice system. Ferreyra-Orozco explains these contradictions in the contexts of historical and contemporary approaches to human diversity in Mexico.

In Part III, we read about the Caribbean attitude towards issues of race or ethnicity, crime and criminal justice. The Jamaican situation is expressed in Chapter 8 by Louise Henry, Marika Dawkins and Camille Gibson. In this society, where the vast majority of the population is defined as black, integrating the concept of race into the discourses of crime and criminal justice is not all that straightforward. The reasons for this are made clear in the chapter. What seems straightforward, however, are Jamaica's crime and victimization patterns and their nature, the spatial and racial markings of crime and victimization, and the criminal justice strategies with regard to crime. Throughout the discussions, we see the fundamental role of violence and its correlation with indigent localities, home to many of Jamaica's black residents. The authors' discussion of criminal justice attacks on crime is approached notably from a perspective that intersects crime, socio-economic factors and relations with the justice system. These scenarios, the chapter alerts us, are not to be separated from the historical legacy of slavery.

Johnson and Kochel's contribution in Chapter 9 concludes Part III. In this chapter, race (used interchangeably with ethnicity) is accounted for in crime and victimization data. Invariably, the authors offer a detailed discussion of how Trinidad and Tobago's racial groups (including the juvenile populations) are represented in rates of offending, victimization, and incarceration. Gangs, drug trafficking and homicide are key interrelated crime situations that draw most of their victims from socio-economically marginalized communities populated by predominantly Afro-Trinidadians. In the criminal justice system, this racial group is also over-represented. While the role of

race in the circumstances of Afro-Trinidadians is debatable, Johnson and Kochel's exploration of colonial Trinidad and her colonial socio-economic structure and policing style may shed light on the place of race in various facets of contemporary Trinidad and Tobago.

In Chapter 10, the conclusion, I reflect upon the unique contributions of each of the chapters. I present similarities and differences in the chapters' assessment of the theme of the book. In so doing, I place more emphasis on the Latin American and Caribbean countries generally for the principal reason that societies in these regions, relative to the North American countries, have yet to gain recognition in the Western-led international debate.

My hope for *Race, Ethnicity, Crime and Criminal Justice in the Americas* is that it finds a readership and an appreciation within and beyond its international scope.

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Part I

North America

1

Race, Ethnicity, Crime and Criminal Justice in Canada

Scot Wortley and Akwasi Owusu-Bempah

Canada has an international reputation for being a tolerant, diverse nation comprised of people from many racial, ethnic, cultural and religious groups. However, as with all heterogeneous countries, Canada has not escaped moral panics regarding immigrant criminality nor concerns about the possible discriminatory treatment of racial minorities by the criminal justice system. This chapter begins with a brief description of Canada's immigration history and provides a profile of Canada's current racial minority populations. The chapter then documents the over-representation of certain racial minority groups within the Canadian criminal justice system, and briefly explores patterns of minority victimization and offending. We next examine minority perceptions of the Canadian police and criminal courts and examine evidence of racial bias in the Canadian criminal justice system. The chapter concludes by arguing that Canada's current ban on race-crime statistics not only prevents the thorough study of minority crime issues, but it also hinders efforts to eliminate racism from Canadian policing, court processes and corrections.

A profile of Canadian diversity

Canadian Heritage, the federal ministry responsible for culture, language and multiculturalism, proudly states that it is Canada's experience with diversity that distinguishes it from most other countries around the world. As stated by the federal government, Canada's "32 million inhabitants reflect a cultural, ethnic and linguistic make up found nowhere else on earth" (Canadian Heritage, 2009). The term "visible minority" is a uniquely Canadian term that is used to describe persons, other than Aboriginal persons, who are non-Caucasian in race or non-white in skin color (see Chui et al., 2008). This would include people of black, Asian, South Asian, Hispanic and West Asian racial backgrounds.¹ The latest figures from the 2006 census

put the visible minority population at just over five million people – or 16.2 percent of the total Canadian population. This figure is up from 11.2 percent in 1996 and 4.7 percent in 1981. Data trends suggest that the visible minority population in Canada is also growing rapidly. Between 2001 and 2006, for example, Canada's visible minority population increased by 27.2 percent – five times higher than the overall population growth rate of 5.4 percent (Chui et al., 2008: 12).

Canada's racial diversity is largely a product of recent immigration practices. Attracted by Canada's relatively high quality of life and its reputation as an open and inclusive nation, well over 200,000 immigrants arrive in the country each year. It should be stressed, however, that Canada has not always been a welcoming nation for people of color. Indeed, racist immigration policies that favored white European migrants and systemically excluded people of color characterized much of Canada's early history (see Henry and Tator, 2005; Troper, 2003). However, beginning in the 1950s, both economic necessity and changing social mores regarding racial prejudice led to the gradual erosion of discriminatory immigration policies. This change in immigration practices culminated in the 1971 Immigration Act and the introduction of the economic "Points System." This new system led to the eventual arrival of immigrants from Africa, the Caribbean, the Middle East and Asia and marks the beginning of official multiculturalism in Canada. By 1981 over two-thirds (68.5 percent) of new immigrants to Canada originated in countries from outside of Europe and 55.5 percent belonged to a visible minority group. In 2006, the most recent year for which data is available, 83.9 percent of new immigrants came from outside Europe and three-quarters (75.0 percent) belonged to a visible minority group (Chui et al., 2008: 12–13). If current immigration trends persist, Canada's visible minority population will continue to grow much more rapidly than the white population. Current projections estimate that visible minority groups could account for one-fifth of the Canadian population by the year 2017 and almost one-third (30 percent) by 2031 (Statistics Canada, 2010: 23).

Canada's visible minority population is diverse and includes people from a variety of different races and ethnicities. In 2006 South Asians became the largest visible minority group in Canada, surpassing Chinese Canadians for the first time in the country's history. According to the census, there are 1,262,900 South Asians in Canada, accounting for 4 percent of the total population. Chinese Canadians represent the second largest visible minority group, with a population of 1,216,000 or 3.9 percent of the total population. In 2006 the number of black or African Canadian people in Canada stood at 783,800 – or 2.5 percent of the total population. Other sizable visible minority communities in Canada include Filipinos, Hispanics, Southeast Asians,

West Asians, Koreans and people of Japanese descent. Together, these groups represent an additional 5.1 percent of the Canadian population.

When discussing racial diversity it is also important to note that Canada has a large indigenous Aboriginal population, one that has suffered immensely from a long history of colonization and oppression. According to the latest census figures, there are approximately 1,678,200 individuals in Canada who report an Aboriginal ancestry, representing 3.8 percent of the total population (Chui et al., 2008).

The term “visible minority” has been widely criticized for obscuring the immense differences that exist among various racial–ethnic groups. Nonetheless, while the term “visible minority” fails to accurately capture the different origins, histories and experiences of racial minority groups in Canada, these groups have a number of characteristics in common. For example, visible minorities tend to be younger than the Canadian average and disproportionately reside within major urban areas (especially Toronto, Montreal, Vancouver and Calgary). Census data also suggests that visible minorities, are on average more educated than members of the Canadian-born white population. However, statistics reveal that minorities still suffer from higher than average unemployment rates. Workplace discrimination and issues related to recognizing foreign accreditation have also contributed to relatively low average incomes and deepening levels of poverty amongst some racial minority groups. Issues of poverty, residential segregation and unemployment are particularly widespread within Canada’s black and Aboriginal communities (Galabuzi and Labonte, 2004). Many scholars have argued that these socio-economic differences are the product of a long history of discrimination and social exclusion (see Henry and Tator, 2005).

Canadian multiculturalism

In addition to immigration reform which gradually allowed for the entry of racial and ethnic minorities to Canada, the Canadian government has passed several important pieces of legislation intended to recognize the diversity of the Canadian population and to protect the rights and interests of all groups. The most important legislation in this regard is the Canadian Multiculturalism Act. As state policy, multiculturalism began in Canada in 1971, when Prime Minister Pierre Trudeau delivered a warmly received address to Parliament indicating that his government had accepted the recommendations of the Royal Commission on Bilingualism and Biculturalism, which included the official recognition and maintenance of Canada’s diversity (Henry and Tator, 2005: 285). Subsequently, in 1981, multiculturalism became firmly entrenched in the Canadian Constitution and enshrined in the Canadian Multiculturalism Act, which received royal assent in 1988. In

fact, Canada was the first country to implement a federal multiculturalism policy (Henry and Tator, 2005). Official multiculturalism was intended to: support the cultural development of ethno-cultural groups; help minorities overcome barriers to full participation in Canadian society; promote creative interchanges among all ethno-cultural groups; and help new Canadians learn one of Canada's two official languages. The act has remained largely unchanged since 1988 (see Henry, 2002: 234).

While Canada's multiculturalism policy can be seen as relatively forward looking in its goals, the approach has been viewed with suspicion and hostility by many Canadians. From a political standpoint, many Canadians view multiculturalism as a tool used shamelessly by politicians eager to buy votes at election time. In Quebec, multiculturalism policies are viewed by some as detrimental to the position of French Canadians as one of the country's founding linguistic and cultural communities (Knowles, 2007). Similarly, many Anglo-Canadians believe that multiculturalism poses a threat to their traditional way of life – a threat to a society that was originally built on British values and beliefs (Henry, 2002).

Criticism, however, has not come only from Canada's original settler groups. Opposition to multiculturalism has also come from those who see the approach as divisive, and one that further accentuates the differences between groups rather than promoting inclusiveness (Knowles, 2007: 270–71). It has also been argued that multiculturalism promotes the idea of a dominant Canadian culture, based on the values and beliefs of the original British settlers and their descendents, in relation to which all other cultures are “multicultural” (Henry 2002). From an even more critical standpoint, it has been suggested that the true intent of symbolic multiculturalism is to provide a counter argument to the increasing demands of minorities for equal access to all sectors of Canadian society and equal protection under Canadian law. Thus, while supposedly embracing the “differences” of “other” cultures, Canadian multiculturalism may provide a convenient veil behind which discrimination flourishes and the cultural hegemony of the dominant group is secured (Henry, 2002). It is within this context that we turn our attention to issues of race, crime and criminal justice in Canada.

Minority Canadians as the victims of crime

Due to an official ban on the release of race–crime statistics, it is extremely difficult to fully document the victimization experiences of racial minorities in Canada. However, the data that are available indicate that, in addition to various economic and social disadvantages, some minority groups – particularly black and Aboriginal Canadians – suffer from relatively high rates of criminal victimization. For example, statistics from several major Canadian

cities – including Toronto and Montreal – reveal that serious violence is becoming increasingly concentrated within the black community. For example, Gartner and Thompson (2004) document that, between 1992 and 2003, the homicide victimization rate for Toronto's black community (10.1 murders per 100,000) was more than four times greater than the city average (2.4 per murders per 100,000). Further investigation reveals that young black males are particularly vulnerable to violent death. For example, while black males comprise only 4 percent of Toronto's population, in 2007 they represented almost 40 percent of the city's homicide victims. This represents a homicide victimization rate for black males of approximately 28.2 per 100,000, compared to only 2.4 per 100,000 for the Toronto population as a whole (Wortley, 2008). At the national level, crime data that has been released from the federal government suggests that Aboriginal people typically have an annual homicide victimization rate that is seven to eight times higher than non-Aboriginals (Brzozowski et al., 2006). Finally, although official statistics have not been released, several recent gang-related shootings in British Columbia have taken the lives of a large number of young Indo-Canadians. This has led to speculation that South Asians are over-represented as victims of gang-related gun violence – particularly in the Vancouver area (Totten, 2008).

Canadian surveys have produced mixed results with respect to minority victimization. The 2004 General Social Survey (GSS), for example, contacted a random sample of over 24,000 Canadians and found that visible minorities had the same rate of violent and property victimization as whites (see Perreault, 2008). However, this finding likely reflects the fact that the category "visible minority" combines racial groups with high victimization rates (i.e., blacks) with groups that have comparatively low victimization rates (Asians, South Asians, etc.). Indeed, research using disaggregated racial categories suggests that black and Aboriginal Canadians are far more exposed to violent victimization experiences than are people from other racial backgrounds. For example, the 2000 Toronto Youth Crime and Victimization Survey, a study of over 3,300 Toronto high school students, found that black students were significantly more likely to report multiple violent victimization experiences, including serious physical assaults, death threats, weapons-related threats, assault with a weapon and sexual assault. For example, 13 percent of black female students reported that they had been sexually assaulted on three or more occasions in their lives, compared to 6 percent of white female students, 4 percent of Asian female students and only 1 percent of South Asian female students (see Tanner and Wortley, 2002). Similar surveys have found that Aboriginal Canadians are more likely than other racial groups to experience various types of interpersonal victimization – including domestic violence (Department of Justice, 2009).

Finally, Canadian data suggests that black Canadians are particularly vulnerable to hate crime victimization. Hate crimes are those criminal acts in which the perpetrator targets a victim because of their perceived membership in a certain social group, often defined by race/ethnicity, religion or sexual orientation. These types of crimes are more likely to involve extreme violence and cause greater psychological trauma than crimes in which hate is not a motivating factor (Siegel and McCormick, 2010). Data sources indicate that black people are the most common target of hate crime in Canada. Starting in 2008, for example, the Canadian Centre for Justice Statistics (CCJS) released a series of reports on hate crime which included both police statistics and information from the 2004 General Social Survey (GSS). Racial animosity is the most common motivation for hate crime. Indeed, race was the motivating factor in over 60 percent of all documented hate crimes reported in Canada between 2004 and 2007. Furthermore, police statistics reveal that 48 percent of the race-related hate crimes reported to the police during this time period involved black victims. By contrast, only 13 percent of race-based hate crimes involved South Asians, 12 percent involved West Asians (people mainly of Arab descent), 3 percent involved Aboriginal peoples and 2 percent involved people of East Asian background (Chinese, Japanese, Vietnamese or Korean descent). In other words, although they represent only 2.5 percent of the total Canadian population, black people represented half of those victimized by race-related hate crime during the study period (Dauvergne et al., 2008; Walsh and Dauvergne, 2009).

The results of the 2000 Toronto Youth Crime Victimization Survey further reinforce the fact that black people are more vulnerable to hate crime than are the members of other racial minority groups. For example, almost three quarters of black Toronto high school students (74 percent) report that they have been threatened because of their racial background, and one out of four (23 percent) indicate that they have been the victim of a racially motivated physical assault (Tanner and Wortley, 2002).

Media images of minority criminality

The data reviewed above indicate that black and Aboriginal Canadians are significantly more vulnerable to serious criminal victimization than are members of the white majority or other racial minority groups. However, media analysis reveals that blacks and Aboriginals in Canada are much more likely to be depicted as criminal offenders than as crime victims (see Wortley 2002). Indeed, the black community in Canada has long complained that the news media and other forms of popular culture (films, music, etc.) depict their community in a biased, stereotypical fashion. Empirical research tends to support this argument. For example, Wortley (2002) provided an analysis

of all stories (N=2,000) appearing in Toronto-area newspapers over a two month period in 1998. He found that almost half (47 percent) of all stories depicting black people had to do with the topic of crime and violence, compared to only 14 percent of stories depicting white people. Wortley also found that stories involving the murder of white victims – especially white victims murdered by minority offenders – received much more media coverage than stories involving minority murder victims. Finally, Wortley (2002) observed major racial differences in the news narratives that sought to explain criminal behavior. While white crime was almost always explained as the product of individual pathology, minority criminality was often characterized as a group or cultural phenomenon. Similar findings have been produced by other researchers in Canada and the United States (see Henry and Tator 2000).

Critics argue that the manner in which minority people are depicted in the Canadian media tends to demonize racialized populations and identify them as a “foreign” or “alien” threat. The negative impact that racialized images of crime can have on the minority community is evident in the results of public opinion polls. A survey conducted in Ontario in 1995, for example, found that nearly half (45 percent) of all respondents believe that there is a strong relationship between ethnicity and criminality. Of respondents who hold this view, two-thirds believe that West Indians and blacks are responsible for most crime (Henry, et al., 1996). More recently, a 2008 poll asked a random sample of Canadians to estimate the proportion of people in Canada with a criminal record who come from a racial minority group. The respondent’s views were hugely distorted. In general, respondents estimated that twice as many visible minorities have a criminal record in Canada than police records indicate (Rankin and Powell 2008). One could conclude that unbalanced media depictions of minority crime may directly contribute to the formation of racial stereotypes and an exaggerated understanding of the true relationship between crime and racial identity. For a more balanced analysis we must turn to criminological research.

Minority Canadians as criminal offenders

Table 1.1 combines data from the 2006 Canadian Census with 2008 federal correctional data in an attempt to document the representation of various racial groups in the Canadian prison system. The results suggest that both Aboriginals and blacks are grossly over-represented. For example, although they represent only 3.8 percent of the Canadian population, Aboriginals make up 17 percent of the population under federal correctional supervision. This produces an odds ratio of 4.50 – indicating that the Aboriginal population is 4.5 times more represented in the correctional system than in

Table 1.1 Representation of ethnic-racial groups in Canada's federal corrections system (2008)

| Racial background | National population ¹ | % of National population | Federal correctional population ² | % Federal correctional population | Odds ratio | Rate of federal correctional supervision (per, 100,000) |
|--------------------|----------------------------------|--------------------------|--|-----------------------------------|------------|---|
| White | 25,000,155 | 80.0 | 15,157 | 66.6 | 0.83 | 60.62 |
| Aboriginal | 1,172,785 | 3.8 | 3,894 | 17.1 | 4.50 | 332.03 |
| Black | 783,795 | 2.5 | 1,684 | 7.4 | 2.96 | 214.85 |
| Asian ³ | 2,090,390 | 6.7 | 668 | 2.9 | 0.43 | 31.95 |
| South Asian | 1,262,865 | 4.0 | 216 | 1.0 | 0.25 | 17.10 |
| Other | 931,040 | 3.0 | 1,127 | 5.0 | 1.67 | 121.04 |
| TOTAL | 31,241,030 | 100.0 | 22,746 | 100.0 | 1.00 | 72.80 |

¹ Population estimates for each racial group were derived from the 2006 Canadian Census (Chui and Maheux, 2008).

² 2008 Federal correctional figures were taken from Public Safety Canada 2009. These numbers include those in prison and those under community supervision.

³ The "Asian" category includes people of Chinese, Japanese, Southeast Asian, Korean and Filipino descent.

⁴ The "Other" category includes all other racial groups including individuals with a bi-racial or multi-racial identity and those whose racial identity is unknown.

the general population. Similarly, although they represent only 2.5 percent of Canada's population, black people make up 7.4 percent of the population within the federal corrections system. In other words, black representation in the federal corrections system is three times greater than their representation in the general population. Interestingly, whites, Asians and South Asians are all under-represented in the federal corrections system. Overall, Aboriginal Canadians have the highest rate of federal corrections supervision (332 per 100,000), followed by black people (215 per 100,000), white people (61 per 100,000), Asians (32 per 100,000) and South Asians (17 per 100,000).

Minority representation in the Canadian correctional system varies dramatically by region. For example, Aboriginal offenders represent almost 40 percent of the federal correctional population in the Prairie region, but only 9 percent of those incarcerated in Ontario. Similarly, black offenders represent 16 percent of the federal correctional population in Ontario, but only 3 percent of the correctional population in the Prairie region. Finally, the data indicate that minority and Aboriginal prison populations are increasing. For example, between 2000 and 2009, the number of Aboriginals serving sentences in Canadian prisons increased by 17 percent. Similarly, the number of minorities serving time in federal penitentiaries increased by 26 percent. By contrast, the number of white inmates actually declined by 5 percent.

Some have argued that this over-representation reflects a higher level of criminal offending among racial minorities – particularly blacks and Aboriginals. Others have argued that it reflects racial bias or discrimination within the Canadian justice system (see Wortley and McCalla, 2008). We will first examine the “higher offending” hypothesis, before turning our attention to the issue of discrimination.

The current ban on race-crime statistics in Canada makes it just as difficult to accurately document patterns of minority offending as it is to document patterns of minority victimization. Nonetheless, there is limited data to suggest that the Aboriginals and African Canadians may be somewhat more involved in some types of crime than members of other racial groups. We can infer, for example, that black and Aboriginal people are significantly over-represented among homicide offenders – at least in some jurisdictions. As discussed above, black and Aboriginal homicide victimization rates are significantly higher than the national average. Since the vast majority of all homicides are intra-racial (i.e., victims and offenders come from the same racial background), many observers have begun to refer to this phenomenon as “black-on-black” or “Aboriginal-on-Aboriginal” violence (Ezeonu, 2008).

Many have argued that relatively high rates of homicide and gun crime among African Canadians and Aboriginals in Canada are reflective of their

over-representation in street gangs. Unfortunately, official police statistics on Canadian gangs are almost nonexistent. However, in 2003, the solicitor general conducted the *first ever* Canadian Police Survey on Youth Gangs (Chettleburgh, 2007). In this study, 264 police agencies from across the nation participated. Between them they identified 484 youth gangs operating within Canada and an estimated 6,760 individual gang members. Interestingly, the majority of the police agencies participating in the survey maintained that racial minority youth are grossly over-represented in gang activity: Asian and South Asian gangs are thought to dominate the west coast, Aboriginal gangs dominate the prairie provinces, and black gangs dominate central and eastern Canada (Chettleburgh 2007: 18–20). The Toronto Youth Crime Victimization Survey (see Wortley and Tanner 2006) also found that the self-reported gang membership was twice as high among black (13 percent) and Hispanic (12 percent) youth than among white (6 percent) and Asian (5 percent) youth.

Consistent with American findings, survey results from Toronto also indicate that black Canadian youth may be somewhat more involved in some forms of violent behavior than the members of other racial groups (see Table 1.2). For example, according to the results of the 2000 Toronto Youth Crime Victimization Survey (TYCVS), 53 percent of black students indicated that they had been involved in three or more fights in their lifetime, compared to 39 percent of white students, 32 percent of Asians, and 28 percent of South Asians. Similarly, 43 percent of black students reported that they had been involved in a “gang fight” (where one group of friends battled another group) at some point in their life, compared to 30 percent of white students, 28 percent of Asians and 27 percent of South Asians. It is important to note, however, that white students appear to be much more involved with illegal drugs than their black counterparts. For example, 45 percent of white students report that they have used marijuana at some time in their lives (compared to 39 percent of black students), 6 percent have used cocaine or crack (compared to only 2 percent of black students) and 13 percent have used other illegal drugs (compared to only 3 percent of black students). Furthermore, 17 percent of white students report that they have sold illegal drugs at some time in their life, compared to 15 percent of black students. This last finding is particularly noteworthy in light of other research which suggests that black people are dramatically over-represented with respect to drug possession and drug trafficking arrests and convictions. This discrepancy, therefore, could reflect possible racial bias in the investigation and prosecution of drug crimes in the Canadian context. This issue will be discussed in more detail in the next section.

In sum, it must be stressed that although some research indicates that black and Aboriginal people in Canada may be more involved in some types

Table 1.2 Percent of Toronto high school students who report that they have engaged in selected deviant activities at some point in their life, by racial group (Results from the 2000 Toronto Youth Crime Victimization Survey)

| | White | Black | South Asian | Asian | West Asian | Hispanic |
|---|-------|-------|-------------|-------|------------|----------|
| Carried a weapon in public | 24.7 | 27.3 | 13.0 | 23.3 | 18.5 | 27.4 |
| Engaged in robbery or extortion | 12.7 | 17.8 | 8.6 | 10.4 | 7.7 | 11.0 |
| Tried to seriously hurt someone | 19.6 | 28.1 | 12.3 | 19.4 | 20.6 | 18.6 |
| Got in a fight | 63.9 | 73.1 | 50.2 | 54.7 | 64.9 | 59.9 |
| Got in a group or gang fight | 30.4 | 42.5 | 27.0 | 28.2 | 29.0 | 36.3 |
| Engaged in Sexual Assault | 1.1 | 3.6 | 0.7 | 1.0 | 2.3 | 2.1 |
| Used marijuana | 44.9 | 38.7 | 10.9 | 19.2 | 20.9 | 36.5 |
| Used cocaine or crack | 5.9 | 2.3 | 0.7 | 2.5 | 2.3 | 3.4 |
| Used other illegal drugs | 12.5 | 3.4 | 0.7 | 7.1 | 4.7 | 7.4 |
| Sold illegal drugs | 16.8 | 14.6 | 4.1 | 9.2 | 8.2 | 16.9 |
| Stole a motor vehicle | 5.4 | 6.7 | 2.2 | 3.8 | 2.2 | 8.1 |
| Stole a bike | 12.0 | 18.8 | 7.1 | 9.3 | 8.2 | 20.3 |
| Engaged in minor theft (less than \$50) | 50.1 | 50.3 | 33.3 | 48.7 | 35.1 | 50.7 |
| Engaged in major theft (more than \$50) | 16.8 | 26.2 | 9.2 | 16.1 | 10.4 | 21.6 |
| Been the member of a criminal gang | 6.8 | 12.6 | 5.2 | 5.8 | 4.4 | 12.1 |

of crime than people from other racial backgrounds, the same studies indicate that the vast majority of people from all racial groups never engage in serious criminal activity. It is also unfortunate that the ban on race–crime statistics in Canada precludes a more detailed analysis of the relationship between race and other forms of criminality. For example, while black and Aboriginal people may be somewhat over-represented in certain street-level crimes, it is quite possible that they are grossly under-represented with respect to white-collar and corporate crime. Finally, it must be stressed that any over-representation of blacks and Aboriginal people in street-level crime and violence can be explained by their historical oppression and current social and economic disadvantage. For example, Wortley and Tanner (2008) found that the impact of race on gang membership and criminal offending is greatly reduced after statistically controlling for household income, single parent background and community-level poverty/social disorganization. Furthermore, the impact of black racial background on criminal offending becomes statistically *insignificant* after introducing variables that measure respondent perceptions of racial discrimination and feelings of social alienation. In other words, respondents who experience and perceive racism against their own racial group – with respect to housing, education and employment opportunities – are more likely to be involved in crime than those who do not experience or perceive racism. Group differences in exposure to racism and disadvantage, therefore, may explain why black and Aboriginal Canadians appear to be more involved in gangs and violent offending than people from other racial groups. A possible source of racism against minority communities lies within the criminal justice system. We turn to an examination of this issue in the following sections.

Perceptions of “criminal injustice”

Perceptions of racial bias within the Canadian criminal justice system are widespread. In 1994, the Commission on Systemic Racism in the Ontario Criminal Justice System conducted a survey of over 1200 Toronto adults (18 years of age or older) who identified themselves as either black, Chinese or white. Over 400 respondents were randomly selected from each racial group. The survey results indicated that three out of every four black Torontonians (76 percent) believe that the police treat members of their racial group worse than white people. Furthermore, almost two-thirds of black respondents also felt that members of their racial group are treated worse by the criminal courts. Interestingly, the findings also indicate that perceptions of racial bias are not isolated within the black community. Indeed, over half of the white respondents (56 percent) reported that they think black people are treated worse by the police and a third (35 percent) think blacks are treated worse by the courts (see Wortley, 1996). Additional research suggests that a high

proportion of black youth also perceives that the criminal justice system is discriminatory. For example, a 1995 survey of 1870 Toronto high school students found that over half of the black respondents (52 percent) felt that the police treat members of their racial group much worse than the members of other racial groups. By contrast, only 22 percent of South Asians, 15 percent of Asians and 4 percent of whites felt that they were subject to discriminatory treatment (Ruck and Wortley, 2002). It should be noted that in the studies discussed above racial differences in perceptions of criminal injustice could not be explained by racial differences in social class, education, or other demographic factors.

Findings such as these have caused various government and criminal justice representatives to admit that the “perception” of discrimination exists. It has also motivated various police organizations to implement programs designed to improve relationships with various minority communities (see Stenning, 2003). Unfortunately, after more than a decade of race-relations efforts, it appears that black people in Canada continue to distrust the police and criminal courts. In 2007, for example, we replicated the commission’s 1994 survey (discussed above) to determine whether racial minority attitudes towards the Canadian justice system had improved over the intervening 13 years. We found that attitudes had actually worsened. For example, in 1994, 76 percent of black Torontonians felt that the police treated black people worse or much worse than whites. By 2007 this figure had risen to 81 percent. Similarly, in 1994, 48 percent of black Torontonians believed that a black person would get a longer sentence than a white person charged with the same crime. By 2007 this figure had risen to 58 percent (see Wortley and Owusu-Bempah, 2009).

Despite these findings, there is still considerable debate about the cause of these perceptions of racial bias. Critics of the justice system feel that perceptions of discrimination reflect reality and are rooted in the lived experiences of black and other minority people. On the other hand, the conservative view is that perceptions of injustice are inaccurate and caused by other factors, such as peer socialization, popular culture and exposure to stories about racism in the American media. One popular explanation is that most black people in Canada are immigrants who come from countries like Jamaica or Nigeria, where the criminal justice system is corrupt, brutal and oppressive. As a result, many black people have based their opinions about the police and the courts on their experiences in their home country. The hypothesis is that second and third generation blacks, who have been raised in Canada, will have a much better opinion of the Canadian justice system. Research, however, suggests that the opposite is true. Recent immigrants, in fact, perceive much *less discrimination* in the Canadian justice system than do immigrants who have been in Canada for a long period of time. Indeed,

blacks who were born in Canada tend to have far worse perceptions of the Canadian police and criminal courts than those who were born in other countries (see Ruck and Wortley, 2002; Wortley and Owusu-Bempah, 2009; Wortley et al., 1997). How can we explain this finding? To what extent are perceptions of racial discrimination accurate? To answer this question we must turn to the empirical data.

Racial profiling

Racial profiling can be said to exist when members of a particular racial or ethnic group become subject to much greater levels of criminal justice and/or security surveillance than the “average” or “typical” citizen. Thus, in the academic literature, racial profiling is commonly defined as: 1) significant racial differences in police stop and search practices (i.e., driving while black); 2) significant racial differences in customs search and interrogation practices; and 3) particular undercover or sting operations which target specific racial/ethnic communities (see Harris, 2002; Wortley and Tanner, 2005; 2004a; 2004b; 2003). It should be stressed that racial profiling is said to exist when race itself – not criminal or other illegal behavior – is a significant factor in the making of surveillance decisions. In other words, at a societal level, racial profiling exists when racial differences in law enforcement surveillance activities cannot be explained by individual differences in criminal or other illegal activity.

Over the past two decades racial profiling has emerged as an important social issue in Canada. The Aboriginal community has long complained about biased police treatment. After the events of 9/11, Canada’s South Asian and Arab communities also leveled allegations of racial profiling. However, most of the recent discussion in Canada has focused on the treatment of the black community. Numerous studies conducted in the United States and Great Britain – using a wide variety of research methodologies (i.e., field observations, qualitative interviews, general population surveys and official statistics) – have identified that black people are more likely to be stopped, questioned and searched by the police than are whites (see reviews in Tanovich, 2006; Tator and Henry, 2006; Bowling and Phillips, 2002). A similar picture is emerging in Canada. For example, James (1998) conducted intensive interviews with over 50 black youths from six cities in Ontario. Many reported that being stopped by the police was a common occurrence for them. There was also an almost universal belief that skin color, not style of dress, was the primary determinant of attracting police attention. James (1998: 173) concludes that the adversarial nature of these police stops contributes strongly to black youths’ hostility towards the police (also see Neugebauer, 2000). More recently, the Ontario Human Rights Commission (2003) gathered detailed testimonials from over 800

people in Ontario – most of them black – who felt that they had been the victims of racial profiling.

The issue of profiling has also been explored through survey research. For example, a 1994 survey of Toronto residents found that almost one-third (30 percent) of black males had been stopped and questioned by the police on two or more occasions in the past two years. By contrast, only 12 percent of white males and 7 percent of Asian males reported multiple police stops. Multivariate analyses reveal that these differences in police contact with individuals of different races cannot be explained by differences in social class, education or other demographic variables. In fact, two factors that seem to protect white males from police contact – age and social class – do not protect blacks. Whites with high incomes and education, for example, are much less likely to be stopped by the police than whites who score low on social class measures. By contrast, blacks with high incomes and education are actually more likely to be stopped than are lower class blacks (see Wortley and Tanner, 2003; Wortley and Kellough, 2004).

A second survey, conducted in 2001, surveyed Toronto high school students about their recent experiences with the police (Wortley and Tanner, 2005). The results of this study further suggest that blacks are much more likely than people from other racial backgrounds to be subjected to random street interrogations. For example, over 50 percent of the black students surveyed reported that they had been stopped and questioned by the police on two or more occasions in the previous two years, compared to 23 percent of whites, 11 percent of Asians and 8 percent of South Asians. Similarly, over 40 percent of black students claim that they have been physically searched by the police in the past two years, compared to 17 percent of their white and 11 percent of their Asian counterparts. Further analysis of this data suggests that racial differences in who is being stopped and searched by the police cannot be explained by racial differences in criminal activity, gang membership, drug and alcohol use or public leisure activities (Wortley and Tanner, 2005).

A second quantitative strategy for examining racial profiling involves the collection of data by the police themselves. Although such data collection strategies are quite common in both the United States and Great Britain, Kingston, Ontario, is the only Canadian jurisdiction to conduct such a study. Beginning in the late 1990s, the Kingston Police Service received a number of complaints about racial profiling from the city's relatively small black community. Rather than ignore these allegations, Kingston Police Chief (Bill Closs) decided to engage in a groundbreaking data collection project. Despite strong resistance from police associations across the country, this pilot project went into the field in October 2003. For the next 12

months, the Kingston police were ordered to record the age, gender, race and home address of all people that they stopped and questioned – along with the time and location of the stop, the reason for the stop and the final outcome of the interaction (i.e., arrest, ticket, warning, etc.). Information was ultimately recorded for over 16,500 police stops conducted over a one-year period (Wortley and Marshall, 2005).

In general, the results of the Kingston Pilot Project mirror the results of racial profiling studies conducted in the United States and England. During the study period, the black residents of Kingston were three times more likely to be stopped at least once by the police than their white counterparts. Overall, the individual stop rate for black residents was 150 stops per 1000, compared to only 51 per 1000 for whites.² The results further indicate the individual stop rate is highest for the black male residents of Kingston (213 per 1000), followed by black females (75 per 1000), white males (74 per 1000) and white females (29 per 1000). An additional advantage of the Kingston study is that it gathered information on both traffic and pedestrian stops. Indeed, over 40 percent of the 16,000 stops conducted during the study period were performed on pedestrians. Thus, if racial profiling does exist, we might expect that blacks would be more over-represented in pedestrian stops than traffic stops – since the racial background of pedestrians should be more apparent to officers than the race of drivers. This is exactly what the results of the Kingston study reveal. While black people are still greatly over-represented in traffic stops (2.7 times), they are even more over-represented in pedestrian stops (3.7 times). Finally, further analysis indicates that the racial differences in Kingston police stops cannot be explained by racial differences in age, gender, the location of the stop or the reason for the stop. Interestingly, neither racial differences in observed or suspected criminal activity, nor racial differences in observed traffic violations, could explain the higher stop rate for blacks (see Wortley and Marshall, 2005).

Since the release of the Kingston pilot project, no other Canadian city has attempted to systematically collect information on the racial backgrounds of people stopped and questioned by the police. However, following a hotly contested freedom-of-information request that ultimately took them to the Ontario Court of Appeal, the *Toronto Star* newspaper eventually obtained information on over 1.7 million civilian “contact cards” that had been filled out by the Toronto police between 2003 and 2008. It should be stressed that these contact cards are not completed after every police stop. They are only filled out when individual police officers want to record, for intelligence purposes, that they have stopped and questioned a particular individual. Contact cards contain various pieces of information, including the individual’s name and home address, the reason for the stop and the location and time of the encounter. These cards also include basic demographic

information, including age, gender and skin color. Police argue that this information helps them keep track of who is present on the streets at certain times and locations and that this information may help them identify potential crime suspects and victims.

Critics argue that these contact cards provide insight into police surveillance practices and largely reflect the types of neighborhoods and individuals that come under enhanced police scrutiny. Interestingly, as with the Kingston data on police stops, black people are grossly over-represented in the Toronto police service's contact card database. Although they represent only 8 percent of the Toronto population, black people were the subjects of almost 25 percent of all contact cards filled out during the study period. Furthermore, the data indicate that black people were issued a disproportionate number of contact cards in all Toronto neighborhoods – regardless of the locality's crime rate or racial composition (Rankin, 2010a; Rankin, 2010b). As with the Kingston data, these findings are quite consistent with the racial profiling argument.

Racial profiling has two potential consequences for the black community in Canada. Firstly, because the black community is subject to much greater levels of police surveillance, black people are also much more likely to be caught when they break the law than are white people who engage in exactly the same forms of criminal activity. For example, in the Toronto high school survey discussed above, 65 percent of the black drug dealers (defined as those who had sold drugs ten or more times in the past 12 months) report that they have been arrested at some time in their life, compared to 35 percent of the white drug dealers. In other words, racial profiling may help explain why black people comprise the majority of people charged with drug crimes in North America, even though the best criminological evidence suggests that the vast majority of drug users and sellers are white. The second major consequence of racial profiling is that it serves to further alienate black people from mainstream Canadian society and reinforces perceptions of discrimination and racial injustice. Indeed, research strongly suggests that black people who are frequently stopped and questioned by the police perceive much higher levels of discrimination in the Canadian criminal justice system than do blacks who have not been stopped. Being stopped and searched by the police, therefore, seems to be experienced by black people as evidence that race still matters in Canadian society. That no matter how well you behave, how hard you try, being black means that you will always be considered one of the "usual suspects."

Police use of force

Highly publicized American cases of police violence against black people (i.e., Rodney King, Amadou Diallo, Abner Louima, etc.) serve to reinforce

the perception that North American police officers are biased against members of the black community. However, high profile cases of police brutality involving black and Aboriginal victims are not limited to the United States. The names of people like Dudley George (Aboriginal), Albert Johnson (Black), Lester Donaldson (Black), Michael Wade Lawson (Black), Marcellus Francois (Black) and Sophia Cook (Black) are frequently used to illustrate that police use of force is a problem faced by other minority groups in Canada as well. Unfortunately, investigations of racial bias with respect to the police use of force are extremely rare in this country.

A recent examination of data from Ontario's Special Investigations Unit is one exception. This study reveals that both black people and Aboriginals are highly over-represented in cases of police use of force (Wortley, 2006). Whites and members of other racial groups – including South Asians and Asians – are significantly under-represented in such cases. The SIU is a civilian law enforcement agency that conducts independent investigations into all incidents in which a civilian is seriously injured or killed by police actions in Ontario. Between January 2000 and June 2006, the SIU conducted 784 investigations. While black people are only 3.6 percent of the Ontario population, they represent 12 percent of all civilians involved in SIU investigations, 16 percent of SIU investigations involving police use of force and 27 percent of all investigations into police shootings. Additional analysis indicates that the police shooting rate for black Ontario residents (4.9 per 100,000) is 7.5 times higher than the overall provincial rate (0.65) and 10.1 times greater than the rate for white civilians (0.48). Finally, when we only examine cases where the death of a civilian was caused by police use of force, the over-representation of blacks becomes even more pronounced. While black people represent 27.0 percent of all deaths caused by police use of force and 34.5 percent of all deaths caused by police shootings, the black rate of police shooting deaths (1.95) is 9.7 times greater than the provincial rate (0.20) and 16 times greater than the rate for white people (0.12). The results for Aboriginals are strikingly similar.

These findings, though provocative, do not constitute “proof” that the Canadian police are racially biased when it comes to the use of force. Indeed, the fact that these cases resulted in few criminal charges (and no convictions) could be seen as evidence that force, including shootings, was justified. This interpretation is consistent with American research (see Fyfe, 1998) which suggests that once situational factors (i.e., whether the suspect had a gun or was in the process of committing a violent felony) have been taken into account, racial differences in the police use of force are dramatically reduced. Meaning there is less racial disparity in the use of police force when relevant factors are taken into account. Nonetheless, until such

detailed research is conducted within Canada, questions about the possible relationship between race and police violence will remain.

The arrest situation

Previous American and British studies of police arrest practices suggest that racial minorities were much more likely to be arrested for minor crimes (drug use, minor assault, vagrancy, etc.) than whites (see extensive reviews in Gabbidon and Greene, 2005; Walker et al., 2004; Bowling and Phillips, 2002). However, additional evidence suggests that racial bias in police arrest decisions may be declining. For example, contemporary US observational studies of police-citizen encounters suggest that, controlling for the seriousness of criminal conduct, race is unrelated to the police decision to arrest (see DeLisi and Regoli, 1999; Klinger, 1997). Nonetheless, a number of recent American studies suggest that it is the race of the victim – not the race of the offender – that may impact the arrest decision. In other words, there is considerable evidence to suggest that the police are more likely to make arrests in cases involving white than non-white victims and are especially likely to make arrests when the case involves a white victim and a minority offender (see Parker et al., 2005; Smith et al., 1984; Stolzenberg et al., 2004). Some have argued that this is direct evidence that the police put a higher value on white victims than on minority victims and thus devote more effort and resources to solving such crimes (see Mann, 1993). These findings are also consistent with the “racial threat” hypothesis which suggests that the police will treat interracial crimes involving minority offenders and white victims as particularly heinous.

Unfortunately, studies that examine the impact of both offender and victim race on arrest decisions have not yet been conducted in Canada. However, recent Canadian evidence does suggest that race may influence police behavior once an arrest has been made. An analysis of over 10,000 Toronto arrests – between 1996 and 2001– for simple drug possession reveals that black suspects (38 percent) are much more likely than whites (23 percent) to be taken to the police station for processing. White accused persons, on the other hand, are more likely to be released at the scene. Once at the police station, black accused are held overnight for a bail hearing at twice the rate of whites. These racial disparities in police treatment remain after other relevant factors – including age, criminal history, employment, immigration status and whether or not the person has a permanent home address – have been taken into statistical account (Rankin et al., 2002a). Studies that have examined the treatment of young offenders in Ontario have yielded very similar results (Commission on Systemic Racism, 1995).

Pretrial detention

The bail decision is recognized as one of the most important stages of the criminal justice process. Not only does pretrial detention represent a fundamental denial of freedom for individuals who have not yet been proven guilty of a crime, but it has also been shown to produce a number of subsequent legal consequences. Controlling for factors like type of charge and criminal record, previous research suggests that offenders who are denied bail are much more likely to be convicted and sentenced to prison than are their counterparts who have been released (see Friedland, 1965; Reaves and Perez, 1992; Walker et al., 2004). Thus, racial disparities in pretrial outcomes could have a direct impact on the over-representation of racial minorities in American and Canadian correctional statistics.

A large number of American (see reviews in Demuth and Steffensmeir, 2004; Free, 2004) and British studies (see Bowling and Phillips, 2002) have extensively documented the fact that non-whites are more likely to be held in pretrial detention than whites. A similar situation seems to exist in Canada. An examination of 1653 cases from the Toronto courts, conducted on behalf of the Commission on Systemic Racism in the Ontario Criminal Justice System, revealed that blacks are less likely to be released by the police at the scene and more likely to be detained following a show-cause hearing. This disparity is particularly pronounced for those charged with drug offences. Indeed, the study found that almost a third of black offenders (31 percent) charged with a drug offence were held in detention before their trial, compared to only 10 percent of whites charged with a similar offence. This profound racial difference remains after other relevant factors – including criminal history – have been statistically controlled (Roberts and Doob, 1997).

A second Toronto-area study provides additional evidence of racial bias in pretrial decision making (Kellough and Wortley, 2002). This research project tracked over 1800 criminal cases appearing in two Toronto bail courts over a six month period in 1994. Overall, the results suggest that 36 percent of black accused are detained before trial, compared to only 23 percent of the accused from other racial backgrounds. Race remains a significant predictor of pretrial detention after statistically controlling for factors associated with both flight risk (i.e., employment status, home address, previous charges for failure to appear, etc.) and danger to the public (i.e., seriousness of current charges, length of criminal record, etc.). Additional analysis suggests, however, that black accused are more likely to be detained because they tend to receive much more negative “moral assessments” from arresting officers. Moral assessments refer to the subjective personality descriptions that the police frequently attach to show-cause documents. The data suggest that, on average, police officers spend more time justifying the detention of accused

blacks than of accused whites. Clearly, this is evidence that police discretion extends from the street and into the courtroom – at least at the pretrial level. Finally, the results of this study suggest that rather than managing risky populations, pretrial detention is a rather important resource that the prosecution uses (along with over-charging) to encourage (or coerce) guilty pleas from accused persons. Those accused who are not held in pretrial custody are, by contrast, much more likely to have all of their charges withdrawn.

It is interesting to note that, even when released on bail, black accused are subjected to greater court surveillance. Controlling for legally relevant variables, black accused out on bail tend to receive significantly more release conditions – including curfews, area restrictions and mandatory supervision requirements – than do whites. Since blacks are subject to a greater number of release conditions and are more likely to be arbitrarily stopped and investigated by the police (see evidence on racial profiling above), it is not surprising to find that blacks are greatly over-represented among those charged with breach of condition offences (Wortley and Kellough, 2004).

Race and sentencing

American and British research on race and sentencing has produced mixed results. Some studies have found that black and other minority defendants are treated more harshly (Hood, 1992; Hudson, 1989; Mauer, 1999; Shallice and Gordon, 1990), some studies have found that they are treated more leniently (Willbanks, 1987) and others have found no evidence of racial differences in sentencing outcomes (Lauritsen and Sampson, 1998). Recent reviews of the American research (see Johnson, 2003; Spohn, 2000; Ulmer and Johnson, 2004) indicate that racial minorities are sentenced more harshly than whites if they are: (i) young and male; (ii) are unemployed or have low incomes; (iii) are represented by public defenders rather than a private attorney; (iv) are convicted at trial rather than by plea; (v) have serious criminal records; (vi) have been convicted of drug offences; and (vii) have been convicted of less serious crimes (i.e., racial differences in sentencing are greatest among those convicted of drug offences or less serious crimes).

Canadian research on race and sentencing has also produced contradictory findings. For example, while Aboriginal offenders are more likely to receive sentences of incarceration for relatively minor offences, they frequently receive more lenient sentences when convicted of more serious crimes. For example, one study found that only 20 percent of Aboriginal persons convicted of homicide receive life sentences, compared to more than half of non-Aboriginal offenders (LaPrairie, 1990). Similarly, using five years of federal admissions data, Moyer et al. (1985) found that sentence length for several violent crimes favored Aboriginal accused more than whites.

Compared to research on Aboriginal offenders, relatively little Canadian research has focused on the sentencing outcomes of blacks or other racial minorities. Those studies that do exist, however, point to the possibility of racial discrimination. For example, Mosher's (1996) historical analysis of the Ontario courts, from 1892 to 1930, reveals that black offenders experienced much higher rates of conviction and harsher sentences than did their white counterparts. Multivariate analyses of this data reveal that observed racial differences in sentencing severity cannot be explained by other legally relevant variables (Mosher, 1996: 432). More recently, the Commission on Systemic Racism in the Ontario Criminal Justice System compared the sentencing outcomes of white and black offenders convicted in Toronto courts during the early 1990s. The results of this investigation revealed that black offenders – particularly those convicted of drug offences – are more likely to be sentenced to prison than are whites. This racial difference remains after other important factors – including offence seriousness, criminal history, age and employment – have been taken into statistical account. Toni Williams (1999: 212) concludes that “this finding indicates that the higher incarceration rates of black than white convicted men is partly due to judges treating them more harshly for no legitimate reason.” However, Roberts and Doob (1997) caution that the commission's research suggests that the effect of race is statistically weaker at the sentencing stage than at earlier stages of the justice process and may be limited to certain offence categories (i.e., drug offenses).

Clearly, research on racial differences in sentencing is at an early stage in Canada. One factor that has yet to be examined is the impact of the victim's racial background. However, American research strongly suggests that, regardless of their own race, individuals who victimize white people are sentenced much more harshly by the courts than those who victimize blacks and other racial minorities (Cole, 1999; Johnson 2003; Spohn, 2000; Urbina, 2003). This fact might help explain why minority offenders – who usually victimize people from their own racial background – sometimes appear to be treated more leniently at the sentencing stage. Finally, the sentencing process appears to be particularly harsh on offenders who have victimized white females. Recent research, for example, strongly suggests that homicides involving minority males and white females are the most likely to result in a death sentence (see Holcomb et al., 2004).

Race and corrections

As with other stages of the criminal justice system, very little Canadian research has examined the treatment of racial minorities within the corrections system. However, consistent with studies of the police and the criminal courts, the research that has been conducted suggests that some forms of

racial bias exist behind prison walls. The Commission on Systemic Racism in the Ontario Criminal Justice System, for example, found that while racist language and attitudes plague the environments of many Ontario prisons, and racial segregation is often used as a strategy for maintaining order, correctional officials do not acknowledge that racism is a significant management problem (Commission on Systemic Racism, 1994). Commission researchers also found evidence of racial bias in the application of prison discipline. Minority inmates are significantly over-represented among prisoners charged with misconduct – particularly the types of misconduct in which correctional officers can exercise greater discretionary judgment. This fact is important because a correctional record for such misconduct is often used to deny parole and limit access to temporary release programs. Indeed, exploratory research suggests that black and other racial minority inmates, controlling for other relevant factors, are somewhat more likely to be denied early prison release (Mann, 1993; Commission on Systemic Racism, 1995). Unfortunately, Canadian research has yet to explore possible racial discrimination in parole decisions within federal correctional facilities. Finally, commission researchers have highlighted the fact that current rehabilitation programs do not meet the cultural and linguistic needs of many minority inmates (Commission on Systemic Racism, 1994; 1995). The current correctional system, it is argued, caters to white, Euro-Canadian norms. The treatment needs of black and other racial minority prisoners are either unacknowledged or ignored. Ultimately, inadequate or inappropriate rehabilitation services for minority inmates may translate into higher recidivism rates for non-white offenders – a fact that may further contribute to their over-representation in the Canadian correctional system.

Conclusion

The history of racial minorities in Canada is marked by a legacy of racism, inequality and exclusion. In particular, the profound economic and social disadvantages faced by the black and Aboriginal communities have been compounded by their unequal treatment within the Canadian criminal justice system. As in the United States and the UK, evidence suggests that racial minorities in Canada suffer from racial profiling as well as from relatively harsh treatment with respect to arrest decisions, police use of force, pre-trial decision making and sentencing. Explaining the relatively harsh treatment that some minorities have received in the Canadian justice system always seems to produce vigorous debate. Some view this treatment as justified – that it stems from the over-representation of racial minorities among criminal offenders. Others maintain that this harsh treatment reflects both overt and institutional racism within Canadian society. Few concede that

both perspectives may hold some truth. We must ask ourselves whether it is possible that the disproportionate economic and social strain experienced by black and Aboriginal peoples within Canadian society have resulted in higher than average rates of criminal offending among members of these racial groups. Is it also possible this slight over-representation in criminal offending, combined with sensationalistic media coverage, has led to exaggerated stereotypes about the criminality of minority Canadians? These stereotypes are often used to justify racial profiling and other forms of discrimination. Is it possible that racial bias within the criminal justice system has served to further increase and solidify feelings of social alienation among members of the racial minority community and that these feelings of exclusion have provided justifications for additional criminal activity?

These questions deserve additional research in the Canadian context. Unfortunately, as the continued ban on the collection and dissemination of race–crime statistics confirms, there is little political will in Canada to confront our historical legacy of racism and how this legacy continues to impact the lives of minority residents. It is interesting to note that the primary argument in support of the ban on race–crime statistics is that it serves to protect racial minorities from further stereotyping and discrimination (Owusu-Bempah and Millar, 2010: 100). However, as public opinion polls suggest, racial stereotypes about the relationship between race and crime still exist in Canada. In fact, because of racially biased crime reporting in the Canadian media, public opinion about the relationship between race and crime is far more distorted than actual crime statistics reveal (see above discussion). In other words, the ban on race–crime statistics may be contributing to racial stereotypes rather than debunking them.

It must also be recognized that the ban on race–crime and race–criminal justice statistics has actually helped the police, criminal courts and corrections system deflect allegations of racial bias. Without proper data, it is impossible to document the extent of racial discrimination in the criminal justice system and whether antiracist policies are having any effect on reducing the negative impact the justice system is having on minority communities. For example, allegations of racial profiling by the police have often been dismissed by the Canadian courts because of a lack of empirical evidence (see Tanovich, 2006). The ban on race–crime statistics, in our opinion, is actually a practice that reduces the accountability of the justice system. At the beginning of this chapter we noted how critics have often argued that Canada's official policy of multiculturalism has served to veil the true extent of systemic racism that exists within this country. It is our contention that the current ban on race–crime statistics has served a similar purpose – it prevents Canadians from honestly examining the true impact justice institutions have on the lives of minority citizens.

Notes

1. In Canada the term “Asian” is used to refer to people with an East Asian background (including Chinese, Japanese and Korean ethnicities). The term “South Asian” is used to refer to people of Indian, Pakistani or Sri Lankan background. The term “West Asian” is used to refer to people from a Middle-Eastern or Arab background.
2. It should be noted these stop rates were calculated after eliminating all police stops that involved people who lived outside of the City of Kingston. Furthermore, each individual who was stopped during the study period was only counted once. In other words, the rates reported above were not inflated by individuals who had been stopped on multiple occasions.

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2

Race, Ethnicity, Crime and Criminal Justice in the United States

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Introduction

The disciplines of criminology and criminal justice, in their individual and collective inquiries into crime, criminality and their interactions with the criminal justice system, have given notable attention to the subject of race. Broadly speaking, their inquiries encapsulate debates over the possible and/or actual role played by a person's racial background in offending and in their contact with the criminal justice system. Criminological/criminal justice interests in these seemingly ongoing concerns have expressed themselves in a significant number of scholarly books in titles ranging from interests in a specific area of the criminal justice system to interests in the general criminal justice process. In addition to these books are the numerous chapters, journal articles, conference papers, government publications and related publications that have joined the debate and kept it alive. In sum, there is now so much literature out there that students, professors and others with interest in race, crime and criminal justice will find plenty to choose from: the task lies in managing the plentiful as opposed to searching for scarce scholarly resources.

Notwithstanding the seemingly abundant literature, scholarly interests in the relationships among race, crime and the criminal justice system are alive and well, and this seems to be somewhat influenced by the fact that there is a contention yet to be resolved. This contention revolves on *why* and *how* some racial minorities (notably blacks) have, over the years, had a consistently disproportionate representation in national crime figures, including the prison population. For example, arrests for violent crimes in 2002 were a disproportionate 38 percent for blacks, whose portion of the national population, according to 2000 census data, stood at 12.3 percent. The proportion of whites arrested was 59.7 percent (portion of national population, 75.1 percent); Asian/Pacific Islander, 1.2 percent (portion of national population 3.7 percent); and American Indian/Alaskan Indian, 1.1 percent

(proportion of national population 0.9 percent); these figures are from the US Census Bureau (2001) and the Federal Bureau of Investigation ((FBI) 2002a). The 2006 arrest data for Parts 1 and 2 criminal offenses show a 28 percent arrest figure for blacks, 69.7 percent for whites, 1.1 percent for Asian/Pacific Islander, and 1.3 percent for American Indian/Alaskan Indian (FBI, 2007).

The over-representation or under-representation of racial groups displayed in these arrest data are mirrored across criminal offenses, except for a few offenses such as liquor laws, where whites and American Indian/Alaskan Indian are over-represented, while blacks are under-represented. Three years later, arrest data and their distribution across Parts 1 and 2 offenses are similar to the 2006 arrest pattern. In the 2009 arrest data, blacks, whites, Asian/Pacific Islander, and American Indian/Alaskan Indian make up the respective figures of 28.3, 69.1, 1.2 and 1.4 percent (FBI, 2009a). Imprisonment pattern is no different. As of January 2011 when the federal prison population was 209,360, blacks made up 38.7 percent of this figure and the data for the white, Native American and Asian populations were 57.8, 1.8 and 1.7 percent respectively (Bureau of Prisons, 2011). Rates of imprisonment (per 100,000 US residents) for the periods 2000–2009 show that non-Hispanic black males and females are more likely than their non-Hispanic white and Hispanic¹ counterparts to be incarcerated; and Hispanic males and females have a higher imprisonment rate than their non-Hispanic white counterparts (US Department of Justice, (USDOJ) 2010a).

From such racially based variations in crime data a wide range of both consensual and conflicting studies (quantitative and qualitative) have emerged at local, state and regional levels – all geared towards determining how one's racial background might influence who gets caught up as a suspect/offender in the criminal justice system. This daunting issue is not unique to the United States, as demonstrated in this book and in the 2010 work. But, unlike many countries in Europe and elsewhere, the United States has a relatively well-established scholarly debate on the topic, ranging from policing and racial profiling to sentencing and corrections. The intention of this chapter is not to rehearse the expansive literature, with the likely outcome of favoring one school of thought or the other, or at worse floating aimlessly between schools of thought. Instead, what we consider a worthwhile goal is to draw attention to a number of (by no means exhaustive) interconnected problematic issues, which in our viewpoint seem to add to the difficulties in advancing the race–crime–criminal justice debate. We take issue with the racially monolithic character of crime and victimization data, in particular the former; we take into account the seriousness of criminal victimization, while expressing disappointment in existing gaps in statistical data when it comes to racially motivated hate crime and crimes of the powerful; and we

call for more and bolder scholarly investigations into the contributions of governmental policy to discriminatory practices. In other words, the racial disparities that seem to exist in the treatment of suspects/offenders in the criminal justice system may be tied firmly to governmental policies, which explicitly or implicitly create and reinforce discriminatory criminal justice practices. The following discussions first examine how we interpret offending rates and behavior on the premise of race.

Offending rates: the problem with race-based data

Past and current US arrest and incarceration data inform us that, as far as racial groups are concerned, blacks are the main offenders, and this statistical conclusion is pertinent only when we compare the proportion of racial groups in the crime data with their proportion of the national population based on the 2000 census. The resultant finding shows that blacks (and Native Americans to a lesser extent) tend to be over-represented, while whites and Asians (particularly the latter), are more likely to be underrepresented. This over-representation–under-representation disparity has aroused two key perspectives (which have served as reference points for other emerging perspectives) which have a particular focus on blacks: the possibility of disproportionate black involvement in offending (Wilbanks, 1987) or the possibility of foul play by the name of racial discrimination (overt or covert) against blacks (Mann, 1993). Despite the intensity of the debates that have accompanied these schools of thought, a perplexing concern is that scholars/researchers have not only tended to base their arguments on estimates, but also, and most importantly, that the estimates are far from accounting for the *real* role that race plays in crime statistics. We are aware that statistical data have limitations. Crime data limitations have ranged “from problems of crime reporting/non-reporting and recording/non-recording that amount to the ‘hidden figure’ of crime to the underestimation/overestimation of certain crime types and situations” (Kalunta-Crumpton, 2010a: 323). Census data upon which race-based crime data are assessed in terms of proportionality harbor their share of limitations; for example, minorities are known to be represented insufficiently in the census data.

For the purpose of this chapter, the most critical aspect of the crime and census data limitations is that we are far from gauging the influence of race on offending and on contacts with the criminal justice system based on these data sets. And this is principally because of what Georges-Abeyie (2010) identifies as the racially monolithic character of these data, despite the many *ethnic* groups that form each of the *racial* groups. Ethnic, according to the *Reader's Digest Oxford Complete Wordfinder*, relates to a social group “having a common national or cultural tradition”; it relates “to race or

culture" (Tulloch 1993: 505). Thus, ethnicity denotes the broader biological characteristics of social groups, in addition to their shared socio-cultural characteristics, including language, religion, and national origin (Georges-Abeyie, 2010; Higgins, 2010). In keeping with the definition of ethnicity within the framework of commonalities found among groups of people, the breakdown of racial groups into ethnic categories can be extensive, depending on how far down the ethnic classification line one wants to reach. Cole's (2010) comment on the issue of ethnic classification with reference to UK's census, crime and victimization data is informative. Since the 2001 census, UK has operated on a 16+1 racial/ethnic classification system which breaks down each of the main racial groups (white, black, Asian, Chinese or other, and mixed heritage group) into a number of ethnic groups. For example, the Asian group differentiates among Indians, Pakistanis, Bangladeshis, and other Asian; and the black group among black Caribbean and black African. According to Cole, although "it would seem that the attempt to make a clear distinction between racial/ethnic groups will be endless until all the world's ethnic groups are listed separately... these developments cannot be underestimated" because "they represent recognition of the diversity that exists within perceived main racial groups..." (2010: 26). Essentially, failure to recognize at least some of the ethnic diversity that embodies racial groups renders as problematic any attempts to analyze the influence of race on offending rates and encounters with the various stages of the criminal justice system.

In the United States, this data anomaly is apparent. Five main and broad racial groups – black (or African American), white, Asian, American Indian and Alaskan Native, and Native Hawaiian and other Pacific Islander – informed the 2000 census data.² The contributions of key ethnic groups to these data are nonexistent. The census data are extremely deceiving, particularly when we note that Hispanics are classed as an ethnic group, one which can be composed of individuals from any of the main racial groups or the multiracial categories (see Georges-Abeyie, 2010). Similarly, Georges-Abeyie argues that the freedom of self-declaration of racial identity presents the tendency for ethnic groups of Hispanics (such as Cubans and Colombians), who by phenotypical judgment are not white, to self-identify as white. Part of this problem in self-declaration is the outcome of what Georges-Abeyie (2010: 291) describes as "social distance realities by non-whites toward non-whites, including toward 'their own' phenotype racial identity group," an expression also likely to be found among persons of mixed-race origin who, as a result of social distance, are more likely to identify with the white racial group in census information (for further information on social distance, see Tatum, 2000). Resulting from this situation are the overestimation and underestimation of particular racial groups.

Crime data are beset with similar problems. Often, racially categorized crime data in the United States are cognizant of four main racial groups: blacks, whites, Asian/Pacific Islander, and American Indian/Alaskan Indian. This four-race classification is more specific to Uniform Crime Reports (UCR) arrest data from which Hispanics are excluded despite being acknowledged as an ethnic group in other federal-level data, such as prison statistics. In line with the census data, Hispanics may well fall into any one or all of the four racial categories based on a police officer's visual categorization, which is open to the possibility of the officer's misrepresentation of one's actual racial origin (see del Carmen, 2008), thereby resulting in overestimation or underestimation of specific racial groups. Each of the broad racial categories is made up of a range of ethnic groups with distinct traditions and experiences, which are likely to inform attitudes towards crime and hence involvement or non-involvement in crime. We know, based on arrest and prison statistics, that blacks have a disproportionate offending rate but we do not know what percentage of African Americans, African immigrants, Caribbean immigrants and Hispanic blacks (to list a few) contributes individually to the cumulative over-representation. The same applies to the white and Native American groups. Even the under-represented *model minority*, Asians, deserve attention since it may be the case that one Asian ethnic group is largely responsible for the relatively small percentage of Asian offenders.

While this major limitation has been acknowledged by scholars (see Geis, 1972; Snowden, 2008; Gabbidon, 2010), studies have tended to use the concepts of race and ethnicity interchangeably and often as a collective as in Asian, black, white and Native American. And the long-standing theoretical debates about race, crime and criminal justice have based standpoints on these racial monoliths. This tradition is not contemporary. Lombroso, the so-called father of positivist criminology, generalized criminality to broad racial categories of non-whites: Africans, Orientals, native peoples (see Gabbidon, 2007). Before him was Frederich Blumenbach whose distinct classification of peoples into Caucasian (white), Mongolian (Asian), Ethiopian (African), Malaysian (Polynesian), and American (Native American) in the eighteenth century (see Feagin, 2010a) paved the way for the attribution of social meanings to racial categorization in European scholarship. Thus, the notion that race is socially constructed emerged from opposition to claims that race equals biological differences, and related opposition to the perspectives of eighteenth-century and nineteenth-century Enlightenment philosophers and European scholars that the superiority of Caucasians is markedly above all the other races (see Kalunta-Crumpton, 2010b).

So, even if race is a social construct by virtue of stereotypical innuendos assigned to races, this does not erase the fact that physical differences are a

biological reality. We have seen and continue to see this reality in official data, including crime data which have continued the historical tradition of classifying different ethnic groups into broad racial categories. It is on the strength of the racial monolith that most contemporary scholars base their studies including the controversial ones (Wilson and Herrnstein, 1985; Herrnstein and Murray, 1994), that media reports are based on, by which popular knowledge and discourses are informed, that policies are made and implemented, and that all these expressions and others sustain and reinforce themselves. Yet, it may be the case that certain ethnic groups of black, white, Asian, and so forth, are more involved in crime than others, and that ethnic groups perceive and experience the criminal justice system differently. In the relatively few instances in which such homogenous terms are narrowed down to ethnic specifics, there is evidence of differentials in the propensity to committing crime and encounters with the criminal justice system, which may be attributed to factors unique to the various ethnic groups, including differing customs, life experiences and socio-economic circumstances.

For example, in regard to Asians there is evidence of ethnic variations in patterns and rates of offending among Far East, East, South and Southeast Asian Americans (Hayner, 1938). In contemporary concerns about organized crime/gangs crime, certain Asian ethnic groups stand out. These are Chinese, Japanese, Vietnamese, Cambodians and Laotians (see Grubb and Crews, 2008; Perry, 2009). The Hispanics group, although classed as an ethnic group in the United States, comprise peoples of different national origins (such as Cubans, Puerto Ricans and Mexicans) who occupy different positions in crime and criminal justice ratings (see Fernandez and Alvarez, 2009). Also, despite the fact that whites as a racial group (and worse still as ethnicities) are typically marginalized in contemporary scholarship, the little we learn from history indicates that a range of white immigrant groups such as the Italians, Jews, Irish, Germans, and so forth, were ethnically marked as separate entities from the British colonists. They were identified by certain derogatory stereotypes, which represented them as biologically or socially inferior to the colonists, and were in various ways associated with crime (see Gould, 2009). Over time, the "conspicuousness" of white ethnicities began disappearing due to the assimilation of the historically white ethnicities by virtue of their whiteness into white "members of the core" (Gould, 2009: 28).

In comparison to the dearth of scholarly literature on crime and criminal justice issues in relation to ethnic groups of whites, Asians, Native Americans (and Hispanics), there is a significant amount of scholarly focus on African Americans dating back through history (see for example, Henderson, 1901; Du Bois, 1996[1899]). In some other literature, the term black is used for the

purpose of studying African Americans (see, for example, Browne-Marshall, 2007). Even though Georges-Abeyie would argue that “the standard definition of ethnicity” may not be well suited to the African American context, given that this group forms one of the Negroid groups “whose original national origins were ... eradicated by slavery” (2010: 288), African Americans are the closest we in the western hemisphere can get to gleaning ethnicity within the broader black race, which encompasses immigrants from Africa, the Caribbean, Latin America and elsewhere. Because of the visibility of African Americans and the invisibility of other black ethnic groups in crime and criminal justice discourses, scholarship may assume African American experience as a black experience.

From the point of offending and through the various stages of the criminal justice system, a breakdown of homogenous racial groups into heterogeneous ethnic groups is imperative for differentiating between the possible influence of race or ethnicity to offending behavior and interactions with the criminal justice system. No doubt, the racial collective in crime data tells us something about crime, and the information is worrying as far as certain racial groups are concerned; also, the controversy over the contribution of racism to the data is a genuine one. The race debate will advance itself positively if we begin to take ethnicity seriously. Essentially, some of the conceptual and contextual controversies surrounding race is likely to ease off. Of course, this approach would also allow for an examination of white ethnic groups, particularly recent immigrant groups who may be currently exhibiting a pattern of crime different to longer-established white immigrant groups. Since the country was built on immigration, there are variations in immigrant (ethnic) groups; there are variations in their life experiences and adjustment mechanisms to adapt to the host society; and such variations are bound to feed into attitudes towards crime as well as any ethnic variations that may be displayed in offending rates (also see Tonry, 2010).

Crime is a problem: criminal victimization

In the 1980s and early 1990s British criminology became dominated by a race and crime debate between left realists and critical theorists (named left idealists by left realists). While the latter attempted a critical exploration of the policies and actions of the state and their roles in generating high crime rates for the black population, the former considered crime rates in each racial group to be a reflection of their offending behavior (see Gilroy 1987; Lea and Young, 1993/1984). Without delving in detail into the conflicting perspectives of both schools of thought, one valuable observation relevant to this chapter that emerged from that era of criminological debate is that

the left realist highlights on criminal victimization encompassed the notion that crime was really a problem and should be taken seriously (see Young, 1994). Crime in this context refers to street crime, that is, those crimes that, relative to corporate crime, are an intentional and direct individual violation of person or property, are transparent and immediate, and are “real and pressing problems for working-class people” (Lea and Young, 1993: 75). Perpetrators of street crime are drawn from the lower class, and the victims are the poor whose vulnerability to crime stems from their residence in areas attractive to the perpetration of crime. Left realism argues that crime has the tendency to be intra-class and intra-racial where, for example, the poor as opposed to the rich, and blacks as opposed to whites, are the most vulnerable (Lea and Young, 1993; Young, 1994). Young opines that “the people who suffer most from crime tend to suffer most from other social problems, for example, physical and mental illness, bad housing, etc. The effect of crime thus *compounds* with other problems” (1994: 113).

This chapter’s acknowledgement of the left realist stress on the impact of everyday crime on the everyday life of the socially, economically and politically disadvantaged is meant to reiterate the importance of the issue of criminal victimization and race, which seems to be relatively marginalized in scholarly/popular interest in favor of offending and discourses of race. Across many Western countries, the intra-class and intra-racial nature of offending/victimization and the focus of these interrelated expressions on the lower-class is observed (see Kalunta-Crumpton, 2010c). However, such narratives tend to place much more emphasis on offending than victimization and, as it seems, the narratives of victimization are sometimes dependent on the narratives of offending, as if the former would not be fully understood without the latter. This approach is also found in the United States, where criminal victimization data sources not only mirror victimization crime types and patterns shown in many Western societies, but also inform scholarly interests in the subject. What do US statistical data tell us about criminal victimization and race?

In the United States, the primary source of data on criminal victimization, the National Crime Victimization Survey (NCVS), concentrates on what Jock Young would class as street crime, and this is encapsulated in NCVS interest in the following three categories of crimes against the person or property: violent crime, property crime, and personal theft. Included in types of violent crime are robbery, rape/sexual assault and assault; for property crime examples are theft, motor vehicle theft, and household burglary; and personal theft includes purse snatching and pocket picking (USDOJ, 2010b). Information on victim characteristics is included in the NCVS information gathering, and according to findings, there are racial variations in experiences of criminal victimization notably for violent crimes. Based on

findings from the 2009 criminal victimization statistics, the NCVS reported rates of violent victimization according to race (USDOJ, 2010b: 4):

Similar to previous NCVS findings, males, blacks, and persons age 24 or younger continued to be victimized at higher or somewhat higher rates than females, whites and persons age 25 or older.... Blacks were more likely than whites to be victims of overall violent crime, robbery, and aggravated assault, and somewhat more likely than whites to be victims of rape or sexual assault. Blacks also experienced higher rates than persons of other races (American Indian, Alaskan Native, Asian, Native Hawaiian, and other Pacific Islander) of overall violence, robbery, aggravated assault, and simple assault.

Hispanics and non-Hispanics were equally likely to experience overall violent crime, rape or sexual assault, aggravated assault, and simple assault. Similar to NCVS findings for previous years, Hispanics were victims of robbery at rates higher than those of non-Hispanics.

The overall high rate of violent victimization for blacks is not restricted to nonfatal violence. According to the Uniform Crime Report (UCR), a disproportionate percentage of blacks (male and female) fall victim to homicide. For example, in 2005 almost half of the total victims of homicide were black, with black males making up approximately 52 percent of the almost 13,000 male victims of homicide, and black females comprising 35 percent of the almost 3500 female victims of homicide. Gang violence contributes to black homicides, much of which is caused by firearms (USDOJ, 2007). Similar to blacks, Native Americans have reported high rates of violent victimization and at some point higher than those for blacks. Between 2001 and 2005 when whites, blacks and Hispanics ages 12 or above reported violent victimization rates of 23 per 1000 persons, 24 per 1000, and 29 per 1000 respectively, the rate for American Indians was 57 per 1000 persons (Ibid.). While blacks (and American Indians) have a history of topping the chart for violent victimization, reported violent victimization rates for the period 2002 through 2006 show that Asians are the least likely of all racial groups to be a victim of violent crime (USDOJ, 2009).

In regard to property crime for the aforementioned period, Asians among all racial groups retained the lowest rate of victimization (USDOJ, 2009). The racial distribution of property crime victimization for 2009 shows that whites make up 40.8 percent of all property crime victims; the rate for blacks is 41.7 percent; Hispanics (who make up approximately 13 percent of the national population according to the 2000 census) have 36.7 percent victimization rate; and the rate for "Other" races (including Asians/Pacific Islanders and American Indians/Alaskan Indians) is 30.7 percent (USDOJ, 2010b).

There are indications that these experiences of property and violent criminal victimization correlate with class. Findings from the 2009 criminal victimization data report that persons at the most risk of property crime come from lower income households (USDOJ, 2010b). Overall, this social category tends to have rates of “property crime and household burglary” higher than those for higher income households. Lowest income households (i.e., below \$7500 a year) “had the highest overall property crime, and were victims of property crime at a rate that was about 1.6 times higher than households earning \$75,000 per year or more” (USDOJ, 2010b: 6). For individual property-related crimes, income-based variations are evident. Rates of burglary and property theft were higher in the lowest income households than in households in other income groups. Households in the \$35,000–49,999 a year income category, are more likely to be victims of motor vehicle theft than the \$50,000 or more annual income households (USDOJ, 2010b). Experiences of violent victimization replicate the class influence. Criminal victimization between 2001 and 2005 shows that while household income variations seem inconsequential to the Asian violent victimization rate, this does not hold true for non-Asians, who include whites, blacks, Native Americans, Hispanics and persons of two or more races. Lower income non-Asian households are likely to be most vulnerable to violence than those in higher income households (USDOJ, 2007). The situation of blacks exemplifies this. Blacks in lower income households and blacks resident in urban areas are more susceptible to violence than those in higher income households and those living in rural or suburban areas (Ibid.). When compared to whites and Hispanics, their experiences of robbery victimization reveal that they are more likely than their white counterparts to reside in urban areas, and like Hispanics are less likely than their white counterparts to “live in households with annual incomes of at least \$50,000” (Ibid.: 4).

These instances, no doubt, give credence to the left realist concerns about criminal victimization of the working-class, and perhaps more so when we consider the intra-racial character of victimization. Intra-racial victimization is observed amongst Native Americans (Grubb, 2008) and other racial groups. The Bureau of Justice Statistics identifies the intra-racial nature of most homicide victimization: a high proportion of black and white single victim/single offender homicide victimization is intra-racial (USDOJ, 2007), and approximately half of Asian single victim/single offender homicide victimization is intra-racial (USDOJ, 2009). However, it would be unusual to expect the type of violent and property victimization covered in the NCVS not to be intra-racial or intra-class if geographical areas where these crimes occur are inhabited by predominantly same-race lower-class residents. Often, such geographical areas are depicted in official and popular discourse as crime-ridden locations where drug dealers, gang wars, and robbers

assume territorial control, and where solutions call for law enforcement and incarceration. And, often, scholarly interests in research and debates revolve around these “mainstream” interpretations. In the fixation on the criminal and criminality, victims’ experiences of NCVS-type crimes, including the crime impact (e.g. economic and sociological) and victim-oriented solutions to the crime problem are sidetracked. The types of crime which come under the NCVS umbrella are those that are convenient for data collection and research purposes. This is not to state that we do not appreciate the usefulness of official criminal victimization data nor appreciate that the NCVS-type crimes are a problem. We do. But we are simultaneously cognizant of their limitations – some of which are similar to those that haunt arrest and related data sources. We also note that despite the limitations, scholars rely heavily on them for research.

Essentially, victimization data hide as much as they reveal. For one, the aforementioned concerns about the monolithic character of racial groupings is revealed in the victimization data and of course one danger of collapsing ethnicities into one racial groups is the likelihood of underestimating or obscuring levels of victimization in an ethnic group. For example, Asian victimization rates are known to be relatively low and this finding may lead one to believe that there is no cause for alarm for this racial group. However, Perry (2009) notes the risks in assuming this sort of perception albeit with reference to the general notion of Asians as the *model minority*. As an example, Perry observes that economic success is not consistent across the varying ethnic groups of Asians, and thus the perception that Asians exhibit a success model worth emulation by other visible minorities tends to ignore the fact that there are specific groups of Asians in socio-economic disadvantage and poverty who could benefit from positive policy interventions (also see Grubb and Crews, 2008). It is within a similar framework that Asian victimization (and offending) may be viewed. Asians are known to have the lowest violent victimization rates of all racial groups, and while we do not know how the “low” rate is distributed across ethnic groups, it may be the case that victimization is far from being evenly distributed. One area of violent crime that has produced data on Asian violent victimization is intimate partner violence (IPV). While official data tell us that from 2002–2006 approximately 13 percent of Asian female violent victimization was related to IPV (USDOJ, 2009), studies of Asian IPV have not only shed light on the nature of the problem but also they have shown how IPV expresses itself in different ethnic groups (see Ahmed et al., 2004; Abraham, 2005; Bui and Morash, 2008).

Further, we have traditionally seemed to comment more about the intraracial nature of crime victimization than we do about its interracial nature. Perhaps this is understandable given that the only crime where interracial

victimization is apparent came under “comprehensive” UCR official statistics only in 1992³ (FBI, 2009b). Herein, we are referring to hate crime, defined as “crime motivated by preformed, negative bias against persons, property, or organization based solely on race, religion, ethnicity/national origin, sexual orientation, or disability ...” (FBI no date) Hate crimes are categorized into: crimes against persons, crimes against property, and crimes against society. Existing UCR data show that racial bias accounts for a significant portion of single-bias incidents.⁴ For example, in 2002, 49.7 percent of the 9222 victims of single-bias incidents of hate crime were victimized as a result of racial bias. Out of the 49.7 percent, victims of anti-black bias accounted for 67.2 percent, anti-white: 19.9 percent; anti-Asian/Pacific Islander: 6.1 percent; and anti-American Indian/Alaskan Native: 1.6 percent. Although ethnicity/national origin is listed and accounted for in monolithic terms, its inclusion in the data is noticeable (FBI, 2002b). Ethnicity/national origin bias accounted for 15.3 percent of the single-bias incidents of victimization in 2002, and anti-Hispanic bias made up 45.4 percent of victimization based on ethnicity or national origin bias while 54.6 percent was attributed to other ethnicity/national origin bias (FBI, 2002b). Subsequent hate crime data paint a similar picture of disproportionate or high rates of victimization for minorities. An example is the 2009 data which report 71.5 percent victims of anti-black bias, 16.5 percent anti-white bias, 3.7 percent anti-Asian/Pacific Islander bias, 2.1 percent anti-American Indian/Alaskan Native, 62.4 percent anti-Hispanic, and 37.6 percent in bias against some other ethnicity/national origin (FBI, 2009c).

Perpetrators of racially motivated hate crimes come from various racial backgrounds. While whites seem on face value to top the figures for offenders, they are in actuality under-represented in relation to their portion of the national population (FBI, 2002b, 2009c). As perpetrators of hate crime, blacks show evidence of over-representation, unlike Asian/Pacific Islanders and American Indian/Alaskan Natives (FBI, 2002b, 2009c). Given the historical climate of racial discord and oppression, one would have expected white perpetrators to be over-represented in racially motivated hate crimes in contemporary times. Despite that underreporting of victimization is one of the key limitations plaguing these data (just as offending data), the data as they stand call for sustained critical questions, particularly in regards to who perpetrates what crime against whom and why. Is the perpetration of racially motivated hate crime by a particular racial group targeted at a specific racial group, and in what contexts? Where does ethnic variation feature in this? There is some research evidence of race-specificity in the hate crime offender and victim nexus. For instance, violence against Asians is perpetrated significantly by African Americans or Hispanics, interracial violence against Native Americans is perpetrated mostly by whites (see Perry 2009,

2004), and perpetrators of hate crimes against African Americans are mostly white (Walker et al., 2007). Yet, this type of information, while important, is not captured in the Uniform Crime Report (UCR) data. Nor is ethnicity considered anywhere to be nearly sufficient.

Lastly, a missing crime category from the victimization data is “crimes of the powerful,” encompassing criminal activities that fall under the umbrella of white collar, corporate, and government crimes. A perusal of the types of crime covered in the victimization and arrest data makes it explicitly clear where the interests of law makers and policy makers and criminal justice agencies lie: street crimes. This variation in the determination of which criminal activities are deemed worthy of attention and which are not, has gained scholarly attention among critical thinkers (see Sutherland, 1949; Chambliss, 1969; Quinney, 1977; Reiman, 1996; Michalowski and Kramer, 2006). The often blind eye that is turned to crimes committed by the socio-economically and politically powerful means that a correlating response awaits the victims of such offenses. As Michalowski (2009) argues, “crimes of the powerful” are typically addressed outside the confines of the criminal and judicial systems and are therefore insulated from the stigma and punishment that accompanies “*real crime*.” He adds: “This occurs even though the damage to health, wealth, and life caused by these offenses vastly exceeds those caused by routine criminals from poorer social classes” (p. 62). The negative ramifications (including deaths) of corporate crimes, including environmental ones, on the poor and minorities in particular are observed by Reiman (1996). Nielsen and Robyn (2009) draw attention to the exploitation and the damage to the environment and health of Indian nations and peoples through “state–corporate crime” – defined by the authors as “a hybrid of white-collar crime in that it has attributes of both corporate and government crime” (p. 82). Government and corporate interests in the natural resources (e.g., oil and gas) of Indian lands have amounted to years of exploitation and endangerment for these communities, among the poorest in the United States.

Examples of corporate/white collar crime abound and so do the negative consequences. Notwithstanding, the policy and practice focus on street crime is often justified by claims that street crimes pose direct, physical harm, presumably unlike “crimes of the powerful.” Michalowski (2009: 83) presents a logical critique of this claim for its failure “to take into account the deaths and injuries that result each year from corporate lawbreaking in the workplace, the marketplace, and the environment, or the suffering caused every year by unaffordable health insurance, fraudulent investment schemes, and raided pension funds.” However, perpetrators of these crimes are too often not prosecuted. Of course, we cannot separate this blatant distinction in definitions of and responses to criminal behavior from the

capitalist ethos of the United States. Palambo's chapter on Cuba throws some light on this issue. The chapter includes a radical perspective of the workings of US capitalism – research studies of which are not easy to accomplish due, Palambo notes, to the “over-arching, expansive control exercised in a capitalist system – that by its nature... tends to protect and serve the interests of those in power more than those of the people.” It seems “convenient” to research street crime victimization in which the offender and victim often share a commonality in race (notably minorities) and/or class (notably lower class), and in so doing researchers may be contributing to the demonization of these sections of society (particularly the offender) while simultaneously boosting the “invisibility” of crimes committed by the powerful against the poor and minorities. Street crimes are a problem. And so are “crimes of the powerful.”

Indeed, crime is a problem – all crimes. But only selected crimes appear to pose a major cause for concern in much of the scholarly literature on race, crime and criminal justice.

Interactions with the criminal justice system: practice and policy

Notwithstanding the long-standing scholarly attention to the issues of race, crime, and criminal justice and the particular focus on the disproportionate population of certain racial minorities in the criminal justice system, relatively few scholars have questioned how the structural content of policies on crime and criminal justice influences racial disparity in the system (Filler, 2004; Tonry, 2009, 2011; Johnson, 2010a, 2010b; Browne-Marshall, 2007). Over the years, much of the research interest has been concerned with debating the direct or indirect implications of criminal justice practices for racial minorities, notably blacks. Even where specific criminal justice policies are acknowledged, it is often the case that these policies do not form a significant part of the critical discussion of the possible influence of race on criminal justice practices. It is as if policies and practices are independent of each other.

Yet, history tells us so much by way of the many documented examples of the blatant use of laws and policies to support discriminatory practices. Indeed, oppression and suppression were legitimized in the US Constitution for the benefit of economic, political and social controls of non-whites (see Browne-Marshall, 2007; Feagin, 2010a, 2010b). Laws gave legitimacy to the colonization of and genocidal attacks on native peoples; to the perpetuation of the slave trade and slavery; to the high and disproportionate incarceration rate of blacks during slavery; to felony disenfranchisement; to the convict-lease, and to Jim Crow segregation policies – to name a few (McIntyre, 1992; Feagin, 2010). The utilization of the law to

control minorities was extended to immigrant groups. For example, laws were specifically designed to exclude certain immigrant populations or to establish quotas for immigration; racial/ethnic profiling of minority immigrants was a legal ordinance from the immigration era of the 1800s (del Carmen, 2008). The Chinese Exclusion Act of 1882 limited the number of Chinese immigrants admitted annually. A century later, the US Supreme Court, in *United States v Brignoni-Ponce*, affirmed racial profiling by “sanctioning the use of ‘Mexican appearances’ by immigration as a factor for making stops” (Johnson, 2010a: 4). In sum, the US legislative structure, including criminal justice policies, has a racist foundation, and the basic ideology behind laws and policies in historical United States were entirely white-oriented (see Feagin, 2010a, 2010b). In a country that overtly legalized oppression through the constitution and empowered authorities to enforce systemic and institutionalized racism, it would be naïve to believe that contemporary legislation and its making are not tainted by what Feagin (2010a) describes as “the white racial frame” composed of, among other things, racial knowledge, images and interpretations.

Many would argue that racism is clearly on the decline, since overt racist policies such as the convict-lease programs are no longer in existence. Others, notably critical thinkers including critical race theorists, would argue that racist laws may be gone but their legacies are present in contemporary legislation and policies, perhaps subtly. In his definitions of “petite apartheid policies,” Georges-Abeyie (1989) brings to the fore the subtleties in criminal justice policies in the United States. He argues that the ideologies behind racially disparate laws never really change, but are rather dynamic, as they merely ensure that the laws assume new forms in petite dimensions with changes in political and socio-economic realities. Others such as Tonyry (2011) have observed the subtleties of crime policies, which he notes are race-selective.

A commonly used example for examining the specific implications of criminal justice policy on race is the 100-to-1 drug control policy on crack cocaine versus powder cocaine. Policies such as this influence disproportionate minority arrest and prosecution in the criminal justice system. On the back of the drug wars have emerged other legislative policies with wider consequences for the lower class, particularly certain minority racial groups. Such policies have included the “crack baby” legislation to prosecute crack-using expectant or young mothers, denial of federal welfare benefits under the 1996 Welfare Reform Act to persons convicted of a felony drug offense, denial of student aid under the 1998 Higher Education Act for drug offense convictions, and public housing evictions under the 1998 Anti-Drug Abuse Act for involvement in drug-related crimes (Mosher and Akins, 2007).

Why and how such policies are created, and their practical consequences, should be the crux of concern and research into racial disparities in various areas of the criminal justice system. Thus, rather than limiting our interest in how the disproportionate representation of certain racial groups in prison is an outcome of, for example, an arrest or a sentencing practice, we should be scrutinizing the values of justice and fairness in the policy that endorses such practice. There are claims that racial differences in criminal justice outcomes could be attributed more to law enforcement priorities and sentencing legislations than to bias in criminal justice decision making (see Sampson and Lauritsen, 1997). The crack cocaine/cocaine powder policy is a case in point. Other policies such as the “three strikes and you’re out” law and the death penalty have come under critical attack. For example, Taifa (1994) describes the “three strikes law,” which imposes a life sentence after a third violent offense, as “constitutionally suspect,” and argues that the law has the potential for unfair impact on African Americans because its major premise regarding repeat perpetrators of violent crime has disproportionate black offender representation (also see Harvey 2011; Tonry, 2011). In regard to such laws, Tonry (2011) adds that despite statistical evidence being available for policy makers to identify the disparity, causing qualities and imminent catastrophic effects on blacks, these laws were still enacted; as such disparities were seen as “chips falling where they may” (p. 81). Like the “three strikes and you’re out,” the death penalty weighs heavily on blacks, and in spite of evidence of racialized ideologies in capital-case jury decision making and the well acknowledged dangers of wrongful convictions (see for example, Fluery-Steiner and Argothy, 2004; Huff, 2004; Christianson, 2004), the death penalty continues to garner significant public support, particularly among whites.

Some scholars who have shown interest in such policies have addressed the “why” in the creation of racially discriminatory policies. For instance, in Tonry’s (2011) perspective, policies which bring about disproportionate black processing in the criminal justice system are not necessarily due to unconcealed racism or deliberate planning; instead, policies are shaped by the psychology of historical relationships between whites and blacks, relationships which created stereotypes of black criminality and a general, subconscious resentment of blacks by whites (also see Feagin 2010a, 2010b). Given the likelihood that whites view the world solely with “White Eyes” (i.e., a kind of metaphor for group ideology), an objective assessment of another’s position and circumstances is hindered. Invariably, the concept of black criminality, and an insensitivity to the peculiar problems of blacks in criminal justice policy decisions, are partly defined by such subjective assessments. This common stereotype may likely be a reason why most whites would rather vote for tougher crime policies (Tonry, 2011). Thus, for

Tonry (2009, 2011), an understanding of the general ideology behind white American apathy/insensitivity to issues that affect blacks could provide grounds for alluding to why policies that clearly mandate and encourage disparate contact with the criminal justice system are created by legislatures or remain unaddressed by government even when their effects become as evident as disproportionate minority confinement. This may well explain why, for instance, in spite of efforts by the US Sentencing Commission, the Director of the Office of National Drug Control Policy, and endorsements by Attorney General Janet Reno to have the 100-to-1 cocaine laws repealed because of their disparate treatment of blacks, President Bill Clinton at the time rather succumbed to the political risk of arousing the anger of the Republican Congress (Tonry, 2011).

We know that laws do not develop in a vacuum. Rather, they are shaped by a range of individual or collective factors, such as political, economic, social and ideological. This applies to racially discriminatory laws, which are by no means only aimed at African Americans, although many historical and contemporary laws are linked to black suffrage. For the white population, their protection has been the dominant interest of America's crime policies. Any disparate treatment of whites in the justice system can only be class-related, as evident in debates over white-collar crime versus street level crime policies (Lynch and Michalowski, 2005). Although there are certain laws that seem to be white-specific, their applications are not. This is exemplified in policy responses to white-collar crime which, as already noted in the discussion of "crimes of the powerful," is hardly prosecuted. Another example is Megan's Law, a ruling which mandates public notification of criminal records in the wake of parental anxiety over white male sexual abuse of young children in the state of Washington (Filler, 2004). Despite the origins of the public notification clause in the Megan's Law and its attempt to restrain child sexual abuse, other types of crime are now subject to public notification. A worrying outcome of extending public notification of criminal records to other crime types is the disproportionate representation of blacks on notification websites. Filler (2004) reports that the ratio of blacks to whites on these websites is 16:1 – an outcome tied to failure on the part of lawmakers to consider and review the practical implications of the law for race.

A detailed discussion and analysis of the rationale behind the creation of laws that turn out to be racially discriminatory is beyond the scope of this chapter. But what appears clear is that there is a range of criminal justice policies that deserve significant scholarly attention in terms of their role and usefulness in effecting a just and fair outcome, including racial parity, at the point of practice. These, in our perspective, include preemptory challenges utilized by the prosecution and defense to strike jurors without

reason; plea bargaining which is known for its openness to abuse; and the use of certain criteria defined as legally relevant (e.g., offense seriousness) or legally irrelevant (e.g., employment status) in bail and sentencing decisions. Such policies are man-made; they are not set in stone and as such can be reformed or repealed. Precedents are already set for striking unjust laws. To continue to bring these concerns to the fore, a strong and persistent scholarly will is paramount, given, as Feagin (2010a: 3–4) observes, some of the obstacles faced by scholars with interest in race issues:

The dominant paradigm of an established science makes it hard for scientists to move in a major new direction in thinking and research. Almost all scientists stay mostly inside the dominant paradigmatic “box” because of fear for their careers, as well as out of concern for accepted scientific constraints. One important barrier to developing new social science paradigms is that new views of society are regularly screened for conformity to preferences of elite decisionmakers in academia and society in general.

Today, most mainstream social science analysis of racial matters is undertaken and accepted because it more or less conforms to the preferences of most elite decisionmakers. For this reason many of the racial matters of U.S. society have rarely or never been intensively researched by social scientists.

These types of obstacles are familiar to critical theorists whose schools of thought have received criticisms ranging from claims that the theory is subjective and untestable to suggestions that the theory promotes socialism and hence is a threat to the capitalist status quo (see Gabiddon, 2007).

Conclusion

Traditional contentions over the topic of racial bias in the US criminal justice system, based on incomprehensive crime statistics, may seem to have reached a cul-de-sac. However, the diversity of opinion raised on this issue has produced such an impressive amount of work that one can say for a fact that race matters. Various works and standpoints, be they realist or critical, have liberally relied upon and drawn strength from crime data compiled by official government agencies, the most notable being the Federal Bureau of Investigations Uniform Crime Report. But, while we are determined to exhaust “all” perspectives of race, crime and criminal justice, a main issue often overlooked is the presentation and articulation of race as a monolith in data and discourse. Victimization statistics share this problem, although the attention given to studying criminality outweighs that assigned to victimization. The dimension

of using ethnic categorization for crime and victimization data collation is a crucial area that this chapter presents as needing earnest scholarship. Some of the reasons for this proposition are examined in the chapter. But, the overall standpoint suggests that identification of ethnic origins as a factor in census and crime/victimization data could very well refocus discourses of race and crime and provide a much more comprehensive and constructive means of responding to crime by criminal justice agencies.

Also, scholarly interests are often driven by the fixation on street crimes shown in both crime and victimization data. A notable consequence of this (seemingly unintended) is the marginalization of crimes that are not recorded or are trivialized in the data. Thus, certain crimes such as corporate crime, elude our concerns with race and crime matters. The same approach applies to questions about the criminal justice system where, for example, “crimes of the powerful” are hardly prosecuted, but where policies made by the influential/powerful to control primarily street crimes are illustrated in practice. Some of the policies impose structural and legal hindrances to equity in the criminal justice system. Are such policies not due for critical reformation?

It seems undesirable for government agencies (including criminal justice and agencies responsible for data collection and processing), like ostriches, to continue to bury their heads in the sands of incomprehensive crime statistics, which in any case are known to be answerable to the goals of crime control. It seems even more undesirable when scholarship continues to take race-based crime and victimization data as given, and continue to study race–criminal justice relations with little or no challenge to policy.

Notes

1. Hispanics are classed as an ethnic group.
2. The census data also include multiracial groups.
3. This date bypassed earlier interracial crimes, exemplified in lynching, which was still in existence following the birth of the UCR in 1930.
4. Also see the NCVS for hate crime victimization data. The inclusion of hate crime in the NCVS is relatively recent.

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Part II

Latin America

3

Race, Ethnicity, Crime and Criminal Justice in Cuba

James E. Palombo

Introduction

This chapter's intent is somewhat different from those typically found in this style of book. In other words, it is not the focus here to provide data related to the race, ethnicity, crime and criminal justice theme in order to underscore particular social circumstances existing in Cuba. Instead, this chapter presents issues in the context of ideological concerns – the political and economic principles tied to crime considerations.

This approach to the subject matter was based primarily on the limited availability of data coming from Cuba, which of course makes realistic assessments of the situations there a bit difficult. This is not to say that crime doesn't exist in Cuba, or that race issues that correlate to crime don't exist, or that darker-skinned people being the least regarded members of Cuban society isn't troublesome, or that the extent to which institutional and individual discrimination play themselves out in crime and in the criminal justice system cannot be measured. Rather, it is to say that despite some legitimate efforts, there is not ample data or access to data collection at this juncture.¹

There is another reason which seems to flow from the first. As one looks closer at the limited data issue, and particularly at the political and economic differences between the United States and Cuba, it is fair to argue that there exists a lack of clear ideological understanding between our two countries. This may be particularly significant in terms of our own ideological concerns, especially in the sense of understanding America's ties to its advanced state of capitalism. In other words, even though this is the system under which we live and work, its definition (or various definitions) is very often left incomplete, leaving us in a rather confused condition. In short, we seem to have scarce data on the nature of capitalism itself, while simultaneously producing a great deal of data without a comprehensive ideological base from which legitimate interpretations/analyses can follow. In turn, this

imbalance leaves us in a situation where legitimate policy interpretations and analyses can follow.²

But this ideological confusion also has its bearing on the Cuban side. In essence, it is fair to ask why there is so little data coming from Cuba? Is this because the Cuban government is hiding something, trying to subvert or defuse any possible demeaning interpretations of its processes? (Keep in mind that this could be analogous to the United States excluding, or being fearful of, information connected to the inherent nature of capitalism.) Or is it because the Cuban government is leery of the data being skewed in the interpretative stage, providing a picture that is more in tune with outside/American interests than with the true intent of the revolutionary movement and its struggles toward actualization? Moreover, what is actually at the heart of that movement, and why is it so problematic to the United States, particularly in this day and age? In trying to respond to these questions it is not difficult to realize that a clear understanding of these concerns demands an equally clear understanding of the ideological structures under which these countries operate.

So, with crime and criminal justice data limited from Cuba on the one hand, and the ideological concerns being as they are on the other, what may be more needed (or at least equally so, and particularly in reference to mainstream dialogue) is not necessarily more discussion on data, but non-partisan, non-biased discussion on the ideological frames by which to analyze data, and the issues that might flow accordingly. Therefore, what follows is an attempt to help in this regard. This is certainly not the definitive piece on these concerns, but a commentary if you will, one that can be seen perhaps as a primer for public and/or student consumption, providing sufficient comparative information from which interpretations of social science findings can be realistically developed and hopefully built upon. (It should also be noted that in an attempt to accommodate the general reader, the discussion is presented with fewer use of endnotes or citations than might be otherwise anticipated. Instead, I would simply like to acknowledge several individuals who contributed significantly to the formulation of my thoughts. They are: Richard Quinney, Fred Cohen, Anthony Platt, David Gordon, Randall Shelden and Karl Marx. To them, and to all the other thinkers I've encountered in my professional and personal life – all the “regular Joes” included – I tip my hat for their ability to manage ideas in their own time and measure.)

It could be said at the outset that having a grasp of the political and economic variables that underpin social science research is a must. After all, good social science has its ground in relating phenomenon to as many significant variables as possible. In this sense, ideological concerns must certainly be understood and carried over somewhere and somehow in the mix

of academic considerations. However, even as this goes almost without saying, this is not necessarily the case, especially in the United States. And, as most individuals in the United States appear ideologically challenged, then one can ask what good any data might be in terms of producing quality oriented interpretations, especially in terms of the development of related social policy? (At this juncture, and in support of the lack of ideological understanding, please consider these questions and/or pose them to your fellow citizens: To what extent are Americans adequately equipped to grasp liberal and conservative principles that attach to say the concepts of freedom and equality? To what extent can these same Americans identify our country's ties to the principles of democracy and the practices of capitalism? And without being adequately informed, can our public, formally educated and otherwise, fully understand claims of inequality, racism and injustice in the various systems, like criminal justice, that comprise the United States?)

It is fair to say that it would be difficult for Americans to be ideologically clear on circumstances in Cuba if they are not adequately versed on the concerns in their own country. With this in mind, and given that Cuba has its root in Marx's critical analysis of capitalism, an analysis correspondingly significant to the United States, what follows is a look into the political and economic mix in America, followed by a look at the related mix in Cuba. In essence, this discussion will provide a better understanding of capitalism in the United States, while simultaneously giving rise to a better understanding of socialist-communist Cuba. It should be noted that the order of the discussion, with United States review first followed by the Cuban considerations, may seem a bit out of order. After all, the book's premise would seem to demand a primary focus on Cuba. However, given that the natures of socialism and communism generally extend from a critical analysis of capitalism, and in an attempt to keep comparisons as clear as possible, the choice was made to present the discussion as it is. (On the point of "understanding," also consider the notion that the United States and Cuba are currently grappling with many interrelated and mutually shared concerns. These concerns are not only tied to their respective revolutionary intents – which in spirit are not so far apart, but also to their ensuing modernizations, which in both cases involve principles connected to democracy, capitalism, socialism and communism. This mutuality, perhaps best referenced as two sides of the same capitalist coin, can be imagined as a large circular intersection from which several directions can be taken. At the center of this intersection are, among other things, the ideals of the respective revolutions and the concerns of capitalism, democracy, socialism and communism. Both countries are stopped, perhaps stalled, at this intersection and both could now legitimately, openly and with shared interest address these concerns in terms of proceeding in informed directions, directions that should speak to better futures for each, as well better relations with each other.)

On US considerations

Across today's American prison systems for adult males, the black population averages over 40 percent. This is a seemingly large percentage especially as black adult males represent approximately 13 percent of the entire population.³ With this imbalance in hand, one can ask our general population (post-secondary students included) why might this circumstance exist? For most, the response would be in accordance with several views. One view follows the general liberal line that minorities have been traditionally denied certain opportunities and that therefore there is some systematic inequality at work. Others, the more conservative vein, would say that minorities may just be less inclined to work through life's difficulties and therefore they themselves are primarily to blame for this unbalanced situation. Still others might say that it may well be a combination of both.

Of course, from an objective standpoint, these are all reasonable enough assessments that can lead to a variety of discussions. However, in pushing the concerns further, the stated argument of this chapter begins to take shape. For once asked how the views play out in terms of the framework of liberal and conservative politics, another scenario unfolds, a scenario often filled with confusion and frustration, especially when additionally asked in what historical context all of this developed. Of course, this does not bode well for respondents, or for the system(s) responsible for their civic education. (For more on this situation, one might ask students or the voting public about the significance of the Industrial Revolution on American democracy and capitalism, or the residual effect of World War II and post war circumstances on that democracy.)

There is a way to attempt to clarify issues on this accord, one that is consistent with explaining important elements tied to race, crime and the criminal justice system in the United States, while also lending itself to an understanding of what has been happening in Cuba as well. This way is connected to taking a closer look at the political and economic views that encompass elements tied to the American experiment. In total, this can help in sorting through the ideological concerns related to crime and criminal justice in both America and Cuba.

Conservative and liberal politics and crime policy

Although there are variations on the themes, particularly in attempts to mix the two into their far-right, far-left, and middle of the road versions, the conservative and liberal paradigms represent the basic political and economic logics referenced in America.⁴

Both conservative and liberal frames are predicated on the premise that we function politically with a consensus oriented, democratic system. In

a general sense, this is a government by the people, especially rule of the majority with the absence of hereditary or arbitrary class distinctions or privileges. Implied here is that the social order is at its core rational, and the government reflects the interests, concerns and beliefs of the rational population at large. If the people are dissatisfied, they bring these dissatisfactions to the government, the government examines the problems, reconciles them with the other interests of the people, and then attempts to make policy/legislation accordingly. Importantly, should the people become disenchanting with those who are making decisions, the vote allows them to pick and choose individuals who can respond in better, more democratically responsible ways. In this sense, people should be able to vote, and anyone who meets the reason and rationality of the people can run for and attain political office. Although there are distinctions and differences between the state and federal governments, both operate within a system of checks and balances, with the legislative, executive and judicial branches counterbalancing the interests of each other. In this way, no one branch can compromise the interests of the people.

The economic system for both parties stems from free-market principles, in which opportunity to both enter and leave the market is based to a large extent on choice. The measure of goods and services is generally formulated around the system of supply and demand – what is produced is a response to what is desired by consumers. In short, the system is capitalism, traditionally meaning that it is an economic system characterized by private or corporate ownership of goods, by investments that are determined by private decision rather than by state control and by prices, production and distribution of good that are determined by competition. The fact that competition exists in this system is generally considered healthy, as it promotes progress and advanced production consistent with what the public desires.

It is important to note that when viewed together by both conservatives and liberal, the political and economic processes are generally distinct from one another – there should not be coercive or manipulative measures at play. Moreover, the commercial rules and regulations, tax laws, corporate restraints and incentives, international trade agreements and so on that require legislative action, should happen with the interests/prosperity of the general public in mind.

With this thumbnail framework in mind, the parties begin to diverge. This happens primarily in relationship to differing assumptions that each party holds in terms of both the economic and political systems and their relationship to social/human considerations. The conservatives generally hold to the principles of freedom and free-will, that is, that everyone has the ability, and is free to choose, what they want or don't want. In this sense, everyone is equal, or has the freedom to become equal. This notion

plays out in a number of ways in the market and on the political and social landscapes. For example, individuals can choose what kind of life they want to strive for, which in turn lends itself to what work and/or education they are willing to take in terms of their pursuits. If people choose not to work, to be poor for example, or they turn to crime to support themselves, then these are certainly options. However as the choice is their rational option (for most people, save a small few so skewed in their biological and/or psychological make-up that they can't make rational choices) so should the consequences also be considered of their own choosing. In this sense, any stigma attached to being poor, like limited access to resources and lack of social integrity, is something the chooser must endure until he/she is willing to change/work out their choices and related circumstance.

As implied, this means that for the vast majority of those who become criminals, it is simply their choice to do so. Therefore any consequences that follow are simply a result of that choice. In this sense, the criminal justice system's responsibility is to respond in ways that can reconcile the need for punishments that society considers fair and just deterrents. In effect, this logic presents a scale of punishment that measures the potential rewards against its risks, which essentially provides the criminal (and potential criminals) with the possibility of choosing their own destinies. Importantly, the focus on individual choice rather than on societal influences in terms of motivations for behavior – criminal or otherwise – dulls the notion of any systematic inequality as a rationale for explaining behavior. (This merits note: it is by the logic of the individual-focused nature of the conservative view, that support for biological and bio-psychological theory and research in terms of motivations for behavior are preferred. This in turn has its influence on both academic and public policy strategies.)

It is important to emphasize the "choice" notion a bit further, especially as it applies to one's ability to maintain oneself in society. First, work and/or jobs are of primary focus – in short the way one either finds one's way into a dysfunctional situation or out of it relates to choosing whether or not to work. The importance of the work-job choice is, of course, consistent with the conservative's interpretation of free-market principles – that the market can create enough opportunity to keep individuals at work. Concomitantly, in order to maximize work opportunities, conservative place a strong emphasis on business/corporate incentives. In short, this is where the support and/or energy come from to develop and maintain a balanced social structure. Therefore, business/corporate incentives are important, as they keep work-related opportunities in continual motion. On the other hand, and again with their focus on individual choice, social or welfare programs designed at improving social conditions are not something conservatives tend to support. For them, these type programs usually result in creating less

than suitable work habits as well as a culture of dependency. (Said another way, conservatives tend to support corporate assistance to create jobs, rather than social assistance for those who choose not to work.) In addition conservatives do not favor "big government," seeing the sovereignty of states and/or local government, that is, those most familiar with their issues, as most important. Taken in tandem with little interest in social programs, this translates into less taxation to run both state and federal governments, with again more focus on creating corporate incentives for job creation.

Conservatives, with their view of how easily the free market and democratic political processes should interface, as well as their notions of free will, choice and individual responsibility, present for many a clear way to consider America. This is more so as the view blends well with the traditional religious underpinnings in the United States connected to "hard work," as well as the general spirit that anyone, from any walk of life, can be successful in the "land of the free."

Liberals on the other hand, suggest that on close scrutiny, there is substantial slippage in the conservative logic. As noted, they tend to agree that the political system is a democracy and that the economic system reflects free market principles. However, liberals have traditionally split from conservatives in terms of how well the political and economic processes actually mix. For them, unlike the almost ideal match that conservatives suggest, liberals posit that political and economic motivations may differ, especially in the context of unfettered competition in the marketplace. In short, the market tends to reward those who have the most opportunity to access its processes. In this context, without some legislative effort to balance the situation, individuals may be left in disadvantaged or dysfunctional situations, making it more difficult for them to become successful. Therefore, and although individual responsibility remains important, the structural/systematic issues that have developed along these "opportunity" lines need to be addressed, as part of the responsibility inherent to a democratic society. In other words, it is the government's responsibility, on behalf of the people, to take these issues related to inequality to task. This of course often means that social programs, at the expense of others more advantaged (usually in the form of higher taxes), and growing governmental involvement (usually meaning "bigger" government) will come to be. In sum then, equality within society, as well as the essence of democracy itself, depends on this type relationship. And the related sacrifices, including taxation, should be considered as a responsibility that is part of that cost.

In the context of the liberal view, it is not hard to see that the free market system would require some bending. Although this might place social interests on par with or even above economic interests, and might actually pit one against the other, this is perceived by liberals as the most effective

way to achieve a balanced democratic society. Therefore, those who are disadvantaged, like the poor and/or many of those who become criminals, need the attention of society. In this context, it becomes the responsibility of any social construct, including the criminal justice system, to help work with and rehabilitate people, particularly in the sense of those who are disadvantaged, as well as help rebuild the social circumstances from which they came. (It should be clear that in contrast to conservatives, the liberal logic tends to support sociological and/or socio-psychological theory and research, which again has an impact on academic and public policy strategies.)

It is not difficult to recognize the general differences between liberal and conservative logic. From the notions of what a free market may mean, to what a democracy may imply, the two clearly present divergent points of view. In this context, and particularly related to choice, free will and opportunity, it is probably as easy to recognize the significant role of equality in the liberal view as compared to freedom for conservatives. In other words, once equality becomes the focus, it can be seen as confronting or tugging-at the essence of freedom – whether in the form of taxes, and/or the giving up of opportunity, and/or one’s seat on the bus. (The civil rights movement and the ensuing “war on poverty” come strongly to mind in support of this point, especially in terms of the resulting policies connected to affirmative action and quota systems. Both of these were implemented to remedy unequal access to opportunity, and both were prime examples of the contest between liberal and conservative philosophies.)

Criminal justice and the deprivation of liberty

Given the distinctions noted above, it becomes easier to see that given their logics, conservatives and liberals focus on different agendas within the criminal justice system. In this sense, the four C’s of the system – criminals, cops, courts and corrections – would all have particular strategies employed as well as degrees of rights and responsibilities in accordance with those strategies. For conservatives, the system is generally focused on law and order, societal rights, and swift, certain and severe punishment for offenders. This logic of course, plays itself out in all aspects of the system, including the imprisoning/punishing of more criminals in hopes of deterring and/or at least incapacitating those who choose this style of life. The distribution of resources of course is also important, with more money being allocated toward stricter and more comprehensive law enforcement as well as prison expansion.

Although liberals have shifted their traditional views on crime to the conservative direction, particularly in response to the public’s interest in “getting tough,” their logic has always implied a different focus, one more

concerned for the rights of suspects and the rehabilitation of those who find their way into crime. This logic, flowing from the liberal's notion of structural imbalances, results in a system less focused on punitive measures and more on measures they believe will create a more caring and balanced system, one they argue will actually improve on the essence of justice while mitigating the circumstances that tend to breed crime. (For some, this focus has pushed the introduction of three more C's to criminal justice considerations, cash, color and class, all which have a relationship to the nature of an unbalanced system.) Included in their logic are "rights" oriented police forces and court processes, fewer offenders being incarcerated with more of them being sentenced to shorter times, and more use of treatment and community correction programs. Importantly, this is where their resources tend to get allocated with the argument that this approach is not only more cost effective (particularly as opposed to prison costs), but that this approach also offers a better chance of reducing criminality.

There is an abundance of information and data on the criminal justice strategies that have developed in accordance with the punishment and rehabilitative oriented philosophies. Certainly reviewing any number of criminal justice texts which present both theoretical and practical material on the mixes and matches of these philosophies, as well as their respective successes and failures would support this fact.

However, in keeping with the notion that the political and economic paradigms need closer scrutiny, an oft-neglected concept can be of service with furthering that particular dialogue – the concept being "the deprivation of liberty." This concept is of particular importance relative to the objectives of the criminal justice process, especially in that it sheds significant light on both substantive and procedural issues extant throughout the system. (The concept, having roots in the civil processes, is of significance there as well.)⁵

The "deprivation of liberty" is employed at various stages within the criminal justice system. This becomes clear in considering the activities involved with "cops, courts and corrections" in terms of: stopping and detaining suspected criminals; bail and jail considerations; sentencing from probation to levels of imprisonment; and use of the death penalty. At every level then, one is, to some extent, deprived of their liberty, and it is that theme by which we ultimately punish people.

Although an interesting point, this in and of itself may not be that informative. However, it becomes more so when we begin to consider how the processes surrounding the deprivation are actually employed. In other words, it is exactly this concept by which we frame what we can and cannot do in the course of responding to criminal behavior. Now the term takes on more significance.

However, and particularly relative to this discussion, the deprivation of liberty concept allows for another very significant consideration. In short, this consideration can be raised by inquiring to what extent liberty has the same quality throughout society? In other words, could liberty mean less to some and more to others? And if the answer here is that liberty is not a static element, but one that it is dynamic and relative in character, then the deprivation of liberty will most likely have correspondingly varying results. In this sense, it is not difficult to arrive at the notion that for those most poor, who also happen to be highly represented in the criminal class, that is, the most punished (whether system or choice driven is not at issue) the quality of liberty may not be the same for them as for others in the society. This of course may well help explain why depriving these individuals of their liberty, particularly by imprisoning them, seems to have limited overall value.

It should be clear that once the deprivation of liberty concept is on the table, a variety of considerations are raised. In this sense, it is not difficult to note that the "quality" of liberty aspect could point both conservatives and liberals in certain directions. For the conservative, it could be argued that if this is the perception of poor people, that if they feel they are being subject to a lesser degree of liberty than the rest, and if they are not willing to work their way out of that situation but rather become criminal and burdensome to the remainder of society, then perhaps some stronger forms of punishment might be employed. This might range from more severe prison conditions to even corporal punishments in the form of whippings, beatings, public humiliation, castration, and more use of the death penalty. And although these may raise 8th amendment, "cruel and unusual" considerations, the possibilities may address the situation simply by making "unpunished liberty" a more valuable option for those considering criminality.

Of course, and has been previously suggested, you could expect liberals to respond consistent with their notion of trying to balance the playing field, in effect attempting to achieve more equal conditions so that the quality of liberty might be the same for all. In other words, recognizing the legitimacy of the relative quality of liberty argument, particularly in considering the significance of "cash, color and class" within the system, liberals would tend to support overall structural improvements, which for them would have the greatest impact on lessening the motivations for criminal behavior.

As implied, the deprivation of liberty concept can certainly act as a vehicle to explore the many facets connected to both conservative and liberal views on crime, criminals and the criminal justice system. However, and most important to the nature of this discussion, it can also serve as a bridge to another view which has a very prominent relationship to both the American and Cuban experiments. For in the examination of concepts

like liberty and equality, and the relationship of both to concerns like the distribution of justice, the strategies and allocation of resources within a criminal justice system, and the actual motivations for criminal behavior, there is a prompt to consider all the variables that have an influence on the matters at hand. In turn, and if only by sheer logic, a close look at the nature of our economic system – most aptly framed as capitalism – should ensue. In other words, and despite the fact that neither the conservatives nor liberals have entertained this to any appreciable degree, examining the deprivation of liberty concept should lead to referencing the economic process that has had an important impact on concerns like equality and liberty, and that also controls much of the daily happenings across America. In this light, a most important feature of this referencing process must include the considerations developed from a “critical analysis of capitalism,” an analysis which, having been around for a century and a half, has had a major influence on many governments across the world, including that of Cuba. In this sense, it is an analysis which helps us to better understand the United States, and one which coincidentally serves to connect our country to Cuban concerns. (It can be argued that leaving out the nature of capitalism in an analysis of America is like leaving out the pitcher and catcher in analyzing baseball. In short, it makes little sense to leave either mechanism unattended. Yet for a good portion of our history, and only to limited degrees in times of significant social crises like those occurring during our labor struggles, the civil rights movement and the “war on poverty”, this “leaving unattended” has been the case.)

The radical approach

In essence, the radical view, sculpted primarily by Karl Marx, puts forth the notion that America in its capitalist form represents a conflict system (not consensus as liberals and conservatives suggest) which is reflected in the power struggle between the haves and have-nots. In this sense, the haves do whatever they can to maintain and increase their control over valuable resources (including labor) while the have-nots attempt to wrestle away what they can of that power to meet their needs. In this light, the government is nothing more than a tool of the haves, which in turn makes the have-nots subjects of the laws, not really taking part in their making. Economic and political power then are controlled by the haves, and social problems that occur are not necessarily their concern, save to protect their interests by placating public interests as is necessary.

From this perspective, often while deviously and dangerously hiding under the guise of democracy, most policy and practice in the United States could be seen as conforming to the mandates of profit. This is a central point, not only when examining the government, but perhaps more importantly, the

methods of production, the value of labor, the nature of consumption and the overall quality of life in the system.⁶

Social problems in this context are inherent in the nature of the profit driven, competitive system. Inequality in this sense is a functional result of this system and cannot really be addressed given this. Freedom exists in so far as one is connected to the system and/or its mode of production – the more money and resources, the more power. This means that with the principles of both equality and freedom, one's actual connection to them is relative to one's position on the economic-political-social class ladder – with those at the highest point being most in control of both profit and power.

Radicals also contend that the social problems developed within the system of capitalism are often capitalized on by those in power. For example, when workers argue over race and/or gender it becomes more difficult for them to form any united front regarding labor concerns. Moreover, by having a divided work force, especially if certain groups can be systematically marginalized, a "surplus" labor force can be maintained, which in effect would mean that they could be used at any time – perhaps when work was plentiful or when strikes occurred – at lower pay and without many benefit considerations. This situation could also help keep wages in line with profit motives, as workers would know that others are available to take their places. (In this sense, capitalism will prompt those in power to seek cheap labor anywhere it can be found.)

It is not difficult to understand this logic's connection to work opportunities as well as to the concerns related to education, housing, income and the general conditions attached to poverty. In the radical view, these are all tied to the practicalities of capitalism, especially in its limitations on equal opportunity, and they have little to do with the ideals connected to democracy. In short, these concerns cannot be satisfactorily addressed without examining them within the context of capitalism. And this is also the case with the issues related to crime.

Although Marx himself spent little time directly considering crime, there has been significant work done, primarily under the banner of "new criminology," which focuses on examining the structure of capitalism, the relationship of the laws enacted by those in power, and the seemingly convoluted policies and strategies that can develop in a system that ignores its own identity.⁷

In this context, radicals argue that most criminals are responding to an irrational system that is both unequal and unjust. (This on its own may sound "liberal," but it must be remembered that this is stemming from a critical analysis of capitalism, something that liberals do not bring to the table.) It is a system that: promotes competition and success but inherently limits the avenues to both; allows for laws to be made by the rich that ultimately

subject the poor to unequal, crime inducing conditions; allows for the development of dual forms of justice, with the rich getting one form and the poor another; and promotes the use of democratic principles to resolve what are essentially economic, capitalist generated problems. Again, given these situations, radicals argue that individuals, particularly those from the poor areas most affected, sense what is happening and often respond by neglecting the laws which don't seem to have them in mind, and/or by acting in ways that speak to "making money," something the profit-oriented system actually encourages. (This point has ties to the "cultural instincts" concept, in that one can question what type of instincts are developed over time in a system that extols profit motives above all else. This might also relate to why rich people can be pushed toward crime, and also lends itself to why juveniles enter crime so readily. In both cases, individuals may be acting out of the sheer desire for money and/or from a state of confusion or alienation regarding the contradictions and inconsistencies in a system that preaches the ideals of democracy yet practices the principles of capitalism.)

In considering the deprivation of liberty, radicals offer support for this form of punishment only for some, and only to the extent of it being implemented in a system where equality has a legitimate claim and freedom is realized accordingly. In essence, because the quality of liberty in a capitalist system is considerably skewed at different points in the system, particularly for those most disadvantaged, who also happen to be the most likely to be punished, depriving people of liberty would seem, at a minimum, to produce no deterrent effect, and, to more significant degrees, prompt anger and/or violent behavior related to the entire state of affairs. For radicals then, without addressing the fundamental imbalance in a capitalist system (again something neither liberals nor conservative do) punishments can hardly be reconciled with the varying forms of criminality being considered.

Of course this theme plays itself out in considering the entire criminal justice system. For radicals, justice does not exist in the US system, rendering it more appropriately termed a criminal "response" system in both form and function. This is because the system relies on the influence of money and power at every step. It is no secret for radicals that from stopping suspects in the street, to posting bail, to acquiring counsel, and to the sentencing process "cash, color and class" are clearly of major influence. To restore justice to its intended place, and incorporate a criminal "justice" system that might have the same components but a more true/legitimate base, radicals would propose a real "war on poverty," one that would serve to dismantle the capitalist system and the inherent inequalities that emanate from it. In essence this would not only serve the interests of justice, but also alleviate a great deal of crime that stems from the strain imposed on people living in a capitalist system. (A criminal justice system in their view would

involve less use of jails and prisons, with different, more humane types of community programs put into effect. Management philosophies would be altered reflecting the concept of “habilitation” and throughout the system the notion of social concern would become paramount. In essence, the tearing down of the prison-industrial complex in conjunction with tearing down the capitalist system would ultimately serve the interests of a truly just society.)

In further examining criminal law in the context of power and profit interest, radicals point to the enactment of certain laws that they argue serve to control the lower class and the marginal work force – laws the rich and powerful can easily circumvent. In this sense, and in review of laws enacted that make primarily individual, moral behavior related to drug use, prostitution and gambling illegal (often analyzed as “victimless crimes”) radicals propose that these laws were enacted to not only control those who might object to systematic concerns (think of the issues and people connected to the civil rights movement) but also to regulate labor potential. In this context, potential lower class workers could be used when labor is needed, or imprisoned when it is not. (This type of logic leads to a variety of considerations tied to the significance of prison, “cheap labor” industries as well as to the development of the prison-industrial complex, where profit and the ensuing work opportunities related to prison building and prison staffing become economically and politically advantageous.)

As with both the liberal and conservative logics, there is certainly more to the radical approach. Suffice it to say that it does present thought-provoking and what appear to be realistic concerns. Nonetheless, for radicals, a twist on this thought-provoking point exists. Those in the United States argue that in terms of advance studies, that is, doing research and gathering data that can support their assumptions regarding capitalism, they are often frustrated by the same system which should be under scrutiny. This of course supports their argument relative to the over-arching, expansive control exercised in a capitalist system – that by its nature it tends to protect and serve the interests of those in power more than those of the people. Yet, this has its impact on producing meaningful social science. For radicals then, most theoretical designs do not go far enough in terms of including what for them is fundamental to understanding the problems in America – a critical analysis of capitalism. (The closing of the entire school of criminology at the University of Berkeley in the mid-1970s is often cited as an example in reference to the power of the system over “anti-establishment” academia. Critics also like to point to the lack of consideration as to the nature of capitalism in both secondary and post-secondary education. Interestingly, these situations/criticisms mirror the same ones often used by our governmental

and educational officials in terms of what transpires in other parts of the world.)

There have been claims that the implications which flow from a critical analysis of capitalism are clearly utopian – that the kind of socialist and communist systems that they look toward could never exist. This may be true, and perhaps the same can be said about democracy. However, there is more to be concerned with here. In this context, it is fair to pose several questions. In juxtaposing the liberal and conservative views and their ties to democracy and free market considerations with the critical analysis of capitalism, one can simply ask which view seems more consistent with what we actually see happening in America? Asked another way, when taking into consideration what happens at individual, family, community and state and federal government levels, and when examining the financial crises and wars and all the other issues and concerns that surround us, are we not indeed a country of capitalist motivations? And if this is so, is there not some important and immediate value to what the radicals are saying, a value that lies beyond any utopian possibilities? And shouldn't this value be evident in terms of our research, data analyses and policy recommendations that will impact our future decisions?

Of course, it is also fair to ask what is it that the radicals are actually saying in terms of platform and policy. What are they suggesting in terms of replacing the capitalist system? Interestingly enough, we can attach to very real responses simply by looking 90 miles from the American shore. In essence, this is what the Cuban revolution represented. It was a revolt against what many Cubans perceived as the tyrannies of a dictatorship supported by capitalist interests. It's to that revolution that we now turn. (Interestingly, it can be argued that the objectives of this revolution were not that far from our own pursuits of liberty and justice. In other words, the "of the people, for the people" spirit of both democracy and communism, seem to speak to a common intent.)

On Cuban considerations

The vast majority of adult, male, Cuban prisoners are the darkest skinned of the Cuban population. This is evidenced by birth card notation where individuals are considered black (B), white (W) or mulatto/mixed (M), with some estimating the "B" number in Cuban prisons as high as 90 percent. As this is extreme in comparison with the "B's" in the general society, about 12 percent, the question becomes why this might be so?⁸ Is it due to some form of individual discrimination or dislike? Is it due to inequality in the system, perhaps some inherent flaw in the communist approach? Could it be due to

some type of biological mix in those particular individuals? Or could it be a combination of some or all of these things?

As was noted at the outset, given the lack of discussion and information on crime in Cuba, these questions are difficult to sort through. If only in terms of the lack of rates, that is, rates of apprehension, rates of conviction, and rates of incarceration, one gets a sense of assessment difficulties. But there is certainly more to consider, especially when making comparisons to the situation in the United States. Clearly, Cuba cannot rely on the economic opportunities that have developed with the growth of America's power and prosperity. On this point alone, Cuba's incidences of crime and responses to it cannot be fairly measured against those extant in America. Of course, this underscores the point that a clear understanding of both systems must exist. And to some extent, this has been addressed in the preceding review of the variables that feed into understanding ideological America. The discussion now turns to Cuba, the other side of the coin if you will, to help provide some insight in similar fashion.

Taken in total, from the role of government, the methods of production, the value of labor, the nature of competition, and the overall quality of life, the capitalist system, with its head and heart both pointed at the maintenance of profit and power, represented to Castro and his followers a truly conflict system – one antithetical to legitimate human progress. Therefore, in the context of the Cuban revolution, the intent was to put into place a structure by which the principles of communism could ultimately be attained. In essence this would allow those previously oppressed and alienated to share equally in the development of the “new” Cuba.⁹

In short, the Cuban revolution reflected a blueprint of the radical approach, extended from the critical analysis of capitalism noted in the context of US considerations. In this sense, while attempting to achieve its own goals related to the development of communism, the revolution was also pushing the United States toward a type of transparency – one that suggested that the country acknowledge its contradictions stemming from its mix of the ideals of democracy and the practices of capitalism. Of course, this push was seen as totally unwarranted, a threat to what America actually represented in the world – sentiments that have remained at point throughout US and Cuba relations.

Be that as it many, what developed under Cuba's Communist Party was centered on raising the standards and opportunities related to education, labor, housing and health for all the people. In this context, state controlled programs, supported by income generated from the state controlled economic endeavors of the country would be channeled into the social efforts, effectively taking emphasis away from profit for individuals and/or corporations and placing it on benefitting the social system. This would mean that

tax collection and allocation of public funds would have to be reviewed out of concern for both the country's overall productivity and the advancement of public welfare. Wholesale changes in behaviors and attitudes were to be implemented as the system transitioned from the economic and political tyranny of the past, which in essence would allow for all facets of the population to attach to the principles of the revolution, principles tied to the essence of Marxist philosophy.

What has played out with this well-intentioned philosophy is certainly subject to inquiry. Obviously, (and as with America's struggle with democracy) there have been problems within the revolutionary movement. Some of these problems have been tied to the lack of any significant challenge to Castro and the single-party rule of the Communists. In this sense, and although often perceived as a heroic individual who, despite enormous odds, continues to push his countrymen toward principles worthy of revolution, Castro is also seen as a dictator, an individual not really representing anything different from the tyranny of previous leaders. There is also a great deal of poverty in Cuba. Some argue that this is a direct result of the conflict with the United States, with the embargoes and covert planning that have thwarted any potential success. Yet others suggest that communism itself is outdated, that by its lack of free market, capitalist connections it only creates crippling and uncreative social process that are doomed to fail. Regardless of the position taken, given the significance of the differences between Cuba and the United States, it should be clear that when discussing social problems like crime, Cuba's ideological structure demands attention.

Politics and crime

In the context of Cuba's communist design, with its emphasis on equality and the distribution of wealth, it is difficult to gauge ordinary crime as well as the responses to it. In other words, given the focus in the country, what might be the motivation for criminal behavior? Accordingly, what disciplines in terms of this motivation might hold sway: Could it be biology, psychology, sociology? And to what extent would the cultural instincts of the Cuban people – the mix of all three over time – be influenced by what the Cuban system/society has and has not been able to attain? (On this "cultural instinct" point it might also be interesting to examine how the instincts in communist Cuba might compare to those in capitalist America.)

Cuba's poverty and the lack of resources that usually underpin criminal enterprise, particularly in the sense of available "street cash," also make it difficult to assess crime. The fact that both the common drug and gun activity seen in the United States are hardly existent in Cuba seems to have a relationship to this circumstance as well.

These concerns of course have a corresponding impact on assessing the effectiveness of the criminal justice system. Nonetheless, the criminal justice system in Cuba (which, much like the United States, can be couched within the four C's) appears to work relatively consistent with the interests of justice in terms of ordinary crimes. What evidence there is suggests that individuals are treated in a relatively fair manner, and that punishment, although not without its abuses, seems to reflect the interests of the public and the government. As has been noted, there are a great number of darker-skinned people within the prison system – a vexing situation indeed, but again one hard to dissect without adequate support.

Another image seems to emerge in terms of political crimes however, as principles that might be attached to a “just system” appear to be less present. In other words, it seems the courts can be less tolerant of these circumstances, with more swift and severe responses as a result. Although data reference is still an issue, the significant dissident reactions to the problems emanating from “political persecution” tend to support this claim, one which certainly has garnered its share of attention, especially from outside sources, in terms of a system claiming to be politically just. It is interesting to note that this apparent “duality” within the system – a relative fairness when it comes to prosecuting ordinary crimes but with a corresponding lack of it in terms of political crimes – can be compared, with some significant twists of course, to the suggested duality within the American system, one track for the rich, another for the poor. (It might be that the deprivation of liberty concept finds its value within this “duality” concern. In other words, in terms of the perceptions of the quality of liberty for both the rich and the poor in Cuba, and given the overall objectives of equality in the country that could speak to those perceptions, what might be the effect of the respective punishments enforced? Of course, the result of this line of inquiry might also make for an interesting comparison should the same line be applied in the United States.)

Conclusion

In all its forms, the Cuban revolution confronted American capitalism and the power tied to its advancement in the world. Importantly, the anti-capitalist revolution, with its massive changes in the political, economic and social orders, seemed to be viewed only as threat to our American way of life. Even today, despite our growing concerns over fiscal management, unemployment, wage stagnation, job exportation, war, health care and the continuing distrust of our government, it is hard to garner the necessary energy to alter this perception. This is not only so because the traditional political parties, with their ties to the existing system and the “business as usual” tendencies cannot be relied upon, but because it is hard for the

public to understand/internalize the actual issues at hand, especially given the information (or lack thereof) in their educations. In this sense, perhaps we are suffering from some form of collective, cultural crisis, a situation from which we may not be able to recover.

Certainly, socialism and communism remain viable themes in many parts of the world. Much of Europe has ties to socialism as do countries in the other “Americas.” And, of course, there is China, a country already at the super-power stage, moving its ideology across the world accordingly. In short then, what is happening in Cuba presents for the United States a great opportunity to sort through the ideological realities of both countries.

This chapter was presented in this light. At the outset it was noted that we need to develop better ideological understanding between the United States and Cuba. In “connecting the dots” of elements that feed into the most significant political and economic views, and then providing reference to crime and criminal justice policies, the chapter should help in making this happen. The development of more reliable and useful research projects, especially those meant to impact public policy was also suggested along the way. Certainly, detailing each political and economic view prior to any research endeavors – whether they be focused on crime, poverty, education, crime, health, justice, or human rights – would be very helpful in fostering at every level of education more civic understanding and dialogue. This framework would also allow, as circumstances warrant, a continual updating on the issues at hand. Other research projects that delve into what/how well the public and student population actually comprehend the issues could also flow from these pursuits. In total, these efforts could result in better, more expansive civic curriculums, much like what we have seen happening in conjunction with technological development.

With that in mind, and following from the general review presented in this chapter, let’s hope that it will be possible for both countries to delve into the hard questions, not just accuse the other of ignoring them, and learn to co-exist and even share with each other. Clearly, unless we take up the responsibility of untangling our ideals and practices, the lines of confusion both internally and externally will continue to grow. And it will simply be a shame to let this happen, especially between two relatively young countries with such shared revolutionary and socially-willed pasts. In essence, it’s about time – and what is there to lose that is not already being lost?

Notes

1. A review of possible material pertaining to issues of crime and race in Cuba demonstrates the lack of reliable information. For examples of what is available see: Gottfried, 2001; Fuente, 2001; and D’Amato, 2007.

2. Although there are volumes of books and articles that discuss capitalism and socialism, there is limited material that explores the actual comprehension of political concepts by students and the general population in the United States. Be that as it may, the point is supported by this author's 30 years of post-secondary teaching experience, with polling of students, faculty and the public done accordingly. (In that context, in cooperation with the chairs of criminal justice departments of four different state universities, there was an informal survey of 300 students completed in 2000 which evidenced results consistent with the point presented. In this sense, and out of interest in having a more civic-minded citizenry, it might be that a more detailed, nationally based survey be undertaken).
3. FBI, Uniformed Crime Reports, selected years. For a more in-depth look at interpreting these statistics, see Randall Shelden, *Controlling the Dangerous Classes: A History of Criminal Justice in America*, 2nd ed. (Boston: Allyn and Bacon, 2008)
4. Edited by David M. Gordon, *Problems in Political Economy: An Urban Perspective*, 2nd ed. (D.C. Heath and Company, 1977). This text presents an excellent comparative review of liberal, conservative and radical views on social problems, including crime. Highly significant in form and function, there is limited work of this comparative nature.
5. Fred Cohen, *The Law of Deprivation of Liberty: A Study in Social Control Cases and Materials*, (West Publishing Co. 1980). This text provides the essential elements of both the procedural and substantive concerns tied to the deprivation of liberty as a form of punishment.
6. David Gordon, *Problems in the Political Economy: An Urban Perspective*, 2nd ed. (D.C Heath and Company, 1977).
7. Ian Taylor, Paul Walton, Jock Young, *The New Criminology: For a Social Theory of Deviance*, (Rutledge Publishing, 1988). For more on these points, see Richard Quinney, *Critique of The Legal Order: Crime Control in a Capitalist Society*, (Transaction Publishers, 2001), also Tony Platt and Paul Tagaki, "Meeting the Challenges of The 1980's", *Crime and Social Justice* 17 (1982).
8. As noted, locating reliable data is difficult. For the purposes of this discussion, see: Paul D'Amato, "Race and Sex in Cuba", *International Socialist Review*, issue 51, Jan-Feb. 2007 (www.isreview.org), Alejandro de la Fuente, "Recreating Racism: Race and Discrimination in Cuba's Special Period" *Socialism and Democracy on Line*, Issue 29, Volume 15, #1, Spring-Summer 2001 (www.sdonline.org) and Eugene Gottfried "Reflections on Race and the Status of Peoples of African Descent in Revolutionary Cuba", Nov. 2000, AfroCubaWeb (acw_AT_afrocubaweb.com).
9. There are volumes of books by Karl Marx which clarify socialism, for instance, *The Economic and Philosophical Manuscripts of 1844* (Prometheus Books, 1988) For more on socialism in Cuba, see Fidel Castro and Ignacio Ramonet, *Fidel Castro: My Life: A Spoken Autobiography*, (Scribner, 2009) and Philip Bonsal, *Cuba, Castro and The United States* (University of Pittsburgh Press, 1971).

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4

Race, Ethnicity, Crime and Criminal Justice in Argentina

Daniel Míguez

Introduction

The way in which social differences were established in Argentine society has made discriminatory mechanisms, be they in the criminal justice system or in any other institutional environment, a complex subject of study. Contrasts of class, ethnicity or nationality do not in themselves produce social boundaries; they are combined in multiple and changing patterns of social discrimination. Moreover, Argentines often do not accept these categories as legitimate sources of segregation, but this does not mean that discrimination is completely absent in Argentine society. In general, the more accommodated sectors, such as the urban middle classes, will seldom admit that they “make distinctions” based on issues of race, class or nationality. But through classificatory systems that are implicit in their subjective forms of perception and action, these sectors display discriminatory attitudes that reproduce social prejudice against the poor and the people who represent the phenotypical stereotypes that are frequently associated with poverty.

However, these tacit ways of discrimination that result from subjective forms of perception do not escape the local “structures of feeling” – the socially constructed sensibility of social actors (Williams, 1977). In fact, in the fundamental social organizations, like the educational or justice systems, the neutralization of discriminatory mechanisms (for example, the tendency of the police to discriminate against people with certain physical stereotypes or living in poor areas of the city) is recurrently discussed and made the object of policies aimed at eliminating them. In spite of these efforts, these institutions still act predominantly over the marginalized sectors of society, reproducing social and moral categories that segregate in terms of class and associated ethnic and phenotypical patterns. Thus, the efforts to put limits to the discriminatory effects of their intervention do not seem to produce the expected fruits. And even if this may happen because it

is not easy to neutralize the bigoted attitudes that are hidden in the cognitive structures of social actors, another factor should be added to this equation. And this is that the organizational cultures, the material infrastructure and the corporate interests that intervene in the interior of these organizations obstruct the mechanisms that would eliminate or restrict discrimination, even when the actors who participate in these cultures or carry the corporate interests are the same ones who promote antidiscriminatory policies.

Therefore, this form of "institutional" and "indirect" discrimination (Kalunta-Crumpton, 2006:14) does not occur only because the subjective structures of institutional agents bias their day to day intervention, producing a cumulative effect that contradicts more explicit policies. It also happens because the historical processes that gave form to these same organizations, and to the social networks in which they intervene, produce organizational dynamics that subordinate the interests of the less well off to those of the agents who have greater control of the institutional power structure. Consequently, the discriminatory effect that these institutions produce does not happen because of overt segregation, but because the hierarchy of interests within those institutions defer those of the segregated classes in favor of the more established classes.

Hence, to understand these tensions we need to explore, in the first place, how issues of class, political identity, nationality, ethnicity and phenotypical contrasts have become intertwined in Argentine history. In the second place, we need to discern the roles that public institutions have played in these processes. In particular, we need to pay attention to the judicial system and understand the aims it had in different situations and the particular effects its interventions produced in these particular contexts. A good example of the way in which the judicial system has intervened in the production of different forms of discrimination in Argentine society may be found by comparing the goals of the juvenile justice system at the end of the nineteenth century with its aims and results in the final decades of the twentieth century. Although, other sections of the judicial system could be studied for the same purpose, the juvenile justice system is particularly transparent in terms of showing how blind mechanisms implicit in the institutional system reproduce social prejudice and discrimination in spite of an explicit desire of its agents to overcome them.

At the end of both the nineteenth and the twentieth centuries, the juvenile justice system championed social integration. But, whereas in the first period judicial action over the less well off was seen as the prime mechanism for promoting a "homogeneous society," in the second period it was contrastingly seen as the main cause of discrimination. However, although for different reasons, in both periods the juvenile justice system was one of the multiple "marry-go-rounds" that reproduced the indirect institutional

forms of discrimination that were part of the cycles of impoverishment and marginalization of those decades.

Social contrasts and class attitudes in Argentine history

To explain the composition of Argentine society and the attitudes that mediate the relationships between groups we need to pay attention to the sequence of immigration flows and the ways in which each social sector became integrated in its arrival contexts through its insertion in space and in the production and political systems. It was in this process that they became “relationally” defined: their interests and attitudes towards each other were established, giving way to concrete forms of interaction.

In this sense, an initial and fundamental issue was the immigration dynamics that developed between the mid-nineteenth century and the Great Depression of 1929.¹ In that period the Argentine population rose from 1,737,000 inhabitants in 1869 to 11,746,000 in 1930. During the whole period, immigrants represented 23–30 percent of the total population, making Argentina the country with the highest rate of foreign-born residents in the world. Moreover, given the concentration of immigrants in the big coastline cities, half of the population in these areas was of foreign origin during the final decades of the nineteenth century. Almost the same rate of immigration could be found among the active workforce at the national level (Germani, 1962: 212).

This significant immigrant presence was not totally spontaneous, nor was it, of course, exempt from consequences. The strong inflow of Europeans to the population was the result of immigration policies established by the national elites, who were trying to set the “cultural bases” for economic and political development. In fact, the policies were really aimed at attracting population of northern European Anglo-Saxon origin from the northern countries of Europe that, in the opinion of the political elites, were the real advocates of the industrial and civil cultures that would launch Argentina towards its modernization. But, even if this policy succeeded in attracting such Europeans, the actual immigrants who arrived did not all have the “desired” social profile. The majority were poor Spanish and Italian peasants with low qualifications, even below the average of the native-born population. And, instead of fulfilling the desired goal of populating the uninhabited parts of the country they settled in the bigger cities and exploited small land tenures in the already colonized areas.

This was, in part, the effect of the contradictory interests of the national elites who were trying to populate the less-inhabited regions, but at the same time did not want to yield their big tenements to newcomers, especially in the rentable areas. Therefore, the incoming flows of immigrants

ultimately constituted the working force in the developing service and commodities industries of the big cities. On the other hand, and due probably to the fact that the ethnic profile of immigrants did not fit the desired model, the elites tried to unify the nation under one cultural standard. In this way, the policy was not aimed at creating a multicultural society in which the state respected diversity; instead, it promoted the substitution of foreign identities by a unified and exclusive national spirit.

This policy of “one nation, one culture” expressed itself in several dispositions that aimed at a unified society: for example, the use of uniforms and universal school programs and the prohibition of bilingual education, but also, in establishing very simple and basic requirements to acquire residence papers and national citizenship. Therefore, even if during this period Argentina was a multinational society that did not favor multiculturalism, it also did not experience open confrontation between immigrants of different nationalities, nor did it have explicit discriminatory laws against ethnic groups. However, it is clear that, within this context, what have been called “implicit policies of invisibility” did exist. That is, the social pressure to include everyone in one common cultural mould induced the population to hide its ethnic or national roots as a way of blending in (Frigerio, 2002: 5).

On the other hand, the ruling elites resented the fact that most of the immigrants who were ultimately seduced by their policies and were coming to “their” land did not have the ethnic background they had hoped for. The elites perceived that these masses of poor Italian and Spanish immigrants could hardly include individuals with enough cultural capabilities to appropriately exert the political responsibilities of a modern citizen in a modern nation.

However, tensions surrounding political rights remained latent as long as the majority of immigrants refrained from becoming Argentine citizens (most applied only for a residence permit) and thus did not claim the right to vote. In this way, for most of the period, the elites retained the monopoly of political power without being challenged by immigrants; this state of social-political equilibrium began to yield towards the second decade of the twentieth century. At that stage the second generation of immigrants, already Argentineans with electoral rights and integrated in the economy as a growing urban middle class, irrupted in the political arena through the Unión Cívica Radical². This was initially expressed by this political faction winning the presidency in 1916, and in the subsequent military coup d'état in 1930, which evidenced the elite's opposition to the eruption of new social sectors in Argentine political life. The 1930s coup initiated an alternating sequence of military dictatorships and civil governments that continued until 1983. This progression essentially subsumed potential conflicts of nationality and class into a conflict of political identities and regimes.

A new stage in these dynamics occurred between the 1930s and 1950s. The flow of European immigrants that had receded after the financial crises of 1929 was substituted by a new demographic mutation. The growing urban environments and the import substitution industry that developed after the crisis of 1929 and during World War II attracted the poor peasants of the northern areas of Argentina and, somewhat later, also from bordering countries like Bolivia, Paraguay and Chile. This process ended between the mid-1950s and the 1960s, when 65 percent of the Argentine population was living in urban contexts. By then, in Buenos Aires, the biggest Argentine city and the capital, 36 percent of the population was of migratory origin (Germani, 1962: 230). This process also produced the emergence of slums and shantytowns at the outskirts of metropolitan areas. As was the case with the European immigrants, the local migrants and people from the bordering nations also had ethnic markers. The majority of them came from regions where the presence of aboriginal people, especially Quechua and Guaranies, was significant.

Therefore, they were clearly “different” from the dominant ethnic patterns of the central regions of the country, where the inflow of European immigration established a mainly Caucasian type. Hence, in addition to their residential and social conditions, this wave of immigrants was characterized by its phenotype, which showed the presence of aboriginal people among them. The established urban sectors reacted to this new racial pattern. Discriminatory terms were frequently used to characterize the newcomers: *aluvión zoológico* (which identified migrants as a zoological mass) and *cabecita negra* (alluding to the dark color of their skin, hair and eyes) showed the racialization of social categories that occurred in that period (Ratier, 1971; Taylor, 1981). This prejudice was also expressed in the actions of the police and the justice system towards recent migrants, especially through the laws of vagrancy that forced them to accept very detrimental working conditions (Ratier, 1985: 75).

However, the racial categories that were expressed in this discriminatory language did not frame the leading forms of segmentation in Argentine society. The rapid process of subordinated integration (as worker or laborer) experienced by those who recently arrived in the city induced different patterns of mutual social recognition. As had happened in the late nineteenth century, the political expression of the immigrant classes through the Partido Radical had broken down the national–ethnic pattern into one of political confrontation. The rapid assimilation of the recently migrated from the condition of “marginalized urban poor” to that of “Peronist industrial worker”³ (politically and economically integrated) dissolved differentiations by migratory and ethnic markers into those of class and political identity. In addition, given the immigrant origin of the urban

middle classes, the myth of a unified nation and the lack of strong established ethnic differentiations, social fault lines were not traced to racial frontiers. Moreover, if Peronism did sometimes generate resistance and discrimination among the urban middle classes, these were also amenable to the egalitarian undertones of its ideology. This made explicit forms of discrimination, if not completely absent, considered shameful conduct that “cultured citizens” tried to dissimulate (Margulis, 1974: 84).

The consequences of these processes are that, although certain “ethnic substrate” is present in the way in which social sectors were constituted in Argentine society, it is evident that towards the 1940s ethnic cleavages had, in themselves, only a minor political relevance at the national level. The dominant atmosphere during the development of the import substitution industry was the opposition between Peronism and anti-Peronism (Grimson, 2006: 73). In sum, discrimination in Argentina did not operate strictly on racial patterns, but instead subordinated them to those of class and political identity. In this case, these identities were associated with certain phenotypes that had higher prevalence in the working classes, although they were not completely absent in others.

Given these characteristics, even if during the nineteenth century Argentina did have residents of African origin (although not in a very significant proportion), several causes dissolved that legacy as a locus of identity.⁴ Thus, people with African ancestors do not necessarily recognize any racial differentiation with the rest of the population (Frigerio, 2002:4). Therefore, if “black” may be a discriminating epithet in Argentine society, it does not allude to an Afro-American, but to the phenotypical characteristics that predominate in the population of the northern states of Argentina. But for this same reason, this denomination does not assume a stigmatizing character unless it is associated with conditions of class or political identity. Thus, one can be “black” if at the same time one is a Peronist or a slum dweller; but the dark color of the skin does not in itself have a stigmatizing character if it is not associated with being a Peronist, poor or having some social/moral “dishonor.”

As stated, then, the composition of Argentine society defined a pattern that subordinates or dissolves the racial factor into one of class and spatial location, and implies a phenotypical contrast that has social relevance only when associated with the first two.

This pattern of social differentiation and segregation that constituted itself as a consequence of the migratory process and the rise of Peronism subsisted until the relatively integrated social structure that accompanied the export substitution industry began to show its limitations – exemplified in the 1970s in declining salaries, growing unemployment, poverty and spatial marginalization. Since then, the repressive methods and economic

policies applied during the last military dictatorship (1976–83) and afterwards, introduced changes in the levels and mechanisms of segregation in Argentine society.

On the one hand, the dictatorial government applied unprecedented repressive methods. This was particularly evident in the city of Buenos Aires, where these actions included building walls surrounding slums to hide them from “decent” citizens. In other cases slum inhabitants were compulsively eradicated, expelled to the outskirts of the city and into the state of Buenos Aires⁵ (Guber, 1984:116). But the greater and more lasting effect came from the pauperization of the working classes that resulted from the economic policies applied by the military regime: at the same time the military opened the internal market to foreign imports and reduced workers’ rights, lethally punishing any reaction by the unions. This aggravated the structural tendencies towards growing unemployment and increasing poverty already present before the dictatorship. In fact, the effects of these policies extended during the 1980s and had a bigger impact in the 1990s when similar policies were applied. Growing unemployment and the deterioration of the purchase power of workers’ salaries during the period caused increasing difficulties in sustaining the household. According to Guadagni et al. (2002: 88), unemployment reached peaks of 18 percent of the active working force during crises in 1989 and 2001, and salaries lost 50 percent of their value between 1980 and 2000. In this context, the competition for employment and sufficient income increased the conflicts between local workers and immigrants coming from the neighboring countries especially Paraguay, Peru and Bolivia (Grimson, 2006: 86–87). The situation prompted union and political leaders to try to capitalize on the situation by engaging in a nationalist rhetoric that deepened racial and national cleavages.

As we will see, these tensions expressed themselves in the interventions of the judicial system and the police, deepening their profiling techniques and their bias towards citizens from bordering nations. However, these racist impulses seemed short-lived; at least their more explicit and aggressive manifestations had a very limited public presence as they were quick to attract opposing responses and initiatives. The lack of support for, and even direct rejection of, nationalist discourse and racist outbursts by significant portions of the Argentine population showed the limitations of such racism.

It is, then, over this complex and changing configuration that the action of the Argentine justice system should be measured if one aims at understanding its discriminatory effects. These emerge, most of the time, as a disproportionate action by the judicial agents over the young and poor inhabitants of the urban ghettos. But these actions, at the same time, present variations that respond to the changing conditions under which the judicial system has to act. These complex tendencies and countertendencies may

be discovered when observing, even briefly, the founding moments of the Argentine penal system.

The logics of Argentine judicial system

As stated, to study the function of the judicial system over the structure of Argentine society is an arduous task. In addition to the complex patterns of segregation that characterize Argentine society, there are limited data showing how different social sectors are treated by judicial agents. In contrast to what happens in other parts of the world, in Argentina there is no systematic registration of the ethnic or racial backgrounds of police detainees or of those in prison. This fact does not necessarily result from the will to hide the racial bias of penal organizations, but instead it reflects the tradition that assumes a unified racial and cultural constitution of the Argentine nation – a perception that is also present in census information that does not account for the racial origins of the population.

However, and in line with what has historically been the discriminatory pattern of Argentine society, there are available data on the social and national origin of those imprisoned and who go through the judicial processes. Although the information available is not exhaustive, and we cannot engage here in a detailed reconstruction of the social biases of the judicial system, we may consider two key eras that are particularly revealing of its fundamental logic: the founding of the Argentine nation and its social structure between the end of the nineteenth century and the mid-twentieth century, and the crisis of this form of social organization since the mid-1970s.

Childhood and moral order in modern Argentina

The final decades of the nineteenth century and initial decades of the twentieth century show, in particularly pristine way, how the legal gears of the judicial justice system processed the demographic dynamics of Argentine society linking a particular kind of social stratification with certain forms of moral segregation. As mentioned, the processes that characterized Argentine society during this period were signaled by the efforts of a political elite that strived to turn Argentina into a modern, industrialized and urbanized republic. This project included the idea of establishing a democracy with the “eventual” participation of all social sectors. But the elites also perceived that great portions of the Argentine population did not meet the appropriate educational and moral backgrounds to engage in responsible political participation. Therefore, in their perception, before these masses could be included as proper political actors, it was necessary to promote a civic and industrious culture that was lacking among the poorer and uneducated

sectors of Argentine society. In this context, the educational and justice systems were seen as privileged instruments: the means through which a new set of attitudes and forms of emotional control consonant with a modern republic could be established.

The intervention of the juvenile judicial justice system was then oriented towards the nucleus that was thought of as more distant from the desired models of social conduct, and also the generation that was perceived as more relevant to consolidate the cultural foundations of the new republic: the poor and abandoned children who maraud in the streets and precarious households in the growing urban settlements of Argentina. Thus, a great deal of the government action was aimed at using the judicial and educational systems to induce, among the more deprived families, a moral order that in their view was consonant with the new republic. In this sense, the consuetudinary practices of abandonment and giving away children by indigent families⁶ were a particular object of attention. Judicial agents tried to eradicate these “deviant” practices by promoting examples of the stable nuclear family as a “natural” and morally desirable familial model. Initially, the action of the juvenile judicial system was oriented towards the poor inhabitants of the peripheries of the cities then in formation. Somewhat later, its actions were aimed at the immigrants who inhabited precarious housing settlements in what were already big urban areas.

Within this context, judicial debate and practices were oriented basically to institute the rights of property and custody (*patria potestas*) of children, in order to set a predominant model of parenthood and intervene in the population that was more distant from it. These interventions were originally made by renowned members of civil society, “citizens of credited morals and fortune” (Aversa, 2010: 31), and in many cases by members of philanthropic organizations that assisted abandoned children and somewhat later by the children’s attorney.

These agents aimed not only to aid “exposed” children, but they regulated parental rights, measuring them according to moral standards that responded to idealized familial models and the attitudinal systems that the elites tried to establish. It is remarkable how judicial interventions or the criteria by which philanthropic institutions accepted children or rejected petitions by their families to recover them after “giving them away,” considered more the moral standards of the parents “in question” than their legal rights. Or to be more precise, the access to strict legal rights was conditioned by a previous evaluation of whether the parents complied with the desired moral profile. Thus, the criteria that governed the intervention of the justice system or the philanthropic organizations were not only based on the legal status of the involved actors, but also pondered their condition according

to the moral parameters of the ruling classes that discriminated between accepted and rejected models of social conduct.

Hence, if the intervention of justice did not respond exactly to a system of racially biased categories, it did act over a set of moral ones that oriented its actions towards a particular class and discriminated against it by separating the poor but “honorable” from the vile. This moral segregation, although it did not discriminate following strict ethnic standards, did take into account “appearances”: physiognomic characteristics (not only phenotypes but also dressing, cleanliness, etc.) that in the perception of the intervening social agents were indicators of the moral standards of the subjects upon whom they acted. In that way, it was not exclusively the acts of a subject that could trigger the action of the justice system, but the acts and what justice “predicated” about the subject’s moral constitution could also expose him or her to action by the justice system.

Towards 1958 the desired familial structures and the standardization of domestic life in general were basically settled according to what the elites desired in the final years of the nineteenth century. While in 1869 familial structures still had the traditional pattern of the rural world which the elites were trying to change, in 1947 several indicators (like family size, number of “illegitimate” children, the quantity and degree of instability in informal unions or couples) suggest that by that year the typical familial model of the industrialized and urban world preponderated (Germani, 1962: 254). Of course, this did not happen only because of the intervention of the judicial system; other factors should be considered, such as the development of the industrial infrastructure and the demographic transformation that accompanied it. By the mid-twentieth century, industrialization by the substitution of imports,⁷ the redistribution of income and political integration enhanced by Peronism created a context that reduced the tensions between the marginalized urban poor (who became part of the working classes) and the judicial system. If after the 1940s Argentine society experienced a convulsive atmosphere, this was due to the open political confrontation between Peronists and anti-Peronists. This tension not only separated and opposed the political and economic elites from the working classes, but also it divided the middle classes through ideological flaw lines that separated those who championed social justice, tolerating the “impolite” manners of Peronism, and those who could not stand its rude demeanor.

However, in spite of these political confrontations, Peronism still promoted the stable nuclear family as the predominant and desirable familial model for the working class. Only, that in contrast with what happened in the nineteenth century, the Peronist approach was not pursued by means of the law. Instead, it was premised on two alternative mechanisms. One,

parental role models were often represented in text books and other school activities: fathers were characterized as hard workers and good providers, and mothers as loving and caring protectors of the household (Gallo, 2010). Two, social policies created the material conditions that made these familial models viable. Therefore, during Peronism, instead of a private system based on the charitable organizations of well-off families, social policies became based in state organizations that distributed resources through public policies.

It could then be said that the domestic models that guided Argentinean family life, and its basic moral standards were finally established during Peronism and stopped being the object of intervention by the legal system. If the conflicts between the social elites and the working classes were present during and after Peronism, they were not expressed as the disciplinary action of the penal system over the urban poor, but instead in political and sometimes direct military confrontations. This underlying logic ruled the tensions in the Argentinean class system until the mid-1970s, when the model of industrialization by the substitution of imports reached its limits, and the characteristic conflicts that accompany urban marginality regained momentum. For this last period, we utilize data from judicial sources that illustrate the process.

Judicial action in the decline of the import substitution model

The more eloquent indicators of the deterioration in the living conditions of the working classes since the 1970s are the rates of unemployment, poverty and the value of family income. In 1974 only 5.8 percent of the Argentinean population stood below the poverty line; by 1989 the inflation that affected the Argentine economy during the 1980s reached a peak, pushing the poverty rate to 38.2 percent (Beccaria and Vinocour, 1991: 22). The tendency became even worse towards the beginning of the twenty-first century, when a new fiscal crisis produced an inflationary cycle that left almost 50 percent of the population below the poverty line. In addition to the effects of inflation, the increase in people below the poverty line can also be explained by growing unemployment. Only 2.7 percent of the population fell under this condition in 1980, but the unemployment rate grew to 15.1 percent in the year 2000 during which salaries among the working classes were worth 50 percent less than they were in 1980 and 30 percent less among the sectors of higher income (Guadagni et al., 2002: 78).

These data show, then, that by the end of the twentieth century the transformation of the social structure yielded a significant number of urban marginalized poor. In this sense, and somewhat paradoxically, during the final decades of the twentieth century Argentina was facing the same problems of social integration as it had in the final decades of the nineteenth century.

And, as shown below, Argentina seems to have offered the same kind of answers to the same types of problems: in the twentieth century, as in the nineteenth, the increase in unemployment and poverty implied a growing intervention of the judicial system over the deprived urban classes. For example, between 1984 and 2007 the incarcerated population increased very significantly, from 7.94 imprisoned persons per 100.00 inhabitants at the beginning of 1984 to a peak of 23.69 by the end of 2007. The penal system clearly directed its actions towards the poor, unemployed and uneducated. Through all these years, around 58 percent of the imprisoned population had only attended primary school, and 20 percent had reached secondary school; only 5 percent completed their tertiary education. On the other hand, 63 percent declared to have no profession or occupation, and 28 percent to having only worked in informal activities. Seventy-two per cent declared themselves unemployed or underemployed. In addition 75 percent of those in prison came from urban contexts, and 69 percent were under 34 years of age (SNEEP,⁸ 2007). Thus, we can fairly say that the “system” concentrated its action on the young, urban poor.

It is interesting to note that even if there was a clear class bias in the system, it does not seem to have a similar bias in terms of nationality. For a long period the incarceration rate for people with their origins in neighboring countries was similar to their proportion in the general population. However, during the 1990s certain xenophobic tensions arose in relation to the increase in unemployment, and the situation showed the racist tensions that underlay the class segregation that characterized Argentine society.

As Grimson (2006: 83–85) has pointed out, a notable episode occurred during 1998 and 1999, when for a few months several politicians, including the governor of the state of Buenos Aires and the leaders of the construction labor union, adduced that the cause of growing unemployment was the inflow of illegal immigrants (especially from Bolivia and Peru). At the same time the minister of the interior declared that half the minor crimes in the city of Buenos Aires were committed by foreigners from neighboring countries. These attitudes of high political leaders gave a green light to certain sectors within the police force to tighten control over the immigrant population. This, of course, resulted in a higher detention rate of foreigners from adjacent countries. However, within the same force, opposing reactions immediately arose showing defensive mechanisms against this racist rhetoric or, at least, the perception that it would not be easily tolerated by important sectors of Argentine society. High commanders of the police forces denied that foreigners were responsible for most of the minor street crimes, pointing out that they were predominantly done by Argentines. Also, the Secretary of Immigration and recognized members of the Academy rejected the xenophobic discourse

stating that only 4.6 percent of those legally condemned to death were foreigners (Mármora, 1999).

Beyond this controversy and the political interests that fueled it were at least two relevant issues. First, the selection of Peruvians and Bolivians as targets of xenophobic discourse implied a deeper form of segregation. As mentioned, the dominant physiognomic appearance of people of these nationalities resemble the prevalent phenotype among the Argentine poor population. Thus, in the accusations made against Peruvians and Bolivians it was also implied that “the poor people from the outskirts of the city,” the *Cabecitas Negras*, were also to blame for the rise of crime in Argentina. Second, those who promoted a xenophobic attitude based their judgments on the high rate of police arrests of foreigners from neighboring countries, while those who rebuked that position pointed to the relatively low sentencing rate for foreigners. In that light, it became clear that while police action was biased mainly against Peruvian and Bolivian nationals, the judicial justice system did not seem to have a similar tendency. Thus, in spite of the efforts made by high commanders to deny any biased action by the police, it is evident that their concrete actions are skewed towards foreigners from bordering countries, while the judicial justice system tends to neutralize this tendency in their sentencing.

This sort of schizophrenic behavior of state institutions was quite evident in the previous discussion. During the controversy the racist attitudes came to light, attitudes that are hidden in the subjective structures of perception by which Argentineans organize their social world, and which are present in police profiling. But, at the same time, the reaction of important sectors of Argentine society against this xenophobic rhetoric showed the ambivalent predisposition towards them. Within the same organizational structure of the state, we find the roots of racial discrimination and the efforts to neutralize at least its more public outbursts. In sum, the episode made clear that the punitive forces of the state tend to act predominantly over certain social sectors (the urban poor) and discriminate according to phenotypic or physiognomic stereotypes. However, it is also clear that these tendencies do not go unnoticed by the agents of this same system who try to control them.

Legal philosophies

In fact, the efforts of the legal system to control class bias are not only the result of the “factual” behavior of the judges. Although, we cannot examine in detail the legal philosophies that underlie the Argentine justice system, certain examples may illustrate these foundations. A good case in point is the contribution made by Eugenio Zafaroni, a recognized member of the Academy, but also a constituent of the Supreme Court of Justice. Zafaroni’s (1988; 1990) contributions focalize exactly in the class bias of the penal system, pointing

out that in a capitalist–industrial–urban society the penal system reproduces the power structure of the ruling class. Therefore, far from representing a neutral regulation of the relationships between social subjects, penal justice is part and parcel of class domination and exploitation that good legal philosophy should correct. For this reason, Zafaroni (1993) denounces every death that occurred within the penal system (not only those that result from the action of the armed forces of the state, but also those that happen because of confrontations between interns, etc.), asserting that they are not “errors” or “mishaps” of the penal system, but part of its constituent logic. From this standpoint, justice should not aim at punishing the poor who infringe on the law because of the impoverished social conditions to which they are exposed. Instead, it should aim at obliging the state and society in general to create conditions in which the deprived sectors can find paths for social integration.

Even if this legal discourse is only one element in a complex and controversial field, it is also evident that its philosophical foundations are quite influential. As stated, Zafaroni has a very prominent role in the academic and legal fields; many of the current judges in the justice system were formed by this type of legal philosophy. Coincidentally, their sentencing decisions tend to favor different forms of probation and parole over prolonged incarceration. Also, within the same prison system there are programs that try to substitute a merely punitive logic for policies that favor social integration. According to official statistics, 69 percent of inmates in the Argentine penal system take part in some sort of educational program, and 88 percent participate in sports and recreational activities; only 25 percent are involved in professional or occupational programs (SNEEP, 2007).

It would, of course, be naive to take these data as an accurate reflection of reality. Certainly, they could be biased by the interests of the agents of the penal system to show a more favorable profile. However, this same fact would show that they are at least partially conscious that what is expected from them is to favor social integration over punitive action. At the same time, it is also evident that these “alternative programs” are far from being able to correct the class bias of the penal system. In this context, one cannot discard the conditions that Zafaroni and many others highlight in their accusations of the penal system. As they state, at the end of the day these alternative regimes and programs do no more than dissimulate an underlying logic that remains constant in spite of these cosmetic measures. However, it may be interesting to go deeper into the mechanisms that produce these “constant” outcomes and analyze the complex web of institutional interests, cultures and traditions that explain why antidiscriminatory policies tend not to produce the expected results. Through this exploration we may further understand how the class bias of the judicial justice system reproduces the physical stereotypes and arbitrary moral standards associated with the

way in which racial and ethnic discrimination developed in Argentina. An exploration of the dynamics of the juvenile justice system of the State of Buenos Aires may help unveil such mechanisms.⁹

The juvenile justice system in the State of Buenos Aires

Concurrent with the aforementioned legal philosophies, one of the more important controversies about the juvenile justice system has orbited around the need to eliminate its punitive actions, and overall its discretionary capacity to intervene in the lives of “exposed” or “abandoned” children with no crime records (Raffo, et al., 1986; García Méndez, 1995; Roige, 2010). In particular, since the restoration of democracy in 1983, there has been a persistent effort by agents of the juvenile judicial system to comply with international legislation (like the International Convention of Children’s Rights, the Beijing Rules, and the United Nations Guidelines for the Prevention of Juvenile Delinquency) and substitute the discretionary powers of juvenile judges for public and social policies that favor the social integration of exposed children.

These debates and initiatives found their culminating point in 1994, when the International Convention of Children’s Rights was given constitutional status. However, this did not mean an immediate and complete reform of the juvenile justice and penal systems in all Argentine states. In many of them the necessary transformations to eliminate the discretionary power of judges took many years. In the case we will analyze here, the State of Buenos Aires, this was only achieved in 2007.

Against the grain of what was proposed in public debates and judicial reforms, after the return of democracy the number of juveniles processed in the Buenos Aires courts underwent a significant increase: while in 1984, only 1.63 percent of the population under 18 was under the surveillance of the judges, in 2004 the rate peaked to 3.95 percent. Among them, the rate of those with penal cases escalated from 0.49 percent to 1.3 percent, while those under the “protection” of the judges without having committed a crime expanded from 1.13 percent to 2.64 percent. This means a growth of 37.7 percent for penal cases and 42.8 percent in the case of “abandoned” children who were under the protection of the judiciary, thus a combined growth of 41.7 percent.

In this sequence it becomes evident that while a new model of juvenile justice was being discussed, one that avoided judicial action over deprived and impoverished children, the concrete actions of the juvenile justice system increased the number of children under its custody. And this tendency was even higher for children who in fact had no criminal records and whose only fault had been to be left abandoned to their own fortunes. Thus, as

at the turn of the nineteenth century, the judicial system of the twentieth century intervened over poor and deprived children in order to “protect,” “moralize” and “prevent,” more than reacting to a transgression of the legal order.

However, it would be simple to interpret this expansion and slow pace of change in the institutional system as a mere effect of overt opposition to legal reform by state agents. In general, even in the State of Buenos Aires, the agents of the juvenile justice system adhered to the international legal frames that questioned the discretionary powers of juvenile judges and its predominantly penal action. This standpoint, notably expressed by judges, the state’s Supreme Court and other members of the juvenile penal system, is shown in the jurisprudence dictated by the Supreme Court itself and in the policies promoted by the Council of Juvenile Affairs even before the 2007 reforms. For example, according to the Supreme Court, the Council of Juvenile Affairs had among its main purposes to contribute to the well-being of children under the surveillance of the justice system “within the legal frames provided by the International Convention of Children’s Rights, the United Nations Minimal Rules for the Treatment of Minors Deprived of Liberties and other international dispositions.”¹⁰

Consequently, with these legal dispositions, the council resolved as one of the initial tasks of a four-year plan (1996–99) to “act according to the international legal frame,” and proposed myriad plans and programs which aimed at requalifying personnel in charge of minors and to replace the policies centered in the institutionalization or imprisonment of children in macroinstitutions with less “punitive” options. It thus prioritized alternatives that privileged the restitution and reintegration of family ties (for example, by giving economic and/or psychological assistance to deprived families) and actions based on community organizations and other types of integration centers, like day-care centers, mentoring or tutoring programs, and so forth. In extreme cases, when institutionalization was considered inevitable, the aim was to create small centers, with a limited number of participants and a family-like structure instead of macroinstitutions.

Towards 1998 the difficulties in implementing these policies became apparent. Under a new direction of the council, a document of February 1998 ordered a diagnostic study of the state of the new programs. The aim of this study was to detect the main problems and best practices in the current programs and work out guidelines that would set the criteria for the future recognition of programs and consequent distribution of subsidies. In fact, what had happened was that up to that moment programs were created through subsidies given to NGOs associated with various types of organizations (churches, political parties, worker’s unions, etc.). Therefore, the distribution of state subsidies was in fact mediated by a network of corporate

agents who had privileged their own organizational interests over the quality of the offered programs. This gave way to a variety of programs that were very uneven in terms of their type and quality. Given this situation, the ultimate purpose of the 1998 study was to set basic standards to guarantee the quality of the programs and make them more homogeneous. Although shortly after this study was contracted new guidelines were set to regulate and control the programs, fieldwork¹¹ between 1999 and 2001 showed that the guidelines were hardly adhered to: a wide variety of programs, very different in terms of the qualifications of personnel and of the intervention techniques, were in place and received state support.

More dimensions of this process may be recognized by paying attention to jurisprudence set by the Supreme Court of Justice during those same years. Between 1997 and 1999 the court demanded several times that the governor and council adequate the penal system to the international dispositions adopted in the constitutional reform of 1994, and to comply with the four-year plan established in 1996. Court documents made three specific demands. To make the reforms in infrastructure and to create the number of new programs originally programmed; to definitively eliminate the incarceration of minors in police stations, and to effectively implement the “requalification and training of the personnel in the system through the School of Specialized Formation of the Council [since it is evident that there are] severe limitations in the human resources that [have] custody [of] the minors in our institutions”¹²

The court established a direct causal link among several grave episodes, the lack of compliance with these dispositions and with the original program of the council. Incarceration in police stations was denounced as one of the principal causes of the deaths of juveniles with penal accusations. But in addition to police stations, the institutes dependent on the council were also denounced because several violent episodes occurred in them, and those incidents were attributed to the lack of proper infrastructure and qualification of its human resources. The events alluded to in these denouncements included mutinies, the death of several interns in questionable episodes (probably homicides), cases of youngsters wounded by gunshots in maximum security institutions, and a very high rate of runaways: “Between the 1st of January and the 12 of March 1997, 320 minors were registered as violators of the penal law, during that lapse 149 [46 percent] escaped.”¹³

The ineffectiveness of these denouncements and demands of the Supreme Court became evident for us during extended fieldwork we conducted at an institute of the State of Buenos Aires between 2002 and 2003. During those years, 65 percent of the interns fled the institution within the first ten days upon their arrival, and the overall runaway rate was 74 percent. On the other hand, we found a clear predominance of underqualified personnel. The

principal and sub-principal of the institute had not completed their secondary education (they were former owners of car body shop). Forty-five per cent of the remaining agents had only received a secondary education and none of them had specific qualifications to work with minors. Only 31 per cent had professional qualifications of tertiary or university level (Míguez and Gonzalez, 2003).

At the same time, the guidelines provided by the council were based on Paulo Freire's model of popular education. These documents were aimed at guiding underqualified personnel towards a new institutional model, which prioritized emotional support and education over punitive action. But it was obvious, and our fieldwork made it clear, that the educational level of the institutional agents made it impossible for them to have a real understanding of the content and theoretical inspiration implied in the guidelines. Thus, the "real" way in which personnel handled the internal life of the institution was far from the idealized model that the documents proposed.

This already suggests a certain impotence of the Supreme Court in actually managing the institutional system that is supposedly under its supervision, but further explorations revealed even more clear examples. In the court documents we already noted, incarceration in police stations is mentioned as one of the paramount violations of the International Declaration of Children's Rights, and even as one of the principal causes of death among incarcerated minors. Surprisingly, while exploring the statistical data provided by the court itself we discovered that many judges did not send information regarding the places of confinement of juveniles under their supervision. For example, data for the year 1991 and for 1994 to 1998 are so inaccurate that the court itself declines to make it public, and for the period 1999 to 2004 available data show several anomalies. During 2001 and 2002, four tribunals stopped sending information on the location of institutionalized minors detained on criminal charges, and by 2004 another five courts began to do the same. Thus, by that year almost half of the state courts did not declare the exact whereabouts of the juveniles in their charge. In this way the courts omitted information concerning the place of detainment of minors, hiding from the Supreme Court whether they were in police stations or were institutionalized in proper programs. What becomes evident is that the same Supreme Court that denounces the improper treatment of minors by the juvenile justice system cannot control its own subordinates and make them reveal the places of confinement of the youth in their custody.

In sum, the incidences presented here reveal an intricate and paradoxical institutional dynamic. The organizations and protagonists of these processes (the Supreme Court and its subsidiary tribunals, the Council of Juvenile Affairs, and even the executive authority of the State of Buenos Aires) all formally adhere to the jurisprudential philosophy of the international documents

regarding the legal status of minors. However, all of them transgress the same policies they are trying to follow. And this incapacity to follow the same standards they set for themselves does not come from interfering actions of particular institutional actors. It is not the effect of agents that openly or surreptitiously reject change. It is more the lack of proper infrastructure and the contradictory institutional interests that hinder the new policies.

For example, part of the limitations to implementing new types of programs come from the lack of funds to build new premises and to hire proper personnel. Plus, as mentioned, the existing resources were many times diverted into improper programs due to the influence of corporate interests. In this context, judges often had no alternative but to leave minors detained in police stations. But to avoid reprimand from the Supreme Court they then had to hide these decisions, not reporting the places of detention of juveniles in their custody. The Supreme Court seems to have answered, at the same time, denouncing and condemning confinement in police stations, but tolerating the situation's omission from official reports. On the other hand, the difficulties of counting with properly qualified human resources came from the fact that requalification of older personnel with many years' service in institutions was very difficult, and its substitution would have meant letting go a huge number of employees in an economic context of growing unemployment. It was hard for those with progressive ideologies looking for new regimes of social integration for marginalized youth to accept that the cost of implementing the new programs could be to leave significant numbers of personnel unemployed.

Thus, during the 1990s and the initial years of the 2000s the juvenile justice system seems to obtain the same results as in the final decades of the nineteenth century. Still, the system directs its actions mainly towards the young, urban poor, reproducing cycles of marginalization and stigmatization over deprived sectors. The imposition of a social order that assimilates material conditions, phenotypical stereotypes and the moral constitution of social subjects reproduces social prejudice. This condemns the poor not only to material deprivation, but also as moral outcasts and as aesthetically undesirable. The stark contrast with prior times is that many agents of the juvenile justice system are completely aware of these issues and make considerable efforts to overcome the negative results. However, the contexts of intervention strongly condition their actions, making new programs deliver the same old outcomes.

Conclusion

The constitution of the Argentine social order is characterized as subsuming ethnic and national differences mainly as contrasts in morals, political

identities, class and phenotypical stereotypes. In this sense, two stages seem foundational. In the first stage, immigrant population was assimilated into the social structure and the political system between the end of the nineteenth century and until the initial years of the twentieth century. In that period, the European nationalities that characterized the urban middle classes were “merged” in a national ethos that subsumed them in contrasts of class and political identity. The second stage took place from the third decade of the twentieth century, when migrants to the urban peripheries had a subordinated integration in the productive and political systems as workers in the import substitution industry and members of the Peronist movement. In that process the ethnic background of the migrant population was again dissolved in divisions of class and political identity, although the racial background remained as a hidden substrate, expressed in phenotypical stereotyping.¹⁴ In these contexts the judicial system intervened, imposing (especially in the nineteenth century) certain criteria of normality and morality that had a discriminatory bias. In compliance with the more well-off sectors of society and the governing elites, judges acted upon the more deprived and marginalized population, trying to impose a moral order that represented the views and interests of the ruling classes. This action separated, even among the poor, those who were worthy of citizenship – the dignified poor who complied with proper moral standards – from those that had to be disciplined to learn proper habits and customs. In fact, this moral ordering aimed at restructuring the family models typical of poor peasant families into the domestic models functioning in the industrial and urban society that the elites were trying to promote. These tensions seem to have waned by the middle of the twentieth century. By then, the development of industry and the distributive policies of Peronism facilitated the rapid integration of rural migrants into the urban–industrial social order. As in the former case, these processes dissolved ethnic backgrounds in differences of class and political identity, making the Peronist/anti-Peronist divide the ruling social dichotomy, and turning explicit ethnic conflict into a far less poignant issue.

Although this state of affairs lasted for a prolonged period, after the mid-1970s and especially during the 1990s, the increase in unemployment and poverty rates modified the former state of relative equilibrium. In this context, political identities lost their strength as a principal means of identification and social categorization. And, as at the turn of the nineteenth century, the intervention of justice regained momentum as a marker of social divides. In a broad sense, the effects of justice in the nineteenth century were analogous to that of the latter part of the twentieth century. In both cases this intervention resulted in the stigmatization of the young and poor of the urban outskirts. However, our argument is that although the aggregate effects are the same, the causes underlying them do not necessarily match.

At the end of the nineteenth and beginning of the twentieth centuries agents of the judicial system were not conscious of the possible pernicious effects of their interventions. They saw their actions as instruments of social promotion, the lever that would induce the poor and ignorant into the modern world. Although they did not exactly aim at reproducing a discriminatory classification of social subjects – and their purpose was to include everyone in one national identity – this same goal implied casting out from this biased parameter of social acceptability the culturally, morally and, ultimately, socially different. During the 1990s and the initial years of the twenty-first century, agents of the judicial system were aware of the cultural and social bias of the law, and they try to neutralize its stigmatizing effect by redefining the purposes and methods of their interventions. However, the aggregate impact of their actions does not seem to be too different from that of their predecessors. What are different in this case are not the final results, but the causes that produce them.

If in the initial period it was a “lack of consciousness” that reproduced subjective and institutional structures of discrimination; in the second instance it is not an absence of recognition of the skewed action of justice that seems to be the problem. In this case, institutional and indirect discrimination seem to result from the contradictory set of interests that pervade judicial institutions and state government in general. If, on the one hand, some institutional agents try to change the system in order to avoid its tendency to discriminate against the marginalized, thereby reproducing their marginalization, on the other hand, changing the system in order to reverse this tendency would affect the same interests of the actors that promote them. Beyond the politically correct discourses and good intentions of institutional agents, the structure of interests that pervade these organizations naturally give privilege to those who “conduct” the system over those that are its “clients”. And, although agents tend not to see the contradictions between their interests and those of the poor, in fact the tensions between them explain in significant measure the class bias and stigmatizing character that persist in the cultural traditions and indirect-institutional forms of discrimination in Argentina.

Notes

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1. This international crisis of the financial system had its most prominent impact in the United States, but it however had worldwide repercussions. Argentina deeply felt the crisis, since it affected its development model, which was based on the export of agricultural goods and the import of industrial products.
2. The Unión Cívica Radical became the first political party to express the perceptions and interests of the urban middle classes that developed as a consequence of

the growing integration of European immigration into Argentine society. It was the first “party of the masses” in contrast to previous alternatives that expressed variations within the ruling elites. In fact, the elites had no competing electoral party before then, and have only acceded to power by electoral fraud or military coups (see Rock, 1977 for a more thorough account). The Unión Cívica Radical has since then become one of the two more prominent parties in the Argentine political system, competing with “Peronism” as will be explained later.

3. In 1945, Juan Domingo Perón, by then the secretary of labour of the military government that had ruled Argentina since 1943, was imprisoned for promoting workers’ rights and giving political recognition to labour unions. A massive mobilization of the existing socialist and organized labour syndicates, with spontaneous support from non-unionized workers, forced the military government to free Perón and then call for national elections. Perón won the elections in 1946 and ruled until 1955, when he was overthrown by the military. During his time in government Peron consecrated workers rights and favoured the distribution of wealth through salaries and access to public health, housing and schooling. This meant he was the unprecedented protagonist for the working classes in the political, production and educational systems, which gave them a renewed sense of dignity. Peronism has remained the most prominent political force in Argentine history, being the main opponent of the military until 1983 and the leading party since then, with occasional competition from the previously mentioned Unión Cívica Radical (a more thorough account of this process may be consulted in: Peter Waldman, 1981 or Alain Rouquié, 1982).
4. Several causes produced a decline in the proportion of people of African origin in Argentine society, as exemplified in the high mortality rates they experienced in civil wars and several Black Death epidemics in the nineteenth century; but also interracial marriage combined with processes of civilization have dissolved black identity into a national identification pattern.
5. Buenos Aires is a “state” city, capital of Argentina whose mayor was at that time nominated by the president. The city is surrounded by the state, or province, of Buenos Aires, which is one of the 22 federate states of the republic, and also has a government independent/autonomous from the city. During the dictatorship, slum dwellers were expelled from the city of Buenos Aires into the State of Buenos Aires.
6. In times of economic hardship it was common for poor peasant families to give away their children to better-off families in order to guarantee their subsistence. The settlement could imply that children had to work or at, at least comply with, certain domestic tasks in the receiving family. This practice frequently resulted in conflicts when the original family claimed back their children, since sometimes for economic reasons or because of emotional ties, the receiving families refused to return children to their original parents. The children’s attorney and philanthropic institutions intervened many times in this type of situation, trying to resolve the rights of the involved parties.
7. Since the financial world crisis of 1929 and through World War II, local industry developed, replacing the durable goods –home appliances, etc. – formerly imported from Europe. The economy thus went from being dominated by agricultural exports to a certain level of development of its national industry. This type of industrialization became increasingly unviable after the war, when national industry was unable to rival the recovered European and North American competitors, enhanced by the technological improvements developed by the war industry and then applied to the production of domestic goods.

8. Sistema Nacional de Estadísticas sobre Ejecución de la Pena/National Statistical System for the Execution of Legal Counts.
9. The data presented in the following section were gathered during a research study of the Juvenile Justice System of the State of Buenos Aires between 2002 and 2007. The research combined the analysis of official documents with quantitative analysis of statistical records kept by the Supreme Court of Justice of the State of Buenos Aires and ethnographic research in several juvenile institutes and alternative programs during the same period. The combination of quantitative and qualitative techniques was aimed at capturing the underlying logics of discrimination that are superficially manifested in statistical records but can only be thoroughly grasped in qualitative research (Kalunta-Crumpton, 2006: 25).
10. Supreme Court of Justice of the State of Buenos Aires, decree n° 62/96, October 1996.
11. Between 1999 and 2001 we carried out ethnographic fieldwork in six “alternative” programs, mainly day-care centres and “integration houses” (intern programs with no more than 4 to 6 juveniles) in the State of Buenos Aires. Fieldwork consisted of six months to one year of onsite observation registering organizational routines and patterns of interaction between institutional agents and interns. Research results showed that in most of them the policies set by official documents were not followed, and minors were still received through judicial sentencing. More research of similar characteristics was carried out between 2002 and 2003 in the remaining “traditional” programs – mainly institutes with a closed-door regime. We arrived at similar findings. The reforms set by official documents had not really changed traditional organizational practices.
12. Supreme Court of Justice of the State of Buenos Aires, document n 2768. April 1997.
13. Supreme Court of Justice of the State of Buenos Aires, document n 2768. April 1997.
14. Being short, of stocky build and with dark skin and thick black hair is associated with poverty. And although this phenotype fits more or less with the aspect of people from the Quechua and Guarani cultures, it may be also found among Caucasians from the south of Spain or Italy. Hence, even if the stereotype is more or less inspired by the predominance of certain racial types among the poor; discrimination is directed more by an aesthetic representation of poverty than by an abhorrence of precise ethnic backgrounds (thus, discrimination is based on phenotypes and not genotypes). Bigotry is really aimed at the class origin of those that fit this typecast and not so much at their specific racial heritage.

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5

Race, Ethnicity, Crime and Criminal Justice in Brazil

Mark Harris

You are black and young. You live in a neighbourhood where crime thrives. We take guns out of the streets, arrest dangerous criminals. You happen to live in a place that has the highest rate of homicides and rapes. We do our job right. We approached your building, you looked suspicious; we stopped, got out of our cars with our guns, and told you to put your hands up. We shot. We are the police. We have been very well trained to do our jobs.

(Silva, 2007: xi)

Introduction

A fundamental paradox lies at the core of any consideration of the intersection of race or ethnicity and the justice system in Brazilian society. On the one hand there is the continuing resilience of the devotees to the racial democracy thesis, which asserts that the Brazilian nation was formed through the process of miscegenation so that identification of one's race has become a redundancy: all Brazilians notionally share the mixed heritage of the *mestiço*.¹ Conversely, since the passage of the 1988 constitution there have been a range of legislative measures introduced that entrench the nation's commitment to international human rights standards and the illegality of racial discrimination. There emerges, therefore, a society in which the existence of racial discrimination is denied and simultaneously there are a host of measures to punish those who engage in such practices.

While there has been some analysis of the extent to which racial or ethnic considerations intersect in the workings of the criminal justice system, the primary focus of this chapter is to explore how the legal discourse can serve to write out the use of lethal force by the police that is deployed routinely against the young brown and black (usually male) inhabitants of the *favelas*² of Rio de Janeiro, São Paulo and every other city and town in

Brazil that is described so powerfully in the epigraph above by Silva. There is always the temptation, given the recent history of Brazil, to ascribe the moments of violence to either the legacy of authoritarian rule or, linked with this, to the characterization of the inherent deficiencies of the Latin American legal systems as representing “failed law” (Esquirol 2008: 344–5). To unthinkingly affirm that the Brazilian (or Latin American) legal systems are failed or illiberal versions of “modern law” is to accept that the situation can be addressed by reference to the examples of exemplar nations (such as, perhaps, the United States). While useful insights might be gleaned from a reflection upon the nature of, for example, civil rights litigation in the United States and the recent debates surrounding affirmative action legislation in Brazil, this does not address the question of how race has been written out of the legal discourse such that certain racialized bodies can be killed with impunity by the state authorities. More importantly there is the fundamental impossibility that exists in recognizing how so many Brazilian citizens can be so comprehensively occluded from the legal domain. It is therefore not simply a question of acknowledging racism, or even introducing measures designed to combat it, but rather it is necessary to consider the social and legal conditions that have given rise to such violence as occurs in the *favelas*.

Any consideration of the intersection of race and the criminal justice system (or indeed any social or political issue) in Brazil has historically been inflected by what has been termed the “racial democracy” thesis. The central tenet of this theory is that racial discrimination is absent from the Brazilian nation due to the long history of miscegenation between the Portuguese colonizers and the Afro-Brazilian slaves. The broad acceptance of the theory was further entrenched, according to some academics, by the manner in which social mobility was equated with the “whitening” of the population. The writings of the anthropologist Gilberto Freyre in his 1933 publication, *Casa Grande e Senzala*, provided the basis for the theory of racial democracy. The virulence of the racial democracy thesis was predicated upon an insistence on the notion of race neutrality such that any reference to racism was viewed as “un-Brazilian” (Telles, 2002: 232). Paradoxically, according to Hernandez (2002), this repudiation of racial discourse merely serves to entrench the white privilege within the Brazilian nation. Political mobilization amongst Afro-Brazilians is therefore diluted by the struggle of having to argue for the existence of racism, to the detriment of being able to engage with broader social mobilization (Hensler, 2007: 285).

Aside from the myopia exemplified by the followers of the racial democracy thesis, Cano and colleagues (2010a; 33–34) also argue that there is a methodological difficulty in engaging with any consideration of race in the criminal justice system. This is due in part to the limitations of the

categories of race and ethnicity in the official census and also to the divergence that can emerge between the ascribing of race by an external observer as against the practice of self-attribution. There is also, he argues, a degree of inconstancy in the definition that follows from self-identification. It is the persistence of the myopia of racial democracy that explains, in part, the failure to engage with the extreme violence that is married with the day to day lives of Brazil's *favelas*.

Constitutional entrenchment of rights

While the racial democracy thesis continues to have many adherents in Brazil, there is also, as noted above, a strong legislative and constitutional entrenchment of the rights of the citizen, including strong prohibitions against racial discrimination. This symbolic recognition of equality is also evidenced in Brazil's commitment to the majority of international human rights instruments, as recognized by the International Bar Association (IBA 2010: 19–20). With the ousting of the military dictatorship in 1985 a new constitution was drafted, restoring many of the fundamental rights trampled by the military. Among the measures in the new constitution are substantial protections of the rights of citizens. Article 5 of the constitution, for example, states:

All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property.

This particular provision then goes on to enumerate no less than 78 clauses or rights that are protected. In addition to the wide-ranging protections of the constitution, the federal legislature subsequently enacted the Cao Act (Law No 7.716/89) that created new racial discrimination offenses, with provision for penalties of up to five years' imprisonment. Subsequent legislative enactments further expanded the scope of the racial discrimination provisions, including a measure pursuant to Article 20 of Law No 7.716 of 1989 that provided a generic definition of racism as the "practicing, inducing or inciting discrimination based on race, colour, religion or nationality."³ Significantly, the criminal offense of slander was added to the penal code and included provision for affronts that were based upon race, color, ethnicity, religion or place of origin.

An analysis of the prosecutions initiated pursuant to the new racial discrimination measures was made by Machada, drawing from rulings made from 1998 to 2007 and using data from the Tribunal de Justiça do Estado de

São Paulo (TJSP), the São Paulo Court of Appeals. The analysis of the cases launched (in particular in respect to slander) revealed a plethora of procedural and institutional impediments to launching prosecutions, but there was no evidence to suggest that, notwithstanding the low conviction rate, the judiciary of São Paulo were not clear in their directives that “racism is illegal and that the incidences of such acts must be curtailed” (Machada, 2009: 1555). For Hensler (2007) the developments in the area of antidiscrimination legislation (and notably the shift in focus from criminal prosecutions to civil litigation) are firm indications that the law can have a positive role to play in responding to racial discrimination. Interestingly, he identifies the extent to which the “class above race” thesis has meant that the general acceptance of class distinction as the basis for preferential treatment has tended to mask matters which are more appropriately dealt with as racial discrimination. Significantly, Hensler goes on to adopt a positive stance, arguing there is indeed broader recognition of racial discrimination within the Brazilian nation and this of itself effectively demands that “that the legal system will be increasingly held accountable for failing to find a viable means of redress” (2007: 343). While Hensler’s optimism with regard to the possibilities for racial discrimination action might not be overstated, it needs to be remembered that those black or brown Brazilians who might have grounds to initiate civil proceedings will be largely barred from doing so by economic considerations. In reality few human rights crimes will be effectively investigated or prosecuted.

In June 2010, some 122 years after the abolition of slavery in the nation, the Brazilian Congress finally passed the Racial Equality Statute, bringing to an end seven years of passionate debate. Chief among the provisions of the statute were the introduction of social and racial quotas for admission to the nation’s universities and the granting of ownership of land to the some 2.5 million inhabitants of *quilombos* (remote villages) where runaway slaves had historically taken refuge and which are now occupied by their descendants. In the period leading up to the passage of the statute there was great dispute regarding the nature of affirmative action, and it continues to excite passionate debate in Brazil. From the perspective of those opposed to affirmative action measures, it represented an attack upon the cultural particularity of the Brazilian, in effect representing a reprise of the racial democracy thesis that miscegenation had produced what Silva (2009: 12) terms a “racially homogenous (symbolic, juridical, economic) configuration.” Alternatively, those in favor of affirmative action saw it variously as either addressing a clear inequity and disparity in access to education or providing an ethical response, almost a form of reparation, for the past injustices. For sociologist Joaze Bernadino it constituted a positive racialization of social relations in Brazil and, by implication, the end to the myth of racial democracy (Silva 2009: 12–14).

Leaving aside the merits of the affirmative action initiatives generally and any substantive analysis of the content of the statute, it seems unclear as to whether the passage of such measures will translate to a transformation in the juridical recognition of the rights of black and brown Brazilians. On a purely pragmatic level Brinks (2008 3–5) challenges the extent to which the human rights that are articulated can be enforced in reality, and goes on to argue that the articulation of such rights without effective mechanisms such as legislative enactment or an enforcement mechanism can actually be counterproductive in that they effectively expose the rights claimants to new violence (2008: 253). This is summed up best by the manner in which the rights discourse has been rejected in some quarters as being little more than “privileges for bandits” (Caldeira, 2006: 107). It is a theme that is echoed in a Human Rights Watch report (2009: 3) which makes the observation that in Brazil, consistent with many other nations, there is the widespread assumption that human rights and public security are mutually exclusive terms. Further, it is argued, such measures actually diminish the effectiveness of the police in responding to the threat of crime and violence posed by the drug gangs. A measure of the malleability of the human rights discourse can be seen in the manner in which it, paradoxically, has been deployed to justify violent actions by the government. In June 2007, for example, a military operation directed at curbing the influence of drug gangs and involving 1,350 heavily armed officers entering the Complexo do Alemão shantytown in northern Rio, led to the deaths of at least 19 people. In a statement, the state government said: “Confrontations are undesirable, but in the name of human rights... there is no way to retreat from this obligation.”

Writing on the operation of the British Race Relations Act Fitzpatrick (1990: 259) observed: “Law is tied to a particular community that excludes those whom law would include through race relations legislation.” His comments, I would argue, are no less applicable to the situation in relation to the operation of antidiscrimination legislation in Brazil. For the inhabitants of the *favelas* the existence of the antidiscrimination statutes confirms, rather than challenges, their exclusion. The community of law within Brazil remains determinedly closed and white, and patently it is no less exclusionary than the spatial configurations of the cities, such as Rio and São Paulo, which demarcates the million-dollar mansions and *favelas*, in such close proximity. Despite this, the effect of human rights measures ultimately, and somewhat perversely, achieves the same form of social closure as the racial democracy thesis. While the racial democracy concept refuses, in the enlightened *meztizo* society of Brazil, to entertain the possibility of racism, the effect of the raft of antidiscrimination measures is to confirm that racism, if it ever existed, has been addressed and the nation has recuperated. Far from operating at

odds with the racial democracy thesis, the content and symbolism of anti-discrimination measures effectively complement it.

Policing

Any analysis of the Brazilian justice system is necessarily informed by the statistics that reveal a nation besieged by violence and crime. In 2008, for example, there were 10,000 homicide victims in Rio de Janeiro and São Paulo, while the homicide rate for each of the cities was 34.50 and 10.76 per 100,000 inhabitants, respectively (IBA 2010: 31). From the early 1990s the growing power of the drug traffickers in the cities has engendered a sense of fear within the populace, which Caldeira (2000: 19), writing of São Paulo, described the experience as follows:

Everyday life and the city have changed because of crime and fear and this change is reflected in daily conversation. Fear and violence, difficult things to make sense of, cause discourse to proliferate and circulate. The talk of crime – that is everyday conversations, commentaries, discussions, narratives and jokes that have crime and fear as their subject – is contagious.... Thus the talk of crime feeds a circle in which fear is both dealt with and reproduced and violence is both counteracted and magnified.

The escalating fear of crime has, in turn, given rise in part to an implicit endorsement of the use of extreme (even lethal) force by the police against those who have come to be seen as representative of the criminal “other.” In considering the nature of policing we can draw from the observation of Waddington et al. (2009:119) that; “policing in Brasil bears the scars of its birth as a colonial gendarmerie preoccupied by the necessity of repressing...the large population of slaves.” Colonial violence, predicated upon race, is entirely consistent with Agamben’s (1993: 61) vision of policing as “the site where the contiguity if not constitutive exchange between violence and law...is visible in all its nakedness contra to common opinion, which sees the police as a purely administrative function for the execution of the law.” It follows, therefore, that the principles of “public order” and “security,” which the police are under obligation to decide on a case-by-case basis, “represent a zone of indistinction between violence and law” (1993: 62).

The nature of the violence by the police has been aptly described by Pereria and Ungar (2004) as *mano dura* (an iron fist). Certainly it can be argued that the operations of the military police in particular perpetuates many of the criminal activities (particularly torture and the use of lethal force) that were the hallmark of the program of social repression under the Brazilian military dictatorship from 1964 to 1985. Routinely, the dictatorship manufactured

forged depositions and false confessions to prosecute its opponents, in breach of both the principles of the military tribunals as well as of any surviving judicial norms, as stated by the Archdiocese of São Paulo (A.D.S.P, 1986: 141). Leaving aside the arguments that any analysis of the operation of the law in Brazil (or indeed any Latin American nation) is necessarily flawed due to the “failed law” thesis (Esquirol, 2008) it remains to be considered how the violence in Brazil (and the specifically racial nature of such violence) can be understood through reference to the operation of the legal system. The role of the police is crucial in any analysis of the engagement of specific racial or ethnic groups with the criminal justice system. It is a site of engagement that has been commented upon in literature from around the globe, attesting to the existence (and impact) of racial bias or discrimination amongst officers, from the police to the courts to the prisons.

The research by Cano (2010a: 208) identifies those incidents where police stops or searches of citizens are likely to be either recorded, scrutinized by other state agents or subject to (and therefore limited by) adherence to existing legal norms. The exercise of police discretion in a “blitz” (police stop or questioning of the public) in Rio de Janeiro was the subject of research by Ramos and Musumeci in 2003. The research indicated that race played a major role in the pedestrian stops and for police stops on public transportation. While there was a higher prevalence of white drivers stopped, this departure from the normal understanding of racial profiling experienced by so many African-American (and more recently Hispanic and Latino drivers in the aftermath of, for example, Arizona’s passage of laws relating to “undocumented” immigrants) drivers in the United States can be largely explained by the socio-economic fact that the majority of the black population of Rio do not own a vehicle.

Apart from the discretion exercised by police at the point of first contact (the blitz), there are also a number of other points at which discretion can be exercised to discriminatory effect. These include whether or not to register a complaint or to register the details of the alleged offense. According to Cano et al. (n.d, 5) this can result in members of discriminated minorities being taken into custody while a member of the “dominant group” (presumably white) “might be simply admonished or induced to pay bribery.” Within the Brazilian Civil Police there is also the discretion, after initially registering the complaint, as to whether to proceed with the official inquiry (*inquerito*). While more serious offenses mandate such a course of action, there are a range of offenses of the more trivial type where the police can again exercise their discretion as to whether to proceed. As with the initial point of contact with police there is an increased likelihood that an official inquiry will be opened for members of a discriminated group (the black and brown inhabitants of the *favelas*). The ultimate decision as to whether to prosecute

the alleged offender falls to the prosecutors, who determine whether they will formally accuse someone of a crime and initiate proceedings in the courts. As with the preceding procedural stages, the possibility exists for the prosecutor to exercise discretion according to any bias or prejudice against the race of the alleged offender.

The role of the judiciary

It falls upon the judiciary to impose the sentences for offenders who are brought before the Brazilian courts. The criminal justice system of Brazil was in large part derived from the codified Roman civil law tradition, consistent with many other South American nations. Unlike Anglo-American jurisdictions, Brazilian courts did not until recently follow the doctrine of *stare decisis*, whereby judges are bound by the decisions of courts of higher jurisdiction. The inquisitorial nature of the Civil code system is directed largely by the interrogation of the accused by the judge, drawing on materials provided from police questioning. Kant (1990) considered that this form of questioning constituted “a proceeding against everything and everyone to find out the truth of the facts.” The main codes with respect to criminal matters are the Brazilian Criminal Code (Law No. 2, 848/1940) and Brazilian Criminal Procedure Code (Law No. 3, 689/1941). The Code of Civil Procedure (Law No. 5, 869/1973) contains the main rules of procedures which govern civil court disputes. Within Brazil the judiciary is comprised of federal and state branches. At the head of the court hierarchy is the Federal Supreme Court, which hears matters pertaining to the constitution and can also rule on the legality of federal and state laws.

External review of the role of the Brazilian judiciary has in the past been less than favorable. A 2005 report by the International Commission of Jurists concluded that the judiciary were slow and often corrupt. There was also criticism of the slowness of the judiciary in determining cases, resulting in massive backlogs in the finalization of matters. According to a 2003 poll conducted by the Brazilian Bar Association the status of the judiciary had diminished so substantially that it was the second least respected government authority in Brazil, with over a third of the respondents indicating that they had little trust in the judiciary. In July 2004 the Senate approved a range of measures which established the binding precedent of high court decisions and also allowed for increased external scrutiny of the judiciary through the establishment of the National Council of Justice (*Conselho Nacional de Justiça*, or CNJ) with the authority to hear complaints against all judges.

Notwithstanding these developments, a 2004 report by the United Nations Special Rapporteur on the Independence of Judges and Lawyers confirmed continuing instances of corruption, nepotism and irregularities in the conduct of judicial entry examinations. For the purposes of this

chapter it is worth noting that Despouy (2005) commented upon the fact that members of the indigenous or black communities represented less than 1 percent of all the top judicial positions. The comprehensive exclusion of race (or indeed any consideration of it) from the judiciary was summed up by Hensler (2007: 334), who observed that a 1996 survey of the Brazilian judiciary did not even query the race of the office holders. By implication it can be argued that there is an expectation that the judiciary would not be comprised of any but white persons. Machada (2009: 1542) comments upon the extent to which the Brazilian judiciary remain either “impermeable or insensitive to the problem of racism” and goes on to quote from an Afro-Brazilian activist that: “[T]he judge’s free interpretation of facts is generally influenced by social theories that undervalue the gravity of racist violence – both in real and symbolic terms – turning racial relations into a carnival and feeding into an ideology of racial democracy.”

From a purely statistical basis it remains unclear whether the sentencing in Brazilian courts is equitable across different races. While in a number of nations work has been carried out with regard to disparities in sentencing due to race, the field has received scant attention in Brazil. Prior to the work of Cano et al. (2010a) the main analyses were those by Costa-Ribeiro (1995) of the “blood crimes” in the First Jury Court of Rio de Janeiro between 1900 and 1930 (Cano et al., 2010a: 209), as well as by Adorno (1995) analyzing robberies in São Paulo in 1990, and Kahn (1998) with respect to sentences relating to serious offenses against property and the person. The analysis by Cano involved a total of 2,337 cases drawn from both Rio de Janeiro and São Paulo in 2000 and 2001. The findings of the research revealed that the average sentence length in offenses relating to robbery, homicide and drug crimes did not differ substantially according to the race of the defendant. The research also indicated that the retention of a private attorney had no bearing upon the outcome and, also, in comparable prosecution filings of charges there was no substantial difference in the sentences handed down. In conclusion, Cano and his colleagues’ (2010) work suggested that the study “failed to find evidence of racial bias in sentencing in Brazil” (p. 239). Significantly, the authors do not argue that this evidence is conclusive. Rather, they argue, it confirms that any bias is more likely to have taken place in the points at which alleged offenders first encounter the police. It is the discretion that resides with the police that potentially have the greatest latitude for the exercise of discriminatory policing.

The use of lethal force in the *favelas*

For more than two decades drug-related violence has become an increasingly serious problem in Rio de Janeiro, where the lower levels of the trafficking

hierarchy are dominated by organized crime gangs ensconced in the *favelas*. There are more than a thousand *favelas* and they are home to over one and a half million people. Any substantial criminological inquiry must account for the neighborhoods and *favelas*. Yet the *favelas*, by virtue of their control by the drug gangs and militias, exist outside the operation of the law in both a spatial and juridical sense. It is within the *favelas* that there is most frequently the suspension of due process, where individuals can be killed with impunity by the police. The residents of the *favelas*, mostly brown and black, are caught between the violence of the drug gangs and the punitive expeditions launched by the police force.

Anas (2006) has identified at least two competing views of the nature of the violence that circulates within the *favelas*. The first sees Rio as a divided city where the drug traffickers rule over a separate spatial order that is akin to a feudal state within the existing state. Soares (2000) argues that the *favelas* constitute an “archipelago of independent areas...that the rule of law cannot reach, where democratic institutions, the Constitution and the law do not operate.” (Anas 2006: 3). Alternatively, there is the neoorientalism vision that articulates the *favela*–state relationship as the state serves to legitimate the parallel power of the bandits. The manner in which various agents of the state trade and engage with the criminal elements within the parallel state can be seen as no less than an abrogation of the role of the state. An Amnesty International report (2005: 3) observed:

[W]hen the police do intervene, it is often by mounting “invasions” – violent mass raids using no warrants or, on rare occasions, collective warrants that label the entire community as criminal. Human rights violations and corruption on the part of the police are rife in the *favelas*. The majority of the victims of police violence are poor, black or youths and the experience of many *favela* residents is that the police are corrupt, brutal and to be feared.

The nature of the violence within the *favelas*, it should be noted, is not solely attributable to the police. The residents of communities under the control of drug traffickers experience violence either directly or as the innocent bystanders of the often random violence. The extent of the use of lethal force led the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to observe that “extrajudicial executions are rampant in some parts of Brazil” (Alston 2008: 5). For more than two decades this violence has constituted the everyday reality of those who occupy the poorest neighborhoods in Brazil’s cities. According to a Human Rights Watch Report (1997) the nature of the violence deployed against members of these communities takes a number of different forms. These include the use of lethal

force in the invasion of *favelas*, individual instances of police killings where there is the suggestion of inappropriate force, the use of force in responding to reported criminal activity that goes beyond what is required and also the use of lethal force by off-duty police for personal reasons. In addition the report comments on the number of persons “disappeared” while in police custody (Human Rights Watch, 1997: 6–17).

Each successive report compiled by NGO Human Rights organizations regarding conditions in Brazil documents the violence that is manifested towards the inhabitants of its cities by the police. In 1993 there were two massacres in Rio de Janeiro that shocked even the most jaded middle-class *cariocas*.⁴ Following the slaughter of seven street children by police on the steps of the Church of Candelária in inner-city Rio de Janeiro, which was dubbed the Slaughter of Candelária, there followed, on August 30, another night of police terror in the *Vigário Geral* neighborhood, which was referred to as “*Chacina de Vigário Geral*” (the Massacre of *Vigário Geral*). Following the ambush and execution of four police officers by a drug gang in the *favelas*, twenty police officers embarked on a revenge expedition that left twenty-one residents dead, including eight members of an evangelical family. Silva’s account of the “*Chacina de Vigário Geral*” is compelling for the manner in which it analyzes how the initial horror and outrage of the general public was rewritten over a number of days in the media and through the pronouncements to assert that the incident was only the work of “bad cops,” but also that the civilian victims were themselves perhaps responsible for the ambush of the police that sparked the slaughter (Silva 2001: 441–6). A demarcation was made between the crime that still routinely concerned all middle-class *cariocas* and the different, aberrant violence of those who inhabited such violent places as the *favelas* (the *zona de violencia*, as Silva terms them).

The extent to which the two slaughters were normalized within the consciousness of the populace could be gleaned from the subsequent agreement between the state of Rio de Janeiro and the federal government to introduce military troops in a joint effort with the police (labeled “Operation Rio”) to attack the drug gangs of the city (Human Rights Watch 1997: 33). The operation failed in its expressed purpose, resulting only in an escalation in the abuse of the residents of the communities through the use of warrantless searches, torture and illegal detention. It also served to set the tone for the ensuing nature of relations between the state and the residents of the poorest neighborhoods, with police/military insurgencies and invasions becoming the mode of operation.

In the decade from 1995 there was little in the way of improvement, with an Amnesty International (AI) report in 2005 criticizing the large number of execution-style killings by police and arguing that the government’s

public security policies had served to exacerbate the growth of violence and crime. An example of the escalating violence occurred in March 2005 when 29 people, aged between 13 and 64, were killed by police in the Baixada Fluminense district (a poor neighborhood on the outskirts of Rio de Janeiro). The killings took place in 11 different locations. The violence was reported as being retaliation for the detention of nine officers accused of killing two people and dumping their bodies behind the police station in the Baixada region. Film footage had also shown the police throwing the decapitated head of one of the victims over a wall (AI 2005: 49). The Baixada Massacre, according to the AI report, was notable only for the number of victims involved. The use of death squads within the Baixada region, it further concluded, was a routine and daily occurrence and that "The day-to-day activities of 'death squads' go largely unreported." (AI 2005: 50).

Confirming the findings of the AI, a report released by Human Rights Watch in 2009 analyzed 74 deaths at the hands of police in Rio de Janeiro and São Paulo from 2006 onwards and concluded that the majority were in fact extrajudicial executions. The report also commented on the continuing existence of death squads (*grupos de extermínio*) in São Paulo and the increasing presence of illegal armed militias in Rio de Janeiro, each of which could be linked to hundreds of murders annually. The report further observed that 1137 "resistance" killings in Rio de Janeiro in 2008, while showing a slight decrease from the preceding year, was still the third highest number on record for the city. In November 2007 a United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, made a visit to Brazil. His report tabled the following year noted that following a large-scale police operation in a *favela* in Rio de Janeiro in April 2008 which resulted in the death of 14 people that a "senior police official reportedly compared the dead men to insects, referring to the police as the 'best social bug spray.'"

In more recent years there has been a pronounced development in the nature of the police confrontations and in the nature of their presence within the *favelas*. Where previously the police entry into the *favelas* has been more akin to skirmishes, entering and retreating, the strategy has since been directed towards displacing the drug gangs and militias occupying the *favelas*. As Silva (2009: 213) observes:

During these occupations, *favelas'* residents participate in scenes similar to the war scenes unfolding in Iraq, Afghanistan, Palestine and other corners of the globe. To be sure, the 'kill on site/sight' practice of Rio de Janeiro's police does not make one wonder whether Rio's *favelas* are concentration camps or battlefields, but rather prompts consideration of the question of what exactly is the difference between them.

Silva's analogy with war is borne out by the report of the UN Special Rapporteur, who observed that "The official rhetoric of 'war,'" the acquisition of military hardware, and violent police symbols only make these views more broadly acceptable (Alston 2008: 19). In responding to Alston's preliminary observations, the Rio state governor, Sergio Cabral, did not dispute the statement, arguing in an interview with the *Jornal do Brasil* newspaper, that: "This is war, and war must be confronted with war" (*Guardian*, November 16, 2007).

The nature of the policing as operating in a war was also reinforced by the comment from a commander of the elite military police force in Rio de Janeiro (Batalhão de Operações Especiais, or BOPE) to the effect that "[W]e operate as we would in a conventional war, where the tank leads the way and the infantry surrounds the enemy." (AI, 2005: 1) The police use of a military style vehicle – known as the *caveirão* (translates as "big skull") in 2002 confirmed the introduction of a military approach to the policing of the *favelas*. Apart from operating as a formidable assault vehicle, the use of the *caveirão* embodies both a physical and psychological threat in the communities that it polices. The emblem of the BOPE reiterates the purpose of the vehicle – a skull, impaled on a sword and backed by two gold pistols – and is said to symbolize armed conflict, war and death (AI, 2006: 4).⁵ In light of these developments and the reports that the Brazilian government was considering purchasing drones to enhance surveillance techniques within the *favelas*, a 2009 report which likened the police invasions to counter-insurgency tactics used by US soldiers in Iraq, is unsurprising. (*Washington Post*, January 6, 2009).

This begs the question why the state has shifted its policing approach from one of insurgency and retreat to occupation and control of the *favelas*. In the *Cidade de Deus* (City of God) *favela*, for example, a unit stationed there is called a "Pacifying Police Unit." These units are geared towards building a rapport with, and winning over, the inhabitants of the *favelas*. Once the military presence with the helicopter gunships and *caveirão* has displaced the drug gangs and militias then the state is intent upon establishing the PPU in 160 *favelas* by 2014 (*New York Times*, October 10, 2010). The *mano dura* of policing is accompanied by projects that are directed towards a model of community policing in Brazilian cities. While observers may be tempted to view such changes as indicative of a growing social awareness, a more pragmatic analysis would suggest that the security concerns that surround Brazil's staging of both the FIFA World Cup in 2014 and two years later the Olympics have given priority to policies of pacification and containment in which previously there has been simple recourse to death squads to clear the municipal spaces.

Where the "war" of the early part of the last decade that was waged in the *favelas* was solely concerned with asserting, in the most violent manner

possible, the state's primacy in the security of the state, the more recent events reflect an awareness of the watching global community and the scrutiny of human rights observers. For all of the positive media reportage of this new mode of policing in the *favelas* and the displacement of the drug gangs from certain *favelas*, it should be noted that this does not necessarily translate to a reduction in the violence experienced by the inhabitants of the *favelas*. In fact an increasing number of communities are now controlled by militias, a fact that was commented upon in a report by the Special Rapporteur in 2008 to the effect that militias comprising police, ex-police, prison guards and private citizens were expanding their control over *favelas* for the purposes of extortion – claiming “protection” money or controlling the supply of public utilities (Alston, 2008: 23). It was estimated at the time of the Special Rapporteur's report that approximately 92 of 500 Rio de Janeiro *favelas* were under the control of such militias (Alston, 2008: 35). More recently this influence has expanded such that a survey in November 2010 revealed that militias controlled 105 of the 250 major Rio *favelas* (*O Globo* November 6, 2010).

Academic analysis of the intersection of race and lethal force in the *favelas*

Despite the fact that the victims of the violence within the *favelas*, either at the hands of the drug gangs, a militia or police, are routinely black or brown, there is little in the way of official or academic acknowledgment of the racial dimension to such violence. This situation prevails despite the observation of Alston (2008: 19) that there is widespread acceptance in the “mainstream” of the view that that police operations are planned “for the very purpose of killing poor, black, young men.” Two notable exceptions are the work of Cano (2010a and 2010b) and Brinks (2008). The study by the former posed the question as to whether police are more likely to kill black people than white in comparable circumstances and whether the use of lethal force was balanced (Cano 2010b: 32). Ultimately, Cano concluded that since the “police are more lethal in *favelas* and there are more blacks and mulattos in the *favelas*, this could all add up to a higher likelihood of being killed among the blacks and mulattos simply because they live in the areas where police tend to be more lethal. In other words, these results could be attributed to a geographical bias rather than to a racial bias” (2010b: 38–39).

While Cano's engagement with the racial dimension of crime is praiseworthy, at one level there are three observations that must be made. In the first instance it is important to note that the sample draws from the official records of violence and it is likely that such records represent only a fraction of the

lethal (and non-lethal) encounters among the police, militias, drug traffickers and the communities of the *favelas*. The very nature of the *zona da violencia*, as Silva suggests, is that it exists beyond the reach of “the law.” The death squads that operated in various regions throughout Brazil in the 1990s necessarily operated beyond the law, even though their activities received unofficial imprimatur from public officials such as the governor of Rio de Janeiro, who declared in May 1995, following the killing of drug traffickers: “These people don’t have to be treated in a civilized way. They have to be treated like animals” (Cavallaro, 1997: 1). Put simply, the actions of the police within the *favelas* are not subject to the same rules of scrutiny or accountability that one would expect in more wealthy neighborhoods in Rio, for example, Leblon or Ipanema.

The second point relates to the period surveyed by Cano (2010b: 34), from 1996 to 1999 in the case of São Paulo, and 1993 to 1996 in Rio de Janeiro. While the analysis by Cano and research also of Ribeiro, Adorno and Kahn evidences the fact that violence was being documented effectively from the moment that the military dictatorship was replaced, it is clear that there was an escalation in such activities in the years subsequent to the period surveyed by Cano. Finally, and most problematic, there is the conflation of the geographical location and the violence by Cano, which seems to imply that the use of lethal force occurs because of the fact that the black and brown population reside in the *favelas*. This logic denies the racial logic that occurs in the social ordering of Brazilian society such that, as Silva (2001: 441) argues, both bodies and places in Rio de Janeiro can be read as confirmation of what she terms the “analytics of raciality” which produce blackness as a signifier of the domain of “social degeneracy, pathology and illegality.”

Where Cano chooses to argue that it is a matter of geographic or spatial ordering that may be at the root of the violence that occurs in the *favelas*, Brinks’s (2008) analysis, which reviews the judicial responses to police killings in Latin American nations, is not all that dissimilar in concluding that socio-economic factors dictate the groups who are most susceptible to the use of lethal force by the police. In respect of São Paulo, Brinks determined that the prospect of successful prosecution was fairly minimal given that:

the police target a population that is radically marginalised and unable to bring its own economic or social resources to bear in support of their claims. The police then craft an investigation that shifts procedural truth drastically in the direction of exoneration. In the social climate of fear and concern over crime, prosecutors never look beyond this police-crafted reality, instead representing the cases as the legitimate use of lethal force in response to violent attacks on society. (Brinks 2008: 176)

Significantly Brinks fails to acknowledge that those who suffer from the violence (and who cannot demand justice from the courts) are more than just “the underprivileged class.” The exclusion of, for example, São Paulo’s *favela* dwellers from what he terms the “the daily interactions with the state and formal society,” frames the experience of the victims of extrajudicial killings solely in socio-economic terms. Consequently, as ‘lower working classes,’ it follows that they are beset with high indices of insecurity, violence, disease and infant mortality” (Brinks 2008: 150). According to Brinks the excess violence of the law can be redressed through the provision of appropriate resources and the implementation of legal reform that involves consideration of “both the rule-crafting and the fact-finding dimensions of legal decision making” (2008: 247). Brinks’s faith that legal reform will effectively rein in the excess violence of the law fails, however, to account for the fact that the inhabitants of the *favela*, to echo both Fitzpatrick and Silva, do not occupy the domain of legality or law making. The rule-crafting and fact-finding dimensions are absent from the neighborhoods of the poor; indeed their language has no valency within them.

Conclusion

Any analysis of the intersection of race or ethnicity and the criminal justice system in Brazil through recourse to rates of arrest, conviction or sentencing is always going to be delimited by a range of considerations. In the first instance there is the refusal to engage with race in the discourse, such that race is invariably subsumed within the category of poverty. What also needs to be considered is that, for a range of methodological factors outlined above, there has been a paucity of critical empirical or theoretical engagement with the question of race and racism and the law. Consistently the racial “other” within Brazil is either written out of the legal text as not being present or, alternatively, is only present in a limited field of interaction that fails to acknowledge the extent of the violence that is manifested on a daily basis in the *favelas* of Rio and São Paulo and throughout Brazil. Bearing this caveat in mind it is argued that there are three main conclusions that emerge.

The first is the extent to which the racial democracy thesis persists in obscuring any reference to race by focusing solely upon socio-economic or spatial interpretations of the operation of the justice system. Detailed and comprehensive analyses of the state of the Brazilian criminal justice system from respected organizations such as the International Bar Association, Human Rights Watch and Amnesty International consistently identify the same pattern of systemic failings of the criminal justice system. Absent

from each of their reports, however, is any reflection of the issue of race. The second is the paradox of a nation that notionally pays such comprehensive attention to enshrining human rights, but can so comprehensively fail to observe and implement them as thousands are murdered each year at the hands of the state in what must be seen as a form of racialized violence. Finally, there is the question of how the use of lethal force that has been routinely directed towards the black and brown inhabitants of the *favelas* can be reconciled as anything less than the state declaring war upon its own citizens. The question that this poses for the Brazilian nation is how such acts of racial violence can be conducted within, indeed facilitated by, the agents of the law itself? As Brinks states, the answer lies in a change in the relationship that exists between the polity and the various branches of the legal system. He argues that:

The necessary institutional changes will not take place, the requisite judicial and prosecutorial willingness will not materialise, police conduct will not improve, Leviathan will not be bound, until voters in these cities begin to write some binding conditions into their social contract, election by election. (2008: 259).

What is missing from Brinks's earnest assessment is not only any consideration of race as a factor in the extrajudicial killings of the *favela* residents, but also the presumption that the residents of the *favelas* are in some way capable of entering into the negotiation of the social contract. The very nature of the racialized violence confirms the nature of exclusion from the civil polity, reiterating (albeit unconsciously) the abiding allure of the racial democracy thesis.

Excursus: another way of thinking about race, violence and law?

Ultimately the response by Brinks and Cano to the question of racial violence in the use of police lethal force fails to account for that which is written outside the parameters of the legal brief or the official inquiry. The violence that is perpetrated is not just upon the crumpled bodies but upon the populations of the *favelas in toto*. The violence of the urban wars, in a sense, transcend the operation of the legal order and render null and void the usual terms of judicial accountability. What is required is a new way of thinking about the intersection of race, violence and the law. When Silva (2001: 330) invokes the image of the *zona da violencia* (zone of violence) as that which is inhabited by the black and brown bodies of Rio de Janeiro, there is a distinct contrast between the spaces in the *favela*, where "one lives with a constant fear of the terror – of the police and the drug dealers alike" and the other side of the city "where most of the minority Enlightened

middle-class sun-tanned *Cariocas* live, seemingly unaware of what goes on elsewhere.”

While it may be tempting to read this juxtaposition between the zone of death or illegality of the *favelas* and the comfortable middle class areas that comprise what Silva terms “the domain of justice”⁶ as a spatial rendering of the juridical boundaries within the sprawling metropolis of Rio de Janeiro, such a view can only offer an attenuated vision of the relationship between race and the violence of the law in Brazil. The racial “other” in Brazil necessarily occupies a symbolic place outside the terrain identified with whiteness – which is a signifier of all that is just, legal and good. Even in identifying such privileging of whiteness – what Lipsitz (2006) terms the “possessive investment in whiteness” – there remains the tendency to limit the analysis to the logic of exclusion. If the myth of racial democracy denied the existence of racial injustice then, conversely, the idea of racial justice embodied in the US civil rights movement provides for the criminalization of exclusionary practices and providing legal remedies. The belief that the racial injustice within Brazil can be rectified by drawing from the legal model of the United States provides a model that fails to acknowledge the myopic approach to the question of race in Brazil. The racism is therefore constructed as an aberration and the installation of corrective, punitive or ameliorative measures serve to confirm the rectitude and, by implication, the universality of the law. Such an approach is flawed for its adherence to the belief that the law itself is unbiased and can, through remedial measures, be restored such that it provides equity and equality. This has been criticized by “Critical Race Theory” scholars such as Crenshaw (1995) who advocate a “race conscious” legal perspective which repudiates the notion of the universality of the law.

Certainly the characterization of the *favela* dwellers as less than citizens or the “enemy within” allow for the deployment of extreme intervention, and this intervention is predicated upon what Silva (2007: 24) describes as the “silencing of the racial underclass in Brazil.” Any subsequent project which seeks to address the intersection of race, violence and the law in Brazil must venture beyond the limits of existing criminological or statistical analysis. To effectively address the reason why so many young black and brown men continue to die in the *favelas*, it is necessary to move beyond the trope of racial exclusion and to a consideration of how the racial “other” is always placed outside the nation. The critical project requires a movement to the very foundation of the racial analytic that has informed the ontological foundations of thought. Silva (2009: 213) argues that the deployment of raciality validates the state’s killing of certain persons – the young men and women of color – to maintain the state. Such violence can occur only because, as she puts it, “these persons’ bodies and the territories they inhabit always-already signify

violence.” Until there is recognition that the Brazilian state is grounded firmly upon the necessity of a logic of obliteration (that demands that the bodies of the black/brown racial “other” can only ever be antithetical to the nation’s project of modernity) then the violence will always continue. The project that remains is not just to force the acknowledgment of the racial nature of violence and exclusion but instead to reflect on the possibility of dismantling the onto-epistemological framing of race within the Brazilian nation that gives rise to the “zone of death” within the *favelas*.

Notes

1. The term *mestiço* refers to a person within Brazil of mixed race descent from European settlers (primarily but not confined to Portuguese), indigenous inhabitants, and those of African origin brought to Brazil as slaves.
2. *Favela* is a term used to describe the shanty towns that have been built throughout Brazil on public land within the cities.
3. Lei No 7.716 de 5 de janeiro de 1989, Col. Leis Rep. Fed. Brasil, 181 (1): 11, Jan 1989.
4. The term *cariocas* refers to the native inhabitants of Rio de Janeiro.
5. On the symbolic effect of the *caveirao* and other iconography in the occupation of the *favelas* see Silva (2009: 229–30),
6. In many ways it is possible to reflect upon the experience of the *favelas* as akin to the “space of death” which Taussig (1986) refers to in reference to the violence utilized to ensure that the Putamayo Indians in Colombia remained a docile and acquiescent labor force for the colonial rubber companies. There is insufficient space to explore the link, but Agamben’s (2005: 3) analysis of the “state of exception” as that place where there occurs the “physical elimination not only of the political adversaries but of entire categories of citizens that cannot be integrated into the political system” offers a possible insight into the nature of policing within the poor neighborhoods.

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6

Race, Ethnicity, Crime and Criminal Justice in Colombia

Fernando Urrea-Giraldo

Introduction

Colombia is the third largest Latin-American country in population after Brazil and Mexico. According to data from the 2005 census, Colombia's population exceeds that of Argentina. As of June 30, 2010, Colombia's population stood at 45,511,909 inhabitants. Seventy-six percent of Colombia's population lives in urban centers and 31 percent in the five main cities.¹ On the other hand, since 2000, Colombia contributes 5 percent to the total generation of Latin-American and Caribbean GDP (Gross Domestic Product). Colombia is a country with a relatively diverse economy. Colombia's economy is of intermediate size, smaller than Brazil, Mexico and Argentina, and comparable to Chile's economy but with a larger GDP, making the country the fourth largest in the region, mainly due to the severe reduction in Venezuela's economy.

According to the 2006 Gini index,² Colombia is one of the four countries (Bolivia, Haiti, Brazil and Colombia) in Latin America and the Caribbean with major income inequalities. These countries have a Gini higher than 55.3 (UNDP, 2010: 38). In 1964, the Gini was 55.5. By 1970 it was 57.5; in 1980 it was 54.0; and in 1990 it was 53.0. This means that during these three decades it decreased slightly by two to four points, without ever dropping below 53.0. Again between 1995 and 2000 it increased slightly to 56.0 and reached 59.0 in 2008, when it started to show an increase well above the previous figures (Urrea, 2010).

The chapter draws its data from Cali. Cali is the third largest urban center of Colombia, after Bogotá and Medellín. It is also the center of Valle del Cauca, one of the major regions of the Colombian capitalist development, after Bogotá and Medellín. Cali's central position offers other small urban areas a network of cities with an industrial and agro-industrial development (in the center and south of Valle del Cauca, north of Cauca and the Pacific with the city port of Buenaventura). Cali makes an important contribution

to the generation of the national GDP. As of June 30, 2010, Cali had an average population of 2,244,639 inhabitants. One of the most important characteristics of Cali and its "hinterland" appears to be its ethnic-racial factor. Cali is the municipality that has the highest concentration of Colombia's black population. According to the 2005 census data, 26.2 percent of the municipality's population self-identifies as afrodescendant, but it could well be around 35 percent of its total population. The area that encompasses the south of Valle del Cauca, north of Cauca, the municipality of Buenaventura and the city of Cali has a population of more than 1.2 million black people, by self-identification in the 2005 population census, and this figure amounts to 26.7 percent of the total black population in Colombia. This region and the city of Cali have the highest concentration of blacks in Colombia.³

Colombia has been characterized as having, over the last 60 years, one of the highest violent homicide rates in the world. From the mid-1950s to the end of the 1960s, Colombia's violence statistics were among the highest in the world. According to Pissot and Barbary (2004, with Spanish translation in 2007), in this period "the homicide rates in Colombia were consistently one of the highest five in the world, with a figure of 31 per 100,000 inhabitants." In the mid-1970s, the rates moved to an average of 20 per 100,000 inhabitants, placing Colombia's homicide rate between fifth and tenth in the world (2007: 300 and 301). If we consider the phenomenon of Colombia's political violence in the decades of 1940, 1950 and 1960, the highest homicide rates were predominantly in rural areas; however since the 1970s they have gradually tended to be more urban, even though they have continued to be significant in the rural areas.⁴ This trend is even more evident from the 1980s. If we take into account the existing comparative international statistics for the 1990s and the twenty-first century (Soares and Naritomi, 2007: table 2 and figure 2, pp. 32, 46; Waiselfiesz, 2008: 15, 17, 19, 20, 21, 24, 35, 37, 101, 103, 105), Colombia's high homicide rates become more evident. However, in the twenty-first century Colombia has come to occupy the second place, behind El Salvador (Waiselfiesz, 2008: 37). According to Soares and Naritomi the average rate of homicides during the 1990s in Colombia was 83.2 (per 100,000) and in 2000, 70.2. For 2005 the rate dropped to 43.8 homicides (Waiselfiesz, 2008: 24), while the average rate for 16 other Latin-American countries in 1995, 2000 and 2005 was 19.8, 22.0 and 18.2 respectively.

High rates of violent crime, represented by homicides and specifically murder with firearms, has defined the country through several decades, with a new outbreak in the last 20 years. This is related to Colombia's social and political structure and its pattern of capitalist development. Besides the fact that in Colombian society there exists a high concentration of income and different means of production, land in particular, there is also

a strong aversion of national and regional elites toward all kinds of distributive social reforms and of any populist project that implies state intervention. Colombia is one of the few countries in the region that has not had a populist political experience in its government history. Such political experience could have played a significant part in the integration of the popular classes with the middle and higher ones. On the contrary, the elite has favored the emergence of a conservative technocratic class, which is to a large extent composed of economists who have imposed their will on the operation of the economy since the 1990s. Contrary to social demands and the pressure of urban and rural sectors of the population, this elite has made use of networks of political clients via traditional parties, and, nowadays, electoral machines and private armies, which are employed to choke all kinds of social protest. Institutional armed forces and police have functioned as private armies in the service of the conservative sections of the upper class, especially some elite business groups and big land owners. For these reasons the state has had a weak institution in its territorial control and the state's presence has been disputed by guerrillas, paramilitary groups and the aforementioned far right elite sectors.

Capitalism in Colombia is characterized by a median diversified industrial development, which day by day tends to move toward a *maquila* production⁵ exports model, used also to meet domestic market demands. This process operates in a highly restricted formal labor market, accompanied by a pattern of strong labor deregulation since the 1970s (Urrea, 2010).

Criminality in Colombia and Cali, and drug trafficking

Since the 1970s, criminality in Colombia and in Cali has been associated with the emergence and development of an illicit drug market and with drug trafficking,⁶ primarily of marihuana and cocaine, and, to a lesser degree, heroin. Colombia's drug trade articulates a network of drug production-distribution. Similar to other countries, the illegal drug market operates in small and medium scales and these levels usually cater to drug distribution in local urban markets around the country to meet national demand.

Drug trade is strongly associated with Colombia's high homicide rates because of the interactions between drug trafficking and the guerrilla movement, but also, and above all, the extreme right paramilitary groups. Thus it is probable that drug trafficking plays a huge part in explaining the high homicide rates in Colombia, and of course Cali. There are other factors, which precede the rise of drug trafficking, and which have created a favorable atmosphere for fights over power in regional criminal spaces. But for the purpose of this paper, I would like to highlight the role of criminal organizations involving drug dealers, paramilitaries and guerrillas that have

generated many types of homicidal violence, and which interact with violent situations (including homicide) in cities such as Cali, working through urban criminal organizations, some of which exercise territorial power over certain neighborhoods of the city. The criminal activities of these groups extend to various types of “business,” besides drug trafficking, such as extortion of businesses, kidnapping, assault and armed robbery.

Palacios and Serrano (2010) draw attention to Colombia between the 1980s and 1990s to show that Colombia’s state control is too weak to regulate the social order, which worsens considering the large size of Colombian regions. As a result, generalized, informal social control arrangements are implemented through the use of physical force by private armies with a profound conservative orientation. The armies have been known to impose control over the new large landowners and also the old landowners who have been recycled into the new order of land dispossession, and over the state’s financial resources and technical assistance programs. A significant portion of economic transactions operate through the use of illegal mechanisms, which are sustained by death threats in rural and urban areas. Although these actions are more frequent in rural areas, for example, the act of land dispossession and the associated threats of violence, we should not ignore the effect of these phenomena in cities like Cali.

Homicide, criminality and delinquency

As illustrated in the introductory section, it is imperative that any discussion about crime and criminality in Colombia take into account violent homicides, which are categorized in legal terms under homicide modality. This is particularly the case in reference to Cali. While homicides are a fundamental characteristic of Colombia, it is also important to take into account other types of criminal acts, like the so-called “crimes against the economic patrimony.”⁷ Under another classification, different types of delinquent crimes were observed for the 1990s in rates (per 100,000 inhabitants) that were on average similar to other countries in the region: in assaults, 14.1; robberies, 19.9; and crimes of aggression to the victim, 21.0. If we consider the diverse crimes, including the ones noted above and also deaths from road accidents, the rate reaches 53.7. With this rate, Colombia was classed as the second highest (after Uganda with 53.9) in a sample of 55 countries across various continents, followed by Argentina with 50.2 (Soares and Naritomi, 2007: table 8⁸). What this means is that another South American country presented similar rates to the ones observed for Colombia. According to Pissoat and Barbary (2007: 336–337), results from household surveys that include information on victimization (robberies with or without violence), and that compare Cali in the mid-1990s with five other Latin-American cities, show

a similar pattern of common delinquency, not taking into account specifics in crime types. According to the authors: “[I]f Colombia is located on the basis of its homicide rate as one of the most violent countries in the world, it is wrong to extend this classification to the field of minor delinquency, like some authors do when they consider the phenomenon as evident” (Pissoat and Barbary 2007: 337).

Violence, criminality and race

At present, apart from the investigations conducted by Urrea and Quintín (2000), Pissotat and Barbary (2004 and 2007), and Urrea and Botero-Arias (2006), there is a deficiency in Colombian studies on the relationship between violence, criminality, race and social inequality⁹. There are, nevertheless, relevant studies on violence and social inequality in Colombia such as the study that was conducted by Sarmiento Gómez (2000); the pioneer works of Bourguignon (1999a, 1999b). For Latin America and the Caribbean, there are relevant studies conducted by Fajnyber et al. (2002); Bourguignon et al. (2003); and above all Waiselfiesz (2008). But in Colombia until now, the race factor has not been significantly considered in studies of criminality, violence and social inequality. Previous studies paid minimal attention to race. The study conducted by Pissotat and Barbary (2004) focused on the cities of Bogotá and Cali. The authors pointed out especially with reference to Cali the effect of the intra-urban social inequality such as the pattern of the socio-residential segregation of the city, including a race component in social inequalities behind common delinquency. This study is different from other studies regarding Cali. For example, in Guzmán and Quintero's (2009) study of criminality in the city, the race factor is included but only in terms of its link to the socioeconomic factor; no reference is made to a socio-racial analysis of the city.¹⁰ A previous study conducted by Guzmán (1999) points toward an existing association between violence and poverty, not in terms of the causal effects of poverty on violence, but in terms of the concentration of victims located in popular sectors. In this study, the author leaves out the ethnic-racial factor.

It is unquestionable that due to the absence of data regarding the socio-racial characteristics of the victims and the perpetrators of violent events and criminal acts in general, the ethnic-racial factor has not been considered important in the studies of criminality and violence in Colombia. However, for the years of 1998 and 1999 some statistics showing socio-demographic information by ethnic-racial group have emerged for the city of Cali (Barbary and Urrea, 2004), and there are also statistical data on common urban delinquency (Pissotat and Barbary, 2004 through the CIDSE-IRD survey of Cali in 1998). Later the 2005 census allowed for the

first time a compilation of complete socio-demographic information on the Colombian population at a national level according to ethnic group, and the census data include, among other variables, information on mortality by sex and age. Also, the Colombian national institute of statistics (Departamento Administrativo Nacional de Estadística, DANE) has since 2006 included ethnicity in all the records of deaths in the country based on ethnic identification information given by a close relative/friend of the deceased or by the police and forensic authorities. This allows for a breakdown of mortality rates including violent deaths by ethnic-racial group. Furthermore, since 2008, the epidemiologist monitoring system (SIVIGILA) of the Ministry of Social Protection has included ethnicity in every morbidity-mortality incident in the public health sector. Cali is also the first city to start using this information, thanks to the possibility of comparing official public health records of the deceased with the 2005 census data. From 2009 the Secretaría Salud Pública Municipal – Public Health Secretariat – in Cali started processing data from the SIVIGILA system by ethnic-racial group.¹¹

Because of the considerable demographic weight of the black population in Cali and its relevance in the national context, in terms of being the municipality and the region with the greater concentration of black people in Colombia, this chapter introduces the socio-racial factor in its analysis of homicide and in its analysis of other spheres such as imprisonment and military and police recruitment. The socio-racial factor is also used to assess the prevalence of the imprisonment of blacks.

Thus, the main interest of this chapter points toward an analysis of mortality rates by sex, age groups and violent criminality (homicides) according to racial background – that is, the black, or Afrodescendant population, versus the non-black or non-Afrodescendant population. The chapter also explores the differentials of penitentiary imprisonment between the two populations by sex. Furthermore, it examines the interactions between the pattern of socio-racial deaths and imprisonments and social inequalities in the context of socio-residential segregation in the city of Cali. The discussions are dissimilar to previous studies, which focused on different forms of criminality (i.e., common delinquency type) in Cali and although such studies included the ethnic-racial factor, this variable was not sufficiently emphasized as a causal factor, for example Pissoat and Barbary's (2007) study. Other examples include studies that have gathered data on all types of crimes including homicide, and despite containing ethnic-racial information, this factor is only marginally addressed, for example Guzmán and Quintero (2009).

The discussion firstly addresses patterns of homicides rates for Cali since 1983 to 2009, compared to national rates and the rates for the capital,

Bogotá. In this part there is a reference to the drug trafficking phenomenon and its differential effect between these two cities; also there is a brief reference to the case of Medellín. From here on, the chapter on Cali combines data from the 2005 census with SIVIGILA data from 2006 and 2009. In the second section, the chapter examines concentration patterns by race and age groups according to residential areas/social classes in Cali (2005 census data). This section explores several types of inequality indicators according to Cali's urban conglomerates and ethnic-racial groups (black and non-black populations). The indicators are: the UBN (unsatisfied basic needs), school attendance for 11- to 26-year-olds, differences in income according to sex and varying levels of education between Afrodescendants and non-Afrodescendants in Cali and the 13 main Colombian cities (in this part census and GEIH – Great Integrated Survey of Households – data are used), life expectancy and death rates per type of household according to race characteristics. Also, the section provides a description of mortality rates by sex and age for black and non-black populations in Cali (based on the 2005 census), and sex and age characteristics of victims of homicides in Cali during 2005 (SIVIGILA without ethnic information). This is followed by an examination of the differentials in homicide rates for the black and non-black populations in Cali for the year 2009 (SIVIGILA with ethnic information) and two of the city's neighborhoods (El Retiro and Potrero Grande) and boroughs (15 and 21) with some of the highest concentration of blacks during the years 2007, 2008 and 2009. The third section is a discussion of the rates of imprisonment and military and police recruitment by ethnic-racial groups. Finally, conclusions are presented.

Patterns of homicide rates in Cali and some comparative statistics of different types of crime between Cali, Bogotá and Medellín

It has already been mentioned (see Pissot and Barbary, 2007) that the higher rate of homicide in cities such as Cali is not necessarily reflected in the high rates of criminal delinquency, since data on the latter indicates a similar pattern for other Latin American cities. However, the presence of drug trafficking in Cali and surrounding regions since the 1970s, with a substantial increase in the 1980s and 1990s, has largely contributed to the high homicide rates. This situation applies also to other regions and Colombian cities, particularly Medellín (Palacios and Serrano, 2010).

Figure 6.1 is illustrative of the patterns of homicide rates in the city of Cali during the period 1983–2009 – in comparative terms with Bogotá's rates and the national rates (Bogotá excluded). During these 26 years, rates for the country's capital (Bogotá) have been well below the rates for Cali, even

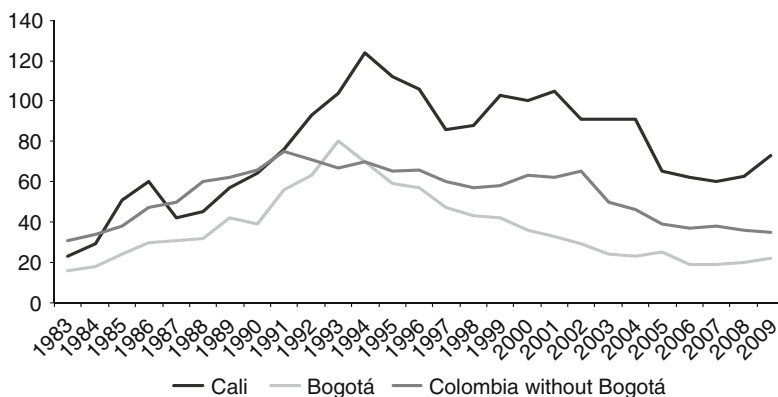


Figure 6.1 Homicide rates per 100,000 inhabitants for Cali, Bogotá and Colombia (without Bogotá), 1983–2009

Source: CISALVA 1983–2006; *Revista Criminalidad* (National Police Magazine), 2007 and 2008; Secretariat of Municipal Public Health, SIVIGILA, 2009.

in 1993 when rates for Bogotá exceeded national ones. For the period 1983–1991, three phases are evident in Cali’s and national rates: in the first phase before 1984, when Cali’s rates are lower than the national rates; the second, between 1984 and 1986, when they are well above the national rates; and the third, between 1987 and 1991, when they are lower with a tendency to be equal to the national rates. But since 1992 Cali has had homicide rates that are well above the national average (excluding Bogotá). While the maximum national rates reached 80 homicides per 100,000 inhabitants in 1993, Cali’s rates between 1992 and 2004 were well over this limit, to the extent that in 1994 they exceeded 120 homicides per 100,000. The drop in national homicide rates started around 1994. Cali lagged a year behind in this drop in homicide rates and the drop has been relatively low. In the case of Bogotá, the same pattern started two years prior to 1994. Also, while for the national aggregate the homicide rate continued to drop between 2008 and 2009, Cali showed a significant increase; in Bogotá a moderate increase was seen.

The “Cali Cartel” became hegemonic in its control of the drug market until the mid-1990s during which it was hit hard by the police. Its downfall coincided with a drop in homicide rates (see Figure 6.1, 1995–1997). Nevertheless, the substitution or replacement of the “Cali Cartel” with another cartel, “Norte del Valle” (the North of the Valley), and then by yet other cartels with different criminal agendas, led to a renewed increase in homicides from 1998 to 2004 (Figure 6.1). Following a fresh assault by law enforcement on these “cartels” – an assault that was against the arranged agreements between mafia groups, the business sector and State authorities – homicide rates were again reduced until 2007 (Figure 6.1).

In 2008 and 2009, as a result of the emergence of new mafia groups in the region, there was another increase in the homicide rates for Cali. These groups replaced the old ones; they allied themselves with extreme right groups and the business sector, and also received protection from State authorities. All this goes to show that drug trafficking is crucial to understanding the rate of homicides, which are the evidence of deadly violence that has accompanied the replacement of the old criminal organizations with the new ones; furthermore, there exists an important alliance between the mafia groups, the local business elites and the political organizations, in their interactions with the authorities and the agencies of state security (police, army, intelligence agencies).

In Bogotá, unlike Cali and other cities such as Medellín, drug trafficking has not, in general, had a significant presence, although in the last 10 years its presence has been slightly more visible as seen in extreme right drug-paramilitary expressions in it, also found in various regions of the country. The rise in homicides rates between 2007 and 2009 (Figure 6.1) in Bogotá has been influenced by this factor, though never to the extent seen in Cali.

Different types of crime and homicides from 2003 to 2008 for Cali, Bogotá and Medellín according to national police data

Colombia's national police records of all types of crime (Revista Criminalidad 2003 and 2008) show that between 2003 and 2008 the total crime rate in the country goes from 696.2 accumulated crimes per 100,000 inhabitants in 2003 to 805.8 in 2008. These figures show a significant increase of 15.7 percent in the crime rate. However, in comparing crime rates for the metropolitan areas of Bogotá, Medellín and Cali, the picture is very different: in Bogotá the crime rate drops from over 995.6 accumulated crimes per 100,000 inhabitants in 2003 to 733.1 crimes in 2008. In the case of Medellín it drops from 917.0 to 834.0 crimes, while in Cali the case is the opposite, crime rate shows an increase from 457.6 to 1,253.5. The crime rate variations with particular reference to Cali are explained mainly because in Cali and its metropolitan area there was a considerable increase in "crimes against economic patrimony" and "personal lesions."¹² These crimes went from 179.4 and 54.9 respectively in 2003 to 495.0 and 124.3 crimes in 2008, and in addition there was an increase in other types of crimes. In contrast, in the metropolitan areas of Bogotá and Medellín these two types of crimes dropped significantly, as did other crimes.¹³ The strong variations between the three metropolitan areas against the national total are possibly related to the major dissuasive and repressive police presence in Bogotá and Medellín in relation to "crimes against the economic patrimony." Also, homicide rates that police recorded in the three metropolitan areas and for the national total presented considerable drops: in 2003 they were, for the national total 54.6 homicides per 100,000 inhabitants, for the metropolitan area of Bogotá

21.8 homicides, for Medellín 87.8 homicides and for Cali 88.8 homicides. In 2008 they dropped respectively to 36.1, 16.8, 35.2, and 56.5. Despite the overall reduction in Cali's homicide rate in 2008, the figure is relatively higher compared to the national total and to Medellín, which has a slightly lower rate than the national average. And in comparison to Bogotá, Cali's rate is 3.4 times higher. Also we have to note that in 2003 the rates of the metropolitan areas of Cali and Medellín were very similar (almost equal).

Finally, past Colombia data reveal that rates for all kinds of crime do not follow the same trend as homicide rates in these three cities, which are just a part of general crime rates. This reconfirms what is proposed by Pissoat and Barbary (2007), who have explanations for the criminological trends of common delinquency, not necessarily associated to homicides:

In the context of the social crisis in Cali, we already suggested the existence of a very real impact of the massive exclusion from the labor market of the poorest population in the increase of delinquency. In order to approach the space and socio-demographic factors in the exposition to delinquency, we have decided to relate the declarations of robberies without physical violence registered in the CIDSE-IRD survey with the characteristics of the people interviewed. We examine in the first place the space factor of the phenomenon. The rates per neighborhood show a link between the local socioeconomic context and the frequency of the attempts against property: in general, when the economic insecurity of the inhabitants increases the insecurity on the property also increases. Thus, the highest rates are the ones in the popular neighborhoods of the east. However, there is an exception in the poor neighborhoods of the west, where the lowest frequencies in Cali can be observed. (...) Also, is the local socioeconomic heterogeneity that produces the 'delinquency market' whereas, on the contrary, the homogeneity suppresses it, at the same time a strong social 'cohesion' increases the deviance control. (Pissoat and Barbary 2007: 339).

Regarding the effect of the social space context, these results, confirmed by the finest anthropological analysis (Urrea and Quintín, 2000), show that it is not the level of socioeconomic precariousness that modulates exclusively the activity of minor delinquency, even if on the scale of the main features of the social geography of agglomeration, the crime frequency seems to be linked to the poverty rate. In the intermediate scale of the type of neighborhoods in Cali, the situation that appears as 'criminogenic' is the coincidence of two dynamics: in the first place, the multiplication of nuclei of extreme precariousness that generates the economic and social crisis, and where the young men in particular are found practically excluded from the labor market; in second place, the local increase of the social injustice. This spatial juxtaposition to a

neighborhood scale or, more frequently, to the scale of a group of contiguous neighborhoods increases the tension between the precariousness of the poorest and the relief, very relative, of the least poor. (Pissoat and Barbary 2007: 344–345)

The image that is derived is double. On the one hand, the minor delinquency in Cali is exercised mainly at the core of the popular neighborhoods, under a close spatial and social proximity between the authors and its victims. On the other hand, the differential exposition between sex, age, the socio-professional category and the racial membership establishes many demarcation lines in the core of this neighborhood's population: between adult men or young women more exposed and between young and teenage men least exposed, between actives in the socio-professional category more exposed and other categories or activity status least exposed (unemployed, retired, domestics, students) and, in some cases, between black and brown (mulatto) population more exposed and white and 'mestizo' population least exposed. Probably these social and demographic divisions deepen the censorship between the population exposed to the risk of robberies and the population that commits it. (Pissoat and Barbary 2007: 345–346)

Distribution of the population in Cali according to race and age groups, by social class residential areas: social and racial inequalities

Around 75 percent of black people live in 11 boroughs in the east of Cali (2005 census-DANE), the majority of these in the lowest social-economic levels, and with at least half of black households residing in the poorest neighborhoods of those boroughs. At the same time, black people make up approximately 40 percent of the east population of the city, according to results from the 2005 census. This figure contains a high percentage of young male population below the age of 30 as shown in Table 6.1.

The Afrodescendant population in Cali according to data extracted from the 2005 census presents the highest percentage of young male population in the city: 58.5 percent Afrodescendant versus 53.3 percent for the non-ethnic population and 54.9 percent is the urban average. On the other hand, if we examine the Cali Afrodescendant population by boroughs, we find that the boroughs with the highest concentrations of black people, which represent over 35 percent of them, have also the highest percentage of young male population (less than 30 years of age) at 60 percent or more. These boroughs are the numbers 13, 14, 15, 16 and 21. It has to be acknowledged that these are boroughs in the east of the city with a strong representation of very poor neighborhoods and a demographic representation

Table 6.1 Percentage of male population younger than 30 years of age for Afrodescendant and non-Afrodescendant people, and for some boroughs in Cali with their respective rates of Afrodescendant population*

| | Total Cali | Afrodescendant Population | Non-Afrodescendant Population** |
|-------------------------------|---|---------------------------|---------------------------------|
| Male Population <30 yrs | 54.9 | 58.5 | 53.5 |
| % Afrodescendant Population | 26.4 | Doesn't apply | Doesn't apply |
| Popular class boroughs | | | |
| | Four boroughs from the East conglomerate | | |
| | Borough 13 | Borough 14 | Borough 15 |
| Male Population <30 yrs | 59.5 | 62.8 | 64.04 |
| % Afrodescendant Population | 38.1 | 51.2 | 50.1 |
| | Middle class boroughs (from Middle North conglomerate) | | |
| | Borough 17 | Borough 19 | Borough 22 |
| Male Population <30 yrs | 50.3 | 44.8 | 44.1 |
| % Afrodescendant Population | 9.5 | 9.1 | 10.7 |
| | One borough that belongs to Mountain side conglomerate | | |
| | | | Borough 20 |
| Male Population <30 yrs | | | 58.6 |
| % Afrodescendant Population | | | 12.6 |

* In the calculation by boroughs the Indian and Rom (gypsy) population are included, not for Cali's Total.

** Without ethnic-racial self-recognition, according to the ethnic question model of the 2005 census.

Source: 2005 census data available in <http://www.dane.gov.co>. Calculations are mine.

of well over 60 percent of black people, according to estimations from the 2005 census. A borough with poor neighborhoods in the “mountainside” (ladera) zone of the city (for example, borough 20) can reach under 30 male percentages closer to the male population under 30 in boroughs 13, 14, 15 and 21, even though the rate of self-identified black/brown (mulatto) there is only of 12.6 percent. On the other hand, the middle class and upper class boroughs with rates of representation of black people between 9 percent and 17 percent have a percentage of between 44 percent and 50 percent of males under 30; these figures are below the urban average of between 44 and 50 percent for the non-ethnic population in Cali.

This contrast indicates a demographic association between geographical areas with high rates of young male population and poverty, independently of the percentage weight of black people; and in contrast, a relatively lower percentage of young male populations in the more wealthy residential areas, with relatively low percentages of black populations. However, even though there are poor areas with low rates of black concentration (as in the case of the boroughs in the “mountainside” – ladera – in Cali) and high class boroughs with low and moderate populations of black people and the lowest percentages of men under 30, evidence shows that in the east of the city there exists a strong association between poverty, young males and a high residential concentration of black people. In sum, the black population in question is socially heterogeneous, as analyzed in earlier studies (Barbary and Urrea, 2004; Barbary, 1999; Urrea, 1999; Urrea and Viáfara, 2007). This population is highly concentrated in the poorest areas of the city, particularly in the east.

This type of socio-demographic profile of young male populations (under twenty) has been noted and assessed by Urrea and Quintín (2002), and Urrea and Viáfara (2007), through the demographic results of the survey World Bank – CIDSE and Cali’s mayor in September 1999,¹⁴ with the implications that this profile has in the process of masculine sociability within contexts of poverty. These demographic characteristics, which are more evident among males between 10 and 29 years in the Afrodescendant population of the city, favor individual and collective hyper-masculine practices (“Macho” behavior in sexual and virility male competition with use of physical and symbolic violence against women and other men). Such practices are highly competitive and conflictive, and they endorse the use of physical violence for the purpose of obtaining social recognition. Thus, this socio-demographic framework constitutes a key factor for understanding the dynamics of social violence in Cali as well as in other Latin American cities. The diverse ramifications of social violence not only affect particular groups of people, as in the case of young black people, but they also have

Table 6.2 Percentage of the population with at least one UBN; total for Cali and the five urban conglomerates for the Afrodescendant and non-Afrodescendant populations, Census 2005

| | Cali Total | | | Afrodescendant | | | Non-Afrodescendant | | |
|----------------------------------|------------|---------------------|------------------|----------------|---------------------|------------------|--------------------|---------------------|------------------|
| | UBN | Population with UBN | Total Population | UBN | Population with UBN | Total Population | UBN | Population with UBN | Total Population |
| Total Cali | 11,01% | 227.105 | 2063323 | 15,85% | 85.414 | 538.770 | 9,24% | 139.467 | 1.509.855 |
| East | 17,00% | 104.957 | 617.366 | 21,20% | 58.274 | 274.905 | 13,62% | 46.152 | 338.856 |
| Middle East | 9,04% | 31.986 | 353.761 | 12,31% | 12.381 | 100.598 | 7,74% | 19.417 | 250.999 |
| Middle North | 6,46% | 33.536 | 518.860 | 5,67% | 5.564 | 98.201 | 6,61% | 27.546 | 416.705 |
| Mountain side (Ladera) and Rural | 18,99% | 49.469 | 260.515 | 23,44% | 8.216 | 35.056 | 18,14% | 40.361 | 222.525 |
| North-South Corridor | 2,29% | 7.158 | 312.821 | 3,26% | 979 | 30.010 | 2,13% | 5.990 | 280.770 |

Source: DANE, 2005 Census; calculations are mine.

an impact on the overall Cali Afrodescendant male and female populations of all ages.

Some indicators that reveal the social and racial inequalities in Cali by urban conglomerates

In this article the term “urban conglomerate” refers to a geographic unit inside a city, in this case Cali; this city groups various boroughs, creating a territorial space with similar sociodemographic and socioeconomic characteristics within that space (Urrea and Botero-Arias, 2006). In the case of Cali, a municipality with 22 boroughs and a rural area, the following conglomerates have been formed: east, which groups boroughs 7, 13, 14, 15 and 21; middle east: boroughs 8, 11, 12 and 16; middle north: boroughs 3, 4, 5, 6, 9 and 10; mountainside (Ladera) and rural area: boroughs 1, 18, 20 and rural area; north–south corridor: boroughs 2, 17, 19 and 22.

In Cali’s five conglomerates, the percentage differences of the populations with at least one “unmet basic need” (UBN) in Afrodescendant and non-Afrodescendant (2005 census) groups are considerable. With the exception of the Middle North conglomerate, in which percentages for the two groups are similar, but slightly higher in the non-Afrodescendant population, the poverty level measured in terms of “unmet basic needs” for the other four and for Cali’s total is much higher in the Afrodescendant group (see Table 6.2). In the two conglomerates with the highest poverty level (east and mountainside (ladera/rural) of well above 15 percent of the total, the Afrodescendant poverty level exceeds 20 percent in both conglomerates. Also, in the conglomerate with the lowest poverty level (north–south corridor), the Afrodescendant group has a slightly higher rate of UBN.

In Figures 6.2 and 6.3 we can see that school attendance in both age groups is lower for Afrodescendants of both sexes, with the exception of the middle east and the rural area. In the former conglomerate, Afrodescendant women have a higher school attendance rates; and in the latter conglomerate school attendance rates are favorable for Afrodescendants of both sexes in the 11 and 16 years old groups, but only for the Afrodescendant women in the 17–26 years group. The differentials of school assistance between men and women are stronger in the Afrodescendant population. The north–south corridor conglomerate reports the highest rates of attendance for both populations and in both age groups. In short, and as it was expected, there is a close relationship between the rates of populations with UBN and school attendance rates.

Another relevant indicator to show the social inequalities between Afrodescendants and non-Afrodescendants is the combined monthly labor income for both sexes, based on attained educational level. For this indicator, we have available data for Cali and the aggregated group of the 13 main Colombian cities (of which Cali is one) in the second quarter of 2007

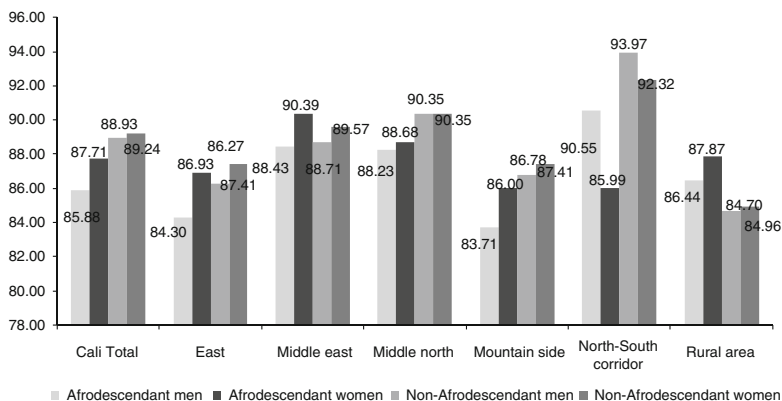


Figure 6.2 Percentage of school attendance for the 11- to 16-year-old population by ethnic-racial group and sex, for Cali and six conglomerates

Note: For this graphic and the following the rural area is a conglomerate, separated from mountainside conglomerate.

Source: DANE, 2005 Census; calculations are mine.

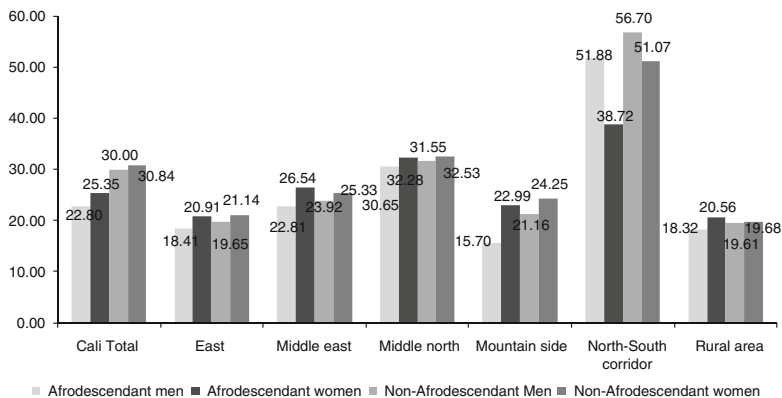


Figure 6.3 Percentage of school attendance for the 17-26 year-old population by ethnic-racial group and sex, for Cali and six conglomerates

Source: Census 2005, DANE.

based on the GEIH (Great Integrated Survey of Households) (see Figures 6.4 and 6.5).

Both figures are revealing of the socio-racial inequality patterns in Cali and the total for the country between Afrodescendants and non-Afrodescendants of both sexes. In the lowest educational levels (i.e., “no education,” and “elementary education”), income levels do not show differentials, but as the

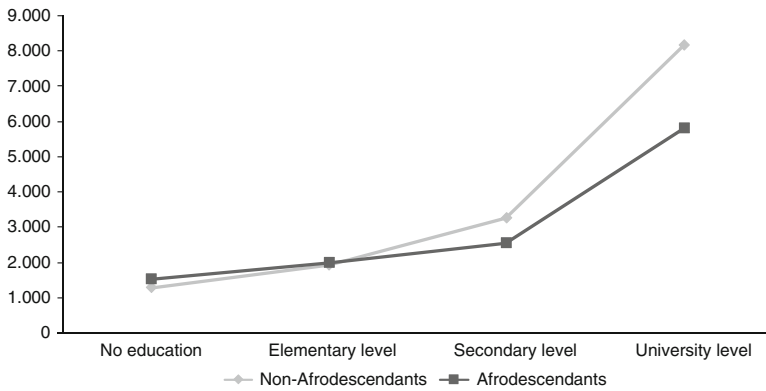


Figure 6.4 Cali: monthly incomes (in Colombian pesos) by educational level and race (both sexes), 2007

Source: Carlos Viáfara López (2010), Gran Encuesta Integrada de Hogares (GEIH), DANE.

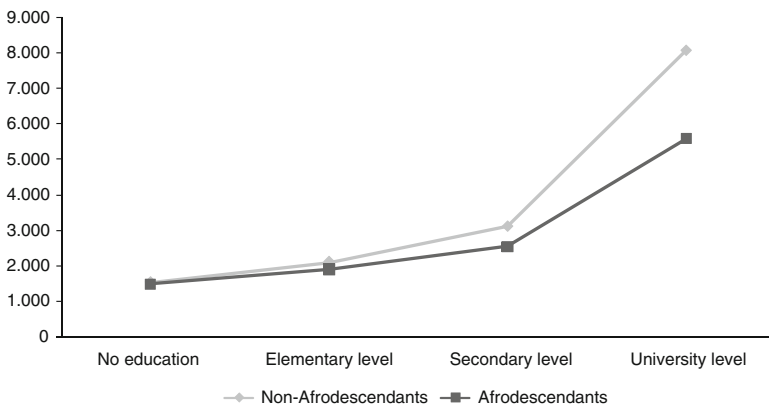


Figure 6.5 Thirteen major Colombian cities: monthly incomes (in Colombian pesos) by educational level and race (both sexes), 2007

Source: Carlos Viáfara López (2010), Gran Encuesta Integrada de Hogares (GEIH), DANE.

educational level increases (“secondary” and “university” levels), the income gap widens and favors the non-Afrodescendant population. This means, that even though a higher educational attainment for Afrodescendants improves their income level, the non-Afrodescendants with same educational attainment have an income level that is considerably higher.

Regarding life expectancy in Cali, the 2005 census results show strong differences per ethnic-racial groups. Between non-Afrodescendant and

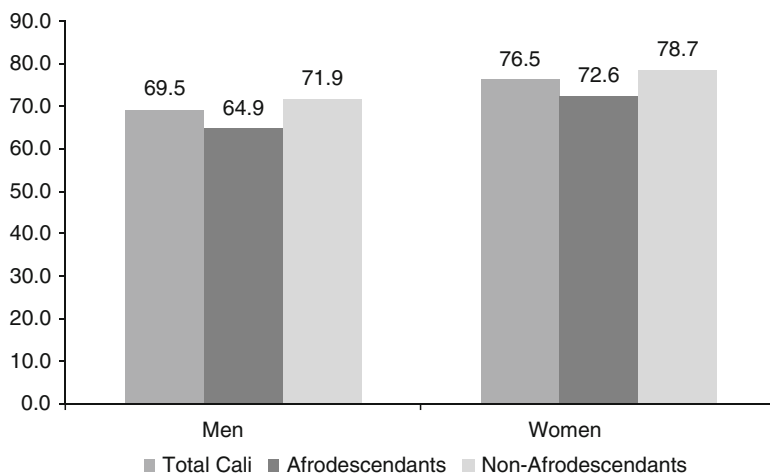


Figure 6.6 Life expectancy per sex and ethnic-racial group, total for Cali, 2005

Source: Census data, 2005, contrasted with SIVIGILA data, 2005.

Afrodescendant men, the differential is seven years of life in favor of the former (non-Afrodescendants), while for women the differential is 6.1 years of life in favor of non-Afrodescendants. For both sexes and per ethnic-racial group the differential is 6.7 years in favor of non-Afrodescendants (see Figure 6.6).

Boroughs 7, 13, 14, 15, 16 and 21 (which make up the east conglomerate, including one borough, the 16, belonging to the middle east conglomerate) have the lowest life expectancy in Cali (see Figure 6.6 compared to Figures 6.7 and 6.8) for both women and men. These are the boroughs with the highest concentration of black population in Cali; more than sixty percent of Cali's Afrodescendant population resides here. Also, the east conglomerate presents the highest differential in years of life between men and women. For the Afrodescendant group the difference is 8.4 years versus 6.2 years for the non-Afrodescendant; in both ethnic-racial groups, women are at an advantage. This difference is obviously related, as we will see in subsequent discussions, to the highest rates of male homicide in this part of the city, most of them black men: young and young adults. Also in this conglomerate black women have the lowest life expectancy (70.9 years).

In contrast, in the conglomerate where the more wealthy social classes live (2, 17, 19 and 22 boroughs), as we expected, life expectancy is the highest for both sexes (see Figure 6.8); also the differentials between men and women are smaller. Nevertheless, even in this middle and upper class conglomerate, the Afrodescendant group shows the lowest life expectancy. The differential,

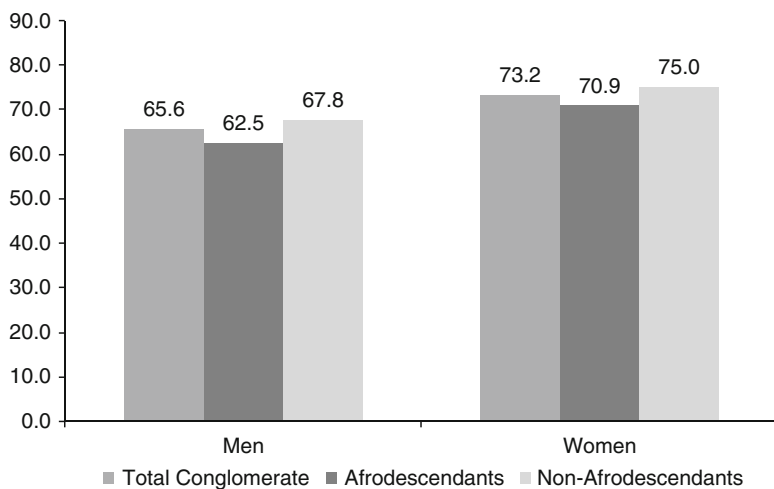


Figure 6.7 Life expectancy in boroughs 7, 13, 14, 15, 16 and 21, according to ethnic-racial group, Cali 2005

Source: Census data, 2005, contrasted with SIVIGILA data, 2005.

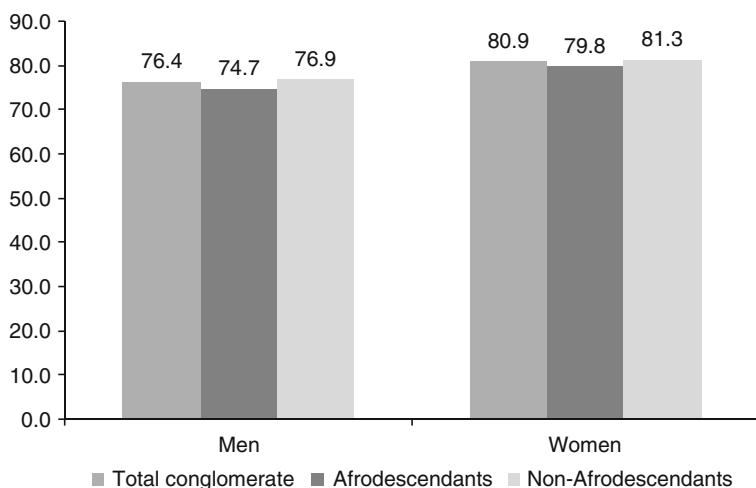


Figure 6.8 Life expectancy in boroughs 2, 17, 19 and 22, according to ethnic-racial group, Cali 2005

Source: Census data, 2005, contrasted with SIVIGILA data, 2005.

Table 6.3 Rates of households with deaths per 10,000 households according to conglomerates and the total for Cali, census 2005

| Conglomerates | Types of household | Household with deaths | Household Total | Rates of | | Household Total |
|--|--------------------------------|-----------------------|-----------------|-------------------------------|-----------------------------|-----------------|
| | | | | households with deaths*10,000 | % of households with deaths | |
| East | Afrodescendants Households | 1246 | 68101 | 183,0 | 47,1 | 47,6 |
| | Non-Afrodescendants Households | 1170 | 84483 | 138,5 | 19,8 | 20,7 |
| | Household Total congl. East | 2416 | 152584 | 158,3 | 28,2 | 27,7 |
| Middle East | Afrodescendants Households | 560 | 28396 | 197,2 | 21,2 | 19,9 |
| | Non-Afrodescendants Households | 1141 | 68504 | 166,6 | 19,3 | 16,8 |
| | Household Total congl. East | 1701 | 96900 | 175,5 | 19,9 | 17,6 |
| Middle North | Afrodescendants Households | 565 | 28530 | 198,0 | 21,4 | 20,0 |
| | Non-Afrodescendants Households | 1761 | 113563 | 155,1 | 29,8 | 27,8 |
| | Household Total congl. East | 2326 | 142093 | 163,7 | 27,2 | 25,8 |
| Mountain side (Ladera) and rural areas | Afrodescendants Households | 164 | 9879 | 166,0 | 6,2 | 6,9 |
| | Non-Afrodescendants Households | 767 | 56824 | 135,0 | 13,0 | 13,9 |
| | Household Total congl. East | 931 | 66703 | 139,6 | 10,9 | 12,1 |
| North-South Corridor | Afrodescendants Households | 109 | 8092 | 134,7 | 4,1 | 5,7 |
| | Non-Afrodescendants Households | 1073 | 84978 | 126,3 | 18,1 | 20,8 |
| | Household Total congl. East | 1182 | 93070 | 127,0 | 13,8 | 16,9 |
| Total Cali | Afrodescendants Households | 2644 | 142998 | 184,9 | 100,0 | 100,0 |
| | Non-Afrodescendants Households | 5912 | 408352 | 144,8 | 100,0 | 100,0 |
| | Household Total congl. East | 8556 | 551350 | 155,2 | 100,0 | 100,0 |

Source: special processing census 2005.

however, is not as wide as in the case of the east conglomerate: 7.6 years in the poor boroughs of the east side versus 4.5 years in wealthy boroughs. This means that also between the wealthiest groups the Afrodescendants live fewer years compared to the non-Afrodescendants for both sexes.

A complementary indicator to these life expectancy graphics (Figures 6.6, 6.7 and 6.8) is the rate of households with deaths per 10,000 households. The advantage of using this indicator is that we can analyze it disaggregated by boroughs; but for the purpose of this analysis we have aggregated for the five conglomerates. This confirms the results of life expectancy, with the advantage that in this case the data are taken directly from the census without relying on estimates. Table 6.3 shows clearly that in all of Cali's conglomerates the random probability of deaths in any age and sex group is very high for the Afrodescendant households. Cali's total is 184.9 households per 10,000 Afrodescendant households versus 144.8 per 10,000 non-Afrodescendant households. A 40.1 household difference between the two groups is shown. The highest rates belong to middle east and middle north conglomerates, for both ethnic-racial groups, followed by the east conglomerate.¹⁵ On the contrary, the lowest rates as we expected, belong to the north-south corridor conglomerate, followed by the mountainside (*ladera*) and rural zone.

Data on the rates of mortality in Cali for various age groups by sex and ethnic-racial groups (Afrodescendant population versus non-ethnic population), based on the 2005 census outcomes (see Figures 6.9 and 6.10, and the related tables below), is an important indicator of the differentials in mortality rates between both populations, that at the same time are related to Table 6.1 results on the high percentage weight of men under 30 in the Afrodescendant population, discussed above.

The graphs on total rates of mortality by sex and ethnic-racial groups¹⁶ (see Figures 6.9 and 6.10) show strong differentials in mortality rates for the black or Afrodescendant population and non-black or non-Afrodescendant population in Cali. For both sexes and also for each one, when we control for ethnic-racial group, black people have higher mortality rates in all age groups, with the exception of the female age group in the age range of 10-14 years where similar rates are shown for the two racial groups (see Figure 6.10), and in the male group with very close rates in the 40-44 and 45-49 age groups although the rates are slightly higher for Afrodescendants (see Figure 6.9). Overall, the race/ethnic differentials are higher in the case of male mortality than in female mortality (1.8 percent between the two racial groups of males versus 1.5 percent between females of both racial groups¹⁷). On the other hand, as it was expected, male mortality rates are higher than those for females in all age groups, independent of ethnic-racial groups. Additionally, the male overall mortality rate is higher in the age groups 10-14, 15-19, 20-24

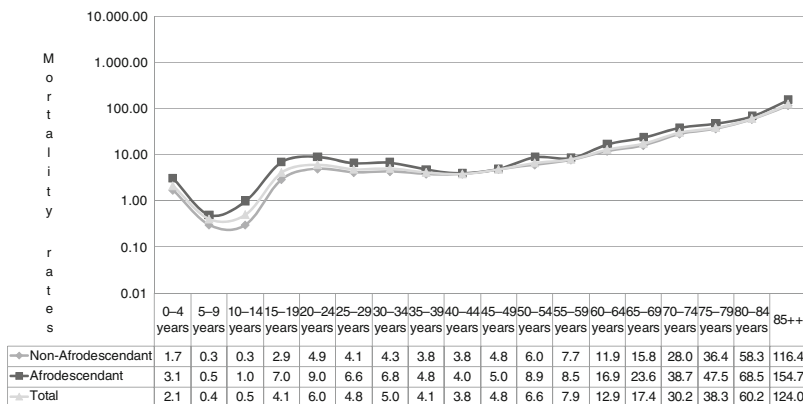


Figure 6.9 Male mortality rates per thousand inhabitants, total for Cali Afrodescendant and non-Afrodescendant populations (logarithmic scale) by five-year age groups, 2005 Census

Source: 2005 CENSUS. Special process DANE-CIDSE 2006.

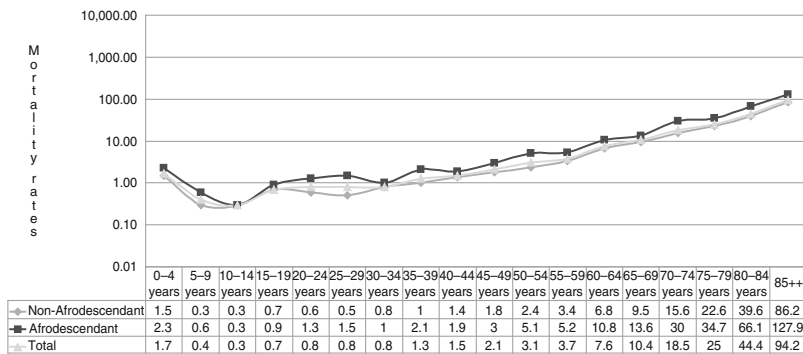


Figure 6.10 Female mortality rates per thousand inhabitants, total for Cali Afrodescendant and non-Afrodescendant populations (logarithmic scale) by five-year age groups, 2005 Census

Source: 2005 CENSUS. Special process DANE-CIDSE 2006.

and 25–29 years, and it is in these age groups that ethnic-racial difference is amplified because the differential reaches the highest values. However, this disparity occurs with the exception of the 0–4 year old group that shows a high mortality rate for black males, even when compared to the rate for black females (see Figure 6.9). For the non-Afrodescendant group in the 0–4 age

range there is a moderate difference between the male and female mortality rates and of course, the rates are well below those for Afrodescendant males and females (see Figures 6.9 and 6.10).

The overall look at the rates shows high mortalities for black men due to homicide, but also due to other types of morbidities for those under the age of 10 and those aged 55 and above¹⁸. Unfortunately, there is no data per ethnic-racial groups in the records of Cali's Secretariat of Public Health. For this reason, it was not possible to apply ethnicity/race-based analyses to the data in Table 6.4. Nevertheless, if we rely on the pattern observed in Figures 6.9 and 6.10 above, particularly Figure 6.9, in relation to rates of male mortality per ethnic-racial groups, it can be estimated that at least 60 percent of deaths by homicide in Cali in the age group 10–29 years old, involve black men, and even for those aged under 20, the estimate can reach almost 80 percent. Black men under 30 are not the only age group affected by death from homicide. In the 30–54 age group, blacks contribute to at least 50 percent of deaths.

In conclusion, males in Cali face high risk of becoming a victim of homicide, and, as we shall see in the following section, the rate of homicide is considerably higher for black than non-black males. On female mortality by homicides and violent aggression, the pattern according to ethnic-racial groups is less clear. In this case the rates of deaths may be distributed

Table 6.4 Violent deaths, Cali 2005 (aggressions/homicides*) per sex and large age groups

| | Men | % | Women | % | Total | % |
|--|-------|------|-------|------|-------|-------|
| Total Deaths | 6650 | 58.0 | 4817 | 42.0 | 11467 | 100.0 |
| No. of deaths aggression / homicide | 1560 | 93.1 | 116 | 6,9 | 1676 | 100,0 |
| % of total deaths | 23.5 | | 2.4 | | 14.6 | |
| Aggression / homicide between 10 and 29 yrs | 825 | | 60 | | 885 | |
| % | 52.9 | | 51.7 | | 52.8 | |
| Between 30 and 54 years | 670 | | 49 | | 719 | |
| % | 42.9 | | 42.2 | | 42.9 | |
| 55 and more years | 62 | | 3 | | 65 | |
| % | 4.0 | | 2.6 | | 3.9 | |
| Under 9 years | 3 | | 4 | | 7 | |
| % | 0.2 | | 3.4 | | 0.42 | |
| Total | 100.0 | | 100.0 | | 100.0 | |

*Data from Secretariat of Public Health Cali Municipality establishes a difference between deaths by violent aggressions and deaths by murder (homicide).

Source: Secretariat of Public Health Cali Municipality, 2006.

evenly between Afrodescendant and non-Afrodescendant females. Anyhow, according to Figure 6.10, Afrodescendant females also have higher mortality rates, based on accumulated statistics of different types of disease (morbidity), than non-Afrodescendant females. The race-ethnic differential grows considerably from 50 years of age.

Homicide rates according to ethnic-racial group in Cali and in neighborhoods with high concentrations of blacks (2009)

The SIVIGILA homicide data per ethnic-racial group (data available since 2008) show a high homicide rate for blacks (i.e., Afrodescendants) of both sexes: 153.5 homicides per 100.000 inhabitants, more than two times higher than the one corresponding to the non-black (i.e., non-Afrodescendant) population of 65.9 homicides per 100,000 inhabitants. In 2009, the average homicide rate for the whole city was 80.2 homicides per 100,000 inhabitants, based on the SIVIGILA data (Table 6.5). Interestingly, the suicide rate among black people is also higher: 5.4 versus 3.0 for the non-black population.

Data in Table 6.6 show that when the rate of deaths in Cali is disaggregated by conglomerates, some neighborhoods in boroughs in the east conglomerate with high concentration of blacks (more than 60 percent), show very high rates in the year 2009, well above the average for the total

Table 6.5 Rates of causes of death in deaths registered by the SIVIGILA according to ethnic-racial group (Cali 2009; data adjusted)

| | Afrodescendants | | Non-Afrodescendants | | Total cases | |
|---|-----------------|-------|---------------------|-------|-------------|-------|
| | Cases | % | Cases | % | Cases | % |
| Natural death | 2193 | 66.2 | 7676 | 82.2 | 10070 | 79.6 |
| Homicide | 898 | 27.1 | 1086 | 11.6 | 1790 | 14.2 |
| Transit | 101 | 3.0 | 273 | 2.9 | 373 | 2.9 |
| Accidental | 63 | 1.9 | 119 | 1.3 | 174 | 1.4 |
| Not known | 0 | 0.0 | 144 | 1.5 | 163 | 1.3 |
| Suicide | 31 | 0.9 | 50 | 0.5 | 76 | 0.6 |
| Total | 3313 | 100.0 | 9333 | 100.0 | 12646 | 100.0 |
| Percentage of registered deceases per ethnic-racial group | | 26.2 | | 73.8 | | 100.0 |
| Homicide rates*100,000 | | 153.5 | | 65.9 | | 80.2 |
| Suicide rates*100,000 | | 5.4 | | 3.0 | | 3.4 |

Source: SIVIGILA data, 2010.

Table 6.6 Homicide rates 2007–2009 (*100,000), boroughs 15 and 21; neighborhoods Potrero Grande and El Retiro, Cali

| | 2007 | 2008 | 2009 |
|---------------|-------|-------|-------|
| Borough 21 | 64,7 | 71,0 | 81,6 |
| Potero Grande | 60,7 | 140,8 | 159,1 |
| Borough 15 | 87,4 | 93,8 | 115,5 |
| El Retiro | 165,9 | 317,2 | 441,0 |

Source: Social observatory of the city of Santiago de Cali's mayoral office on deaths per homicide; the population projections per neighborhoods and boroughs are from the Administrative Department of Planning from the mayor; in the case of Potrero Grande these are supported on estimations of the populations, using data taken from the Secretariat of Housing of the Municipality of Cali. The original data of Potrero Grande and El Retiro, and the boroughs 15 and 21, were provided by Ana Isabel Meneses and Luis Bastidas, sociology students of Universidad del Valle, working for the Social Observatory of the city of Santiago de Cali's Mayor office.

of blacks in Cali: 159.1 homicides per 100,000 inhabitants in the Potrero Grande neighborhood, and 441.0 in El Retiro neighborhood. It is important to note that from 2007 to 2009, homicide rates were increasing (Table 6.6). This is a pattern that is consistent with the existing records for the whole of Cali.

The prison and military internment according to the ethnic-racial dimension in Cali

Bearing in mind earlier analyses of the high male mortality rates, especially in the Afrodescendant population – with most deaths due to homicides, with victims in the age range of 10–14 and 30–34 years – it is also necessary to examine mechanisms of social control used on population groups traditionally categorized as the “dangerous classes.”

The most important forms of social control under diverse repressive disciplinary modalities in Colombia are jails or prisons, and military quarters and garrisons. Because of the high demographic representation of Afrodescendant population in Cali and its high concentration among the poorest in the city, it is of interest to examine if this population has a high or low vulnerability to imprisonment, be it in the form of punishment or under the modality of discipline by an armed body to exercise repression. In this case, the 2005 census data on the ethnic-racial classifications of males and females in prisons or jails and in military garrisons is of great use.

Table 6.7 presents the rates for jail imprisonment and military recruitment¹⁹ per 100,000 inhabitants for the Afrodescendant population and the non-Afrodescendant population (which probably groups for the most part white and “mestizo” people). The jail imprisonment rate is much higher

Table 6.7 Rates of imprisonment and recruitment (per 100,000 hab.) for Afrodescendant and non-Afrodescendant populations, and total for Cali

| | | Jail | Imprisonment rate per 100,000 inhabitants of each ethic group | Military Headquarters, garrisons | Recruitment rate per 100,000 inhabitants of each ethnic group |
|--------------------------------|--------|-------|--|--|--|
| Cali total | Total | 3,234 | 164.41 | 1,382 | 70.26 |
| | Male | 2,866 | 310.84 | 1,351 | 146.53 |
| | Female | 368 | 35.22 | 31 | 2.97 |
| Afrodescendant | Total | 1,273 | 245.79 | 1,313 | 253.51 |
| | Male | 1,144 | 469.95 | 1,304 | 535.68 |
| | Female | 129 | 47.00 | 9 | 3.28 |
| Non- Afrodescendant | Total | 1,934 | 134.79 | 1,647 | 114.79 |
| | Male | 1,698 | 252.73 | 1,568 | 233.38 |
| | Female | 236 | 30.93 | 79 | 10.35 |

Source: Special processing DANE-CIDSE, preliminary data 2005 census.

for Afrodescendant males (469.95) compared to non-Afrodescendant males (252.73); the same applies for Afrodescendant females, even though the difference is moderate: 47.0 compared to 30.93 for their non-Afrodescendant counterparts. This means that imprisonment rates for the Afrodescendant population for both sexes exceed the rates for the non-Afrodescendant population. Therefore, the prisons and military garrisons in Cali are collective spaces where black people, especially males, are held.

The above data allows for an estimate of the phenomenon of violence facing the black male population, for the most part via homicides, and the wider sociological pattern of their imprisonment in jails or prisons and as part of the military and police force, most of them as soldiers or police agents.

Conclusions

Relative poverty and race inequality have a high significance in the analysis made. In other words, poverty from social inequality (inequalities in one urban area and between urban areas) is more in the city, and as Joseph (1994) states, the cities lump together the poor, and shape segregation and intra-/inter-class confrontations, modulated by race. We should note that urban

neighborhoods are heterogeneous (Ratcliffe, 1999: 5–8), and this implies significant differentials in quality of life and resources (apart from more structural elements like age, gender, life cycle, migration, etc.) that are useful in articulating delinquency and violence dynamics. This fact is illustrated in the high involvement of urban male gangs under the age of 20 in the east side of Cali, where there is the largest black poor population. These gangs are not only perceived by cultural differences, but also through differences in living standards and income. Differential living standard/income is not necessarily about poverty in the sense of an absence of capital (whether patrimonial, cultural, educational, symbolic, social, etc.) per se (in other words, absolute poverty). It is instead the compared absence of capital possessed by other social groups (according to class and race) in specific geographical areas. The perception of this difference generates “social envy,” a feeling that in turn generates social pressure on those who desire material possessions to steal or rob to obtain them. This situation does not imply redistribution of “wealth” across those in need; rather it displays the capacity of the more violent to impose territorial control (Bourguignon, 1999a: 77–78; Bourguignon, 1999b; Gellner, 1997: 182–202).

Relative poverty is much more intense in the midst of urban segregation, which in turn implies social exclusion by race. In this situation, violence becomes a response to the reduced alternatives for upward social mobility in large, impoverished urban areas, and at the same time, it constitutes an important mechanism for accessing cultural goods. Relative poverty could explain violent robbery, sometimes associated with homicide; but the homicide against young black males, focused as dangerous populations, is also committed by private army groups or the police. Nevertheless, another important homicide group is produced frequently by the territorial fight of teenage and young adult male gangs.

Social inequality in cities such as Cali is related to socioeconomic and socio-racial segregation processes of the population by geographical areas. To illustrate the dynamics of the fight for the “occupation” of urban space between classes and racial groups, the image of the North American “ghetto” in the 1970s through the early 1990s, could be considered as the extreme example depicted in the highest levels of black residential segregation (above 60 or 70% are black) by neighborhoods and boroughs in several American cities. However, this image does not apply completely to the regions located in the east or mountain side (*ladera*) of Cali, given the relative minor concentration of black people living with non-black people and the significant socioeconomic heterogeneities present there for both populations (Barbary, 2004: 185–192). Nevertheless, there are neighborhoods in the east region that show a high level of social segregation and exclusion, and a high demographic concentration of the black population, but

also with non-black population. This fact is expressed by rap music groups, where the representations of the ghetto – as an urban exclusion territory – in the lyrics of their songs are present. With the growth of neighborhoods in the east during the past three decades – due to the continuous black migrant influx – Cali, although racially a “mestizo” city, has shown racial tension. This tension manifests itself in recurring neighborhood violence. Such tension is even more specifically manifested by the repression of violent incidents by “social cleanness” groups and the State’s own security agents.²⁰ Nevertheless, among young people the fight for “territories” is a gang social violence, and this shows a non direct reference to class or phenotype. On the other hand, there is a wider urban context of inequality behind the violence and crime social logic (Wacquant, 1993a, 1993b and 1998; Urrea and Quintín, 2000).

In societies such as Colombia, urban segregation, related to social inequality and exclusion, does not fully explain urban violence, especially when the violence is expressed through homicide. A notable contributory factor to urban violence is the absence of the regulatory role of the state in people’s social life. If segregated urban territories are left out of state regulation, just as it happens in other spheres of social life, the dynamics of urban violence can have greater implications. The type of social order in segregated urban areas is key to the production of violence, including homicide-related type. Those who are in control of the coexistence of social norms, and the way in which they control it, is a relevant factor. Regulators might be state agents, families, social organizations representing collective interests, or even large and small-scale illegal organizations that manage to impose a given “order” followed by the inhabitants of that urban territory under their control. The absence of territorial entities able to guarantee “order” favors homicide (Bourguignon, 1999a: 79–80), above all when state agents (police and army forces) sometimes participate as murderers or hidden allies of hired assassins, paid by small or median economic groups in popular and poor neighborhoods or boroughs.

Also, in Colombia and Cali, other factors intensify the dynamics of urban violence whether in relation to property crime or homicide, but particularly the latter, given that the country and Cali each present high homicide rates: Colombia is in the five countries of Latin-American with the highest rates and Cali is in the ten Latin-American largest cities (more than 2 million of habitants) with the highest rates. There is a symbiosis of urban social and racial violence in Cali with drug trafficking and armed conflict, but also coupled with the lost legitimacy of the State as an institution that must regulate the urban territories (neighborhoods and boroughs). In this setting, the poorest social groups, for example blacks in Cali are most

affected by the ongoing violence. In urban areas that could have worked as a form of refuge that provides protection against market asymmetry and State's action (thanks to the symmetry and reciprocity that kinship, neighborhood, friendship, etc., imply [Hannerz, 1998: 115–126²¹]), fear and distrust are instead imposed through a new pattern of relationship grounded in *terror*, with the consequence of increasing individualism and widespread distrust (Pécaut, 1999: 9–11).

The framework of these factors are urban processes of class and racial segregation with high levels of social exclusion and poverty, particularly in certain types of popular settlements (influenced by migratory process and urban growth under historical conditions of huge social inequalities and precarious housing). On the other hand, these urban trends go together with national and regional economic and political processes (Ibid.). In sum, the polarized urban context – that generates social violence - intermingles with the collective influences of drug-trafficking, guerrilla and paramilitary action, and the absence of institutional authority.

Also, conditions of inequality and relative poverty, and in some urban contexts, racism, can be aggravated by the negative effects of the deregulated patterns of social life without State intervention (or produced by State absence). This phenomenon ends up favoring savage practices in the management of collective and individual conflicts of popular neighborhoods, which are themselves generated by race and class-based social inequality. As the quantitative data in this chapter reveal, we can see urban social violence as a result of social inequalities and relative poverty, affected in the case of Cali by a component of class and relative racial segregation in given urban peripheries with high concentrations of blacks, and on the other hand by the dynamics of national and regional violence generated by political and social conflicts (armed confrontation between guerrilla, paramilitary right groups, police and army; displaced peasant populations; persecution and murder of community and union leaders) and illegal economy (drug-trafficking).

Since the 1970s, drug-trafficking in Cali has had a significant impact on criminal organizations in urban sectors, but, unlike Medellín, because of the characteristics of the so-called “Cali Cartel”, the co-optation or recruitment of members for this cartel were not the youth in very poor urban neighborhoods, nor the gangs. The participation in the drug-trafficking business seems to be more common among groups of young and adults living in urban sectors, but in a more dispersed form and without hierarchies or controls imposed or implemented by large organizations.

It is worth noting that global social conflicts may generate a rapid increase in urban violence. This is shown for example in the so-called “forced

displacement" (by any of the armed conflict groups) of some sections of the population from rural or urban areas that are hit by the upsurge of war. There are also intra-urban "forced displacement" by violent methods. The "displaced" can become the target of social cleanliness groups or paramilitaries (who allegedly serve the guerrilla), or both. In these situations, the violence forms a self-perpetuating symbiosis in the city between the different armed actors (drug-trafficking, guerrilla, police and national army, paramilitary extreme right groups, powerful intra-urban gangs, and small neighborhood gangs). Of course, these actors work in differential ways, depending on the urban context in the country. Cali's context is different to Bogotá, Medellín and other cities in Colombia. In Cali the demographic weight of blacks and their life conditions in east popular neighborhoods, together with racist practices that crossed the social classes, make Cali's case special.

Social inequality by race is socially legitimated through racist stereotypes that wealthy middle classes and upper classes, mostly whites-mestizos, produce about the inhabitants of the poorest popular class neighborhoods with high concentrations of blacks who are targeted by these negative stereotypes. The dangerous classes in Cali are associated through the mass media, State security forces and the public policies of municipal government with specific social sectors: black young males from the east of the city or another urban territories with a high concentration of black population. Even within the labor market functioning in different levels of qualification operates negative stereotypes in considering black men and women who live in east neighborhoods, and the business elite takes part in this selective game against black people. On the other hand, the analyzed data on military and police recruitment (Table 6.7) reveals paradoxically that the racial order of social control is supported in the use of a police and armed forces device made up in great part of black policemen, soldiers and low-level officers.

According to what has been concluded, it is necessary to analytically integrate into the study of urban violence the factors of inequality/relative poverty, space segregation, compounded by the class and race factors in a "mestizo" city like Cali (and similar cities in other Latin American countries, as well as other societies). The absence of the State as a social control regulator of poor neighborhoods, rising violence resulting from national and regional armed conflict and, above all, the role of drug-trafficking and other urban armed actors converge, through the framework of class and race urban order, in forming the inter-racial urban atmosphere of violence. While class and race exclusion is a factor in urban violence and criminality, due to huge social inequality in the city as component of "social envy", there are other key factors (although not the sole explanatory ones) – drug-trafficking, violent repression

of social protest and low intensity armed conflict – that are the causes of the high rates of violent homicides and crimes. Young black males aged 15–29 years are the most affected as victims (in relative terms, no absolutes) in a combination of violent situations: gangs, social “cleanness groups”, urban paramilitaries that assume the role of social order enforcers, State security agents, and participation in criminal activities with tragic consequences. In the overall male population, this population group has the highest number and percentage of violent deaths. Such a comparison is even more evident for all black inhabitants of Cali and other cities and Colombian regions with a black population, but particularly black males aged 15–29 in popular class neighborhoods, because their opportunities for social mobility are extremely limited. They are less integrated because they are more socially excluded.

Notes

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1. Bogotá, Medellín, Cali, Barranquilla and Cartagena.
2. The Gini index is a commonly used statistical indicator to measure inequalities at different geographical levels (national, regional, local); it is based on the distribution of the monetary income obtained by a household through employment or by property income. It is a coefficient that varies between 0 and 1. As the coefficient draws close to 1, the indicator reveals a high unequal distribution of income. In an extreme theoretical case (where the coefficient is equal to 1), all incomes will be concentrated in one household. On the contrary, if it is close to 0, the incomes tend to have maximum equitable distribution; in other words, all the households would have the same monetary income. According to international patterns, countries with coefficients Gini well above 49.0 are among the ones with a major uneven income concentration. A good number of Latin-American countries have Ginis well above 50.0, and because of this Latin America is one of the regions with major inequalities. This is in contrast with European societies that have a well-developed welfare system, for example the Scandinavian societies and other European countries such as France, Germany, Netherlands and England (before Margaret Thatcher) where the Gini index fluctuates between 25.0 and 33.0, maximum.
3. According to the 2005 census, 10.6 percent of Colombian population identify themselves as being of African descendant or black: 4,573,581 people. According to estimations by Barbary and Urrea (2004), the black population represents between 19 percent and 22 percent of the Colombian population.
4. In 1938, 69 percent of the Colombian population lived in the rural zone and, in 1951, 61.3 percent were resident in rural areas. In 1964 this residential pattern started to change: 48 percent of the population was rural and 52 percent urban; for the year 1973 the percentage went down to 40.9 percent rural population, and by 1985 it had decreased to 35 percent rural population. In 1993, the figure

- was 31.4 percent rural population and for the year 2005 only 24 percent rural population (Murad, 2003: 18).
5. Bonded assembly plant set up by a foreign or native firm with free or very low taxes for the owners.
 6. For an analysis of the role of drug-trafficking in the production of violence in Colombia, see Palacios and Serrano (2010).
 7. Robbery of money, car or house; assault against a store, bank, car or house; theft; extortion; fraud; crimes against industrial or intellectual property; public or private money misappropriation.
 8. Rates estimated from the main urban centers of each country.
 9. In Pissosat and Barbary (2007: 339–346) it is only with reference to the city of Cali that the study includes the race factor in its analysis of exposure to risks of robbery with or without violence, combining the cross effect of the racial phenotype and the socio-professional category. “We come to an eight factor model where seven effects are specified: sex, the crossed effect of sex and age, education level, the characterization of the place of residence, work place, the migration condition and the crossed effect of phenotype and the socio-professional category” (Pissosat and Barbary; 2007; p. 340).
 10. The study was on victimization in Cali’s households. It was focused on violent and non-violent crimes of different types that occurred during the year 2006, based on non-probability sampling, using the “snowball” strategy.
 11. In relation to crimes other than homicide, there are no socio-racial characteristics of the victims or the victimizer. To date there is only information related to causes of death and different pathologies according to ethnic-racial group, that is, only in socio-demographic and public health terms, but in no case is there a legal record by ethnic group. An important exception is the jailed population data according to ethnic-racial group that are found in the 2005 census, but as a basic demographic data. There is also Guzmán’s survey conducted in 2006 for Cali on victimization in households (see Guzmán and Quintero, 2009), that contains an ethnic-racial classification, but as has been noted the analysis of this factor is marginal in the quoted study.
 12. All kinds of harm to the body and health, caused by beating, knife and gun injuries, rape, mutilation, and so on.
 13. Taking into account that the violent homicide pattern is very different between Bogotá and Medellín, as the data for homicide rate indicates that for these two years, Medellín is similar to Cali. The reason for this similarity, as we have pointed out before, has to do with the considerable social weight of drug trafficking in Medellín, same way as in the case of Cali, though without forgetting the historical particularities of each case. A more detailed analysis is beyond the objectives of this chapter.
 14. Survey ‘Access and perception of the services offered by the municipality of Santiago de Cali’, BANCO MUNDIAL -CIDSE -IRD, 1999.
 15. Here we can observe a difference with the calculations of life expectancy; the lowest shows up in the east conglomerate (Figure 6.7), even though this conglomerate is located in third place on the list of highest deaths rates in Cali. We should note that in these results on life expectancy we see the demographic weight. As shown in Table 6.3, the east conglomerate accounts for 47.6 percent of all the Afrodescendant households in Cali and for 47.1 percent of all deaths in these households for the year 2005; for the east conglomerate the numbers are 27.7 percent and 28.2 percent respectively.

16. Rates for 1000 inhabitants; the graphic representation is in a logarithmic scale.
17. The differentials between men by racial group reach the highest peak in the range 10–14 year (3.33 times against black men), and from then, we see differentials dropping until the 45–49 age range, but they always are over 1.0. From age 50 the racial groups start to overcome the differentials with values that move between 1.1 and 1.48.
18. For the under 10 years old groups (for black men and women): malnutrition associated with low birth weight, acute diarrheal and respiratory disease (and in particular the under 1 year old group), diseases related to lower vaccination coverage, higher accident rate per vehicle, no or very low coverage for early degenerative diseases or birth defects. For the black male group aged 55 and over, lower public health attention to hypertensive, diabetics, prostate and lung diseases. In the case of black women, with the exception of prostate, the same diseases and additionally breast and reproductive organs diseases. In relation to the latter diseases non-black women are most likely to be covered by the public and private health systems, so their risks are lower.
19. People doing military service in the army or the police, or professional soldiers and policemen; includes personnel of all police and military ranges or another branch of the armed forces that at the time of the census were living permanently in a military garrison or a police headquarters.
20. In Colombia, this action, carried by paramilitary groups and police and army institutional forces, is called “cleaning of dangerous persons” through the murder of people considered socially undesirable. These undesirables can be common criminals; usually, the target group in Cali is poor black young males, but throughout Colombia also community and union leaders.
21. Hannerz refers to urban social links to the level of neighborhood where however the ties of reciprocity are not personal and strong as in rural areas; this means that impersonal relationships predominate, but anyway there is possibly a social life of cooperation and solidarity in the context of impersonal links, with the support of a network of urban family, friends and sometimes neighbors, but also it means the State presence through different public services (utilities, paved sidewalks and streets, health, education, recreational spaces, also state-subsidized dwelling, many times insertion labor market aids, and neighborhood public security regarding human rights).

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7

Race, Ethnicity, Crime and Criminal Justice in Mexico

Gabriel Ferreyra-Orozco

Introduction

This chapter addresses the discrimination and racism that indigenous groups and Afro-Mexicans (particularly the former) suffer when dealing with the Mexican Criminal Justice System (CJS). This unfair treatment and animosity are usually embedded in larger forms of discrimination against the poor and the disenfranchised. First, a historical explanation to understand race, national identity, and the socioeconomic conditions of minority groups in Mexico will be provided. Second, because the CJS is not a monolithic institution, an analysis will be done to grasp the meaning of this whole system of interconnected government agencies. Third, the chapter will discuss how and why indigenous people and Afro-Mexicans have suffered from discrimination, racism, and human rights violations. Then, it will be argued how these issues have been documented by some non-governmental organizations and civil rights institutions based on case studies that have made headlines in the news. Finally, the conclusions suggest some possible steps that can help to change discrimination patterns within the CJS.

In August 2010, the Inter-American Court of Human Rights (IACHR)¹ condemned Mexico for allowing human-rights violations against two indigenous women, Inés Fernández Ortega and Valentina Rosendo Cantú, after they were sexually assaulted by members of the Mexican army in March 2002. The court described how authorities within the criminal justice system obstructed the investigation as well as the prosecution of the culprits after the victims reported the rape to the authorities.

This judicial resolution documented how the Mexican government did not provide legal protection to the victims after they suffered the crime. These two women, who belong to the ethnic group *Me'phaá* (Granados Chapa, 2010), did not receive medical or psychological attention. Instead, they were threatened by the authorities responsible for providing them with protection and legal advice. The court found evidence of systematic discrimination against

indigenous people in Mexico. Women were frequently the target of that discrimination, particularly in Guerrero state, where the two victims were from and where the crime took place (IACHR, *Caso Fernández Ortega y Otros vs. México*, 2010). The victims had to wait more than eight years to finally receive an official acknowledgement that their legal case was a grotesque injustice. These women were twofold victims: first from the soldiers who raped them, and second from the justice system that failed to protect them. Had the victims been *mestizas*, rich, and politically influential, the criminal justice system would not have treated them as it did (Morris, 1991).

The Mexican government, through the minister of the interior, admitted its responsibility in the case. The government made the commitment to fully address all the guidelines dictated by the court, among them, the need to undergo internal reform to comply with international treaties regarding the protection of human rights (Díaz, 2010). This is but one among many cases in which indigenous people have been prosecuted, incarcerated, or even murdered for being indigenous and for defending and fighting for human rights. The Mexican government has done little or nothing to resolve these abuses. Sometimes the government has even become an active accomplice by hiding evidence or manipulating crime investigations in order to quickly “solve” high-impact crimes that cause social distress (Diebel, 2006).

The example described above reveals the subtle, but institutionalized, discrimination by the Mexican criminal justice system against disenfranchised people, such as indigenous communities, Afro-Mexicans, peasants and poor citizens (among them a few light-skinned Mexicans) who dare to challenge the system and speak truth to power. Many times this discrimination is accompanied by rampant racism toward indigenous populations and people with dark skin. According to Schatz, Concha, and Magaloni Kerpel (2007), “[I]ndigenous peoples have traditionally had difficulties accessing justice in Mexico due to outright discrimination and basic economic inequalities.” Poverty and race both evoke discrimination, but social class or political influence can overcome race-based prejudices because, with money comes status and power (Morris, 1991). However, the vast majority of indigenous groups and the dark-skinned population (a small fraction being Afro-Mexicans) remain poor, isolated, and neglected by the government and the large *mestizo* population in Mexican society.

To better understand the discriminatory practices in the Mexican criminal justice system, it is essential to contextualize the social conditions that have maintained and produced these long-term patterns of discrimination and racism throughout the country. A brief discussion is needed about the indigenous and Afro-Mexican communities in Mexican society in general, as well as how they have been incorporated into or excluded from mainstream

culture based on a contradictory, but hegemonic, discourse of acculturation and nationalism.

A legacy of the colonial caste system

Race has always been a thorny subject in Mexico. Three hundred years of Spanish colonialism left an indelible mark, and one consequence of this was *mestizaje*, which is the mix of races between indigenous women and Spaniard conquerors. The notion of this *mestizaje* has been debated by generations of Mexicans trying to make sense of an identity that deals in contradictory ways with their indigenous past. On the one hand, in order to foster nationalism, society and the Mexican state have embraced the history, symbols, and past of the pre-Columbian cultures that existed in Mexico before the conquest. On the other hand, for a long time the government has neglected most indigenous groups, ignoring their basic needs and reproducing paternalistic policies and political clientelism to keep them ostracized. To make matters worse, the majority of the *mestizo* population has internalized the colonial mentality by which the colonists' physical features, such as light skin, height, and that they speak Spanish are seen as civilized attributes, while anything Indian, such as dark skin, short stature, and speaking native languages, are defined as uncivilized (Bonfil Batalla, 1996).

During the colonial period, the Spaniards set up a complex caste system (i.e., *castas*, which means social classes) to categorize people based on physical appearance and race. The goal was to classify the importance of individuals in society in order to favor the colonists and their descendants. "The castas created explicit hierarchies based on race and race mixture. Elaborate taxonomies categorized people based on both ancestry and physical characteristics. The system was designated to confer relative privilege to the Spanish and to persons of predominantly Spanish ancestry" (Vaughn, 2005: 117). There were six main categories: *Peninsulares* (European-born whites), *Criollos* (colonial-born whites), *Mulatos* (Spanish–Negro mixed blood), *Indians* (natives), *Mestizos* (Spanish–Indian mixed blood), and *Negros* (African slaves). Except for white Europeans, everyone else (including colonial whites) was socially and legally inferior, occupying a certain position in society within a hierarchical category. At the bottom of the social scale were Indians and blacks. (Katzew and Deans-Smith, 2009).

Understanding Mexico's cultural diversity

Indigenous people

When Mexico became an independent nation in 1821, the caste system was officially abolished. In practice however, the racism and discrimination

against people with indigenous heritage and dark skin persisted. The Mexican state remained politically and socially unstable for many decades after independence. Nation-building had to be postponed because there was no unified power that could exert control and guarantee unity and social stability. It was not until after a dictatorship that lasted almost 30 years, and a revolution at the beginning of the twentieth century, that Mexico began to take shape as a modern and unified nation based on a Mexican identity (Camp, 2003).

This effort of unification took an unprecedented active role in emphasizing the *mestizaje* of the Mexican people and excluding any reference to indigenous ancestry. The government set up an official policy to integrate, or “assimilate,” indigenous communities into mainstream society by imposing Spanish as the official language. The Mexican state carried out an active Hispanization process to eradicate ethnic and linguistic diversity and homogenize the collective memory in the name of progress, civilization and national unity (Hernández Cuevas, 2003). Those who did speak native languages were marginalized and seen as backward because they rejected the modernization of the country by refusing to adhere to European values.

The Mexican government developed an official policy toward indigenous people during the administration of President Lázaro Cárdenas (1934–49). The Cárdenas policy lasted until the end of the authoritarian regime in 2000 (with substantial changes over the years). This policy was called *Indigenismo* and it aimed to create awareness of the importance of the Indian heritage. It also included the creation of public institutions, such as the Department of Indian Affairs (*Departamento Autónomo de Asuntos Indígenas*) to be in charge of developing policies to improve the economic and social conditions of indigenous people. Despite these efforts, the Mexican state failed to solve the deep social inequalities, poverty, illiteracy and marginalization among Indian people in society. The reality continues to be that the vast majority of indigenous people still suffer from “systematic discrimination in the public and private sectors, and remain largely outside of the country’s political and economic mainstream. Extreme poverty disproportionately affects indigenous segments of the population, particularly in the province of Chiapas” (Human Rights Documentation Center, 2001). Even with the resurgence of a guerrilla movement and the political and social unrest of indigenous communities during the mid- and late 1990s in Southern Mexico, the inertia against them continues.

On January 1, 1994, an indigenous movement began an armed uprising in the state of Chiapas (Mexico’s poorest state). Wearing masks, these Indians were part of the Zapatista Army of National Liberation (*Ejército Zapatista de Liberación Nacional* – EZLN). They demanded basic human rights: justice, democracy, health care, land, shelter, and food. The Chiapas Rebellion

shook the entire Mexican state. It challenged the claim that Mexico was becoming part of the First World for having signed the North American Free Trade Agreement (NAFTA). The symbolism was understandable: NAFTA took effect the same day the rebellion began (Hayden, 2002).

Chiapas is located in the south of Mexico and has a large population of indigenous people, most of them of Mayan ancestry. Overall there are 62 ethnic and/or indigenous groups in Mexico, depending on who is counting and the criteria used to define them (Navarrete Linares 2008: 8). Article Two of the Mexican constitution defines the nation as a pluralistic entity, acknowledging the existence of indigenous people as a core element of Mexican society, even listing their rights to preserve their culture, political organization, and social life. However, these rights are in practice subordinated to federal public officials and local political bosses because they are reluctant to give up concessions that could empower indigenous groups. Besides, these rights have been officially granted only recently as a result of constitutional reform in 2001 (*Constitución Política de los Estados Unidos Mexicanos*, 2010). This implies that there is no consistency between what the constitution prescribes and the current living conditions of indigenous groups.

For decades, the Mexican government defined indigenous people linguistically: in the census only those who were able to speak a native language were considered Indians. Therefore, the exact population of indigenous people in Mexico was a matter of debate. Nevertheless, the general consensus among scholars and public officials is that, on average, 10 percent of Mexicans are indigenous people. According to information from the 2000 census, and based on a more inclusive criterion, there were 8,268,914 Indians in Mexico at the end of the twentieth century (Hernández Bringas, 2007: 23). Rather than classifying them between a large *mestizo* population and a minority of indigenous groups, the new official approach is pluralistic: there are many different socio-cultural groups and some may identify as indigenous while others may not.

Afro-Mexicans

Afro-Mexicans, as scholars usually name them, are the Mexican black population that descends from African slaves who were brought to Mexico by the conquerors during the colonial period. It is generally accepted that almost 200,000 African slaves were brought to Mexico between 1521 and 1639 (Vaughn, 2005). The descendants of these slaves (*los negros*) are part of the ethnic diversity of Mexico. As with other minority groups, they have endured patterns of exclusion and prejudice. Sometimes they have even undergone far worse treatment than indigenous groups. For centuries, Afro-Mexicans were literally erased from the national history because of the

emphasis on Mexican identity as the result of race mixing exclusively from Spaniards and Indians. Vaughn, (2005: 119) notes that “[The Costa Chica a] 200-mile coastal region (comprising parts of Guerrero and Oaxaca States) is home to some 50,000 Mexicans of African descent who live in immediate proximity to indigenous people as well as mestizos.” There is no accurate data on how many Afro-Mexicans live in Mexico because the census does not count them as blacks. In fact, Afro-Mexicans do not see themselves as blacks but Mexicans.

Moreno (brown) is the term Afro-Mexicans use to refer to themselves, never Black because, as Lewis (2009: 186–7) observes, “being black or Afro-Mexican conflicts with their national identities by making them something ‘other than’ Mexican. ... In most everyday discourse black is offensive and anti-black racism can inform local social relations.” Only recently, and in response to pressure from social activism, has the Mexican government officially acknowledged institutional discrimination against Afro-Mexicans. This acknowledgment has powerful implications because it challenges the traditional assumption that all Mexicans are *mestizos*. As Bobby Vaughn correctly points out,

The racism to which black Mexicans have been subjected, the ubiquitous stigmatization of blackness in the Costa Chica, and the strong social boundaries that separate blacks, Indians and mestizos from one another suggest that although Mexican identity has important meaning for people, it cannot be characterized as essentially consistent with the popular refrain and national slogan of unity “*todos somos mestizos*” (we are all mestizos), (Vaughn, 2009: 211).

Afro-Mexicans cannot claim any particular ethnic identity (and thus be entitled to receive government support and recognition) because they do not speak any native language, which is the yardstick that determines affiliation to minority groups. “In Mexico, the culture concept is strongly tied to language and dress. Black Mexicans, all of whom speak only Spanish, dress in typical mestizo clothes. Thus they neither share these typical ‘ethnic’ markers nor do they see themselves as an ‘ethnic’ group (*grupo étnico*) distinct from mestizos” (Vaughn, 2005: 121). Given this context, Afro-Mexicans have faced some of the same obstacles as the indigenous people in Mexico, with the aggravated factor that they were never able to hold onto their African heritage because assimilation toward mainstream culture prevented that (Githiora, 2008).

In short, indigenous people and blacks were dominated populations in colonial times, oppressed after the independence of Mexico, forgotten by the Mexican Revolution, and excluded during nation-building with its

focus on a *mestizo* national character. What is their current social condition in Mexican society?

Economic and social conditions of indigenous groups and Afro-Mexicans

Afro-Mexicans and indigenous people are among the poorest in the country. Most of them live in remote areas in the south of Mexico, out of the reach of basic public services, such as municipal water, electricity, and health care. According to the National Council for the Evaluation of Social Development, almost 40 percent of Mexico's indigenous people live in extreme poverty (Milenio, 2010). An estimated 75 percent suffer from multidimensional poverty, meaning they do not have the necessary means to buy essential goods and to acquire services for a dignified life (Milenio, 2010). Overall, the indigenous communities are among the poorest sectors of society, with high levels of malnutrition. They live far below the standards of the *mestizo* population. "Language barriers preclude meaningful participation of indigenous peoples in the public education system. For those people, education is often essentially unavailable" (Human Rights Documentation Center, 2001: 1). This linguistic obstacle contributes to the reproduction of patterns of discrimination that have plagued the lives of these individuals for centuries. Without education or knowledge of Spanish, indigenous people remain excluded from full political participation in society.

Likewise, indigenous people usually do not vote because most are illiterate and cannot read the ballots. When they do vote, they are easily manipulated by local political bosses, called *caciques*, who use them as clientele only during election times (Human Rights Documentation Center, 2001). Due to their illiteracy in Spanish, they are also at a disadvantage in applying for social programs, such as agricultural subsidies or some kinds of welfare, that are available for some low-income *mestizo* families. Lack of Spanish limits their ability to find employment, request proper health services and to complain before government agencies when their civil rights are violated (Montemayor, 2000). Indigenous women in particular suffer because they are more likely than men to be illiterate and more often subjected to physical and sexual violence (Human Rights Documentation Center, 2001).

To make matters worse, after the Chiapas uprising in 1994, the military presence in the indigenous communities of southern Mexico increased dramatically, creating a tense social environment in the region. The government, powerful landowners and the ruling party at the time (*Partido Revolucionario Institucional* or PRI) promoted paramilitary activity to

undermine the grassroots support for the *Ejercito Zapatista de Liberación Nacional* (EZLN) (Hayden, 2002). This led to a permanent state of harassment, aggression and violence by soldiers and paramilitary groups financed by local politicians and strongmen against indigenous people who did not side with political organizations and policies supported by the federal and local governments (Camp, 2003).

Similarly, the fact that Afro-Mexicans have been rendered socially invisible due to the lack of official acknowledgement of their ethnicity has led to their marginalization and exclusion. The rejection of ethnic diversity as a public policy has been translated into a rejection of what is not considered to be Mexican. Anything that is not *mestizo* falls into this category. Therefore, the marginalization and exclusion suffered by Afro-Mexicans is reflected in poor, or no, access to political participation, education, justice, health services and jobs. As Mobwa Mobwa N'Djoli (2009: 224–225) notes, “Afro-Mexicans face greater discrimination and less protection because they are not an officially recognized ethnic group; there is thus no specific legal basis on which to defend or protect their fundamental human rights.”

Given this context of perpetual violation of human rights, discrimination, exclusion, and marginalization based on ethnicity and race, it is crucial to ask how the criminal justice system treats Indians and people with dark skin within the Mexican society. Does this general discrimination include institutions and practices related to the judicial system and law enforcement agencies? Before addressing this question, it is necessary to explore the nature of the criminal justice system in Mexico in order to understand the complexities of providing justice to people where highly bureaucratic institutions and long-term patterns of corruption plague this country.

The Mexican criminal justice system

The criminal justice ideal envisions a process by which criminal activity and criminal behavior are investigated; people are prosecuted based on evidence; and courts render judgment according to the law. The criminal justice system is composed of institutions, such as the criminal courts, the police, and the Prosecutor's office, that make it possible to carry out the investigation, prosecution, and sentencing of people who commit crimes.

In Mexico, the CJS is a complicated bureaucratic network of state and federal courts, state and federal prosecutors' offices, and municipal, state, and federal law enforcement agencies. Every one of these agencies and institutions has a different jurisdiction, a different agenda, and different standards regarding how justice should be understood and administered. There has never been a unified approach to the problem of crime in Mexico. Within the CJS bureaucracy, hierarchies, political feuds, party affiliations, cronyism and corruption

have played a stronger role than serving the public interest and the interest of justice (Fernández Menendez, 2007).

Corruption in particular has been a long-term problem dating back to colonial times (Pietschman, 1989). This problem has been extremely difficult to tackle due to political, social, and cultural considerations. For many decades, the prevalence of corruption in institutions such as the police and the judicial system has been more pronounced than in any other governmental office. This is true for many reasons. First, low-ranking public servants in the state judiciaries and police officers are usually underpaid. The only way to compensate for poor wages has been corruption (Morris, 1991). Second, the sensitive work these government agents do (investigating, prosecuting, and sentencing criminals) make them a target for influence or corruption by politicians, perpetrators, and organized crime syndicates with personal interests at stake (Zepeda Lecuona, 2007). Third, accountability is not a common phenomenon among public officials because connections and support from cliques prevail over legal obligations for public servants. Loyalty to the boss or to the politically affiliated group trumps loyalty to the institution (Morris, 1991). Fourth, impunity in the Mexican criminal justice system is rampant because there are many structural and institutional deficiencies in investigation and prosecution, allowing many criminals to escape indictment (Scherer Ibarra, 2009). Finally, some laws confer broad discretionary powers to detectives, police officers, prosecutors and judges at different stages of the criminal justice process.

Many times, these public servants abuse that discretionary power to obtain personal benefits. The rule of law is more often than not compromised by corruption, political influence and personal interests. According to Schatz and colleagues (2007: 212) “[G]overnment agents frequently act with a degree of impunity that fundamentally undermines the rule of law: every year government agents are involved in violations of due process rights, intimidation, torture, and even murder of [people] who defend indigenous populations or support liberation theology”. These characteristics are found in the judicial system, the police force and the prosecutor’s office (*El Ministerio Público*).

The judicial system in Mexico is not a monolithic institution. There are enormous differences between state judiciaries and the federal judiciary in terms of resources, hierarchy, credibility and performance. Overall, state judicial systems tend to be underfunded, more prone to be influenced by local politicians, and less organized in their civil service. The lack of resources usually includes poor salaries, which becomes an argument some employees use to justify petty corruption, such as *mordida* (literally the bite), grease payments or graft to get things done and circumvent red tape (Ferreira-Orozco, 2010).

The *Poder Judicial de la Federación* (federal judicial system), in contrast, has an enormous budget, not just because it is a federal agency, but also because it is considered a fundamental justice institution for the people of Mexico. It is extremely difficult to be employed there due to high standards of recruitment (Melgar Adalid, 1997). It also has an elitist character, with excellent salaries, and it does quality work. It is a well-organized institution. Because of these characteristics, in general the federal judicial system tends to be more efficient, honest and reliable than state judiciaries. However, some state judicial systems, such as those in Guanajuato or Jalisco states in central Mexico, have a reputation similar to their federal counterpart in terms of professionalism and honesty.

The Supreme Court is the highest court of appeal. This court resolves high-profile controversial legal issues via a legal remedy or petition called *Juicio de Amparo* (constitutional guarantee for protection of civil rights), which is similar to the *habeas corpus* in the United States. The Mexican Supreme Court enjoys independence from other branches of government and from political influence. The petition *Juicio de Amparo* has become a common remedy, although not for everyone because it requires money to hire a competent lawyer to conduct the case before the federal judiciary to strike down unjust trials and sentences based on fabricated evidence. It would be inaccurate to label the entire judicial system as discriminatory, corrupt, or easy to influence, because some sectors of it are professional, efficient and honest. This is important to recognize in order to have a positive perception of this federal courtroom as a reliable and trustworthy institution (Begné Guerra, 2007).

The same optimism may not apply to the police force, which for decades has been known for extracting money from people based on dubious reasons. The most typical form of this phenomenon occurs when a police officer on patrol pulls over a driver, with or without probable cause, and instead of writing a ticket, the officer manages to obtain money (Riding, 1985). This practice known as *mordida* is, however, more than just a variety of corruption; it is embedded in a complicated network of social, cultural, and economic values that exhibit the Mexican ethos on the problem of corruption. As Alan Riding (1985: 117) explains: "a ritual is nevertheless required to avoid the suggestion of corruption: while the bribe is being negotiated, it must be referred to as a fine; or if the cop does the 'favor' of pardoning the offense, he expects the 'favor' of a tip in return; or if a driver has credentials suggesting influence, he must show them without humiliating the policeman." These unwritten rules governing demeanor and social expectations are deeply ingrained in Mexican culture, making corruption a much more complicated issue to root out.

Nowadays, the high level of violence in Mexico, growing out of fights between drug trafficking cartels to control strategic drug routes to the

United States, has put the police in a vulnerable situation. Due to negligence and poor resources, police at the local level lack adequate training and equipment to cope with the sophistication and criminal dexterity of the current organized crime syndicates operating in Mexico (Meyer, 2007). More than ever, law enforcement agents face “the bullet or the bribe.” Either a police officer accepts a bribe from drug cartels or they end up tortured and dead. And even if an officer accepts a bribe, he or she can be murdered by rival cartels, who usually figure out who provides police protection to whom (Finnegan, 2010).

The high levels of corruption within the police reflect the general pattern of corruption in Mexican society. It would be impossible, however, to maintain a corrupt law enforcement organization if there were not complicity from government officials and citizens who benefit from this anomalous activity. Among those officials known for being corrupt are public servants working in the prosecutor’s office. Prosecutor’s offices throughout Mexico have been neglected for a long time. *Mordidas* and sometimes rampant corruption have afflicted this office for decades. This government agency does not have enough resources, offices are understaffed, employees receive low salaries and they are usually poorly trained. This lack of resources and efficacy make them highly susceptible to political and economic influence, and the executive branch (the head of this office according to the law) has been indifferent to all these issues (Zepeda Lecuona, 2007).

It seems like many high-ranking officials and politicians ignore the fact that the role of prosecutors is to provide justice to society (Zepeda Lecuona, 2004). For instance, prosecutors tend to focus on violent crimes that have high social impact among citizens: homicides, kidnappings, rapes, serious injuries, and so on. However, many investigations and eventual prosecutions are based on dubious evidence that does not withstand juridical examination, such as false testimony, self-incrimination or confessions obtained through physical or psychological coercion (Amnesty International, 2010).

Discrimination, racism, and human rights violations are to a certain extent common in this public setting. (Zepeda Lecuona, 2007). But when the accused person in a criminal investigation turns out to be someone who is Indian, poor, or belonging to the lower social strata, the probabilities that he or she will be prosecuted, regardless of his or her innocence, are much higher (Schatz et al., 2007). Even when there is a case of a violent crime, the unwritten policy among prosecutors is to delay investigation and proceedings of those files where poor, indigenous, and disenfranchised people are the victims (Zepeda Lecuona, 2007). This is usually done when there is an overload of work in order to favor those cases that involve parties with economic and political influence and who might exert pressure on the prosecutor. The assumption behind this practice is blatant discrimination: most

prosecutors believe that indigenous and poor people can wait a longer time to see their cases advance because they lack political leverage to demand otherwise. As Andrew Reding (1995: 41) clearly explains,

Despite the veneration of a glorious indigenous past, however, present-day indigenous peoples suffer from repression, poverty, and discrimination caused by racist attitudes that are easily observed but seldom acknowledged as such. The whiter the shade of skin color, the closer Mexicans come to the ideal of good looks reflected in commercial advertising. In a country where less than one in ten persons is white, the overwhelming majority of faces on billboards and in television and magazine advertising are white. This is no accident: it is commonplace in Mexican society to hear Amerindians described as *feo* (ugly).

The combination of potential corruption, highly discretionary decision making and authoritarian attitudes in the prosecutor's office, the police, and some sectors of the judicial system have created a negative atmosphere within the criminal justice system in Mexico. External factors, rather than evidence and facts, sometimes decide whether a person is guilty or innocent. Political influence has played a strong role in distorting the essential goals of the CJS, too, because justice becomes subordinated to personal and economic interests. (Zepeda Lecuona, 2007).

If this is the current status of the criminal justice system in Mexico, what can regular citizens expect? Not much. How does the system treat most people who have to deal with it? Not very well. Most discrimination in Mexico exists on the basis of social class: poor and disenfranchised people tend to suffer more unfair treatment than rich or educated people. However, being Indian and having dark skin means double discrimination when facing the CJS. For instance, according to a report by the US Department of State, the Mexican National Indigenous Institute determined that tribunals "had not yet sentenced 70 percent of indigenous prisoners, half of whom the authorities held in pretrial detention longer than allowed by the law" (Reding, 1995: 41).

The system still adopts the notion that Indians – Afro-Mexicans included – lack money or political connections and are usually ignorant. According to Bonfil Batalla (1996: 16), the "Indian is viewed through the lens of an easy prejudice: the lazy Indian, primitive, ignorant, perhaps picturesque, but always the dead weight that keeps us from being the country we should have been." This general attitude has dire consequences for Indians because their legitimate claims are usually looked down upon or simply ignored by bureaucrats who have to deal with excessive amounts of work amidst the scarcity of resources, whether this is the police, the prosecutor's office or

the judiciary (Zepeda Lecuona, 2007). Acknowledging that discrimination against indigenous people occurs in the CJS does not explain how it happens, how often this practice takes place, what parts of the system tend to discriminate more, or whether or not these discrimination patterns are exclusively racial, ethnic or based on social class. The next section addresses these questions.

Delivering criminal (in)justice in Mexico

There are two major areas within the CJS where injustices based on discrimination and marginalization occur. One is at the prosecutor's office, where people report victimization and crimes; the other is at the trial phase within the judicial system. Understanding how these injustices come about is essential in order to contextualize the larger problem of crime. In Mexico, 75–82 percent of all criminal offenses go unreported because people do not trust the prosecutor's office, or they do not think that reporting a crime will make any difference (Zepeda Lecuona, 2004: 280). Such a public attitude is not unwarranted. Of the 25 percent of crimes that are reported less than 2 percent result in an arrest (Zepeda Lecuona, 2004: 282). At the point of the criminal trial, rich *mestizos* and white Mexicans can expect deference and expedited justice in the CJS because they are usually able to hire a prominent lawyer to help them. This lawyer is expected to have connections in the prosecutor's office and to make sure his or her wealthy client is treated fairly. For those who have no money the opposite is true (Carbonell, 2007). If no such lawyer is hired, then bribes, political connections or social class determine access to resources (e.g., investigators, gathering of evidence, quick proceedings, protection, and so on). Indians, the disenfranchised and poor people cannot expect this kind of access to resources or protection (Schatz et al., 2007).

Violent crimes do not need a personal accusation to prompt the prosecutor's intervention, but nonviolent crimes, such as burglary, fraud, land invasion and some types of robberies, require the victim's direct denunciation to begin the formal proceedings (*Código Penal Federal*, 2010). Personnel in the prosecutor's office may estimate that a poor citizen's demand for justice is not worth the effort to initiate proceedings, either because the value of the crime is minimal or because officials blame the victim for the crime (Zepeda Lecuona, 2007). For instance, public servants reason that the victim should have secured her values or she should have not been walking on that street at night when she was robbed. Often, there is discrimination and maltreatment taking place based on ethnicity, social class and social status.

A powerful factor that undermines the criminal judicial system and perpetuates the cycle of corruption, abuse of authority and discrimination is the prevalence of impunity in Mexican society (Carbonell, 2007). As mentioned earlier, only a small percentage of crimes end up with a final conviction, which means that the large majority of perpetrators get away with their crimes, either because the system is structurally deficient, or because corruption prevents the application of the rule of law. Some scholars (Carbonell, 2007; Scherer Ibarra, 2009; Zepeda Lecuona, 2007) suggest that it is probably a combination of these two elements that keeps impunity so prevalent.

In the midst of structural deficiencies, corruption and related problems in the Mexican criminal justice system, it is difficult to track discrimination, including race-based discrimination. In mainstream Mexican society, discrimination and racism are not usually seen as problem within the criminal justice system (Gall, 1998). The most common explanation people have for unfair treatment is corruption, because this phenomenon is so prevalent in Mexico. Those who have money, political connections, or who belong to the middle or upper class – regardless of race – are less likely to undergo discrimination, marginalization or maltreatment by the criminal justice system because their legal demands are guaranteed to find prompt responses from public servants (Zepeda Lecuona, 2007).

A key way to estimate the extent of discrimination, racism, and corruption within the criminal justice system in Mexico is through reports and investigations from third parties and from indirect references. This is because it is extremely difficult to document first-hand phenomena like corruption or discrimination. Usually, researchers have to rely on what is known as *second-order data* (Haller and Shore, 2005: 14), that is, how people *see* corruption and what they think about it. Also, given that discrimination, racism, and injustice within the criminal justice system are sometimes elusive, researchers generally rely on inferences and data compiled mostly by non-government organizations (NGOs), human rights groups, and international organizations, such as Amnesty International and the Inter-American Court of Human Rights. These have documented patterns of discrimination and human rights violations against indigenous people within the Mexican criminal justice system, such as the case of the indigenous women Inés Fernández Ortega and Valentina Rosendo Cantú (Inter-American Court of Human Rights, 2010). This documentation has been done in the form of reports, investigations or sentences based on information from the CJS, such as the *Recomendación No. 047/2009* issued by the National Commission of Human Rights (*Comisión Nacional de Derechos Humanos*, 2009). These reports and investigations are conducted by third parties who have no interest in the cases under examination and usually take an objective stance. Reports

are initiated in favor of those who have been the victims of legal-system injustices, and when there is enough evidence that those injustices have solid ground.

Such cases provide a rich source of information to document human rights violations and discrimination. They probably represent only a small fraction of trials in which defendants have been prosecuted or sentenced based on their ethnicity, social class or lack of resources, usually through fabricated or weak legal evidence. The following cases have made headlines in national and international news. In general, these cases have become well-known worldwide and have reached large audiences because they reflect grotesque violations of human rights and due process. A common pattern in most of these cases is that the Mexican government has been reluctant to intervene in favor of those affected by injustice, even when there is enough evidence of it.

Documenting discrimination, racism, and human rights violations

The San Salvador Atenco case

On August 25, 2010, the Mexican Supreme Court of Justice turned down the sentences of 12 poor *mestizo* activists from San Salvador Atenco, a peasant community in the State of Mexico. These activists were the leaders of the social movement known as *Frente de Pueblos en Defensa de la Tierra* (Popular Front in Defense of the Land); they were poor peasants who resisted President Vicente Fox's government's plans to expropriate their land in 2002 to build a new international airport near Mexico City.² The events leading to their arrest occurred on May 4, 2006, when several state and federal law enforcement agencies raided San Salvador Atenco. They violently took many of its dwellers into custody as a reprisal for a previous bloody confrontation the day before, when the police tried to break up a blockade of a federal highway by flower vendors who were protesting their evictions ordered by the government (Méndez, 2006).

Ignacio del Valle, the most well-known leader in the group, was sentenced to 150 years of imprisonment. The rest of the members also received long prison terms for an alleged "organized kidnapping" of police officers. These leaders were treated like dangerous criminals and were sent to a "supermax" prison. National and international human rights groups demanded that the Mexican government release the Atenco activists, whose convictions had been based on fabricated evidence, and prompted by the political motivations of the governor of the State of Mexico. Some Mexican scholars, such as Adolfo Gilly (2010), even argued that the Atenco case was a retaliation by President Vicente Fox against this movement because it had prevented the

federal government from building the aforementioned international airport on the peasants' land.

The Digna Ochoa Case

One infamous instance of this unofficial policy was the assassination of the indigenous human rights lawyer Digna Ochoa, whose family belonged to the *Totonac*, a pre-Hispanic people from the mountains of Veracruz state (Diebel, 2006: 175). She was an activist who defended peasants and indigenous people unjustly incarcerated as a result of false evidence based and political motivations. Digna Ochoa and the people she worked with, usually "took the untouchables – the police, intelligence agencies, and the army" (Diebel, 2006: 15). These human rights activists received many death threats, and Digna was even kidnapped several times by police officers. In 2000 she went into exile in Washington, D.C., and after her return to Mexico in March of 2001, she was murdered in October of that same year. First ruled as homicide, the official investigation ended up concluding that "she had committed suicide by shooting herself," twice! (Diebel, 2006).

The Alberta Alcántara and Teresa González Cornelio Case

In April 2010, the Mexican Supreme Court of Justice acquitted Alberta Alcántara Juan and Teresa González Cornelio (indigenous women from the Otomí ethnic group in Querétaro state) of the charges of kidnapping six police officers, ordering their immediate release (Méndez, 2010). The five justices of the first courtroom all agreed that this case was "an unfortunate injustice" and that "serious irregularities" plagued the entire trial, from the use of illegal evidence to admitting contradictory testimonies. These women had been imprisoned for four years. The Supreme Court declared that the kidnapping crime never existed because the attorney general's office (*Procuraduría General de la República*, PGR) did not provide any evidence to make its case. A few months earlier, in September, a third indigenous woman who had been arrested with Alberta and Teresa, Jacinta Francisco Marcial, had been released when the PGR dropped the charges after she had spent three years behind bars.

These three women had all been sentenced by a lower federal court to 21 years in prison for the alleged kidnapping of six officers of the Federal Investigation Office (AFI). Amnesty International declared these women prisoners of conscience. The National Commission on Human Rights (*Comisión Nacional de los Derechos Humanos*, CNDH) issued a recommendation against the Attorney General's Office (PGR), after the commission compiled a detailed investigation that proved their innocence, on the grounds that these women had been convicted on false testimony (*Recomendación No. 047/2009 CNDH*).

This case has some similarities with the one cited at the beginning of this chapter regarding the two women from the ethnic group *Me'phaá* who were raped by soldiers. These similarities are based on how discriminatory patterns occurred, but from opposite sides of a criminal investigation: the Otomi women were defendants in a trial while the *Me'phaá* women were the victims of a crime.

In both cases the victims were indigenous women who did not have economic or political leverage to cope with the discrimination and racism inherent in the CJS. In both situations, the prosecutor's office played a significant role in committing human rights violations. In the case of the *Me'phaá* women, it obstructed any legal action against the soldiers, while in the other case it rushed to incriminate the women based on dubious facts. Also, in both cases it was a judicial resolution at the highest level that finally brought justice and officially recognized the arbitrariness of the Mexican criminal justice system.

The main difference between the two is that the victims of rape had to go to international institutions to make their case. In the case of the Otomí women, the Supreme Court had the last word and overturned the sentences against them; but this stage of the trial was the last chance that the defendants had to argue before a court. In both cases the victims had to go through all the different stages of the judicial system to obtain justice at last. They had to deal with the burdensome and costly Mexican bureaucratic state apparatus on their own, just because they were Indians and poor (Zepeda Lecuona, 2007).

The Human Rights Defenders report

On a different type of account, in January of 2010 Amnesty International (AI) released the report "Standing Up for Justice and Dignity: Human Rights Defenders in Mexico," which highlights the fact that defending human rights abuses in Mexico is a dangerous activity. The report covers approximately 15 cases that include wrongful arrests and imprisonment on false charges, harassment and intimidation, and the killing of activists who dare to speak truth to power (Amnesty International, 2010). Some of these activists belong to indigenous groups and others are *mestizos*. The report emphasizes that those who live in poverty are more exposed to abuse by the authorities. Amnesty International has found evidence that both federal and state authorities in Mexico have been implicated in the misuse of the criminal justice system to falsely incriminate human rights defenders to obstruct or stop their work as activists. Some defenders have been arbitrarily arrested and have been prosecuted using flawed or false evidence. The report states that these prosecutions are usually dismissed later on by appeal courts when judges realize that the proof of guilt is baseless or contradictory.

The abuse of the CJS as a political instrument

There has been a long-term pattern of using the prosecutor's office as a political instrument to eliminate rivals, dissidents and individuals critical of the government, or to gain political advantage during election time. It is not uncommon in Mexico to see the criminal justice system being used to prosecute those who take part in public actions or protest against the government's political decisions. An example is the case of the leaders of the San Salvador Atenco Movement mentioned above, who were sentenced to draconian imprisonment terms because of political motivations.

Although the authoritarian regime that ruled Mexico for 71 years is gone, there are still remnants of that system in many states controlled by the former governing party, the PRI. It is in these states, such as Oaxaca, Puebla, Veracruz and Tabasco, where abuses of authority against indigenous people, peasants, and the poor, most often take place. Most of these people resist discrimination, racism, and human-rights violations, but local governments respond to social movements and public protests by criminalizing them (Gilly, 2010).

The most effective way to discourage protesters or get rid of the social movements' leaders is by using the criminal justice system as a political instrument. Because the police and the state prosecutor's office are subordinated to the executive branch, the governor, it is relatively easy for a high-ranking official within this branch to prosecute someone. The subordination of prosecutors implies that the governor can order (unofficially of course) the prosecution of any individual who is personally or politically threatening.

Discrimination and abuse of power by the army

President Felipe Calderon took office in 2006 and decided to openly confront drug trafficking cartels using the Mexican army. After the army began to patrol highways and cities, incidences of abuses of power, discrimination, and human rights violations against Indians, the poor and disenfranchised, accumulated against the military. Officially, the Mexican army is not part of the criminal justice system. However, a long time ago it began to perform law-enforcement duties – usually reserved to the police – such as criminal investigations, intelligence work, arresting criminals, and setting up check points to deter crime (Meyer, 2007). Since 2006, this practice has increased exponentially to fight the war on drugs that the federal government undertook.

This policy has been strongly criticized by the opposition parties, who argue that the army has not been trained to deal with social dislocations such as drug trafficking; it is only trained to kill in times of war (Meyer, 2007). This criticism is certainly true because since the army began to patrol the streets, various organizations, such as Human Rights Watch, Amnesty International, NGOs and, in particular, the National Commission of Human

Rights (NCHR), have recorded dozens of cases where the army has been involved in abuses and violations of human rights (*Amnistía Internacional*, 2009). As has been the case in the past, indigenous people are the most vulnerable to abuse, although they are not alone. Many poor *mestizos* and white Mexicans have also suffered abuses (*Amnistía Internacional*, 2009). Nevertheless, the cases described above provide evidence of this vulnerability particularly among indigenous individuals and the poor.

One example of this pattern of abuse by the military is the case of the indigenous ecologists Rodolfo Montiel and Teodoro Cabrera from Guerrero state, who in 1999 were arrested, kidnapped, and tortured by the army. Five days after their arrest, they were prosecuted under the charges of drug trafficking and possession of illegal weapons. Before their arrest, in 1998 these two peasants led a campaign against powerful landowners to fight illegal logging in the forests of the Petatlán Mountains in Guerrero state. This appears to be the main reason why they were put in prison. After a trial full of illegalities, Rodolfo Montiel was sentenced to almost seven years of imprisonment and Teodoro Cabrera was sentenced to 20 years.

While in prison, both of them received several international awards for their activism, among them the Robert F. Kennedy award for justice and human rights. In 2001, after intense national and international pressure, President Vicente Fox freed them on the basis of humanitarian considerations. The Mexican government never acknowledged any wrongdoing nor did it prosecute those who incarcerated these activists, so they decided to bring their case before the Inter-American Court of Human Rights for vindication and reparations. The case is pending a final verdict, but so far the government has denied any wrongdoing.

Conclusions

From the analysis presented above, it can be concluded that some areas of the Mexican criminal justice system, such as the prosecutor's office, discriminate on the basis of race, ethnicity and social class, but it is never acknowledged or rationalized as discrimination. Because this discrimination has been difficult to record, there are not many sources or documents to prove it directly and thoroughly. Racial discrimination is more prevalent against indigenous groups while among Afro-Mexicans discrimination takes place on the basis of poverty and social class. Discrimination against indigenous people has become institutionalized in the CJS, but it occurs in the context of the overall discrimination that the poor and disenfranchised people – among them Afro-Mexicans and poor whites and *mestizos* – suffer in Mexican society. At heart, this is an issue of social stratification.

Because discrimination and racism in Mexico are intertwined with issues of *mestizaje*, colonialism and national identity, it is extremely difficult to carry out real changes in everyday life. In the recent past some legal and political changes have been implemented to reverse the inertia of discrimination, such as the constitutional acknowledgment of Mexico's cultural diversity (*Constitución Política de los Estados Unidos Mexicanos*, 2010). However, discrimination and racism against indigenous people, Afro-Mexicans and poor people remain prevalent.

The efforts of some NGOs or public organizations, such as the *Instituto Nacional Indigenista* (Indian National Institute), in charge of defending the rights of indigenous people and creating awareness among the larger population of their basic needs are often thwarted. Local politics, powerful landowners, ignorance and failed federal policies usually trump indigenous people's socioeconomic needs and full cultural recognition (Montemayor, 2000). However, the major obstacle indigenous people and Afro-Mexicans face is the fact that discrimination and racism are not even acknowledged by the government and society in general (Vaughn, 2005). If most Mexicans think that unfair treatment and animosity towards minority groups do not exist, then it will be almost impossible to get rid of these attitudes. Yet, there are some institutional steps that can be taken in the CJS to decrease discrimination.

The first requirement is an overhaul of the entire CJS. Professionalization of public officials is a must. Police officers and employees in the judiciary and the prosecutor's office have to be evaluated for competence, confidence and the capacity to perform their duties according to the needs of each institution. This will require long-term training and the raising of standards regarding how public servants working within the CJS must conduct themselves (Zepeda Lecuona, 2007). Legal and ethical reforms must be implemented in order to emphasize accountability for all public servants regardless of their hierarchical status. These reforms have to tackle impunity so that it is no longer the rule but the exception. Once a record of exemplary punishment has been established against those who break the law, deterrence will prevent others – although not everyone – from wrongdoing (Ferreyra-Orozco, 2010).

Second, any reform requires that the government make enough resources available to pay public servants better salaries that are in accordance with the type of job these officials carry out. Satisfactory wages for public servants who perform sensitive duties – such as courtroom employees, detectives, and prosecutors – are necessary to the development of a work setting devoid of corruption and political influence (Ferreyra-Orozco, 2010; Zepeda Lecuona, 2007). In addition, the CJS needs more resources to deal with high levels of crime and an increasing demand from society for justice. These resources should be invested in hiring more qualified staff,

improving equipment, and acquiring technology that can lead to a more efficient and competent performance by all parties in the CJS. Most law enforcement agencies in Mexico lack personnel, training and the necessary technology to face the powerful drug cartels that in the last decade have mushroomed throughout the country. The sophisticated weapons and intelligence, and the money the cartels possess, have pushed police officers and soldiers to resort to old-fashioned practices, such as torture, to gather evidence (Meyer, 2007).

Finally, discrimination and racism in Mexico are also correlated to institutional inequalities and marginalization of the poor. For many decades, under the authoritarian regime of the official party and via political corruption, social welfare programs and government policies to reduce poverty were used as political tools to ensure electoral support, not to help the needy and disenfranchised (Morris, 1991). The political elite was busy minding its own interests rather than resolving economic and social disparities. As a result, the gap between the few rich and the vast majority who are poor keeps widening. Social justice is long overdue and needs to be addressed in order to facilitate the transition to a society that cares for all its citizens without excluding minority groups.

These changes are likely to improve the criminal justice system and as a result reduce ethnic and racial discrimination. They are not enough, but they are a necessary first step. Indigenous people, Afro-Mexicans and the poor do not commit more crimes than the majority of the population, but they have a far greater chance of being prosecuted and imprisoned when accused of a crime, regardless of the evidence against them. This discrimination continues when they are the victims of a crime: compared to those with political, economic or social leverage, there is a much greater likelihood that the authorities will not accept or investigate their crime reports.

Notes

1. The court "is an autonomous judicial institution of the Organization of American States established in 1979. [It] is formed by jurists of the highest moral standing and widely recognized competence in the area of Human Rights" (Inter-American Court of Human Rights, 2010).
2. The first democratically elected president from the opposition party, *Partido Acción Nacional* (PAN), after 71 years of authoritarian regime.

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Part III

The Caribbean

8

Race, Ethnicity, Crime and Criminal Justice in Jamaica

Louise Henry, Marika Dawkins, and Camille Gibson

This chapter presents a discussion of the relationship between race/ethnicity, crime and criminal justice in Jamaica. It does so by first providing a brief background description of Jamaica's history, population, socio-demographics and culture. This background is the context within which Jamaica's crime scene (particularly in relation to violence and violence-related crime) and criminal justice system operate. As in other nations in which the slavery of Africans existed, being a descendant of voluntary immigrants as opposed to involuntary immigrants corresponds with a contrast in the social standing of many persons, even to the present. Many voluntary immigrant families such as those of Lebanese, Jews from Spain, Germany and Israel, Chinese and Indian descent still dominate the ranks of Jamaica's economic elite while the descendants of less racially integrated involuntary immigrant black slaves dominate Jamaica's poor. The latter constitute most of those who are incarcerated. This chapter concludes with recommendations on how Jamaica could succeed in its efforts to diminish crime and improve its criminal justice system. Its history, and its racial and ethnic *mélange*, necessitate a unique formula for improvement.

Profile of Jamaica

Jamaica (derived from an Arawak term for "land of wood and water") is the largest English-speaking Caribbean nation. It comprises 4244 square miles (10,991 sq. km) and is located approximately 90 miles (145 km) south of Cuba and 100 miles (161 km) west of Haiti (U.S. State Department, 2010). Jamaica is an island with lofty blue mountains, pristine blue beaches, and a tropical climate. It has a population of approximately 2.8 million people (Central Intelligence Agency, 2010) with a life expectancy, as of 2007, of 72 years (Human Development Report, 2009). While the official language of the island is English, the common local dialect, or *patois*, mixes English and African words. The literacy rate is approximately 87.9 percent for those

15 years and older (U.S. State Department, 2010). Approximately 79.8 percent of youngsters 3–24 years were enrolled in educational institutions in the 2007–08 academic year. However, at the tertiary level, enrollment was approximately 29.5 percent (Economic and Social Survey Jamaica, 2008). Of the island's skilled and semi-skilled workers, 52 percent are females (Economic and Social Survey of Jamaica, 2008).

Jamaica's original inhabitants of record were the gentle Arawak people. Until the arrival of Christopher Columbus in 1494, the Arawaks' primary enemies were the cannibalistic Caribs (after whom the Caribbean region is named). Columbus and his sailors inflicted genocide on the Arawak. Beginning in 1509, small Spanish settlements followed (Headley, 1984). In 1513, the Spanish and the Portuguese brought black slaves to the island. When the island was captured by the British in 1655, many escaped into the hills. These former slaves became known as the Maroons. Between 1660 and 1718, at least 1336 English convicts were sent to Jamaica (Burnard, 1996). The island was by then an infamous haven for English pirates such as Mary Reed, Anne Bonny, Calico Jack, Henry Morgan (of Welsh ancestry) and Blackbeard (Edward Teach) who all thrived on attacking Spanish vessels. English settlers became the dominant people as Jamaica became a British colony in 1670. In a study of immigration to Jamaica, Burnard found that from 1683 to 1686, 693 servants arrived; between 1719 and 1739 another 1209 servants arrived. Between 1682 and 1770, 707 free persons arrived.

Under the British, many slaves were imported from the west coast of Africa, including Coromantee, Yoruba, Ashante, Mandingo and Bantu peoples. These would provide labor for Jamaica's booming sugar plantations. Before 1780, half a million slaves were brought to Jamaica (Burnard, 1996). Indeed, at the height of slavery, about 5000 slaves were imported annually (Ferguson, 1997). Burnard (1996) theorized that white brutality toward the slaves (killing for sport and mutilations) in Jamaica reflected a response to the whites' own poor mortality rates (Burnard, 1996). The whites included bond servants, over 30,000 Irish (Tortello, 2003) who often served as slave overseers. Jamaica had 57 plantations in 1673, but 430 by 1740, as it became the world's largest exporter of sugar (Ferguson, 1997). In 1748, 180,000 slaves were controlled by 18,000 whites on 455 plantations (Rogozinski, 1999).

By the late 1700s, many English plantation owners were absentee landlords. They brought in Scottish political prisoners to do their bookkeeping, Irish indentured workers as overseers and the Welsh to work as artisans and sailors (Tortello, 2004). Common Welsh names of Jamaicans today include: Vaughan, Bryan, Davies, Davis, Jones, Morgan, Owens and Reece (Tortello, 2004). Persons of Irish descent constitute some of Jamaica's whites even into the twentieth century. Indeed, former prime minister and national hero

Alexander Bustamante is of Irish descent. Recognizable Jamaicans of Irish heritage include the McKays, Mackey, Burke, Madden, Murphy and Collins families (Tortello, 2003). During slavery, however, a concern that white males would become distracted from plantation business if they became sexually involved with slaves was addressed by laws prohibiting such conduct. If it occurred, the white violator would owe a considerable debt to the slave owner (Barash, 1990).

Because of persecution in Spain, Jews had emigrated from Europe to Jamaica as early as the 1600s. In search of English protection, they continued to arrive in Jamaica for centuries, primarily making a living as merchants, initially in Port Royal, but later in Kingston, Spanish Town, Clarendon, Port Maria, Savanna-la-Mar, and Montego Bay (Tortello, 2003). By 1770 there were about 1000 Jews in Jamaica (Burnard, 1996). Jews were limited by law to owning no more than two slaves. They are credited with innovations in sugar production technology (Tortello, 2003).

The British settlers faced occasional raids by escaped slaves who joined the descendants of Spanish slaves in the mountains – the Maroons. The Maroons' numbers increased substantially as Coromantee warriors who had been forced into slavery escaped and joined their ranks. An increasing number of slave rebellions, sugar production competition from other regions, and the work of abolitionists in England led to the end of the English slave trade in 1807. By 1834, the British Emancipation Act abolished slavery in Jamaica. In response to the idea that slaves needed time to adjust to their freedom, four years of apprenticeship followed. This meant that the slaves received a small wage for their continued work, which was mandated. In 1838, slavery finally ended in practice in Jamaica, and more than a quarter of a million slaves were freed (Ferguson, 1997). As the slaves left the plantations, there were efforts to replace them with European laborers. Two thousand five hundred whites were brought in from northern Europe and another 6000 moved to Jamaica from the Portuguese Madeira islands. Many died of disease in the first year and efforts to recruit European workers stopped in 1860 (Rogozinski, 1999). Thousands of African slaves taken from captured Brazilian and Cuban ships continued to arrive until 1865. By 1944, however, whites in Jamaica numbered about 16,000 (Headley, 1984).

Thinking that East Indians might tolerate conditions in Jamaica better than whites, between 1845 and 1921 more than 36,000 East Indians, largely from northern India were recruited to work the sugar estates in Jamaica (Tortello, 2003). The Indians were on three-year indentureship contracts which could be extended. Initially, the East Indians and blacks had antagonistic relations. Many blacks looked down on the East Indians (whom they called derogatively "coolies") for doing "slave" work that the blacks thought was beneath them. In turn, given traditional biases in India against dark-skinned

persons, many East Indians looked down on blacks. Until 1929, it was possible for Indian workers to be repatriated to India. This transportation was limited and some were forced to remain in Jamaica, many intermarrying with blacks. Despite the large number of children who are the products of parents from both groups, some of the initial tensions remain. There are an estimated 70,000 East Indians in Jamaica today (Tortello, 2003). Successful rice, vegetable and other retail efforts have made Indian family names such as Chandiram, Vaswani, Daswani, Tewani, Mahtani, Chatani and Chulani economic giants in the island.

The Chinese followed. Over 6000 Chinese workers entered Jamaica by 1930 to perform work formerly done by slaves. Many of these immigrants did not do this work for long, but soon began labor on their own farms, grocery stores, bakeries and laundry facilities (Rogozinski, 1999; Tortello, 2003). This concerned white merchants who lobbied the government to pass laws restricting Chinese immigration to Jamaica. Regardless, many Chinese Jamaicans (these include the offspring of Black and Chinese parentage) have continued to excel in business. Some examples are Wayne Chen, owner of the SuperPlus chain, and Michael Lee Chin, chief executive of National Commercial Bank, and one of the world's few black (he is of mixed black and Chinese parentage) billionaires.

In the 1860s to 1900s, more Jewish (of French origin) and Lebanese families emigrated to Jamaica to escape religious persecution. They had heard of merchandizing opportunities and came to set up retail businesses. Many of the Lebanese families (for example, the Issa, Ammar, Hanna, Joseph, Mahfood, Azan, Karam, Fadil, Shoucair, Younis, Feanny, Khouri, Dabdoub, Ziadie and Matalon) still wield considerable economic power in Jamaica (Tortello, 2003). Former prime minister and leader of the Jamaica Labour Party, Edward Seaga is of Lebanese descent. Other whites came from Scotland, Germany, England, Spain and Portugal. A number of Germans (over 1000) and English settled in Jamaica's western areas: Berlin in the parish of Hanover, and Little London and Seaford Town in the parish of Westmoreland (Ferguson, 1997). The Germans came from Breman, Germany. In Jamaica, they were sent to work in the parishes of St. Ann, St. Mary, Portland, Montego Bay, St. Elizabeth, Manchester and Clarendon. Their most popular settlement, however, was Seaford Town where family names like Zwinkman, Volker, Sleifer, Eisinger and Dusterdick remain common (Tortello, 2003). Caribbean blacks commonly looked down on poor whites in their midst, whom they called "Germans" (Williams, 1955).

In more recent times, Haitians and Guyanese have found Jamaica's economy more appealing than their own and they have added to Jamaica's *mélange* of people. As of 2010, the Central Intelligence Agency (CIA) indicates, based on 2001 census data, that the ethnic groups in Jamaica now

include 91.2 percent blacks, 6.2 percent mixed and other unknown at 2.6 percent. While the nation remains predominantly black, its diverse ethnic heritage makes relevant the island's official motto "out of many, one people."

Even though most Jamaicans have black features, it is difficult to offer a single description of the Jamaican black, given the wide range of racial and ethnic mix represented in its population. Thus, each Jamaican constructs his or her own racial identity. For some this identity might be more Afrocentric; for others, it might strategically be more of an identification with whiteness (Charles, 2003). Alleyne (2002) concluded that a basic tripartite of racial division exists in Jamaica, with "White" (receding group) at the top, "Brown" in the middle and "Black" at the bottom, which correlates with its socioeconomic tiers. Historically, blacks have been the object of degradation and exploitation (Alleyne, 2002). Indeed, skin bleaching to obtain a paler hue occurs among a few of the poorest and darkest. Yet, instead of an overrepresentation of the oppressed by race in the island's criminal justice system, there is overrepresentation of the poor, who lack political connections and capital. Most of the wealthy tend to be of a lighter complexion, including some of Lebanese, Chinese and black descent, while the poor majority tends to be of a darker complexion. As Robinson-Walcott (2009) noted, the face of the successful businessman is increasingly brown-skinned, which may explain some of the recent bleaching of the skin that takes place on the island. Charles (2003) stated that slavery has been a traumatizing experience because it has brainwashed many blacks into hating themselves and internalizing negative feelings.

Jamaican culture is dynamic and evolving; given the creative and adventurous nature of Jamaicans, trends change frequently. The country is renowned as the birthplace of reggae music, the home of music icon Bob Marley, and for outstanding performances in international track and field events such as the Olympics and World Games by the likes of Usain Bolt, a three time world and Olympic gold medalist. Other track and field Olympic gold medalists include Donald Quarry, Veronica Campbell, Herb McKinley, Arthur Wint and Deon Hemming. There is emerging research that indicates that black slave descendants of West African origin, many of whom reside in Jamaica and the United States, have a fast-twitch muscle gene called ACTN3 (believed to be in 70 percent of the Jamaican population) that predisposes them to developing into superior sprinters (Rastogi, 2008).

The island is also a place of religious freedom and tolerance. Rastafarianism, a religion that teaches that former Ethiopian emperor Haile Selasse I (or Ras Tafari) is a religious icon and a descendant of the Jewish king David and the dark-skinned Queen of Sheba (believed to be Yemen), began in Jamaica. Ethiopia is the only African country that was never a European colony.

That some dark-skinned Jamaicans identify with this country through the Rastafarian religion represents a form of resistance to ideas of black inferiority (Simpson, 1955). Indeed, although Rastafarianism is perceived by mainstream Jamaicans as a deviant religion, many of its practices have become a part of the local culture, music and art. Other common religions include Protestant, Anglican, Baptist, Roman Catholic, Jewish, Muslim and Hindu.

Jamaica's crime scene

In 1962, Jamaica gained independence from the UK. Jamaica's natural bauxite resources and bountiful sugar and banana production made the country relatively stable. In more recent times, as these industries declined, tourism surpassed them as the island's chief source of foreign exchange. Given the importance of tourism, there has been a focus on recent increases in violence. Since 1991, the increase in violence has occurred in tandem with Jamaica's challenging economics and social inequality (Robotham, 2009). In 1991, the poverty rate was 44.6 percent; it declined to 15.9 percent by 1998, and went up to 16.9 percent in 2004 – much of those being rural poor in a nation with a youth unemployment rate of 30 percent (Robotham, 2009). Concurrently, the deportation from the United States to Jamaica of aliens with a criminal conviction increased, so too did gang activities, police corruption, and a greater international drug trafficking presence as Jamaica grew as a cocaine transshipment point for Colombian drug traffickers. These same drug routes are believed to have been used to import illicit weapons. The majority of trafficked guns in recent years enter in cargo shipped (*Jamaica Observer*, June 25, 2010) from Florida. For the most part, about 1000 illicit guns traceable to the United States are seized in Jamaica each year (*Jamaica Gleaner*, June 23, 2009). Corrupt wharf workers then funnel them into a nearby garrison (that is, a low income community with a particular political party loyalty).

Violence has been a major part of Jamaica's history and for years it has been glorified in its reggae music. The island's history includes accounts of violence that predates the arrival of Columbus. Such accounts include the history of the Maroons and the numerous slave revolts, which are often attributed to the large number of the strong, warlike Coromantee (Coromantyn) slaves. Postcolonial Jamaica has one of the highest homicide rates per square mile in the world; it has even been dubbed "the murder capital of the world" (BBC Caribbean, 2006). There are several risk factors that significantly contribute to the high homicide and crime rates in Jamaica. These include historical violence (already noted); garrisons, politics, and gangs such as the Shower Posse; and the drug trade. Overall, Jamaica is plagued with garrison political violence, interpersonal violence, drugs and property crime.

Despite the largely homogeneous nature of Jamaica's population and its mix of immigrants, it appears as though race plays less of a significant role in relation to crime when compared to other countries.

Garrisons, politics and crimes

Jamaica's two main political parties – the People's National Party (PNP) and the Jamaica Labour Party (JLP) have long been led by persons of a light or even white complexion, such as Edward Seaga (JLP 1980–1980) who is of Lebanese heritage; the half-Irish Alexander Bustamante (JLP 1962–1967); part-white Norman Manley (PNP 1957–1962); and his son Michael Manley (PNP, 1972–1980) while the mass of their followers have been black. The race of the leader seemed not to matter to most as long as the person's ideas were agreeable. Indeed, after the 1944 elections, Group 69 was formed, to offer protection for the political party called the People's National Party (PNP). This group utilized violence to limit the other major political party, the Jamaica Labour Party's (JLP) influence in poor communities. Group 69 devolved into a gang known as the Spanglers, then the "Spanglers International" (p. 61) (Harriott, 2008). They were involved in illegal gun imports into Jamaica. Later the Shower Posse emerged as a JLP counter group to the Spanglers. The posse members included persons with a light complexion, although most were dark-skinned. As their political conflict continued in areas around the capital – Kingston – by the 1960s, Jamaica had become a major marijuana exporter, utilizing commercial and small aircraft to supply the United States' appetite for illicit drugs. In the 1970s, Jamaican foreign exchange controls to maintain the value of its currency limited legitimate businesses' access to much needed foreign exchange. This fueled a "black market" in foreign currency and money laundering of illicit drug gains into the island's banking system (Harriott, 2008). As a result, illicit drugs, businesses and politics became so intertwined that they still inhibit Jamaica's ability to curtail its crime rate.

In contemporary times, media reports indicate that the violence in Jamaica has included a high rate of domestic violence, harsh corporal punishment of children, mob punishment of praedial larceny offenders and violence connected to politics and the drug trade. Crime is often an adaptive response to the social conditions in the environment. Jamaica is prime for crime given concentrations of poverty amidst low academic attainment, high unemployment, overcrowding, fragile family structures, community violence, a high young male population in poor communities and gentrification. Disparities are evident for all to witness. In Kingston, some of the wealthy live in mansions in Beverly Hills, Cherry Gardens and Arcadia Gardens, while many poor live nearby in West Kingston areas like Denham Town, Trench Town and Tivoli (Ferguson, 1997).

Some scientists (University of the West Indies-United Nations Environmental Scientific and Cultural Organization, 2007) refer to some Jamaicans' proclivity to violence as a response to economic hardships. Given the island's dependence on tourism, it cannot afford the threat of its high crime rate. With the end of British policy requiring trade support of former British commonwealth territories, Jamaica's bauxite, sugar cane and banana exports have been unable to compete successfully on the world market. As a result, tourism has outpaced agriculture and mining as the island's chief source of income. The country has also had to deal with substantial "brain drain" as many of its best educated migrate overseas in search of better economic opportunities. At the same time, there are questions about the competence of the island's two main political parties. Many regard their local politicians as self-serving members of the ruling elite (Robotham, 2007).

The largest concentrations of Jamaicans overseas are in the United States, the United Kingdom and Canada. In the 1980s, there were an estimated 5000 posse (gangs often associated with violence, drugs and, or firearms trafficking) members in the United States. These are largely Shower, Spangler, Tel Aviv, Waterhouse, Dunkirk, Banton and Dog Posse (Griffin, 2007). With a propensity for violence, which Columbian cocaine suppliers found appealing, the Jamaican posses seized and controlled the nationwide distribution of cocaine to major United States cities and oversaw street sales in the United States. While posses strengthened overseas, in Jamaica the "high crime (white collar crime) committed by respected persons and "low crime" (street crime) of the island's economically challenged individuals intersected in a "crime-politics nexus" (Harriott, 2008, p. 2). The result is what are called "garrison communities" where local community matters are influenced by the resources supplied by politicians to community "leaders" in exchange for local community political support in the form of votes and election funding. It is reported that politically connected persons frequently give inside information to criminal enterprises allowing the criminals to successfully bid for government contracts. As a result, the public suffers from the botched work of inept contractors and taxpayers are overcharged for inferior services, goods and roads (Harriott, 2008). Most of those in the garrison communities are blacks.

By the 1997 election, the relationship between garrisons and politicians had weakened to some extent as the "dons" depended less on political patronage given their success in international drug markets (Figueroa and Sives, 2003). However, in 2010 the "crime-politics" relationship between criminal garrison communities and political parties became very evident when it appeared that the prime minister of Jamaica, Bruce Golding, was involved in

the hiring of a United States law firm Manatt, Phelps and Phillips to inhibit the US extradition of reputed drug lord – Christopher “Dudus” Coke of the Shower Posse based in Tivoli Gardens, Jamaica. The Jamaican government took approximately one year to facilitate Coke’s extradition order. The violence surrounding the incident left at least 73 persons dead and a number of others injured (*Jamaican Observer*, May 27, 2010). Today, the evidence is such that it cannot be credibly denied that Jamaican organized crime has a deep reach into the nation’s political machinery, somewhat similar to that of the old “party thugs” who supplied votes for New York’s Tammy Hall politicians of the 1800s to early 1900s. It could even be argued that the gangs are more than mere party thugs but rather they are partners (Harriott, 2008 p. 52). Wealthy crime groups offer substantial funds to politicians who respond *quid pro quo* with government contracts and other favors (Harriott, 2008). These relationships are largely between individual politicians and crime groups that operate in their constituencies. The parties want candidates who can run without incurring party debt. The politician is then beholden to his or her financier and is kept in line with the threat of the revelation of the politician’s connection to political violence, voter fraud or other criminal activities. While the integrity of the electoral system has improved in recent years, there remains a need for greater transparency and honor in campaign financing.

According to Harriott (2003), many ex-colonial nations struggle with concerns about identity, and often crises of identity manifest themselves in different ways. Violence may be one such manifestation. Some criminal justice system administrators appear to have lowered their expectations and have become more focused on managing the crime situation rather than focusing primarily on stopping crime (Harriott, 2003). Sives (2003), discussing the “The Hearne Report of 1949,” stated that the “violence in Jamaica is developing a dynamic that is independent of its roots” (p. 10). Henry (2010) reported that between August 6, 1962, and May 23, 2010, more than 30,000 Jamaicans had been murdered. Henry attributed the murders to the political atmosphere that has become a norm in Jamaican culture.

Figueroa and Sives (2003) stated that in order to comprehend the high rates of violent crime in Jamaica, it is critically important that the development of the garrison phenomenon is tracked. A garrison is commonly defined as an area in which political and criminal activities are rigidly controlled by gang leaders or “dons” with political affiliations. Some dons are regarded as “Super Dons” who flaunt their excessive wealth. The message conveyed is that crime pays and that it pays big (Harriott, 2008). More discreet, and often educated, criminals garner respect but high profile violent street criminals are often not respected beyond their garrisons. Garrisons

flourish as the result of government failure to educate and employ the youth of these communities (Harriott, 2008). Thus, garrison communities have been sites where the political process has been connected to criminal activities. In garrison communities, opposition to the dominant party is not tolerated. For example, individuals who oppose the dominant party have been subjected to dire consequences including damage to their possessions (Figueroa and Sives, 2003). Therein are also garrison “jungle courts” (informal community courts) in which the “don” serves as judge. Interrogations and sentences include torture and executions. Examples of the most notorious garrisons are Tivoli Gardens (also called “Jungle” with JLP, Shower Posse allegiance) and across the street – Arnett Gardens with PNP allegiance. Essentially, garrison communities are political strongholds. Jamaica is tarnished by ongoing garrison politics deeply ingrained in its political culture such that criminals affiliated with certain political parties have significant power and leverage based on the crucial votes and campaign funds that they deliver to politicians (Boyne, 2010). Other garrisons include Matthews Lane, Mountain View, Denham Town, Trench Town and Tel Aviv.

In the past two decades, the leaders of the People’s National Party have been mostly dark-complexioned while those of the Jamaica Labour Party leaders have largely been lighter skinned. Hence, the former has been called the “Black Man Time Now” party. In reality, many dark-skinned persons have become disillusioned. The People’s National Party was in power from 1989 to 2007 and it appeared to many that only immediate family and friends of those in power really gained during the “Black Man Time Now” era (Robotham, 2007).

The present high levels of politically motivated violence have a long and disturbing history in Jamaica. It appears as though the political victimization and political violence started in the first administration (1944) after Universal Adult Suffrage. Then, violence was used as a political maneuver to not only win elections, but to secure worker participation in labor unions (Henry, 2010). The “strong arm” politics emerged largely during the election cycle (Harriott, 2003). The two major political parties, the Jamaica Labour Party and the People’s National Party have engaged in election crimes merely because of opposing party ideals. For example, in 1949, both political parties engaged in violent acts in attempts to achieve political objectives (Harriott, 2003). Harriott (2003) stated that the development of partisan politics and the accompanying violence continued throughout the 1960s and 1970s. Such violence has since become an important tool of both the parties. Furthermore, both political parties have constructed specific views, which have placed them firmly in situations from which they are able to defend their supporters (Harriott, 2003). This has resulted in many supporters becoming involved in criminal activities and assassinations to help to

achieve a particular political victory. The political-crime connection has led to an increase in garrison communities (covering 60 percent of urban constituencies and 20 percent of nationwide constituencies). This development threatens the democratic process and is manifested in curtailed street protests, deterrence of media investigations and even violent attacks on politicians (Harriott, 2008). Hence, a vicious cycle of violence has characterized national elections. The criminal activities and fear have created deep-seated political division, have fostered the escalation of political violence and have nurtured the development of drugs, gangs and gang-related crime (Figueroa and Sives, 2003). Most of the perpetrators and the victims of this violence have been black.

The older gangs are organized to garner profits both locally and overseas. For example, the Shower Posse (with JLP allegiance) exists in Tivoli Gardens (west Kingston), Jamaica. This same organization also exists in the following US cities: Washington, DC; Atlanta; Seattle; Los Angeles; New York; Boston; Philadelphia; Pittsburgh; Detroit; Cleveland; Kansas City; Denver and Dallas. The Spangler Posse (with PNP allegiance) exists in Matthews Lane (near Tivoli) Jamaica. This organization also exists in the United States in the following cities: Miami; Los Angeles; Boston; New York; Philadelphia; Pittsburgh; Washington, DC; Houston; Dallas; Atlanta; Cleveland and Seattle (Harriott, 2008).

Some of the larger organized crime groups also benefit from the extortion of businesses. In recent times, youth street gangs and rogue middle and high school students have adopted these extortion tactics. Many of these youth begin their criminal activity as early as age 10. They see the don as a role model (Harriott, 2000) and father figure in the absence of an involved biological father. Most children in Jamaica are born out of wedlock (*Jamaica Gleaner*, July 12, 2009). In the last few years, two new gangs of youngsters have been creating havoc while claiming party affiliation – the Clansman gang with the PNP and the One Order Gang with the JLP. Although political party and criminal gang integrations ensure a certain measure of protection from law enforcement flagrant violence removes this protection.

Youth gang-related violence, mostly in the garrison communities, has been the primary focus of Jamaica's security response. Media images of the residents of garrison communities show them to be blacks. Despite some success in addressing youth gang violence, Jamaica's murder rate continues to be high (Levy, 2010). Levy (2010) cites noted University of the West Indies professor Herbert Gayle who attributed the continued high murder rate to gang disputes that are also family disputes as many gangs reflect actual families dealing with domestic issues, drugs and crime. The conflicts are fueled by the nature of a garrison life that encourages people to be a law unto themselves. One noted response to garrison violence was the Peace

Management Initiative (PMI), which began in January 2002. The PMI was initially led by a group of eight religious leaders, academics and politicians serving voluntarily. The group encouraged communication and forgiveness between community gangs. Counseling for families dealing with loss and trauma was also a part of the initiative (Levy, 2010). However, plagued by limited resources the initiative has had limited success (Harriott, 2008).

Jamaica's homicide rate

Violence is the number one social issue in Jamaica. In recent years, Jamaica has had the dubious distinction of having had the highest murder rate in the world (Figure 8.1). Between 1982–1997 murders doubled in Jamaica. The homicide rate then rose from 36 per 100,000 in 2003 to 58 per 100,000 in 2005 – a record year! The overall crime rate in 2008 was 373 per 100,000 population (Social and Economic Survey, 2008). In 1992, Jamaica had 629 murders, of these 260 (42 percent) were deemed “domestic”; 150 (24 percent) involved robbery, break-ins or rape; 92 (15 percent) were for revenge, drugs, gang feuds, mob violence and politics 120 (19 percent); 135 were killed by law enforcement and 21 by private security personnel. Overall, there were 7221 violent crimes that year (Headley, 1996). In 1999, 849 people were murdered. That summer, in less than three weeks 66 people were killed (*Jamaica Gleaner*, July 8, 1999). By 2005 the murder rate was 1674, the highest in the Caribbean. In 2007, the island's murders were concentrated in certain areas including St. Andrew South (223), St. Catherine North (184), St. James (214), St. Andrew Central (137), Clarendon (163), and St. Catherine South (112) (Economic and Social Survey Jamaica, 2008). By 2009, the murder rate increased to 1680 (*Jamaica Observer*, January 8, 2010). Besides murder, there have been marked increases in rape, robbery, larceny, shop breaking and house breaking and carnal abuse. The victims and perpetrators of these crimes are largely Jamaica's poor (Headley, 2002) most of whom are black.

In the recent past, much of Jamaica's violence was depersonalized, that is, between people unknown to each other where the primary motive was robbery (Headley, 1996). Headley (1996) attempted to answer the question of how such persons come to be. His response was inadequate education and unemployment resulting from the decline in agriculture (modernization of sugar industry; sale of land to bauxite companies) and resulting internal and external migration, the evolving economy, and an increase in the youth population faster than this youth can be absorbed into mainstream structures. Many of the poor who could not emigrate overseas turned to vending and other hustles to survive.

Granted, the official crime figures published by the government are problematic. They are based on police statistics, which are based only on crimes

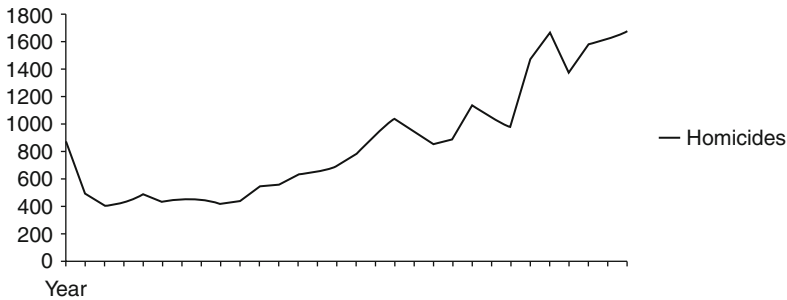


Figure 8.1 Homicides in Jamaica from 1980–2009.

Source: Rae (2009) citing the Jamaica Constabulary Force, 2006; Jamaica Constabulary Force, 2008, 2010.

reported to the police. Thus, the number could be more as many crimes are unreported. Crime is higher in the inner-city where the population density is high and many households are in poverty. However, a lower percentage of crime is reported to the police in the areas of higher crime rates. Harriott (2003) argued that behind the figures are the transnational organized crime networks, drug traffickers and dealers in North America and Europe, fuelled by extortions, protection rackets, gang warfare and politics.

Drugs and the drug trade

It appears that ganja (marijuana or *cannabis sativa*) was introduced into Jamaica after slavery, carried in by East Indian indentured servants in the 1850s (Chevannes, 2004). Given the socioeconomic closeness of blacks and East Indians, the use of the drug became quite common among both groups. Use has been recreational, medicinal and for Rastafarians religious. Today, many of the dark-skinned youth in Jamaica's correctional institutions admit to frequent marijuana use (Grant et al., 2011).

Although crime is a universal phenomenon, which may be independent of drugs, there is a complex relationship involving crime, drugs and politics in Jamaica. Jamaicans have apparently learned to accept the presence of the illicit drug economy. It is often common talk that persons whether lowly or respected might be garnering drug profits given a lavish lifestyle the source of which is not evident. Jamaica's drug trafficking role is one of the most intractable elements contributing to its crime (Robotham, 2003). Consequently, there has been an increase in the volume of cocaine in Jamaica, and the participation of women in the drug trade. This has further compounded crime and violence in Jamaica, which has prompted many to seek alternative solutions to resolving the drug trade problem with the hope that a reduction in crime will

ensue. The use of cocaine among Jamaica's youth however, has not increased significantly as marijuana remains the drug of choice for many Jamaicans who perceive it to be a non-threatening herb; cocaine however, is commonly perceived as a harmful drug that is likely to evoke madness (Grant et al., 2011).

Jamaica's new crime scene includes a greater division of labor, specialization, as well as the internationalization of activities (Harriott, 2000). The result is an underground economy, social power, prestige and ultimately violence. Among Jamaicans, it is widely rumored that some of Jamaica's wealthiest whites (Lebanese), and Chinese with political connections are the top movers of illicit drugs through the island and that their wealth is the result of drug profits. There are related rumors that Blacks in the garrisons in essence work for these persons. In reality, allegations about the whites and Chinese remain unproven, but Blacks from garrison communities tend to be the ones going through the criminal justice system on charges of illicit drug and weapons involvement. Female drug mules could be of any race, but are often blacks, whites or part white, and may be Jamaicans or foreigners (often British). If it seems they might be convinced to do it and they have the necessary travel documents, drug dealers will solicit juvenile or adult women to fly out of the island with drugs (Grant et al., 2011). In 2005, there were 600 Jamaican women in United Kingdom prisons on drug charges; in 2010 there were about 140 women (Brenton, 2010).

For the most part, cocaine merely moves through Jamaica, which serves as a transshipment point to the United States, Canada and Europe. Cocaine destined for the United States goes from Jamaica to the Bahamas, then on to the Florida coast in boats (US Drugs Enforcement Agency [DEA], 2004). In 1999, Jamaican police seized 2454 kilos of cocaine; in 2000 it was 1655.80 kilos; in 2001, it was 2948 kilos; in 2002 they seized 3025 kilos; in 2003 it was 1619 kilos and by May 2004, they seized 1100 kilos. For each seizure it is estimated that at least 10 times that amount moves through the island undetected (Williams, 2004). Cocaine seizures are usually along the north coast areas, for example, 2700 pounds of cocaine were seized in Belmont, Westmoreland, in 2002 (Headley, 2002).

In response, the Jamaican government has signed or ratified a range of international conventions, agreements and laws such as the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988; the Caribbean Regional Maritime Counter-drug Agreement 1995; and the United Nations Convention Against Transnational Organized Crime, 2003 (Harriott, 2008):

In Jamaica, local anti-drug laws include: the Maritime, Drug Trafficking Suppression Act, 1998; Terrorism Prevention Act, 2005; and the Proceeds of Crime Act, 2007. There is still a need, however, for more laws that address criminal conspiracies involving politicians and more closely monitoring

business cash transactions that may be fronts for money laundering or other illicit financial activities (Harriott, 2008). Thereafter, these and the existing laws will need to be effectively enforced. International and national drug policies aimed at controlling the drug trade appear substantial in that commercial airlines are rarely utilized for cargo shipments of drugs as they once were. In the 1970s, the United States pressured illicit drug supply countries to step up eradication and trafficking reduction efforts. If drug cargo or drugs were found on a single passenger, an airline could be heavily fined. Between 1989 and 1991, Jamaica's national airline, Air Jamaica had US\$37 million in fines (Klein, 2004). Subsequent close commercial carrier monitoring forced the Jamaican traffickers to purchase their marijuana in Mexico and to innovatively move both marijuana and cocaine into the United States for sale (National Drug Intelligence Center, 2000).

Crime and criminal justice

The criminal justice system in Jamaica resembles that of the British. As such, it has Judeo-Christian origins and a focus on deterrence. It is designed to prevent citizens from violating the laws and to sanction or to punish those who do. Despite independence from the British in 1962, Jamaica chose to retain much of the British penal code. In 2010, a British court is still Jamaica's court of last resort for criminal appeals. This is something that British lawmakers have found curious and burdensome. Indeed, some Jamaicans find this state of affairs unacceptable. Thus a Caribbean Court of Justice has been proposed for the region.

Jamaica's criminal justice system emphasizes preventative policing, successful reintegration of inmates into employment, preventing recidivism, alternative sentencing, and alternative dispute resolution for minor offenses. In practice however, Jamaica has a relatively weak criminal justice system – overburdened with cases and underfunded. It is a rather antiquated system where until recently judges took their own notes by hand for the official record and where all sleeveless attire is still prohibited. The system is largely ineffective at convicting its “high crime” (wealthy and, or politically connected) offenders. Well-connected offenders are largely insulated from local prosecution given their political influence. Justice for them usually comes only via a foreign indictment (Harriott, 2008). Even then, the Jamaican justice system often appears weak in not seizing opportunities to crush gang and crime networks. Thus, “dons” come and go, but their criminal enterprises tend to remain intact – and accountability for crime shifts (Harriott, 2008). In recent years, formal security and political forces have solicited the involvement of organized crime groups to broker peace (Harriott, 2008). One example of this was the Peace Management Initiative

whereby politicians and others served as peace negotiators with criminal networks. There was also the Violence Prevention Alliance.

Deportees are commonly perceived to be responsible for the recent crime spike in Jamaica but evidence to support these suspicions is largely lacking or is anecdotal. In the 1990s, most deportees to Jamaica were from the United States with deportees from the United Kingdom close behind. Over 80 percent of these cases are for immigration offenses and/or drug crimes. On a much smaller scale, between 2001 and 2004, the United States deported 128 sex offenders and 200 murderers to Jamaica (United Nations Office on Drugs and Crime, 2007). Looking at these and other data, Headley and Jones (2005) concluded that while the average deportee had committed non-violent crimes in the United States their impact on Jamaican crime was likely insignificant, but the number of murderers was cause for concern.

The Jamaica Constabulary Force and its Crime Statistics Unit report two types of crimes: crimes against persons, and crimes against property. The former include murder, shooting, rape, carnal abuse, robbery, and suicide, while the latter include theft, automobile theft, burglary and arson. Most of these crimes are committed by young males, most of whom are dark-skinned. Major crimes reported from 2006 to 2008 reveal substantial increases (Table 8.1). The largest numbers are for robbery, followed by breaking into a structure, then murder.

Table 8.2 below shows the age and gender of persons arrested for selected major crimes in 2008. Of the persons arrested for major crimes, those in the age group 21–25 had the highest number of arrests, followed by the 16–20 age groups. These data indicate that youths are committing the most offenses. Like much of Jamaica's population, this youth is dark-skinned. Only 24 out of the 1518 youths were females. Shooting and robbery were the other dominant crimes committed by youths.

In Jamaica, 77.4 percent of all murders are committed using a gun (Economic and Social Survey, 2008). According to reports in the *Jamaica Gleaner*, many of the illegal weapons have been smuggled into the island and fall into the hands of gang members. The National Committee on Crime and Violence (2002) declared that the main causes of crime were wide and varied, and included the following factors: (a) economic challenges which threaten livelihood, (b) the polarization of communities into groups willing to fight each other, (c) lack of exposure beyond their communities (d) too great of a dependence on elected leaders, (e) excessive police use of force and citizen distrust of police, (f) the emergence of don leadership in low income communities and (g) political tribalism and the drug trade.

The crime experienced by middle and upper class Jamaicans is usually a mere bother – largely some form of theft. Much of the murder, mayhem and

Table 8.1 Number and types of crimes reported for the year 2006–2008

| Offenses | 2006 | 2007 | 2008 |
|--|-------|-------|--------|
| Offenses against persons | | | |
| Murder | 1340 | 1574 | 1618 |
| Shooting | 1341 | 1441 | 1528 |
| Rape and carnal abuse | 1142 | 1106 | 1459 |
| Robbery | 2009 | 1598 | 2660 |
| Offenses against property | | | |
| Breaking | 1297 | 1467 | 2449 |
| Larceny from person, dwelling, Motor Vehicle | 211 | 304 | 325 |
| Grand total | 7,340 | 7,490 | 10,039 |

Source: Jamaica Constabulary Force

Table 8.2 Age and gender of persons arrested for selected major crimes in 2008

| Age group | Major crimes | | | | | | | | | | | |
|-----------|--------------|---|----------|---|---------|---|----------|---|------|---|--------------|---|
| | Murder | | Shooting | | Robbery | | Breaking | | Rape | | Carnal Abuse | |
| | M | F | M | F | M | F | M | F | M | F | M | F |
| 12–15 | 8 | – | 6 | – | 18 | – | 46 | 1 | 32 | – | 27 | – |
| 16–20 | 106 | 5 | 116 | 1 | 182 | 2 | 144 | 5 | 86 | – | 110 | – |
| 21–25 | 173 | 2 | 173 | – | 145 | 4 | 112 | 5 | 74 | – | 73 | – |
| 26–30 | 129 | 6 | 111 | 1 | 93 | 3 | 71 | 4 | 64 | – | 40 | – |
| 31–35 | 67 | – | 49 | – | 48 | – | 50 | 3 | 33 | – | 37 | – |
| 36–40 | 35 | 2 | 36 | – | 29 | 1 | 55 | – | 28 | – | 22 | – |
| 41–45 | 23 | 1 | 17 | – | 14 | – | 14 | 1 | 26 | – | 12 | – |
| 46–50 | 9 | – | 7 | – | 6 | – | 19 | 1 | 10 | – | 14 | – |

Source: Jamaica Constabulary Force, Police Statistical Unit, 2008

unlawful wounding occur among the poorest (Headley, 2002). When the poor commit offenses for any reason the impact can be significant as today the simplest of jobs tend to require the production of a police record as a part of the application process. Because of such requirements many citizens are laid off or are not hired. In turn, many businesses claim that they lose income and that no new investments take place. Some businesses even relocate to more secure environments. Residents then, in the inner city suffer the most as a stigma is attached to them. They are judged to be criminals based on their geographic location and its weak economy. For many, finding a job means lying about their address. Community violence also erodes relationships, as many are

afraid to leave their residence lest they encounter trouble. This includes movement both day and night. Indeed, many children are afraid of going to school as they believe that they will encounter violent rivals or extortionists.

Over, the last two decades there has been an increase in the representation of women as victims and offenders in the criminal justice system. In Jamaica, females are often domestic violence victims, although such incidents are rarely reported. As offenders, their crime is often a drug offense whereby the woman is being exploited. Another crime category for which women are susceptible to victimization in Jamaica is rape and carnal abuse, however, rape is one of the most underreported offenses. Regardless of the race and ethnicity of the parties involved in a rape, a patriarchal history manifests in the underreporting of rape (Amnesty International, 2006), especially if the rapist is from the upper classes and the female victim is not from a prominent family.

Overall, underreporting of crime is influenced largely by public perceptions of the police, which in general, tend to be negative, particularly among the lower class. The duties of the police, many of whom can be visually categorized as black, are to enforce all criminal laws, deliver impartial and professional services, maintain law and order, protect life and property, prevent and deter crime. They are also required to investigate all crimes committed and to preserve the peace. However, due to corruption and related vices in the police force, these responsibilities and expectations are not always met. It is known that local criminals who offend the police in some way and non-criminals who threaten to expose police corruption with credible evidence are often killed by police under mysterious circumstances such as engaging the police in a shootout. Friends of the dead often describe the allegations of violence as uncharacteristic of the victim. The police are commonly believed to be involved in selling ammunition, evidence tampering, perjury, witness intimidation, torturing suspects and contract killings (Rae, 2009). Harriott (1998) reported that in 1998 only 18 percent of Jamaicans felt comfortable informing the police about criminality and only about 20 percent of crimes are reported to police. In inner city communities informing the police about others can bring about retaliation, hence a strong inner city code of silence exists (Brooks, 2010).

Similarly, in many communities where crime is committed, witnesses are reluctant to come forward to participate in the judicial process (Nicholson, 2005). Witnesses (informers) know that many who give evidence die even before the case is completed. Thus, there is no surprise when criminals go free given insufficient evidence. Nicholson (*Ibid.*), a minister of justice, further lamented the common public perception that "informer fi dead" (or, informers should die), a perception that hurts the criminal justice system given that it is difficult to achieve justice "where witnesses remain silent." The introduction of the witness protection program was one means used

to dispel fear. However, many citizens in the inner city have no trust in the police system as they believe that the police are in alliance with many criminals and are thus unlikely to maintain confidentiality. Not only are citizens fearful of being witnesses, but they do not want to serve as jurors (Nicholson, 2005). Markedly, those who wind up in Jamaica's courts are poor. Harriott (2008) referring to a Carl Stone poll in 1991 reported that 68 percent of Jamaicans did not believe that judges were fair with the poor, who are mostly dark-skinned black. One crime area where persons of all races and ethnic backgrounds pass through the Jamaican courts is drug trafficking. It is not uncommon to find white females attempting to leave the country on commercial flights with illicit drugs. In recent years, Asian businessmen such as the East Indian Outar brothers from Clarendon have faced prison time for their drug trafficking involvement. Most often, however, those prosecuted are the dark-skinned black lower-level operators in the drug trade who garner attention for street level violence. It is these persons who are most likely to be in the prisons, many of which are overcrowded because of drug possession, not drug trafficking (Singh, 2004).

This is also the case for some of the youngest, who find themselves in conflict with the law. Overall, one study indicated that about a half of Jamaica's prison population are drug users (United Nations Centre for International Crime Prevention, 1997, as cited in Singh, 2004). Many of them are poor and unemployed, which leads to trafficking drugs. Of course, this further weakens families and communities and eventually is manifested in crime and violence (Singh, 2004).

Jamaica's justice process for juveniles is plagued with similar problems to those of the adult system. Jamaica has approximately 400 juveniles "in conflict with the law" (Office of the Children's Advocate Annual Report, 2009). Many of these are either on remand (awaiting a judicial hearing for several months) or serving a correctional order. Some are the wards of the island's Child Development Agency (CDA), which also has responsibility for children found to be in need of care and protection due to abuse, abandonment or neglect. Others are the wards of the Department of Corrections where they might be housed in facilities for children or in a section of the adult prisons. While conflict with the law occurs across class, those in correctional settings are largely poor, illiterate or semi-illiterate who have succumbed to enticements to vice available in their communities in the absence of family processes to combat the external temptations.

Conclusion

In recent times journalists, scholars and activists have declared that for Jamaica to progress, the politics-crime nexus must be broken and this will

involve not marginalizing those in garrison communities; dismantling garrisons; assisting legitimate businesses to resist organized crime efforts and to develop a more effective police force. Greater cooperation with international efforts to curb the island's drug exports given international appetites for marijuana and cocaine are also necessary. An international effort to deflate illicit drug profits is worth engineering to this end; so too is the de-politicization of the island's policing efforts. A less corrupt force would likely be more successful at defeating crime across classes (Harriott, 2008).

Bernard Headley, a Jamaican scholar (1996; 2002) recommended not marginalizing anyone, addressing economic inequalities, providing a quality education for all, greater use of land and effective engagement of poor persons whereby they have what they need to live a quality life, high impact jobs, outreach efforts and meaningful alternatives to gangs. Regarding the justice system, Headley further suggested that some military resources be diverted to assist law enforcement; that Jamaica practices equality before the law and community policing; that it gets rid of corrupt police officers; reduces its penal response to illicit drug appetites such as small scale marijuana indulgences; utilize opportunities with offenders to educate and do job training; address prison overcrowding, and abolish the death penalty.

Too often, political party loyalty and the concealment of party "dirt" trumps individual integrity. Related to this, many legitimate businesses depend on the patronage of illicit enterprise customers to flourish. Thus, there is a need for more research on victimizations, drug trafficking, business money laundering, and political election improprieties. Until these changes occur, many Jamaicans will remain fearful of crime in their island paradise.

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9

Race, Ethnicity, Crime and Criminal Justice in Trinidad and Tobago

Devon Johnson and Tammy Rinehart Kochel

This chapter examines the influence of race/ethnicity on criminal offending, victimization, fear of crime and perceptions of safety and police–citizen relations in Trinidad and Tobago. We rely on a variety of data to illustrate the intersection of race/ethnicity, crime and criminal justice, including official crime statistics, citizen surveys, self-report studies and national opinion polls. We highlight significant racial/ethnic differences in criminal offending (particularly for homicide), violent and non-violent victimization patterns, and fear of crime and perceived safety. Given the important role that the police play as the public face of the criminal justice system, we examine how perceptions of the police vary across racial/ethnic groups. Throughout the chapter and in the conclusion, we discuss potential explanations for the racial/ethnic differences reflected in the data.

Background

Trinidad and Tobago is a small, two-island Caribbean nation located about seven miles off the northeast coast of Venezuela. Trinidad and Tobago obtained its independence from United Kingdom in 1962 and became a republic in the Commonwealth in 1976. The British influence is still evident throughout the country; the country's official language is English, its political system mirrors Britain's parliamentary system, and its legal system is modeled after English common law. Trinidad and Tobago is one of the wealthiest nations in the Caribbean due to its reserves of petroleum and natural gas, and it expects to reach developed nation status by 2020 (Republic of Trinidad and Tobago, 2007). The nation is also culturally rich; it is the birthplace of calypso music and the steelpan, home to two Nobel Laureates in literature, and is world-renowned for its Carnival celebration. Trinidad and Tobago's population of 1.26 million reflects its colonial past and includes the descendants of African slaves and South Asian indentured servants. According to the 2000 Population and Housing Census, 40 percent

of the population is East Indian, 37.5 percent is African, 20.5 percent is of mixed Indo-African heritage (commonly called “Douglá”), and 2 percent is of other races.¹

The colonial and plantation history of Trinidad has influenced contemporary inter-group relations and modern policing patterns. These historical influences combine with recent crime trends to shape the current linkages between race, crime and criminal justice. In the following sections, we discuss colonial Trinidad and contemporary crime trends, to provide the necessary background for the analyses that follow.

Colonial Trinidad and its contemporary influence

Spain colonized the island of Trinidad in the late sixteenth century, and ceded it to Britain in 1802. The British established sugar and cacao industries in the new colony and imported African slaves to work the rural plantations. After emancipation in 1838, many former slaves migrated to urban areas to pursue their freedom. A large number established squatter communities in the hillsides surrounding the capital city of Port of Spain (Trotman, 1986), and these areas remain predominantly African today. Housing, infrastructure and overall living conditions were and continue to be poor in these communities. As we discuss below, much of the homicide and gang activity in Trinidad today is concentrated in these areas.

In response to the plantation labor shortage following emancipation, indentured servants from India (along with other immigrant groups) arrived in Trinidad to work in the sugar and cacao industries. As a result, colonial Trinidad has been characterized as having had a four-tier ethnic/class social structure, with the (white) planter class at the top of the hierarchy, followed by the light-complexioned colored or mixed-race population, then Africans, and finally East Indians (Brereton, 1993). After the indenture period ended in 1917, many East Indians accepted land in lieu of a paid return to India, and continued agricultural pursuits (Richardson, 1975). Today, rural communities in Trinidad remain predominantly East Indian.

Trinidad’s colonial past explains the geographic, class and political divisions among Trinidad’s ethnic groups today (Yelvington, 1993). As a result of their different histories of incorporation, Trinidadians of African and East Indian descent have generally lived in homogenous communities, with Afro-Trinidadians concentrated in urban centers and Indo-Trinidadians primarily in rural areas (Clark, 1993). Moreover, these groups have generally pursued employment in different sectors; Afro-Trinidadians have tended to concentrate in the civil services (including the police and the defense force), while Indo-Trinidadians largely concentrated in agriculture (Henry, 1993). Only recently, as Indo-Trinidadians have moved into the private sector, have they surpassed Afro-Trinidadians economically. Political activity

in Trinidad also reflects long-standing ethnic divisions within the society, with the major political parties generally aligned with either the African or East Indian community (Premdas, 1999, but see Meighoo, 2008). As we discuss throughout the chapter, these ethnic differences in socioeconomic status and geography help account for ethnic patterns in criminal offending, victimization and fear of crime today.

The Caribbean's colonial history also helps explain the often tense nature of contemporary police–citizen relations in countries like Trinidad, as Mars (2007) explains:

Understanding the enduring consequences of colonialism in the shaping of every aspect of Caribbean society, including the state's coercive apparatus, is arguably the most important factor in explaining police behavior in the region. In this regard, the passive role of politics in the policing of plantation societies, differentiated along both class and racial lines, is of special significance in explaining not only the tactical decisions made by police in the daily performance of their duties, but also the enduring characteristics of police culture and behaviour that continue to generate recurring crises in police–community relations. (Mars, 2007: 265)

Indeed, the style of policing that is common in Caribbean nations like Trinidad – one which “treat[s] the policed like subjects rather than citizens” – reflects the historical role that police played in colonial societies (Harriott 2007: 284). In nineteenth-century Trinidad, the police were a paramilitary organization of non-natives who served the planter elite by controlling “the great horde of uncivilized” Africans and East Indians (Trotman, 1986: 68). As they grew in size and responsibility, the police wrestled with law enforcement processes (Ottley, 1972). They used aggressive tactics to maintain social and physical control over the working class, and were consequently viewed as “an alien army of occupation” (Trotman, 1986: 97). Police–community relations were particularly strained in squatter communities and in the barrack-yards² of the urban centers, as police relied on negative stereotypes and believed the propensity for criminal and violent behavior was correlated with race and class (Trotman, 1986).³ The courts were no better at providing an equal measure of justice: “Decisions relied less on law and more on blatant prejudice, and racist notions of the character of Africans and East Indians alike prevailed over the facts of the case” (Trotman, 1986: 83).

Although the police force is now composed of natives and is meant to serve the public, a tense relationship between the police and Trinidadians (especially those from the working class) remains. Even today, incidents of alleged police abuse of citizens are commonplace, with victims reporting beatings and other mistreatment at the hands of police (Deosaran, 2002).

Police use of deadly force is a particularly salient issue. For example, a series of police shootings of suspects in 2007 and 2008 received much criticism in local newspapers and prompted demonstrations against the police by residents in the high-crime neighborhoods where the shootings occurred (Gonzales, 2008; Kowlessar, 2008; Renne, 2008). Concerns about police killings of suspects in custody have even gained the attention of international rights organizations (Amnesty International, 2001, 2006).

Colonialism influenced the nature of inter-group relations and policing in Trinidad and Tobago, and helps explain the relationship between race, crime, and criminal justice in the present day. Just as it is important to review Trinidad's past to understand the present, it is also useful to examine contemporary trends that affect the nature of crime and the response of the criminal justice system today. It is to these current trends that we now turn.

Crime, fear and a crisis of legitimacy

In recent years, Trinidad and Tobago has experienced a significant increase in violent crime and a crisis in public confidence. The number of homicides more than quadrupled in less than a decade, from 120 in 2000 to 547 in 2008. Most of the increase was due to gang violence in distressed, predominantly African communities surrounding the capital city, Port of Spain (Maguire et al., 2008). At the same time, the clearance rate for homicide declined dramatically (Maguire et al., 2010), allowing murderers to go unpunished. Kidnappings were also a significant concern during this period, particularly in the East Indian community. The kidnapping rate almost doubled between 1999 and 2005 (United Nations Office on Drugs and Crime, 2007) and kidnappings for ransom rose from 10 in 2001 to 58 in 2005 (Temple-Raston, 2007; Williams, 2005).

These trends were a dominant storyline in the media and led to increased concern about crime and safety across the country. National public opinion tracking surveys conducted between 2002 and 2008 recorded a sharp increase in the number of people indicating that crime was the most important problem in Trinidad (from 56 percent in 2002 to 92 percent in 2003 and 94 percent in 2005). These polls also found that a growing number of citizens felt unsafe as a result of the crime problem in the country (MORI International, 2002–2008).

These crime trends have negatively impacted public satisfaction with the police and the criminal justice system overall. According to the public opinion surveys mentioned above, citizens view the police and the courts as ineffective and express little to no confidence in them. For example, in a 2003 poll, respondents were asked to choose descriptions of police from a list of characteristics. The four most common descriptions selected by respondents

were negative: poor service (selected by 38 percent of respondents), corrupt (36 percent of respondents), slow (33 percent of respondents) and unresponsive (31 percent). In 2005, the proportion of respondents describing the police as corrupt rose to 43 percent (MORI International 2002–2008).

Concerns about corruption in the police force, and in the government more generally, are widespread (Freedom House, 2006; U.S. Department of State, 2007). For example, 60 percent of the public thinks police are in league with criminal elements in society, while 40 percent think the government is in league with criminal elements (MORI International 2002–2008). As an example of corruption in the criminal justice system and in the government, the chief justice of Trinidad was charged in 2006 with obstruction of justice in relation to a case involving bribery and corruption charges against a former prime minister (U.S. Department of State, 2007).

Together, these trends demonstrate the significant challenge of violent crime in Trinidad and Tobago, the negative public view of the police and the courts, and the legitimacy challenges facing the entire system of justice.⁴ It is against this backdrop that we examine the intersections of race, crime and criminal justice in Trinidad and Tobago.

Data sources

One of the challenges of examining this topic is the availability of data. Accurate and comprehensive data on criminal offending and victimization in Trinidad and Tobago is difficult, if not impossible, to obtain. Official crime data is often inaccurate and incomplete (Maguire et al, 2008; Mastroski and Lum, 2008; United Nations Office on Drugs and Crime, 2007). In most police stations, crimes are recorded by hand in large paper registers, and are later compiled electronically into general crime categories. Errors and omissions are common, raising concerns about the reliability and validity of the data (Snipes, 2005). It is even more difficult to locate criminal justice statistics broken down by race. Often, the race of an offender or victim is recorded haphazardly in official records, if it is recorded at all.

Given these challenges, we rely on three main data sources in this chapter. First, we use official statistics provided by the Crime and Problem Analysis (CAPA) Unit of the Trinidad and Tobago Police Service to examine recent victimization and offending patterns. As suggested above, the potential errors and omissions in this data must be kept in mind, along with the fact that much crime goes unreported and undetected (as it does in every country). Second, we use citizen survey data to examine self-reported victimization, fear of crime, and perceptions of the police. Our data source is the 2007 Model Stations Community Survey, which included a random sample of 2969 residents in 74 Trinidad neighborhoods. These residents are not a

nationally representative sample, rather they come from ten police districts with relatively serious crime and disorder problems.⁵ Third, we reference data provided in other published and unpublished research to supplement the sources above. For example, we cite research on self-reported delinquency, the juvenile justice system, adult prisons, and public perceptions of the criminal justice system. In the following sections, we review racial differences in offending and victimization, fear of crime and perceptions of safety and police–citizen relations.

Offending

Homicide, gangs and the drug trade

We begin our examination of race, crime and criminal justice by focusing on three of the major issues currently affecting the safety and security of Trinidad and Tobago: homicides, gangs and the drug trade. Between 1999 and 2005, the homicide rate in Trinidad and Tobago more than quadrupled, from 7 to 30 homicides per 100,000 people (United Nations Office on Drugs and Crime, 2007). An analysis of homicide data from 2001 to 2007 shows that homicide is spatially concentrated (Maguire et al., 2008). For example, when Maguire and his colleagues examined official homicide data for 2005, they found that 60 percent of all homicides occurred in only seven of the nation's seventy-one police station districts, and that one station district alone accounted for one quarter of the homicides in Trinidad that year. This station district, just outside the capital city, includes many of the disadvantaged, predominantly African hillside communities that were described above.

In addition to this spatial concentration, data from the Homicide Bureau of Investigation (cited in Maguire et al., 2008) indicate that homicide victims are overwhelmingly male and disproportionately African. Afro-Trinidadians made up 72.4 percent of the homicide victims between 2001 and 2007, which is more than twice their proportion in the population (37.5 percent, as noted above). According to Maguire and colleagues, 18.6 percent of homicide victims during this period were East Indian, 7.6 percent were of mixed race, and 1.4 percent were of other races. A similar pattern is evident between 2007 and 2009, according to data on homicide victims provided by the CAPA Unit (see Table 9.1).

Data on homicide offenders is more difficult to obtain. As Maguire and colleagues (2008) note, most of the homicide case files for 2001–2007 lack key information on suspects, such as a legal name/street alias, gender, age or race. For example, while approximately half (46.2 percent) of the homicide case files included suspect gender, only 26.6 percent named a suspect, and only 15.6 percent of the files reported a suspect's ethnicity. For cases

Table 9.1 Ethnicity of homicide victims, 2007–2010 (%)

| | 2007 | 2008 | 2009 |
|----------------------|------|------|------|
| African | 78.8 | 78.4 | 75.7 |
| East Indian | 16.4 | 14.6 | 16.4 |
| Mixed | 4.3 | 5.1 | 4.5 |
| Other/Unknown | <1.0 | 1.8 | 3.3 |

Source: Crime and Problem Analysis Unit, Trinidad and Tobago Police Service.

where data on race and ethnicity was known, 69.6 percent of suspects were African, 20.3 were East Indian and 9.8 were of mixed race.

Taken together, the available data on victims and offenders indicate that homicide in Trinidad disproportionately affects the African community, and is largely an intra-racial crime. According to the spatial and statistical analyses conducted by Maguire and his colleagues (2008), this is particularly true in the seven police station districts where violence is heavily concentrated. They found that homicides in these areas were more likely to be gang-related and committed with firearms than homicides in less violent areas, and that the victims were more likely to be younger, male and African.

One explanation for the sharp escalation in the homicide rate in the last decade is an increase in the number of murders that are gang-related (Maguire, et al. 2008; 2010). Recent research suggests that there are almost 100 gangs operating in Trinidad, and over 1000 gang members (Katz and Choate, 2006). As with homicides, gangs are spatially concentrated in certain communities and are predominantly Afro-Trinidadian. Katz and Choate (2006) estimated that approximately 83 percent of gangs in Trinidad are African, while only 13 percent are East Indian.

Given its strategic geographic location between the US and Central America, Trinidad is seen as a major trans-shipment point in the international drug trade. Many argue that the recent rise in violent crime and gang activity in Trinidad and Tobago can be traced, in part, to the trafficking of illegal drugs (Freedom House, 2005; United Nations Office on Drugs and Crime, 2007). Indeed, a report from the Ministry of National Security in 2006 indicated that 65 percent of all serious crime in Trinidad was linked to the illicit drug trade (Deceyon, 2006).

Recent data on the race of offenders arrested for possession of narcotics for trafficking suggests that Afro-Trinidadians are disproportionately involved in this crime. Just over half of the people arrested for this crime in 2008 and 2009 were of African descent, while only one in five was East Indian (see

Table 9.2 Ethnicity of narcotics trafficking offenders, 2008–2009 (%)

| | 2008 | 2009 |
|--------------------|------|------|
| African | 58.2 | 59.3 |
| East Indian | 20.8 | 20.4 |
| Mixed | 18.3 | 15.0 |
| Other | 1.8 | 3.0 |
| Unknown | 1.1 | 2.3 |

Source: Crime and Problem Analysis Unit, Trinidad and Tobago Police Service.

Table 9.2). This racial disparity is likely due to the significant involvement of gangs in the drug trade, and the fact that gang activity is concentrated in the African community.

Overall, the picture provided by the data is clear: Afro-Trinidadians are disproportionately involved in homicide (as both victims and offenders), gang activity and the trafficking of illegal drugs. Given the long-established relationship between criminal activity and socioeconomic status, and the concentration of Afro-Trinidadians, gangs and serious crimes in the most disadvantaged communities in Trinidad, it is likely that class background is an important component of this story. The racial disparity in these criminal offending patterns is likely rooted, in part, in the different locations that Afro- and Indo-Trinidadians occupy on the socioeconomic ladder.

Self-reported delinquency

In light of concerns about the reliability and validity of official crime data, we supplement our analysis of offending patterns with self-report data. Two studies have examined how self-reported delinquency among Trinidadian youth varies by demographic characteristics, including ethnic background. In each case, the results are consistent: African and mixed-race youth report more delinquent behaviors than do East Indian youth. The first study, conducted by Ramesh Deosaran (2007) in 2002, included 1800 secondary school students in Forms 1, 3 and 5 (approximately ages 11–12, 14, and 16–18, respectively). The sample was 29 percent African, 36 percent East Indian, 33 percent mixed-race, and 2 percent “other.” Students were surveyed about a range of behaviors, including physical violence (e.g. fist fight, weapon use), substance abuse, high-risk behavior (e.g. got in trouble with police, hung out with a gang), stealing, disorder and incivility (e.g. damaged school property, cheated on a test) and verbal aggression (e.g. obscene language, loud and unruly in a public place).

Deosaran's (2007) results indicate that youth of African and mixed-race descent were most likely to report delinquent and disorderly behaviors, while East Indian youth were the least likely to report delinquent behaviors. The differences between African and East Indian youth were largest when it came to physical violence, high-risk behavior and verbal aggression, and were smaller for stealing and substance abuse. Moreover, Deosaran (2007) notes that the racial differences were not explained by the social class of the school the students attended.

More recent research conducted by Charles Katz and Andrew Fox provides a similar portrait of delinquency in Trinidad (Fox, 2008; Katz and Fox, 2010). Using the 2006 Trinidad and Tobago Youth Survey (TTYS), which sampled 2552 students in Forms 3 and 5 in public schools (41 percent African, 24 percent East Indian, 15 percent mixed race, 20 percent "other" race), Katz and Fox examined substance abuse, anti-social behavior, and risk and protective factors among youth in Trinidad. The TTYS included questions measuring a variety of delinquent behaviors, such as alcohol and marijuana use, gang involvement, gun use, gambling, theft and fighting. Results indicated significant differences in self-reported delinquency by race, with African and mixed-race youth reporting higher levels of delinquency than East Indian youth.⁶

As shown in Table 9.3, Fox (2008) found significant differences across ethnicity for lifetime and recent alcohol and marijuana use. In each case, the pattern was consistent: youth of mixed ancestry were most likely to report alcohol and marijuana use, followed closely by Afro-Trinidadians. East Indian youth were the least likely of all racial groups to report alcohol and marijuana use. When respondents were asked about alcohol use in the last 30 days, percentages declined by about half. Similar patterns emerged for marijuana use, though overall the proportion of youth who engaged in marijuana use was smaller than the proportion who engaged in alcohol consumption. As with alcohol, recent use of marijuana was less common by about half. Fox (2008) did not

Table 9.3 Self-reported delinquency among Trinidadian youth, by ethnicity (%)

| | Lifetime alcohol use | Alcohol use in last 30 days | Lifetime marijuana use | Marijuana use in last 30 days | Current gang member | Carried gun in last 12 months |
|-------------|----------------------|-----------------------------|------------------------|-------------------------------|---------------------|-------------------------------|
| African | 76.4 | 35.9 | 13.2 | 5.3 | 6.1 | 5.4 |
| East Indian | 60.6 | 26.8 | 8.9 | 4.0 | 5.5 | 3.9 |
| Mixed | 80.7 | 41.5 | 15.6 | 7.1 | 4.7 | 7.3 |
| Other | 74.0 | 34.5 | 10.4 | 1.9 | 7.3 | 5.4 |

Source: Fox (2008).

find a significant difference across ethnicity when the respondents were asked about heavy alcohol use.

Given that gang crime is a current concern in Trinidad, the TTYS included a series of questions about gang activity. African youth and those who reported their race as “other” were most likely to report current gang membership, followed by East Indians and youth of mixed ancestry (Fox 2008). Overall, African and mixed-race youth were more likely than East Indian youth to report some gang connection (as associates, current members, or former members), but these differences were not statistically significant. With respect to firearms, youth who reported being of mixed race were the most likely to report carrying a gun in the past 12 months, followed by Afro-Trinidadians and youth of other races. East Indian youth were the least likely to report carrying a gun. Fox (2008) did not find a statistically significant difference by ethnicity in the number of youth who carried a gun to school.

Juvenile and adult detention

Overall, the racial patterns evident in the official and self-reported delinquency data are generally consistent with available data on the racial background of youth and adults in correctional facilities (though the magnitude differs). Deosaran and Chadee (1997) reported that 69.1 percent of the youth living at the three juvenile homes they studied in 1997 were of African descent, 18.2 were of mixed ancestry and 12.7 percent were East Indian. Although these institutional figures demonstrate the significant overrepresentation of African youth in juvenile homes compared to their numbers in the general population, the authors noted that it is not clear whether this is primarily due to racial differences in offending or to racial bias in the administration of justice.

Data on convicted prisoners in adult facilities demonstrates a similar racial disparity. A 2002 study of convicted inmates at all six prisons in Trinidad found that 61 percent were African, 26 percent were East Indian, 13 percent were of mixed ancestry and less than 1 percent were of other races (Ramdhanie, 2007). Moreover, the study found ethnic differences for some of the offenses committed by the convicted prisoners. Ramdhanie (2007) reported that 36 percent of the Afro-Trinidadians inmates, 41 percent of mixed-race prisoners, and 33 percent of East Indian inmates were incarcerated for narcotics-related offenses. This is generally consistent with the juvenile drug use data reported above. A similar proportion of each racial group was incarcerated for larceny/house breaking (26 percent of African, 30 percent of East Indian, and 29 percent of mixed race inmates). In contrast, Afro-Trinidadians were twice as likely to be incarcerated for robbery-related crimes (10 percent) than were those of East Indian descent (5 percent). This

is consistent with higher rates of violence among Africans than East Indians that we reported above for homicide and gang affiliation.

Victimization

To this point, we have demonstrated that violent criminal offending is disproportionately associated with the African community in Trinidad and Tobago, whether the data comes from official sources or self-report studies. We now turn our attention to victimization, first by examining official reports of violent and non-violent victimizations, and then by examining survey data on self-reported victimization.

Officially reported victimization

Police data on the race of violent crime victims in 2008 and 2009 is shown in Table 9.4. The four most common crimes are presented in order of their prevalence, with robbery the most reported violent crime (homicide is not included in these data).⁷ Two patterns stand out. The percentage of East Indian and African victims reporting both robberies and kidnappings closely matches their proportion in the population. For example, East Indians make up approximately 40 percent of the general population, and account for just over 40 percent of those who report to police that they have been robbed or kidnapped.

Table 9.4 Ethnicity of violent crime victims, 2008–2009 (%)

| | Robbery | Wounding/ shooting | Sexual offense | Kidnapping |
|-------------|---------|-----------------------|----------------|------------|
| 2008 | | | | |
| African | 38.7 | 68.7 | 42.9 | 35.9 |
| East Indian | 42.1 | 17.9 | 25.5 | 42.2 |
| Mixed | 13.3 | 9.8 | 20.6 | 15.6 |
| Other | 5.5 | 3.3 | 10.4 | 6.3 |
| Unknown | 0.4 | 0.3 | 0.6 | 0.0 |
| 2009 | | | | |
| African | 40.2 | 64.8 | 47.1 | 42.3 |
| East Indian | 38.9 | 19.4 | 22.3 | 33.6 |
| Mixed | 14.4 | 10.6 | 20.2 | 16.1 |
| Other | 6.0 | 4.0 | 9.8 | 8.0 |
| Unknown | 0.5 | 1.2 | 0.6 | 0.0 |

Source: Crime and Problem Analysis Unit, Trinidad and Tobago Police Service.

In contrast, police data suggests that Afro-Trinidadians are the victims of shootings/woundings at a disproportionate rate. Although Africans make up just over one-third of the national population, they account for two out of every three victims in a shooting or wounding. In addition, there is a racial disparity in reports of sexual assault. Indo-Trinidadians are significantly underrepresented as victims in this category compared to their numbers in the general population, while Afro-Trinidadians and those of other races are overrepresented.

Table 9.5 shows police data on the race of non-violent crime victims in 2008 and 2009. The five most common crimes are presented in order of their prevalence, with breaking/burglary being the most reported non-violent crime. The largest racial disparity is evident in the burglary and larceny from dwelling/house categories. According to data from 2008 and 2009, Africans are disproportionately affected by these crimes, while East Indians and mixed-race individuals are underrepresented in these categories. For the rest of the non-violent crimes (general larceny, motor vehicle theft and malicious damage), East Indians report victimization at a level that reflects their proportion in the population, while Africans are slightly overrepresented.

Crime in Trinidad and Tobago goes unreported to police for a variety of reasons. For example, victims may not think it is significant enough to report, may not believe the police will take it seriously or can do anything about the

Table 9.5 Ethnicity of non-violent crime victims, 2008–2009 (%)

| | Breaking/ burglary | General larceny | Larceny motor vehicle | Malicious damage | Larceny dwelling/ house |
|-------------|-----------------------|--------------------|-----------------------------|---------------------|-------------------------------|
| 2008 | | | | | |
| African | 48.1 | 41.1 | 40.9 | 42.1 | 47.2 |
| East Indian | 30.2 | 38.9 | 40.6 | 39.1 | 31.2 |
| Mixed | 13.1 | 13.0 | 12.5 | 14.9 | 12.6 |
| Other | 8.0 | 6.4 | 5.4 | 3.7 | 6.2 |
| Unknown | 0.6 | 0.6 | 0.6 | 0.2 | 2.8 |
| 2009 | | | | | |
| African | 48.2 | 40.8 | 41.8 | 49.4 | 48.8 |
| East Indian | 30.4 | 39.5 | 42.4 | 32.1 | 28.3 |
| Mixed | 13.5 | 13.1 | 11.6 | 13.1 | 14.5 |
| Other | 7.5 | 6.1 | 3.8 | 5.4 | 5.5 |
| Unknown | 0.4 | 0.5 | 0.4 | 0.0 | 2.9 |

Source: Crime and Problem Analysis Unit, Trinidad and Tobago Police Service.

Table 9.6 Percentage of victims that reported to the police, by ethnicity

| | Burglary victims | Robbery victims | Assault victims |
|--------------------|------------------|-----------------|-----------------|
| African | 54.3 | 40.0 | 35.7 |
| East Indian | 66.2 | 68.8 | 67.9 |
| Mixed | 72.5 | 77.8 | 50.0 |
| All Races | 64.5 | 62.9 | 55.4 |

Source: Model Stations Community Survey, 2007.

problem, or do not trust the police (Mehlman, 2007; MORI International, 2002–2008). Data from national surveys in 2002 and 2005 found that about half of the respondents who indicated they were the victim of a crime in the last year did not report it to the police and that reporting rates varied by crime type (MORI International, 2002–2008). Results from the Model Stations Community Survey (see Table 9.6) are generally consistent with the national survey data. About half of assault victims reported their victimization to police, compared to two-thirds burglary and robbery victims.

To the extent that crime reporting varies by ethnicity, the official police data on criminal victimization reviewed above may not reflect the actual distribution of criminal victimization across ethnic groups. Data from the Model Stations Community Survey suggests that reporting does vary by ethnic background, at least for victims of burglary, robbery and assault (the only crimes queried about in the survey). As shown in Table 9.6, significantly fewer Africans reported their victimizations to the police than did mixed-race and East Indian victims. The disparity between African and East Indian assault victims is particularly noteworthy, with East Indians nearly twice as likely as Africans to report assaults to the police.

To better understand reporting patterns, respondents in the Model Stations Community Survey who did not report their victimization to the police were asked why they did not do so. The results, reported in Table 9.7, must be viewed with caution since the number of respondents in each category is quite low, especially for assault. The most common reason for non-reporting given by victims of all three crimes is the belief that the police would not take action. Differences by ethnicity were also evident. The results suggest that for burglary and robbery offenses, East Indians were much more likely than other groups to fail to report a crime *because* they did not think the police would do anything about it. The differences were particularly large in the robbery category; 80 percent of East Indians who did not report their robbery victimization failed to do so because of low expectations of the police response, compared to 46.2 percent of Africans and 25 percent from mixed-race backgrounds.

Table 9.7 Reasons victims gave for not reporting crime to the police, by ethnicity (%)

| | Nothing stolen/no big deal | Police would not do anything about it | Afraid of those who committed the crime | Other reason given |
|--------------------------|----------------------------------|---|---|-----------------------|
| Burglary | | | | |
| African | 19.0 | 47.6 | 4.8 | 28.6 |
| East Indian | 12.0 | 64.0 | 8.0 | 16.0 |
| Mixed | 23.1 | 30.7 | 15.4 | 30.8 |
| All Races | 16.7 | 50.0 | 8.3 | 25.0 |
| Robbery | | | | |
| African | 30.8 | 46.2 | 0.0 | 23.1 |
| East Indian | 10.0 | 80.0 | 0.0 | 10.0 |
| Mixed ^a | 25.0 | 25.0 | 25.0 | 25.0 |
| All Races | 22.2 | 56.6 | 3.7 | 18.5 |
| Assault | | | | |
| African ^a | 33.3 | 33.3 | 0.0 | 33.3 |
| East Indian ^a | 14.3 | 33.3 | 33.3 | 22.2 |
| Mixed ^a | 14.3 | 57.1 | 0.0 | 28.6 |
| All Races | 20.0 | 40.0 | 12.0 | 28.0 |

Note: ^aThis category contains fewer than 10 respondents.

Source: Model Stations Community Survey, 2007.

Reporting levels may be particularly low for gang-related crimes, given citizens' fear of retaliation. A survey conducted in a high crime, predominantly African neighborhood in Trinidad found that 86 percent of residents believed that gangs will retaliate against people who report gang-related crime to the police (Johnson, 2006). Given that gang-related criminal activity tends to be concentrated in African communities, and goes unreported, official police data likely underrepresent victimization rates for Afro-Trinidadians.

Self-reported victimization

Given the limitations of the official police data, we now turn to self-reported victimization data from the Model Stations Community Survey to further examine victimization patterns across ethnic groups. Respondents were asked whether, in the preceding six months, their home had been broken into and things stolen (burglary), someone had stolen money or other items from them by threatening force (robbery), or anyone had attacked them physically (assault). Nine percent of the respondents claimed to have experienced one of these crimes during the preceding six months (6.3 percent

were burglarized, 2.4 percent were robbed, and 2.0 percent were assaulted). Across the three offenses, East Indians self-reported the highest victimization rate (11 percent), followed closely by mixed-race respondents (10 percent); fewer Africans (7 percent) self-reported being recent crime victims (see Table 9.8). East Indians self-report being assault victims at more than twice the rate of Africans and at nearly twice the rate for burglary and robbery offenses.⁸

As previously suggested, it is possible that racial differences in victimization reflect differences in socioeconomic status. To test this possibility, we compared victimization rates for respondents living in neighborhoods with above average poverty levels to residents in average/low poverty neighborhoods (see Table 9.9).⁹ Victimization experiences were the same across neighborhoods with different poverty levels; 9 percent of the respondents from both the higher and the average/low poverty neighborhoods were

Table 9.8 Self-reported victimization, by ethnicity (%)

| | Burglary | Robbery | Assault | Burglary/ robbery/ assault |
|--------------------|----------|---------|---------|-------------------------------|
| African | 4.2 | 1.9 | 1.3 | 6.6 |
| East Indian | 7.2 | 3.2 | 2.8 | 11.3 |
| Mixed | 6.7 | 2.3 | 2.1 | 9.6 |
| All Races | 6.3 | 2.4 | 2.0 | 9.0 |

Source: Model Stations Community Survey, 2007.

Table 9.9 Victimization rates by neighborhood poverty level and ethnicity (%)

| | Burglary | Robbery | Assault | Burglary/ robbery/ assault |
|--|----------|---------|---------|-------------------------------|
| Above ave. poverty neighborhood | | | | |
| African | 3.3 | 1.5 | 1.5 | 5.9 |
| East Indian | 6.9 | 2.8 | 2.1 | 10.3 |
| Mixed | 5.8 | 2.9 | 2.9 | 9.8 |
| All Races | 5.7 | 2.4 | 2.0 | 9.0 |
| Ave./low poverty neighborhood | | | | |
| African | 4.5 | 2.0 | 1.3 | 6.8 |
| East Indian | 7.5 | 3.5 | 3.5 | 12.3 |
| Mixed | 6.9 | 2.1 | 1.9 | 9.5 |
| All Races | 6.0 | 2.4 | 2.0 | 9.0 |

Source: Model Stations Community Survey, 2007.

recent victims. Moreover, victimization patterns across the three offense types were also similar among residents of higher poverty versus average/low poverty neighborhoods. However, within the different neighborhood types, victimization for burglary, robbery and assault varied by race. More Indo-Trinidadians reported being targeted in both kinds of neighborhoods. This suggests that the racial differences in self-reported victimization are not linked to social class.

Fear of crime and perceptions of safety

In a country experiencing an exponentially high level of homicide and significant gang-related crime, we would expect to find residents fearful for their safety and concerned about victimization. National opinion polls indicate that concerns about safety have been increasing in Trinidad and suggest there is some difference by ethnicity. In 2002, 90 percent of respondents felt safe walking in their neighborhood during the day, and 63 percent felt safe walking at night. East Indians were slightly more likely than other groups to report feeling unsafe in their neighborhoods during the day or at night (MORI International, 2002–2008). About half of the respondents in 2002 felt the same level of safety as they did three years earlier, while 31 percent felt less safe. By 2003, the number of respondents who indicated that they felt less safe than they did three years earlier rose to 70 percent.

More detailed data from the Model Stations Community Survey reveal similar patterns. The survey measured respondents' perceptions of safety in their neighborhood, perceived crime and disorder problems in their neighborhood, and the most important problem in their neighborhood. We examined the data by race and by the socioeconomic status of the community, in order to determine whether class background explained any racial differences in perceived safety. In sum, the data show that East Indians felt less safe than other racial groups, regardless of the type of community in which they lived.

When asked about the most serious problem facing the neighborhood, a majority of respondents (50.6 percent) reported that it was crime. There was very little variation by race, with half of Afro-Trinidadian (50.4 percent), 48.0 percent of Indo-Trinidadian, and 55.3 percent of mixed-race respondents identifying crime as the biggest problem. We observed bigger differences across residents based on poverty level in the neighborhood. In average/low poverty neighborhoods, 55.6 percent of residents considered crime to be the most serious problem, compared to 40.7 percent of residents from higher poverty neighborhoods. There was no difference by ethnic background within higher and lower poverty neighborhoods.

Table 9.10 Perceived safety in the neighborhood relative to six months prior, by ethnicity (%)

| | Less safe | About the same | More safe |
|--------------------|-----------|----------------|-----------|
| African | 20.1 | 73.7 | 6.2 |
| East Indian | 43.3 | 52.1 | 4.6 |
| Mixed | 26.0 | 68.1 | 6.1 |
| All races | 29.7 | 64.7 | 5.6 |

Source: Model Stations Community Survey, 2007.

Table 9.11 Feelings of safety in the neighborhood, by ethnicity (%)

| | Feel unsafe walking alone at night | Feel unsafe walking alone during the day | Feel unsafe home alone after dark |
|--------------------|------------------------------------|--|-----------------------------------|
| African | 34.2 | 7.2 | 15.3 |
| East Indian | 53.2 | 22.1 | 39.8 |
| Mixed | 46.6 | 11.0 | 19.2 |
| All Races | 44.1 | 13.4 | 24.7 |

Source: Model Stations Community Survey, 2007.

Mirroring the national survey results, respondents in the Model Stations Community Survey expressed a recent heightened concern about crime. As shown in Table 9.10, nearly one-third of residents (29.7 percent) reported that their neighborhoods were less safe than they had been six months earlier. Substantially more Indo-Trinidadians felt less safe (43.3 percent) than Afro-Trinidadians (20.1 percent). Again, perceptions of safety varied by neighborhood type (34.9 percent of residents of higher poverty neighborhoods felt less safe, compared to 27.1 percent in low/average poverty neighborhoods), but the racial difference remained constant across neighborhoods.

Walking alone in and around the neighborhood at night evoked the most unease, with just under half of the respondents feeling at least a little unsafe doing so. Fear of walking alone at night was highest among Indo-Trinidadians, who were also the most fearful of walking alone in the neighborhood during the day, and of being home alone after dark. Afro-Trinidadians reported the least fear in each of the three environments and mixed-race respondents fell in between (see Table 9.11).¹⁰ These differences by ethnic background were observed whether residents lived in high poverty or in average/low poverty neighborhoods.¹¹

Studies have also examined fear of crime in Trinidad. Most of this research finds that Indo-Trinidadians are more fearful of crime than other groups (e.g. Chadee, 2003).¹² Recently, scholars have examined fear of gang crime

as well. Using data from a national survey conducted in 2005, Lane and Chadee (2008) found no significant differences in perceived risk of gang crime victimization across ethnic groups, but did uncover racial differences in fear of gang crime. Their results indicated that Indo-Trinidadians and mixed-race Trinidadians were significantly more fearful of gang crime than were Afro-Trinidadians, even though the East Indian respondents were less likely to live in high-crime (urban) areas. Lane and Chadee (2008: 177) offered one possible explanation for the fear/risk paradox: "The difference may be due to the fact that those in higher crime areas are more aware of the real crime problem, and hence their risk, while those in the lower crime areas are left to imagine what types of things might happen to them."

Another potential explanation for why East Indians express more fear of crime than Africans may be related to their beliefs about the ability of police to control crime. According to data from the Model Stations Community Survey, Indo-Trinidadians reported the lowest confidence in the police's ability to control violent crime and to maintain order, less frequent sightings of police in their neighborhoods and the lowest levels of awareness of police-resident efforts to address neighborhood problems. Lerch (2008) found that holding a low opinion of police performance was among the top five strongest predictors of fear of crime in Trinidad (along with perceived risk of victimization, perceptions of disorder, race and gender). Thus, a lack of confidence in the ability of police to effectively deal with crime may be driving fear among Indo-Trinidadians.

Police–citizen relations Perceptions of police

Positive opinions about police competence and effectiveness are important for reducing fear of crime and maintaining social control. As we discussed earlier, the relationship between the police and the public in Trinidad is currently quite strained, and has been so historically. To better understand the nature of contemporary police-community relations in Trinidad, we use the Model Stations Community Survey to examine public satisfaction with police, perceived quality of police services, procedural fairness, and personal experiences with police. We again compare results across ethnic group and by neighborhood poverty level. Since crime concentrates in areas of disadvantage, and these areas have historically been policed aggressively (Trotman, 1986), we investigate whether any observed differences by race might actually reflect differential experiences with police due to community type.

Overall, satisfaction with the police in Trinidad is low, and does not differ significantly by ethnic background. Just over half of respondents in the Model Stations Community Survey were satisfied with the services

Table 9.12 Perceptions of police competence and effectiveness, by ethnicity (%)

| | Police know duties | Police respond quickly | Police try to help citizens | Police able to maintain order | Police control violent crime | Police control gangs |
|--------------------|--------------------|------------------------|-----------------------------|-------------------------------|------------------------------|----------------------|
| African | 57.3 | 47.3 | 69.3 | 75.9 | 57.6 | 51.3 |
| East Indian | 54.5 | 40.8 | 65.4 | 66.5 | 51.3 | 47.2 |
| Mixed | 56.0 | 47.6 | 67.7 | 72.9 | 56.7 | 53.9 |
| All Races | 56.0 | 45.2 | 67.6 | 71.9 | 55.3 | 50.5 |

Source: Model Stations Community Survey, 2007.

provided by the police in their neighborhoods, and one quarter of the residents reported strong dissatisfaction with those services. Respondents generally rated the police poorly when assessing police competence and effectiveness, as shown in Table 9.12. A bare majority of respondents from all races reported that police in their neighborhoods know how to properly perform their official duties, and fewer than half believed that the police respond quickly when people ask them for help. More positively, two out of three respondents thought the police try to help citizens. The largest difference by race is found in perceptions of police response time; African respondents were more likely than East Indians to report that the police respond quickly when called (47.3 percent versus 40.8 percent, respectively).

The police fared slightly better when respondents were asked about their effectiveness. About half of respondents in the Model Stations Community Survey believed the police are able to control violent crime and gangs in their neighborhoods, and more than 70 percent reported that the police are able to maintain order. Relative to East Indians, Africans expressed greater confidence in the ability of police to address violent crime and to maintain order.

The most notable differences by race relate to procedural fairness. This was particularly true for the most overt actions by the police – those police behaviors that may be observed more easily or overheard by witnesses on the street. As shown in Table 9.13, significantly more Afro-Trinidadians than Indo-Trinidadians reported that police officers stop people on the streets of their neighborhoods without good reason and use insulting language when talking to people in their neighborhoods. The racial gap persists, but is smaller, for other negative police behaviors. Africans were slightly more likely than East Indians to believe that police officers use excessive force against people of their neighborhoods, and that the police are often

Table 9.13 Perceptions about police fairness, by ethnicity (%)

| | Police accept bribes/favors | Police stop people without good reason | Police use excessive force | Police are often dishonest | Police use insulting language | Police are not respectful |
|--------------------|-----------------------------|--|----------------------------|----------------------------|-------------------------------|---------------------------|
| African | 42.7 | 33.2 | 32.7 | 41.0 | 39.5 | 35.7 |
| East Indian | 44.8 | 23.0 | 26.3 | 37.9 | 29.1 | 32.9 |
| Mixed | 40.5 | 35.7 | 32.4 | 41.1 | 40.4 | 33.8 |
| All Races | 42.9 | 30.2 | 30.4 | 39.8 | 36.1 | 34.1 |

Source: Model Stations Community Survey, 2007.

dishonest. These findings are consistent with multivariate studies on youth attitudes toward the police in Trinidad and Tobago. Johnson et al. (2008) found that racial background was associated with perceptions of police fairness, with African youth less likely to perceive the police as neutral and fair when dealing with citizens. As shown in Table 9.13, respondents from all racial backgrounds were equally likely to perceive the police as corrupt (accepting bribes/payments) and disrespectful.

A follow-up to the Model Stations Community Survey conducted in 2008 provides some purchase on which ethnic group is subject to the most police misbehavior, and helps illuminate the racial differences in perceptions of police fairness reported above. In this survey, respondents were directly asked about police discrimination by race. More than one-third of all respondents reported that the police do not treat all groups equally, and this perception varied by race. Nearly half of Afro-Trinidadians (46.4 percent) claimed that the police are racially biased, whereas just under one-third of Indo-Trinidadians (28.6 percent) made this claim; mixed-race respondents fell in the middle (see Table 9.14).

Respondents who believed that the police were racially biased were asked which group received the best treatment and which group received the worst treatment. Virtually all Afro-Trinidadians and a large majority of mixed-race respondents reported that Africans were treated the worst. East Indian respondents were divided; almost half indicated that Afro-Trinidadians received the worst treatment, and slightly less than half indicated that Indo-Trinidadians did. When asked which group is treated best, two out of three African and mixed-race respondents reported that Trinidadians of "other" ethnicities are treated best (i.e. whites). Indo-Trinidadian respondents were again more divided; about half felt that "other" Trinidadians were treated best, but one-third believed that Africans received the best treatment by police.

Table 9.14 Perceived racial discrimination by police, by ethnicity (%)

| | Police do not treat all races equally | Africans are treated worst^a | Indians are treated worst^a | Africans are treated best^a | Indians are treated best^a | Other trinis are treated best^a |
|--------------------|--|---|--|--|---|--|
| African | 46.4 | 93.9 | 2.3 | 2.9 | 34.2 | 61.1 |
| East Indian | 28.6 | 47.4 | 42.1 | 30.7 | 16.3 | 51.6 |
| Mixed | 36.8 | 81.1 | 6.3 | 6.8 | 25.0 | 66.2 |
| All Races | 38.1 | 81.8 | 11.3 | 9.7 | 28.7 | 60.0 |

Note: ^aOnly respondents who reported that police do not treat all races equally were asked which group is treated worst and which group is treated best. Percents do not sum to 100 percent because some respondents commented that combinations of groups are treated best or worst (e.g., “both Africans and East Indians are treated best/worst”). The portion of respondents who responded with combinations was extremely small and is not reported here.

Source: Model Stations Community Survey, 2008.

We examined responses to the procedural fairness questions by neighborhood, and found almost no difference of opinion about the procedural fairness of police based on residency in higher or lower poverty neighborhoods. Thus, the primary distinction appears to be based on ethnic background, with Africans generally perceived as receiving the worst treatment by police. Overall, these data suggest that procedural fairness problems plague the Trinidad and Tobago Police Service, and that many citizens believe justice is served differently according to race.

Experiences with police

Views about the police may be driven, in part, by personal experiences with police. If members of different races report differences in the quality of their interactions with the police, this may help explain the racial differences in the perception of police we noted above. The Model Stations Community Survey showed that respondents from different ethnic groups do report different experiences with the police.

Overall, Indo-Trinidadians were slightly more likely than Afro-Trinidadians to report personal contact with the police in the preceding six months (28 percent versus 23 percent, respectively). The difference was due to proactive police contacts (Indo-Trinidadians more frequently contacted police for assistance and were more likely to report criminal victimization to the police than were Africans); similar proportions of East Indian (8 percent) and African respondents (10 percent) were stopped by the police.

Of those who had personal contact with the police, about half reported the experience as positive and half reported it as negative (see Table 9.15).

Table 9.15 Assessments of contacts with police, by ethnicity^a (%)

| | Negative experience | Positive experience |
|--------------------|---------------------|---------------------|
| African | 48.6 | 52.5 |
| East Indian | 57.1 | 47.9 |
| Mixed | 50.0 | 53.8 |
| All Races | 52.4 | 51.1 |

Source: Model Stations Community Survey, 2007.

^aThe denominator only includes respondents who had personal contact with police. Also, those citizens with more than one police contact may report experiencing both a positive and negative experience.

East Indians were much more likely than Africans to report a negative contact with police (57.1 percent compared to 48.6 percent) while Africans were slightly more likely to report a positive contact than East Indians (52.5 percent versus 47.9 percent, respectively). Thus, while Indo-Trinidadians had more personal contact with police, especially self-initiated contacts, they rated their experiences more negatively.

Based on these data, it appears that perceptions of the police are not solely the result of personal contact with the police. As shown in the previous section, East Indians tend to express more positive views of police than do Africans, yet they report more negative personal experiences with the police. This suggests that other factors, such as vicarious experiences with the police, or more global perceptions of the police, also influence Trinidadians' assessments of police behavior.

Conclusion

Using data from a variety of sources, this chapter examined the extent to which race and ethnicity are associated with criminal offending, victimization, fear of crime and perceptions of safety in Trinidad and Tobago. Overall, our review of the research suggests that Africans are disproportionately likely to be involved in delinquent activity as juveniles, to be gang-involved, and to be homicide offenders. Africans are also more frequently arrested and imprisoned as juveniles and adults, compared to East Indians and those with a mixed racial background. Official records show that Africans are disproportionately victims of both property crime and violent crime (especially homicide), yet survey data indicate they are less inclined to report their victimization to the police than are East Indians. Contrary to the official data, within the high-crime communities surveyed for the Model Stations Community Survey, East Indians self-reported being victims of burglary,

robbery and assault at a higher level than did Africans. In addition, East Indians are the most fearful of crime and report the lowest levels of perceived safety in their neighborhoods.

We also explored how racial background influences police–citizen relations. Africans report greater confidence in the police’s ability to control violent crime and maintain order, and have more positive police contacts than East Indians. At the same time, Africans also report seeing more signs of police misconduct – officers applying excessive force, stopping people without good reason, and using insulting language. Although East Indians report lower levels of police misconduct, they report more negative contacts with police, they report seeing police less frequently, they perceive less effort by police to address problems, and they have less confidence in the ability of police to maintain order and control violent crime. Africans are much more likely than East Indians to perceive racial discrimination by the police.

In general, some of the racial differences noted above may be explained by socio-economic status or the geographic areas occupied by different races. Africans are disproportionately found in urban areas, where crime rates are higher, while East Indians tend to reside in more rural areas. Furthermore, police activity is more visible and frequent within denser urban areas, providing increased opportunity to observe misbehavior, particularly from a police force that has historically used heavy-handed tactics to maintain order. Such patterns help explain why citizens of all racial backgrounds believe that Africans receive the worst treatment by police.

Data from the Model Stations Community Survey shows that individuals living in the most impoverished areas, regardless of race, reported bigger problems with homicide, less effort on the part of police to deal with homicide and with drugs, slower police response time, greater risks for victimization, and less satisfaction with police. For this reason, focusing solely on racial and ethnic differences and ignoring ecological effects may present a distorted view of the factors influencing citizens’ experiences with and perceptions of criminal justice in Trinidad and Tobago. Indeed, Kochel (2009) found that the culture of the neighborhood, rather than the ethnicity of the respondent, may promote different views about, expectations for, and experiences with the criminal justice system in Trinidad. Kochel (2009: 177) also reported that race played a secondary role to other individual factors, such as age and prior experiences with police, in influencing residents’ views about the police and neighborhoods.

In the historically disadvantaged and troubled squatter regions of Trinidad occupied predominantly by Africans, violence, experiencing aggressive police tactics and relying on unofficial means to solve crime problems may have become somewhat *normal*. Therefore, residents’ expectations for police in these locales are relatively low, and distrust and reduced police legitimacy

are commonplace. In contrast, some of the findings suggest that East Indians may have higher expectations for police. They are more likely to seek police assistance when victimized, but are subsequently disappointed by the perceived level of effort exerted by police, by personal interactions with police, and by the perceived ineffectiveness of police at controlling violence and maintaining order.

Race or place is a controversy that has long been debated in the United States, but is not easily resolved. The same issues are present in Trinidad, and are rooted in historical and contemporary patterns of incorporation. As a result, the data presented in this chapter showcase the collective importance of race, urbanity, and socio-economic status on crime victimization, offending, and the criminal justice experience, as it plays out in Trinidad and Tobago.

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Notes

1. We use the terms race and ethnicity interchangeably in this chapter, mirroring the way they are commonly used in Trinidad & Tobago and in academic publications about the country. In addition, we use the terms East Indian and Indo-Trinidadian interchangeably, as well as African and Afro-Trinidadian. See Munasinghe (1997) for a more detailed anthropological discussion of race and ethnicity in Trinidad & Tobago.
2. Most of the barrack-yards were “behind the bridge” in eastern Port of Spain, and housed the very disadvantaged (see Cummings, 2004).
3. As Trotman (1986:69) notes: “The East Indian immigrants inherited the catalogue of vices that the plantocracy had first ascribed to the African bondsmen and their descendants – uncategorically they were incurable liars, thieves, and drunkard and were untrustworthy.”
4. In light of these significant concerns, the government of Trinidad and Tobago embarked on efforts to reform the Trinidad and Tobago Police Service in 2005 (Mastrofski and Lum, 2008).
5. The survey was a baseline survey, administered prior to implementation of the Policing for People Model Stations project. The sample was 38 percent

- Afro-Trinidadian, 34 percent Indo-Trinidadian, 27 percent mixed race, and 0.5 percent other. For more information, see Kochel (2009).
6. School samples such as those used by Deosaran (2007) and Katz and Fox (2010) are likely to be biased to the extent that those who are most involved in delinquent or criminal activity are less likely to attend school regularly and therefore be included as a respondent in surveys. As a result, these research studies likely underestimate the amount of delinquency and gang involvement among Trinidadian youth. Moreover, because East Indian youth are disproportionately likely to attend private schools, studies that only sample public school students may not be representative of this population (e.g. Katz and Fox, 2010).
 7. In 2009, however, there were more sexual offenses reported than shootings/woundings.
 8. The self-reported burglary victimization data shows an entirely different pattern from the official police data in Table 9.5 above. The official data indicate that burglary victimization among Africans is 60 percent higher than for East Indians, while the self-report data suggest that burglary victimization for East Indians is 71 percent higher than for Africans. This is challenging to explain. It is unlikely to be the result of differences in reporting, since East Indians were more inclined to report their victimization to the police. One possible explanation is that police were less apt to record burglaries reported by East Indians (e.g., police may have viewed the incident as less serious than the victim reported based on the items taken or other circumstances), but this is not something we can answer with the current data.
 9. Clark (1993) suggested that Trinidadians live in relatively homogeneous neighborhoods. Kochel (2009) found that about half of the Model Stations Community Survey neighborhoods were homogeneous, containing at least 60 percent of residents who are either African or Indian. Furthermore, she found different experiences with poverty by neighborhood: "... forty-two percent of the predominantly Indian neighborhoods were classified as high poverty neighborhoods, relative to 8 percent of predominantly African neighborhoods and 7 percent of mixed neighborhoods" (Kochel, 2009: 151).
 10. Multivariate analyses indicate that the racial gap in perceived safety persists even when controlling for perceived risk of victimization, victimization, social cohesion, information social control, perceptions of neighborhood problems, satisfaction with police and relevant demographic variables (Agha and Johnson, 2007).
 11. Although the results on racial differences in perceived safety from the Model Stations Community Survey concur with the national surveys described above, they differ from those reported by Chadee and Ditton (1999). Chadee and Ditton found that 55 percent of Afro-Trinidadians felt unsafe walking alone at night in their neighborhood, compared to 18 percent of Indo-Trinidadians and 42 percent of those from mixed-race backgrounds. The racial differences reported in the Chadee and Ditton study are likely due to differences in the residency patterns of Africans and East Indians. Chadee and Ditton sampled communities with the highest and lowest crime rates; Afro-Trinidadians were significantly over-represented in the high-crime neighborhoods. Thus, as they note: "The higher level of feelings of unsafety reported by Afro-Caribbeans is better explained by residency than ethnicity" (Chadee and Ditton, 1999:123).
 12. In their preliminary study, Chadee and Ditton (1999) also queried respondents about their general fear of crime. About half reported being fearful of crime, but the authors found no significant difference in the level of fear expressed by each

racial group or even across high and low crime communities. Their findings differ from other research on fear of crime, and may be due to the unique sample design used in their study (see Note 7).

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Part IV

Conclusion

10

Conclusion: Comparative Assessment of Race, Ethnicity, Crime and Criminal Justice in the Americas

Anita Kalunta-Crumpton

Introduction: identifying race and ethnicity in official data

Does race or ethnicity matter in discourses of and approaches to crime? The essence of this line of questioning is that any influence that race or ethnicity might have on interpretations of crime in any given society is likely to be premised on how these concepts are defined and/or on the significance or insignificance assigned to them in official crime data.

Thus, it may not come as a surprise that in countries such as the United States where phenotypical characteristics crucially inform official crime figures and debates, there is abundant literature airing a range of similar and opposing perspectives of race (not ethnicity), crime and criminal justice. Just as the US census data categorize the “one race” racial groups into white, black/African American, American Indian/Alaskan Indian, Asian, and Native Hawaiian/Other Pacific Islander, so do the US Federal Bureau of Investigation and Department of Justice give recognition to these racial groups in the respective crime data and victimization data. National population figures, based on the 2000 census, place blacks/African Americans at approximately 12.3 percent. The figures for white, Asian, American Indian/Alaskan Indian, and Native Hawaiian/Other Pacific Islander stand at 75.1 percent, 3.6 percent, 0.9 percent and 0.1 percent respectively. Despite the US “openness” in declaring racial groupings in census data, including the “two or more races” identity groups, the monolithic character of the racial categories limits the usefulness of the data, given their failure to account for the diverse ethnic groups that form each racial category. Classifying Hispanics as an ethnic group of people, who by self-declaration can identify with any racial group of their choice, adds further complications to data interpretation. In spite of such limitations, the census data provide the frame of reference for analyzing offending and criminal victimization data and rates

according to racial identity groups. Racial categorization is an official and legitimate component of census, crime and victimization data.

The same cannot be said wholly for the United States' neighboring country: Canada, where race-based census data are released and race-based crime statistics are not. Wortley and Owusu-Bempah chart a number of mainstream explanations for the ban on race-based crime data. First, the ban is a reflection of Canada's multicultural agenda and its ethos to give recognition to and protect the interests of diversity. Second, the ban serves the purpose of protecting minorities against "further stereotyping and discrimination." In effect, a release of racially underlined crime statistics may divide rather than unite racial groups in multicultural Canada. Thus, while the 2006 census data tell us that 3.8 percent of Canada's population is indigenous aboriginals, 2.5 percent black/African; 4 percent South Asian; 3.9 percent Chinese, and 5.1 percent other visible minorities (e.g., Hispanics, Filipinos, Koreans, Japanese and Arabs), the varied representation of these identity groups in official crime data is not available. However, the ban notwithstanding, some data are available and informative on the relationships among race, offending, criminal victimization and contacts with the criminal justice system. And what is revealed displays racial disparity to the detriment of visible minority groups, leading Wortley and Owusu-Bempah to draw critical attention to the "real" reasons behind the official ban on race-crime data, and furthermore calls into question Canada's policy of multiculturalism in protecting the interests of its diverse visible minority groups.

Of all the countries covered in this collection, Trinidad and Tobago is similar to the United States by its inclusion of race (or ethnicity) in official data. As a reflection of Trinidad and Tobago's history of colonialism and slavery, much of her population is of African (37.5 percent), East Indian (40 percent), and mixed Indo-African (20.5 percent) descent. Crime and victimization data are also tabled along these three racial or ethnic groups. Unlike Trinidad and Tobago, its Caribbean neighbor, Jamaica, has a relatively less pronounced racial classification model. Although Jamaica's population is 91.2 percent blacks, 6.2 percent mixed-race, and 2.6 percent "other unknown," its racial categorization is relatively complex. With the exception of perhaps the dark-skinned black majority whose skin color self-defines them, those classed as "mixed" and "other unknown" are likely to be made up of all light-skinned people (including those of African descent) given that, as Henry, Dawkins and Gibson argue, Jamaicans (including the black population) construct their own "racial identity." In essence, the authors note, Jamaica operates on a three-tier structure of racial categorization – white, brown, and black – that broadly captures the diverse racial or ethnic populations.

Jamaica's population is defined through these broad groupings, but the order of their importance is determined crucially by socio-economic status. While whites (light-skinned, including Lebanese and Chinese) and brown are situated at the top and middle social strata respectively, black is located at the bottom. And it is on the basis of Jamaica's class structure that discourses of and approaches to crime are negotiated. In this sense, the authors add, race/ethnicity is insignificant. This appears to be illustrated by the absence of these variables in crime data, even though as the chapter discussion shows, class strongly intersects with race/ethnicity in offending behavior, criminal victimization, and criminal justice reactions to crime.

Discerning the place of the race or ethnicity variable in crime issues is seemingly more problematic in parts of Latin America, despite sharing similar historical experiences of slavery and colonialism with societies in North America and the Caribbean. This is with the exception of Colombia, which seems to be the only Latin American country (in this book) to show some race awareness in official national data, albeit only recently it seems. Colombia's 2005 census was the first attempt at compiling race-based national census information along two broad categories: Afrodescendant and non-Afrodescendant. Prior to this, there were indications of local-level data based on race. In any case, the 2005 census indicates that 10.6 percent of the population self-identified as black (or Afrodescendant), although studies estimate the black/Afrodescendant population to be almost double that figure. Presumably, the remainder of the national population is comprised of non-blacks/Afrodescendants. There are other national data sources that have since started to record data according to race. Clearly, Colombia's recognition of race in official data is manifested in Urrea-Giraldo's use of such data at local and national levels to assess socio-economic distribution, crime and incarceration patterns and rates.

While Colombia stands out somewhat, this is not to state that the other Latin American societies are blind to racial or ethnic differences. Rather, the question lies in the extent to which racial or ethnic background is recognized in the broader society and in the narrower confines of crime and criminal justice issues. On reading through this collection, this inquiry is easy to bring to the surface when we learn that in most of these societies, race or ethnicity is irrelevant as a singular entity but instead is subsumed in, and subordinate to, wider social, economic and political factors. Cuba presents a unique image of this scenario. Palombo informs us that, by racial classification, Cuba's citizens are categorized as black, white, or mulatto/mixed, but due to Cuba's historical and current political framework and atmosphere, data on how race is negotiated at various institutions are limited or non-existent. Discussions around issues of race and related problems of racism are not readily engaged in for fear of airing a dissident perspective.

In regard to other Latin American countries where the political ethos is non-communist, there is a silence on race and ethnicity, albeit a different kind of silence, and the reasoning and agenda behind the silence is different. For example, in Argentina, the racial classification consists of whites and non-whites. Yet as Miguez notes, race or ethnicity is not acknowledged by most Argentines as a valid basis for discrimination. Crucial to this belief is Argentina's history of denunciation of multiculturalism and her embrace of a "one nation, one culture" policy. This policy was introduced during the era of northern European immigration into Argentina, in the mid-nineteenth and early twentieth centuries, as a method of adapting the unexpected inflow of mostly southern European Italian and Spanish peasants. The unification policy was "aimed at a unified society" in which "universal school programs" were established, "bilingual teaching" was prohibited, and ethnic or national origins were accepted by all as redundant and incompatible with the unification process.

In time, the process of assimilation meant that second-generation white immigrants were able to move upward socially and economically and to make a successful entry into the political scene. Even though, from the 1930s to the 1960s, the arrival of immigrants from neighboring South American countries introduced a different racial makeup of immigrants (non-whites, mostly of Aboriginal origin, and who were marginalized in the labor force), the preexisting notion of a unified Argentine nation camouflaged the visible racial differences. And very importantly, these immigrant groups of the urban poor were assimilated into the traditional mode of expression for marginalized immigrant groups: political. In the name of political expression of workers' rights for the marginalized, racial differences and any discrimination that may occur as a result become subsumed into class and political identities, both of which complement each other. Given the notion of a unified Argentine society, neither race nor ethnicity is recorded in official crime data, nor in census data (nationality and class is recorded for suspects in the judicial process and for those incarcerated).

Mexico and Brazil have populations that are racially and ethnically diverse. But similar to Argentina, we find that in these Latin American countries race or ethnicity does not form a part of crime figures, and therein justifications for the absence of race or ethnicity are rooted in traditional assumptions of a unified state. For Mexico, the history of colonialism and slavery, and its production of miscegenation has legitimized the myth of a unified national identity, which renders race or ethnicity nonexistent, at least in principle. This framework aligns with Harris' discussion of the "racial democracy thesis" in relation to Brazil in the sense that many Brazilians consider race to be a redundant social consideration. This belief is based on the understanding that "the Brazilian nation was formed

through the process of miscegenation” and “all Brazilians notionally share the mixed heritage of the *mestico*.” Brazil compiles census data based on broad classifications, notably: black, brown and white, and with this monolithic structure come complexities in defining and identifying with any of the groups by *self* and by *others*. This problem impacts on the usefulness of race in crime and criminal justice discourses and analyses. Juxtaposed alongside this concern is the seemingly greater problem imposed by the “racial democracy thesis.” According to Harris, the elusiveness of race in popular perception has meant that any acts of discrimination against black, and brown (i.e., mulattos) Brazilians are attributed to wider structural defects that, if addressed, will ameliorate the problem. In line with this mindset, the range of antidiscrimination legislation is registered as a confirmation of an attack on and obliteration of racism – that is, Harris reminds us, “if it ever existed” in the supposed race-neutral Brazil.

Race-neutrality, as already indicated, is familiar to Argentina’s unification philosophy. Similar to Argentina, unification (at some point) has been central to Mexico as illustrated in the efforts to assimilate indigenous populations into the mainstream. Ferreyra-Orozco observes how Mexico’s assimilation ethos, referred to as the “Hispanization process,” prioritized the eradication of “ethnic and linguistic diversity” through the imposition of “Spanish as the official language.” In essence, Spanish-speaking becomes a key marker of integration into one national identity. Therefore, indigenous people and Afro-Mexicans who speak Spanish are not (at least in theory) classed as minority racial groups, but as a part of the wider “Hispanization process” and a product of *mestizos*. They are not recorded in census data as distinct racial groups but as Mexicans, unlike native language speaking indigenous people who are categorized as Indians in census data.

On the grounds of the collective notion of a unified Mexican national identity based on mixed-race heritage, race-based discrimination in the criminal justice system is not acknowledged by the state and the public, nor are they considered a social problem. The popular view is that any form of criminal justice discrimination may be class-driven, and even this scenario is meaningful only when situated within the broader organizational culture of the criminal justice system. The mute attitude towards race may well explain why documentation of issues around racial discrimination and injustice derive from what Ferreyra-Orozco describes as “third parties and...indirect references” rather than from Mexican government agencies. Such an official attitude to the issue of race calls to mind Brazil where the government, despite defining race as inconsequential and rejecting the reality of racial discrimination, is simultaneously responsive to racial discrimination through antidiscrimination legislation. Racially discriminatory practices are criminalized. Yet, the popular perception of, and leaning

towards, a race-neutral Brazil presents a huge obstacle to efforts to establish the existence of racial discrimination in various spheres.

As will be shown in subsequent sections, it seems that the absence of race or ethnicity in discourse and/or in official crime records of certain countries in the Americas does not guarantee that public perceptions and experiences of visible racial or ethnic groups as crime suspects, victims and clients of the criminal justice system would be any different to the situation in, for example, the United States, where race is integral to official crime data and freely communicated in public crime debates. In the name of silencing interest in racial diversity, multiculturalism is condemned in Argentina in favor of unification; in contrast, Canada's approach is to promote multiculturalism. Brazil, Colombia, Cuba, Mexico, Jamaica and Trinidad and Tobago all have their differing ways of perceiving and interpreting race or ethnicity in principle. But in practice, the approach may be different in crime and victimization situations and in criminal justice reactions to crime.

Crime patterns, criminality and victimization

With the exception of the Argentina and Cuba chapters in this collection, violent crimes are presented as a notable crime problem across societies. Some chapters are more emphatic on this issue while others pay less attention to it. But these variations may be determined by a number of factors, including the fact that violence may constitute a more major crime problem in some countries than others, or by an individual author's choice of topic area in the subject matter of this collection.

Violent crimes, including homicide, are a cause for concern in the United States, and as victimization data show, victims are more likely to be black and Native American, and in some situations Hispanic. These crimes tend to be intra-racial, and are more likely to occur in urban areas, and among lower-income groups. As in the United States, Canada's black community (and in particular its black males) is associated with high levels of violent victimization, including homicide. Black homicide victimization tends to be intra-racial; in relation to offending, this community is portrayed as criminal in media and public perceptions. Like the US indigenous populations (i.e., Native Americans), Aboriginal Canadians are noticeable in rates of homicide victimization, and most of the homicides are intra-racial. Also, there are claims that the disproportionate rates of Canada's African and Aboriginal involvements in street gang (less likely among Canadian whites and Asians) are consistent with their homicide/gun crime rates. Wortley and Owusu-Bempah give an account of homicide victimization of Indo-Canadian youths in gang-related gun violence, however research evidence tends to rank black and Aboriginal violent victimization rates higher than

those for other racial groups. For the black group, experiences of victimization include higher vulnerability to racially-motivated hate crime. In both the United States and Canada, Asian victimization rate tends to be relatively low.

Ferreira-Orozco's narratives of violent crimes, exemplified in sexual assaults and murder victimization of indigenous people and the poor, human rights violations, and drug trafficking related violence against law enforcement officers, add to what is already known about Mexico – a country that is being rampaged by violence often attributed to drug cartels. In a more detailed discussion, we see violence running through the respective chapters on Colombia, Brazil and Jamaica in particular. Colombia has maintained a long history of violence notably violent homicides. Even for non-homicide violent crimes, Colombia is rated highly. Those crimes, described by Urrea-Giraldo as “common delinquency”, include robberies and assaults. Colombia's contribution to global violent homicide rates is remarkable. According to Urrea-Giraldo, Colombia “in the last 60 years” has “one of the highest violent homicide rates in the world”. Central to Colombia's violence is political violence, which is exercised by private armies, composed of the police and “institutional Armed forces”, to maintain the political and capitalist interests of the conservative elites against a populist social reforms agenda. Such violence, including physical force and death threats, has been used to control and dispossess new and old landowners of their land. Against this political and economic character of the country, criminality and drug trafficking in Colombia (and major cities such as Cali) have found a comfort zone in violence, including violent homicides, of which a large part is probably attributed to drug trafficking, and armed conflict.

Urrea-Giraldo highlights the role of organized criminal groups, formed of drug traffickers, guerrilla and paramilitary, in the perpetuation of violent homicides in major cities. These groups exercise territorial control of urban neighborhoods, and alongside drug trafficking, their criminal activities include extortion, kidnapping, armed robbery, and assault. Often, cities and urban neighborhoods most vulnerable to the various forms of violence are those that are socio-economically disadvantaged. As the chapter indicates, social inequality is significant in studies of violence in the contexts of its correlations with certain Colombian cities such as Cali. According to the author, Cali is racially diverse and a major urban region with the highest concentration of the Afrodescendant/black population (26.7 percent). It is from Cali that the author draws much of his study and analyses of interactions of violent homicides, social inequality and incarceration according to race.

Cali is characterized by “socio-economic and socio-racial segregation” but certain parts of the city are particularly segregated. Those segregated geographical areas are the “ghetto”, marked by indices of social exclusion

and a high representation of the Afrodescendant/black population whose residence, lifestyle and experiences in the “ghetto” are overtly manifested in the lyrics in their rap music. Gangs, usually composed of young males, are notable and their perpetration of violence over territorial control is common. Urrea-Giraldo contends that the relative poverty that ensues as a result of urban segregation culminates in the use of violence as a way of life or in acquiring economic gain through criminal acts such as robbery. Also embedded in the frequent incidents of violence are situations of racial tension. In all, Colombia’s urban violence mirrors interactive relationships involving social inequalities, relative poverty, racism (in some urban areas), drug trafficking and political armed conflict. Often, social categories most affected as victims in the various forms of gang and crime-related violence, particularly violent homicides, are Afrodescendant/black males mostly in Cali where social exclusion is more evident.

The image of violence perpetration and victimization revealed by Urrea-Giraldo with reference to Colombia is mirrored in Henry, Dawkins and Gibson’s account of Jamaica’s crime situation. Therein, we find blacks, descendants of enslaved Africans, to be highly prominent in crimes that seem to pose the most threat to Jamaica: violent crimes, including homicide. The authors are cognizant of the implications of historical violence in the era of slavery for contemporary violence. Modern-day violence is localized in impoverished residential areas and among blacks whose violent behaviors are exercised in the domestic sphere, gang activities, drug trade, and in politics to protect a particular political party against supporters of an opposing party despite being traditionally marginalized in political party leadership.

Over time, politics, gangs, the drug trade and other organized crimes have interacted and functioned in an interrelated manner, and with violence as a key *modus operandi*. Jamaica’s violence is deeply tied to politics. At the local level, this nexus is normalized and exhibited in “garrisons” defined by Henry and colleagues as areas “in which political and criminal activities are rigidly controlled by gang leaders or ‘dons’ with political affiliation.” Gangs (including youth gangs) and gang-related crimes, drugs, violence and homicide proliferate in urban “garrison communities,” where most of the perpetrators and victims of violent homicides are joined together by their blackness. Similar to Colombia, these communities suffer adverse forms of socio-economic deprivation, including unemployment, overcrowding, low educational attainment, weak family structures notably exemplified in high levels of biological father absenteeism in families, and community conflict. Such socio-economic conditions are a key to criminality. From these “garrison” communities emerge low-level drug traffickers (male and female) who the authors assume work for the top-level traffickers, some of whom are white (i.e. Lebanese) and Chinese, are wealthy and politically

connected. Yet, the violence that accompanies the drug trade is commonly found in black communities – not only in Jamaica and Colombia, but also in Brazil.

Violence, including homicides, characterizes much of Brazil's crime scene. Its threat to public safety is depicted in the increasing public fear of crime. Drug trafficking and drug gangs contribute to the general climate of violence. And as Harris notes, drug trafficking (although in its low level) and the accompanying "organized crime gangs" and violence is prevalent in the *favelas* and associated neighborhoods – occupied mostly by black and brown residents. Victims of drug-related violence are disenfranchised black and brown residents. An important framework for alluding to Brazil's crime and violence situation is the participation of the state as a perpetrator of violence. Although this scenario is acknowledged in Ferreyra-Orozco's account of military and law enforcement violations of human rights in Mexico, and also observed by Urrea-Giraldo with reference to Colombia, Harris's relatively more detailed description presents a disturbing portrayal of "unofficial" approval of brutal and deadly use of force on certain sections of the society by those who are charged with protecting the public (see the subsequent section for a more elaborate discussion).

Although seemingly less frightening, as far as the chapter discussion shows, Trinidad and Tobago is not immune to violence – also prevalent in black communities. Official data show that the homicide rate, mostly precipitated by gang violence and largely related to the drug trade, is high in deprived, predominantly Afro-Trinidadian communities. Furthermore, Afro-Trinidadians are disproportionately represented as gang members and suspects/perpetrators in homicide and the drug trade. Related to this that for this racial group, young males are particularly overrepresented in homicide victim rates, thus identifying violent homicides as intra-racial. In contrast, Indo-Trinidadians and people of mixed-race origin are under-represented as suspects and victims of violent homicides, and as drug trafficking offenders. Both crimes seem to be interrelated and spatially linked to Afro-Trinidadian communities.

Self-report studies of delinquency portray a similar image in regard to Indo-Trinidadians. Overall, Indo-Trinidadian youth are least likely to report delinquency, particularly violent and aggressive behaviors, and youths from Afro-Trinidadian and mixed-race backgrounds are most likely to report delinquency. Johnson and Kochel attribute this disparity in offending patterns of Afro-Trinidadians and Indo-Trinidadians to the possible influence of the differentials in socio-economic positions occupied by both groups, with the latter being relatively advantaged. Perhaps, this relative socio-economic privilege might somewhat explain why Indo-Trinidadians, while less likely to fall victim to violent homicides including drug trafficking-related

homicides, are noticeable as victims of other types of violent crime: robbery and kidnapping.

While the Argentina and Cuba chapters are relatively silent on violence (at least the types illustrated above), they share some offending profile similarities with the other chapters. These are shown in the racial and class backgrounds of offenders (actual or alleged). In keeping with the ideologies of Argentina's ruling class, the class divide, and the focus of the police and the judicial system on the urban poor, the offending rate is higher among the working class – as revealed in incarceration rates. Police arrest and detention rates are high for visible foreigners from neighboring countries, particularly from Bolivia and Peru. In addition, Miguez notes, allegations of high offending in Bolivian and Peruvian populations extend, by implication, to the indigenous indigent black population since this group shares similar physical characteristics with the Bolivian and Peruvian immigrants. In regard to Cuba, Palombo warns that "discussion and information on crime in Cuba" are lacking. But we do learn from the Cuba chapter that the vast majority (90 percent by estimates) of the prison population is made up of those defined as black, whose statistical representation in the national population is estimated at 12 percent.

Whereas it is "unknown" as to the types of crime and "why" that move Cuba's residents, particularly blacks, into the prison establishment, the author's mention of Cuba's situation on drugs and guns activity is noteworthy. Unlike Cuba, gun and drug crimes form one of the US nightmares and this fact, Palombo comments, is not removed from the capitalist backbone of the United States. In Cuba, these crimes are hardly in existence and, according to Palombo, it would be illogical to separate this Cuban experience from her institution of communism and its manifestation in high levels of poverty (for which, according to the author, the United States is allegedly somewhat responsible) and in what the author describes as "the lack of resources that usually underpin criminal exchange, particularly in the sense of 'street cash.' ..." As it seems, Cuba is more alert to "political crimes" than "ordinary crimes," and while data to this effect are not available, the levels of importance assigned to both categories of crime may be deduced from criminal justice responses to both (see immediate section below).

Criminal justice approaches

In keeping with the political, economic and social variations across societies, and their implications for determining how race or ethnicity is interpreted and reflected in crime, the criminal justice system in each society mirrors such variations. Starting with Cuba, despite Palombo's note of caution on the availability of and access to crime and criminal justice data, the

chapter is able to introduce readers to two categories of crimes – “ordinary crimes” and “political crimes” – and the differentials in criminal justice responses to them. Grounded on communist philosophy and its principle of equality and justice across the board, Cuba’s criminal justice approach to “ordinary crimes” serves the “interests of justice.” The author further states that existing evidence in relation to ordinary crimes “suggests that individuals are treated in a relatively fair manner, and that punishment, although not without its abuses, seems to reflect the interests of the public and the government.” This representation of a “just system” is relatively lacking where “political crimes” are concerned. Actions which are perceived as an attack on communism and its political operations are classed as “political crimes” deserving of persecution, and of a “less tolerant” and a “more swift and severe” criminal justice response. In both categories of crime, official statistics of arrest and incarceration according to racial groups are lacking, and although there is a high proportion of blacks in Cuban prisons, their contributions to “ordinary crimes” and “political crimes” are not “known.”

Why blacks make up the vast majority of Cuba’s prison population is not open to free discussion and debate. If the notion of a “just system” is inapplicable in regard to “political crimes,” what happens when race comes into the equation? And if it is the case that “ordinary crimes” are addressed by the criminal justice system in the “interests of justice,” how are the “interests of justice” defined, and who defines them? Also, the “ordinary crimes”–criminal justice relations raises important queries about possible causes of offending, especially in light of Cuba’s high rate of poverty which, as in other countries in the Americas, may have an even higher impact on the black population. Palombo’s comparative analysis of the United States and Cuba is not quiet on the intersections of class, crime and the US criminal justice system in which the overrepresentation of blacks has been consistent and has remained a topic of debate.

Kalunta-Crumpton’s and Ejiogu’s chapter on the United States acknowledges the disproportionate presence of blacks in crime figures, and also raises critical questions about the major influence that policy (not necessarily practice) might have on the location of blacks in the data. Palombo shares such critical concerns. Through his analytical discussions of conservative, liberal, and radical ideological frameworks of US “politics and crime policy,” Palombo questions the benefits of the “deprivation of liberty” type of punishments that underline US crime control strategy. The crime control approach is class/race-oriented but may yet have no deterrent effects on the most impoverished, who have less “quality of liberty” in the unbalanced capitalist system anyway, but who are the main target of “deprivation of liberty” penalties. There is an implication in the author’s assessment that “deprivation of liberty” may be of value in Cuba (unlike the United States)

given Cuba's focus on equality amidst her limited resources. In this sense, "quality of liberty" may be egalitarian and thus may generate an effective deterrence outcome in "deprivation of liberty." In any case, official records of the socio-economic circumstances of Cuba's diverse populations may not exist or may not be available, and as such their relationships with crime and criminal justice are difficult to debate.

In non-communist societies such as the United States and Canada, socio-economic elements form an integral part of discourses on crime and have been vital in analyses of race and criminal justice. In the United States, it is known that visible minorities, particularly blacks, Hispanics and Native Americans, experience high levels of socio-economic deprivation, and this reality, some have argued, explain their offending rates and subsequent journey through the criminal justice system and into the prison establishment. Canada's black and aboriginal populations are particularly socio-economically impoverished, and their overrepresentation in the federal corrections system has aroused two separate perspectives: one speaks to racial discrimination in the criminal justice system and the other points to a higher offending rate. The former is supported by research evidence which has shown that blacks have high rates of perceptions of injustice in the criminal justice systems, are more likely than whites to be stopped and searched by racial profiling (Asians and Arabs have alleged racial profiling following the events of 9/11 in the United States), tend to be more likely than whites to be arrested, placed on pre-trial detention, receive stringent bail conditions, receive a harsher sentence including imprisonment, and along with aboriginals are highly and disproportionately represented in cases of police use of force including deaths caused as a result. In regard to the latter perspective, Wortley and Owusu-Bempah acknowledge the possible influences of socio-economic marginalization and "historical oppression" on aboriginal and black violent/gang offending.

As shown in most of the chapters, the line of thought which intersects offending with class/structural disadvantage is very significant. In addition, it often extends overtly or covertly to the "why" and "how" certain visible racial groups are quick to make contact with the criminal justice system. What is the position on this in the Latin American and Caribbean chapters? Let us start with Mexico. Notwithstanding the notion of a unified Mexico, expressed in the image of the *mestizo*, the visibility of physical differences retains the importance historically accorded by the colonial caste system. In colonial Mexico, indigenous populations and African slaves were at the bottom of the social strata. With the exception of the blatant racial classifications and overtly oppressive racist actions that underpinned the colonial and slavery era, some would argue that parts of the historical experience are repeating themselves in contemporary Mexico. Ferreyra-Orozco notes

that “Afro-Mexicans and Indigenous people are among the poorest in the country” and “most of them live in remote areas in the south of Mexico out of the reach of basic public services such as running water, electricity, and health care.” Indigenous people are severely disadvantaged because many are unable to speak Spanish, and this language barrier precludes access to employment, public services, and political representation. It is within these contexts of the socio-economic and political marginalization of indigenous people and Afro-Mexicans that encounters with the criminal justice system are interpreted.

The prioritization of class in any discriminatory treatment of people who come into contact with the criminal justice system appears explicit in the Ferreyra-Orozco account of Mexico. The author notes that being poor or lower class is a recipe for discrimination in the criminal justice system, which generally operates in favor of the interests of the politically and economically advantaged, above the interests of the public. But, interestingly, the author observes that in spite of the priority that class attracts in the criminal justice treatment of its clients, there exists an intersection of race with class that generates a situation of “double discrimination.” In this sense, the socio-economically and politically marginalized Afro-Mexicans and indigenous people are more likely to be discriminated against through, for example, prosecutions and human rights violations than their *mestizo* and white counterparts. As victims of crime, their cases are either more likely to sit on the prosecutor’s office backburner for a long time before they are processed, or are not processed at all. Hence, the criminal justice response to criminal victimization aligns with the general culture of approaching crime in which class essentially determines which cases are prioritized in prosecutorial proceedings, particularly when one considers also the influence of the prosecutor’s office’s heavy caseload, low employee salaries, and related organizational deficiencies with the tendency to succumb to corruption and impunity.

In a country where bribery and corruption are normalized within and outside the criminal justice system; where the criminal justice system is under-resourced and understaffed and officials are underpaid and undertrained; where the wealthy, the politically connected, and organized crime syndicates manipulate and abuse the criminal justice system for personal benefit including political; where drug trafficking-related violence is seemingly beyond the control of law enforcement, and bribery is one way of controlling the police force; where criminal justice administrators abuse their discretionary powers for personal interests; and where impunity in the criminal justice system is rife: the fate of the poor in the Mexican criminal justice system is highly insecure. Wealth, often associated with the white and *mestizo* populations, equates to bribery, adequate prosecutorial

and legal representations to effect a speedy and favorable outcome in the criminal justice process. Perhaps, the marginalized populations account for a large percentage of the high “dark figure” of crime, which is borne out of underreporting due to public distrust in the prosecutor’s office or the belief that crime reporting is less likely to generate a worthwhile response from this office.

The interactions of class, corruption and administration of criminal justice are not unique to Mexico. The culture of corruption and its advantage to the socio-economically privileged, and its disadvantage to the impoverished, are acknowledged in the respective chapters on Brazil and Jamaica. With reference to Brazil, Harris refers to observations by Cano and colleagues relating to the role of bribery in influencing the possible exemption of “the dominant group (presumably white)” from the discretionary powers of arrest and incarceration – a “privilege” less likely to be enjoyed by the black and brown residents of deprived neighborhoods. Jamaica presents a similar picture. Henry and colleagues seem to indicate that the high levels of violence and their resultant high homicide rates are such that crime management, as opposed to crime control, depicts the very modest ambition of criminal justice administrators. Regardless of how high or low their crime approach ambition may be, criminal justice officials seem not to be hesitant in arresting and processing “garrison” communities’ poor blacks through the criminal justice system while the high-profile and wealthy criminals utilize their political connections to evade criminal justice criticism. Jamaica’s arrest statistics and reported crime data show that most property crimes and offenses against the person are committed by young black males. Related to this disparate outcome in the administration of justice is police corruption in tilting the scale of justice. As the authors note, “selling ammunition, evidence tampering, perjury, witness intimidation, torturing suspects and contract killings” exemplify police culture of corruption that invariably creates citizen distrust in the police, particularly among inner citizen residents. Fear of retaliation for reporting crime or participating in other stages of the criminal justice process as witnesses exacerbates the distrust. Ultimately, we witness in “garrison” communities a vicious cycle of socio-economic inequalities, poverty, violence, drugs, crime, community disorganization and frequent encounters with the criminal justice system, especially since a prior criminal record precludes access to, and retention in, employment.

As it seems, the setting of corruption found in these countries throws up a kind of discrimination that feeds on class. In other words, those who are financially equipped can buy themselves out of punishment for a crime committed or, through political connections be so exempted. And such an approach to crime and punishment transpires in more manifest than latent ways, unlike in Western societies where covert operations are more likely. In

the United States chapter, Kalunta-Crumpton and Ejiogu argue that “crimes of the powerful” are, in comparison to street crimes, marginalized in official US and scholarly discourses. The authors acknowledge that these crimes are hardly prosecuted. Although the chapter does not address the possible contributions of corruption to the relatively limited attention received by this crime category in the criminal justice system, this is not to assume that corruption does not infiltrate the US criminal justice system in favor of the wealthy and powerful, thereby mirroring the class influence on criminal justice policy and practice discussed in some of the other chapters.

Some of the class-oriented discussions may seem not to harbor a racial or ethnic discrimination element, others do. Readers can judge for themselves, bearing in mind regional and contextual differences among other factors. One could tell that there are chapters that are likely to make readers skeptical about the role of race or ethnicity in criminal justice. These include the chapters on Jamaica, Trinidad and Tobago and Argentina. In contrast, the Brazil chapter exemplifies a focused account of a racialized criminal justice system. In the chapter on Jamaica, it is observed that the majority of the clientele of the criminal justice system is black, but given the irrelevance of race in public consciousness, racial discrimination is not assumed in what popular perceptions would consider class-based discrimination. Indeed, blackness and class are clearly intertwined. But blacks are also by far in the majority and this fact may normalize their majority representation in the criminal justice system, thereby rendering racial disparity and important questions around it irrelevant to any interpretations of this outcome.

We witness such complexities about racial or ethnic discrimination in Trinidad and Tobago. Johnson and Kochel inform us that in colonial Trinidad, policing was race-based and class-based and, in light of the four-tier hierarchical racial and class social structure in which Africans and East Indians were in the third and fourth places respectively, these groups were policed and dealt with in courts as not only the working class, but also as racial groups inferior to white colonists. The authors do note, however, that police–community tensions were particularly evident in disadvantaged urban areas, including the “squatter communities” occupied by Afro-Trinidadians. In colonial policing, race overtly intersected with class. Contemporary policing (the force is now made up of native-born) appears to be tailored along class lines, with the working class as the focus. However, offending behavior, experiences of victimization and representations in prison figures are racially marked.

There is racial disparity in juvenile detention homes that tend to house disproportionate numbers of Afro-Trinidadian youths. Adult prison figures depict similar racial differences with a disproportionate Afro-Trinidadian representation, and Indo-Trinidadian and mixed-race under-representation.

Despite the disparity, Johnson and Kochel observe that the role of race-based or ethnicity-based discrimination in criminal justice administration in facilitating this outcome is unknown. However, the authors tell us that public perceptions of police “procedural fairness” in dealing with citizens show Afro-Trinidadians, including youths, to be more likely to perceive unfairness and racial bias. In addition, mixed-race Trinidadians (and Indo-Trinidadians, albeit to a lesser extent) view Afro-Trinidadians to be the worst treated by the police, while “other” ethnicities (i.e., white) are viewed to be the best treated. Even with these opinions, the authors highlight the importance of class in determining perceptions of Afro-Trinidadians who are more likely to reside in disadvantaged high-crime areas. These localities are prone to high-profile policing (reserved historically for the working class) – one consequence of which is a strained police–community relationship.

Another chapter that may cast doubts on any theory that prioritizes racial discrimination is Miguez’s account on Argentina. As already discussed in the introductory section, this country upholds an ideology of a unified society in which class and political identity are paramount, and are blind to racial or ethnic differences. Unification was an approach adopted to assimilate lower-class northern European immigrants (of the mid-nineteenth to the first two decades of the twentieth century) into Argentine culture. The second wave of immigrants (between the 1930s and the 1950s) stood out by virtue of their physical characteristics. Their presence in urban areas generated racially discriminatory responses that “alluded to the dark color of their skin, hair and eyes.” They were defined “as a zoological mass.” Miguez further notes that such a racialized attitude “was expressed in the actions of the police and the justice system towards recent migrants, especially through the laws of vagrancy that forced them to accept very detrimental working conditions. ...”

But an interesting note on this scenario is Miguez’s observation that race does not by itself attract derogatory stigma unless it is affiliated to class and/or political identity. For example, blackness is only stigmatized if it is associated with slum residence and/or the workers’ rights political movement. Thus, class and political identities are crucial to the negotiation of race in Argentine society. And segregation is presumably class-driven rather than race-driven. For example, the building of walls around slums in Buenos Aires under the repressive military regime of 1976–83 illustrates a form of class-based structural segregation aimed at isolating the poor from the rest of society. Under this regime, repressive economic policies had the devastating effects of increasing unemployment and poverty rates, thereby causing conflicts between the working class and immigrants from neighboring countries, notably Paraguay, Bolivia and Peru. Such a situation prompted racialized political debates as well as police and justice system interventions,

which made the immigrant groups the focus of attention. There are other instances in the late 1990s of racial tension and of racialized political blame of illegal immigration for the high levels of unemployment and a significant portion of the crimes. One consequence was a high arrest rate for visible immigrants from these countries.

Nevertheless, Miguez observes, Argentines at official and public levels are quick to condemn racist actions. Essentially, any discriminatory criminal justice approaches are revealed along class lines even though the outcome tends to reveal visible physical characteristics commonly found amongst the poor. Using the judicial system as a case study, Miguez discusses how, in the nineteenth and early twentieth centuries, Argentina's traditional desire of creating and maintaining an acceptable "social conduct" and "moral order" had led to the involvement of the judicial system in the purification of those classes identified to be in need of moral cleansing: the indigent families and children, including abandoned children. While class seemed to be the key determinant of who was processed through the judicial system for "remodeling," there were indications that "phenotypes" and other physical appearances such as "dressing" informed the moralists' classifications of what the author describes as the "poor but 'honourable,'" and the "vile." The late twentieth century and onwards also show the influential role of the judicial system in representing the interests of the ruling class against the urban poor. At times of growing unemployment and poverty rates and the related blame on foreign immigration, policing the poor tends to be biased against visible (i.e., non-white) ethnicities; and incarceration rates increase with the "poor, unemployed and uneducated" constituting the bulk of the prison population. Discrimination in Argentina may occur "unintentionally" and "indirectly" as a result of broader institutional policies and interests that produce and reproduce outcomes that are discriminatory towards the lower class and associated ethnic groups – made up of poor whites and non-whites.

In Brazil, the opposite seems to be the case from Harris's perspective. Race is manifest and paramount in the Brazilian criminal justice practices. According to Harris, the danger of placing the class factor above race is that race-oriented discriminatory practices are cloaked and are invariably not addressed as such. Harris refers to the tendency of official and academic discourses to not acknowledge racial bias when it comes to visible minority treatment in the criminal justice system. Concerned more specifically with the frequent police use of deadly force against black and brown youths (often male) who reside in high-crime neighborhoods across Brazilian cities, Harris takes issue with the eradication of race from the "legal discourse such that certain racialised bodies can be killed with impunity at the hands of the state." Contrary to "mainstream" perspectives that police exercise of

deadly violence in the *favelas* is a deliberate act against poor young black males, some studies have instead related such violence to the class factor based on the understanding that police use of lethal violence is more likely in the *favelas*. And since the resident population of these indigent geographical areas is mostly black and brown, they are more likely to be victims of such violence. Furthermore, prosecutorial/judicial response to police violence is likely to exonerate the police because *favelas* residents lack the socio-economic resources to advance their case through the criminal justice process, coupled with the shared perceptions and representations of the *favelas* as violent/crime-ridden, a threat to public safety, and impoverished.

But similar to Argentina, "race" in Brazil is fundamentally "subsumed within the category of poverty," and through the ideology of racial democracy any reference is obscured by "focusing solely upon socio-economic or spatial interpretations of the operation of the justice system." As already shown, Harris expresses discomfort with this approach. He also observes that situating the *favelas* and criminal justice relations in mere socio-economic contexts simplifies the unique position the *favelas* occupy in the eyes of the law, which is profoundly demonstrated in the racialized violence that functions outside the mainstream law, the parameters of legality, and criminal justice accountability. In the name of "security" and "public order," brutal force, akin to the lethal violence that underpinned colonial policing of slaves, typifies the policing of the *favelas*. Although Harris briefly outlines stages in police-suspect contact in which discrimination against visible minorities can surface, the use of deadly violence in the policing of the *favelas* introduces a worrying concern over state legitimization of blatant murdering of citizens by the police. In a succinct description of *favelas* relations with law enforcement, Harris explains that the *favelas*:

by virtue of their control by the drug gangs and militias, exist outside the operation of the law in both a spatial and juridical sense. It is in the *favelas* that there is most frequently the suspension of due process, where individuals can be killed by the police with impunity. The residents of the *favelas*, mostly brown and black, are caught between the violence of the drug lords and the punitive expeditions launched by police force.

Also integrated in the warlike, militarized policing of the *favelas* and the apparent police disregard for life, is police corruption. Corruption may favor and sustain organized criminal networks and ultimately reproduces the cycle of drug trafficking, violence (including that meted out by the police), crime, poverty and the victimization of the residents. Even with the recent shift in the policing of the *favelas* from a strategy of "insurgency and retreat" to one of "occupation and control" aimed at pacifying and containing these

geographical areas for the purpose of the forthcoming FIFA and Olympic events, militia members (including police officers) remain prominent in the *favelas* for extortion purposes.

Harris's description of the *favelas* as communities "outside the operation of the law" resonates with Urrea-Giraldo's analyses of violent homicides in the most segregated and socially excluded parts of Cali in Colombia. Like Harris, Urrea-Giraldo notes that urban violence, particularly homicide, is likely to heighten and intensify in segregated urban areas. Those localities are zones for drug trafficking (including related violence) and armed conflict. Nonetheless, they are outside positive state regulation in the context of its role as a positive social control mechanism. Where the state shows a presence in the segregated areas, this is represented in repressive and violent law enforcement, including paramilitary attacks on social groups defined as the "dangerous class." In the name of "social cleanness" to rid society of the "socially undesirable," those attacks include murder. In such attacks, victims are mostly Afrodescendants. Similar to their vulnerability to state violence, data from Cali show that Colombia's Afrodescendants are more likely than non-Afrodescendants (made up of mostly whites and *mestizos*) to receive punishment through incarceration in prisons or jails, and in military quarters/garrisons. Afrodescendant women are also more likely than their non-Afrodescendant counterparts to be in prison. The author notes that "the prisons and military garrisons in Cali are collective spaces where black people, especially males are held."

Similar to conclusions one can glean from many of the chapters, Urrea-Giraldo makes reference to a correlation between the high numbers of Afrodescendants in the incarceration rates, their high demographic representation in Cali and its violence rate, and their high concentration among the poorest in this city.

Conclusion

In many Western societies, the subject of racial influence on offending behavior and interactions with the criminal justice system has animated debates, with one crucial argument speaking to racial discrimination. Allegations of racism have been dampened by opponents' emphatic references to other social factors that may take precedence over race in determining criminality and relations with the criminal justice. Notable among these other factors is class. Often, the class variable is not argued as a stand-alone influence. Rather, it is intersected with race to understand why certain racial groups are more likely to offend, experience criminal victimization and make quick entry into the criminal justice system. In England, for example, the class argument, which found significant favor in the 1980s debate

over the overrepresentation of the black British population in crime figures (see Lea and Young, 1993/1984; Gilroy, 1987), is further credited when the Asian population, another minority racial group, is added to the equation. The general argument is that if the racial discrimination argument were valid, Asians ought to be over-represented in crime figures. But they are not. Therefore, the explanation for the disproportionate black presence in crime data lies in the fact that blacks are more socio-economically deprived than their Asian counterparts and so are more likely to commit crime and face consequent arrest and a subsequent journey through the criminal justice system. Invariably, this factor explains why Asians are under-represented in crime figures because, unlike their black counterparts, they tend to be socially organized as opposed to disorganized.

The US literature presents a similar picture of Asian under-representation in crime statistics, and the overrepresentation of blacks (and Hispanics, another group that suffers deprivation) in these statistics. The relative social and economic advantage of Asians is acknowledged in the literature. In regard to Canada, Wortley and Owusu-Bempah observe that unlike blacks, Asians (and whites) are less likely to perceive discrimination in Canadian criminal justice. The authors note the possible role of "social class, education, or other demographic factors" in determining racial differentials in perceptions of discrimination.

Although the class-offending standpoint (as in the UK) is relatively dormant on why middle-class blacks whose socio-economic stability or upward mobility does not warrant criminality are also vulnerable to police harassment (see Kalunta-Crumpton, 2000), it is a framework that has posed a challenge to proponents of the racial discrimination school of thought in various parts of the globe (see Kalunta-Crumpton, 2010). Perhaps, this challenge is strengthened when we find that the significance of the class factor in narratives of race and criminality is not restricted to Western societies marked by a majority white population. As shown in this collection, the non-Western societies illustrate in differing ways evidence of racial diversity. In most of them, class seems to take precedence over race in discourses of crime despite evidence of racial inequality in the wider social structure. The inequality in question has its origins in past centuries of slavery. This is particularly evident in societies such as Jamaica where the existence of a majority black population seems to introduce some skepticism as to whether race matters. Yet, the population arrangements of a black majority have not guaranteed that the majority enjoys the largest share of the national cake. Instead, Jamaica's history of slavery has shaped the contemporary marginalized position of its majority in comparison to the minority racial groups.

This setting encapsulates what Johnson and Kochel would consider a consequence of “different histories of incorporation”. The Jamaican situation is echoed in Johnson and Kochel’s reflection of history in their discussion of Trinidad and Tobago. Similar to Jamaica, the contemporary location of Trinidad and Tobago’s diverse racial groups in its socio-economic structure has been influenced by this country’s history of African slave labor and the subsequent utilization of South Asian indentured servants to meet the plantation labor shortage following the emancipation of African slaves in the nineteenth century. Contemporarily, the Asian population are predominantly situated in rural areas and lands formerly occupied by their ancestors at the end of their indentured service. In contrast, urban areas of Trinidad and Tobago are home to a high proportion of Afro-Trinidadian descendants of emancipated African slaves who formed “squatter communities” in the wake of their new-found freedom. Those areas, which were and still are characterized by various forms of social and economic disadvantage, are conducive to crime, notably gang activities and homicide.

In this collection, blacks stand out. In the various countries where they are discussed, their offending and victimization patterns as well as their criminal justice experiences are generally similar. Their situation in the Americas is mirrored in Europe (see Kalunta-Crumpton, 2010). But what is often sidetracked in narratives of their offending/victimization is their historical experience. And while we compare their rates of offending and so forth with the Asian experience, we also tend to forget or marginalize the differences in the historical experiences of both racial groups and how these might feed into offending behavior and so forth. An important addition to this point is that not all blacks, particularly those in Western societies, are connected to historical slavery, and as such a recognition of ethnic differences will shed more light on the relevance of history to contemporary situations of black populations. Assuming a black monolith in analyses of crime is questionable for a range of reasons, including the possible failure to account for those outside of the historical experience of slavery and its ramifications. Likewise, even the Asian group with a comparatively less daunting historical relationship with whites does not have a collective experience.

As mentioned in my earlier book (Kalunta-Crumpton, 2010), and in my chapter co-authored with Ejiogu in this collection, a critical rethink of how we classify human diversity is imperative. By way of ethnic grouping, we may begin to study and make comprehensive sense of, firstly, ethnic differences (and thereafter, racial differences) in peoples’ past and contemporary life experiences and circumstances, and how these might impact on ethnic

(and thereafter, racial) differences in offending, criminal victimization and encounters with the criminal justice system.

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