

THE OXFORD
HANDBOOKS IN
CRIMINOLOGY AND
CRIMINAL JUSTICE

General Editor: Michael Tonry

EDITED BY

SANDRA M.
BUCERIUS
MICHAEL
TONRY

≡ The Oxford Handbook *of*
**ETHNICITY, CRIME,
AND IMMIGRATION**

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CRIME, AND
IMMIGRATION**

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CONTENTS

<i>Preface</i>	ix
<i>List of Contributors</i>	xi

Race, Ethnicity, Crime, and Immigration MICHAEL TONRY	1
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PART I RACE, ETHNICITY, AND CRIME IN THE UNITED STATES

1. The Racialization of Latinos in the United States DOUGLAS S. MASSEY	21
2. Race and Crime in American Politics: From Law and Order to Willie Horton and Beyond AMY E. LERMAN AND VESLA M. WEAVER	41
3. Race, Crime, and Public Opinion JAMES D. UNNEVER	70
4. Racial and Ethnic Patterns in Criminality and Victimization TOYA LIKE-HAISLIP	107
5. Race, Crime, and Policing ROBIN S. ENGEL AND KRISTIN SWARTZ	135
6. Racial Disparities in Prosecution, Sentencing, and Punishment CASSIA SPOHN	166
7. Race and Drugs JAMIE FELLNER	194
8. Case Study: Living the Drama—Community, Conflict, and Culture among Inner-City Boys DAVID J. HARDING	224

9. Case Study: African-American Girls, Urban Inequality, and Gendered Violence 252
JODY MILLER

PART II RACE, ETHNICITY, AND CRIME IN OTHER DEVELOPED COUNTRIES

10. Race, Crime, and Criminal Justice in Canada 281
AKWASI OWUSU-BEMPAH AND SCOT WORTLEY
11. Ethnicities, Racism, and Crime in England and Wales 321
ALPA PARMAR
12. Indigenous People and Sentencing Courts in Australia, New Zealand, and Canada 360
ELENA MARCHETTI AND RILEY DOWNIE
13. Colonial Processes, Indigenous Peoples, and Criminal Justice Systems 386
CHRIS CUNNEEN
14. Case Study: Black Cannabis Dealers in a White Welfare State Race, Politics, and Street Capital in Norway 408
SVEINUNG SANDBERG
15. Case Study: Black Homicide Victimization in Toronto, Ontario, Canada 430
SARA K. THOMPSON

PART III ETHNICITY, CRIME, AND IMMIGRATION IN THE UNITED STATES

16. The Politics of Immigration and Crime 457
JESSICA T. SIMES AND MARY C. WATERS
17. Traffickers? Terrorists? Smugglers? Immigrants in the United States and International Crime before World War II 484
PAUL KNEPPER
18. Ethnicity, Crime, and Immigration in the United States: Crimes By and Against Immigrants 505
JACOB I. STOWELL AND STEPHANIE M. DIPETRO

-
19. Immigration and Crime in U.S. Communities: Charting
Some Promising New Directions in Research 529
CHARIS E. KUBRIN AND GLENN A. TRAGER
20. Immigrants and Their Children: Evidence on Generational
Differences in Crime 551
LUCA BERARDI AND SANDRA M. BUCERIUS
21. Latino/Hispanic Immigration and Crime 584
RAMIRO MARTINEZ JR. AND KIMBERLY MEHLMAN-OROZCO
22. Case Study: Criminalizing Settlement: The Politics of Immigration in
the American South 600
JAMIE WINDERS
23. The Law of Immigration and Crime 628
MARY FAN

PART IV ETHNICITY, CRIME, AND IMMIGRATION IN OTHER DEVELOPED COUNTRIES

24. Searching (with Minimal Success) for Links between
Immigration and Imprisonment 663
JENNIFER L. HOCHSCHILD AND COLIN M. BROWN
25. Ethnicity, Crime, and Immigration in France 708
SOPHIE BODY-GENDROT
26. The Convergence of Control: Immigration and Crime in
Contemporary Japan 738
RYOKO YAMAMOTO AND DAVID T. JOHNSON
27. Ethnicity, Migration, and Crime in the Netherlands 766
GODFRIED ENGBERSEN, ARJEN LEERKES, AND ERIK SNEL
28. Immigration, Crime, and Criminalization in Italy 791
STEFANIA CROCITTI
29. Case Study: Sentencing Violent Juvenile Offenders in Color
Blind France: Does Ethnicity Matter? 834
SEBASTIAN ROCHÉ, MIRTA B. GORDON,
AND MARIE-AUDE DEPUISSET

30. Case Study: Lost and Found: Christianity, Conversion, and Gang Disaffiliation in Guatemala KEVIN LEWIS O'NEILL	860
31. Case Study: Immigration, Social Exclusion, and Informal Economies: Muslim Immigrants in Frankfurt SANDRA M. BUCERIUS	879
<i>Index</i>	905

PREFACE

When compiling the *Oxford Handbook of Ethnicity, Crime, and Immigration*, our intention was to produce the most authoritative and scholarly source of research and expertise on the topics around race, ethnicity, and immigration in the United States and across the Western world. The idea to edit the *Oxford Handbook of Ethnicity, Crime, and Immigration* was born after realizing that the key issues around various racial, ethnic, or immigrant groups are often interrelated (in the sense that some racial groups are at the same time also ethnic minorities and/or immigrants and vice versa), but the three areas often remain separated or—alternatively—become very conflated in most scholarly analysis. The *Oxford Handbook of Ethnicity, Crime, and Immigration* is the first edited volume to combine these three key research areas into one book. We have recruited outstanding scholars to contribute to this handbook and hope that our readers will feel that this end-product fulfills our intention.

In this handbook, our readers will find up-to date, in-depth critical reviews of the main research on immigration, crime, and ethnicity, its key issues and controversial debates, as well as relevant policy recommendations and ideas for areas for future research. In addition to these essays, our handbook also contains a smaller number of national and international case studies on cutting-edge topics. We have compiled the *Oxford Handbook of Ethnicity, Crime, and Immigration* with a very diverse readership in mind. We anticipate that scholars will use the handbook to prepare lectures and as an essential background resource for research projects. Similarly, we think that policy makers and non-governmental agencies working on issues around immigration, ethnicity, and race will find the book an invaluable source of knowledge. At the same time, the extensive overview essays on different topics and national contexts seem indispensable for upper-level undergraduate students and graduate students who are taking courses on race, ethnicity, immigration, and crime.

This handbook could not have come together without the extraordinary help by and dedication of Robbi Strandemo and Su Smallen. Both of them have spent numerous hours keeping the authors and us on track, communicating with Oxford University Press and seeing this project through from start to finish. Thank you, we are very grateful to you! Our thanks and gratitude also go out to our many contributing authors, without whom this project never could have been successful. Lastly, we are grateful to the editors and the staff at Oxford University Press, particularly, James Cook and Jennifer Vafidis, for believing in this Handbook and helping us to realize the project.

We hope our readers will find this handbook to be highly informative and interesting. Most importantly, we hope that younger scholars will feel inspired to enhance our knowledge in the years to come and decide to dedicate their time to one of the many areas for future research pointed out by the authors in this handbook.

Sandra M. Bucerius
and
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RACE, ETHNICITY, CRIME, AND IMMIGRATION

MICHAEL TONRY

EVERY 21st-century country is a *mélange* of nationalities, ethnicities, religions, and “races.” In every country, some groups are politically and culturally dominant. Usually, but not always, the same groups are economically dominant. Some minority groups in every country are socially and economically disadvantaged. Some but not all of these are disproportionately involved in crime as victims, offenders, suspects, convicted persons, and prisoners. Always there is disagreement over the extents to which those disparities result from behavioral differences between groups or from stereotyping, invidious bias, and differential treatment by members of the dominant groups. Usually, both things are true: members of some disadvantaged minority groups are disproportionately involved in the kinds of crimes that result in convictions and prison sentences, and the consequences of those differences are exacerbated by stereotyping and differential treatment.

For more than a century, “immigration and crime” and “race and crime” have waxed and waned as political, policy, and research subjects in developed countries. During periods of high-volume migration and social turbulence, resident populations typically attribute crime problems and disorder to immigrants. With varying intensity over time, members of dominant groups also attribute crime problems and disorder to long-standing oppressed ethnic minorities, such as the indigenous populations of Australia, New Zealand, and North America, African Americans in the United States, Afro-Caribbeans in England and Wales, and Roma and Sinti in continental Europe.

I. IMMIGRATION, RACE, AND CRIME IN 1980

Thirty years ago, the literatures on immigration and crime and race and crime were, for the most part, separate. The basic findings in the two literatures, both developed

principally in the United States, had for many years changed little. During the period of high levels of economically motivated immigration from Europe to the United States in the 19th and early 20th centuries, immigrants were often blamed for crime and disorder. A series of national commissions (e.g., Industrial Commission 1901; Immigration Commission 1911; National Commission on Law Observance and Enforcement 1931) showed that the blame was unwarranted. By measures of arrests, convictions, and imprisonment, first-generation immigrants were less involved in crime than the resident population. Their second- and often third-generation descendants were more involved in crime than their parents, and later generations assimilated into and were indistinguishable from the native population.

The reasons for the multigenerational immigration and crime pattern are straightforward. First-generation economic immigrants are self-selected risk takers who leave their homes, families, and languages to move to a new country to improve their and their children's lives. They have good reasons to work hard, defer gratifications, and stay out of trouble. Their descendants, until they are assimilated into the new country's culture and opportunity structures, are caught between two worlds. They typically have the same material aspirations as natives but lack sufficient social and personal capital to achieve them easily. In a common tragic pattern, self-sacrificing immigrant parents, still in part embedded in their natal culture and first language, are often in conflict with children embarrassed by their differentness and chafing at traditional cultural expectations. It is often said that higher crime rates reflect acculturation into American norms of competition, impatience, and ambition and that rising crime involvement is an ironic indication of increasing Americanization (e.g., Rumbaut 2004). The multigenerational pattern recurred in Europe after World War II as economic migrants from southern Europe moved north and guest workers from North Africa and Turkey arrived in search of work (e.g., in Switzerland, Killias 1997, pp. 383–400; in France and Germany, Killias 1989; in Germany, Kaiser 1974; Albrecht 1997, pp. 54–56).

The race and crime literature was also well-settled. Since at least the late 19th century, it was recognized that black Americans were more likely than whites to be involved in the kinds of crime that resulted in prison sentences (e.g., DuBois 1996/1899). The reasons for this at the individual level were partly the same as the reasons that whites participated in crime: disadvantaged, deprived backgrounds; limited educational and vocational skills; socialization into deviant values; and blocked opportunities for material success (e.g., Myrdal 1944). In addition, however, blacks were victims of racist subordination and racial bias and stereotyping (DuBois 1996/1899; Garland 2010).

The two literatures potentially merged in the experiences of southern black Americans who moved north as part of the early 20th century's Great Migration (Wilkerson 2010). According to the multigenerational immigration-and-crime model, the self-selecting adult migrators should have been less involved in crime than were established northern whites. Their children after one or two transitional generations should have merged into the general northern population in all respects, as had descendants of European immigrants. Instead, as a group, the migrants and their descendants remained predominantly

economically and socially disadvantaged, and their descendants were disproportionately involved in crime.

The explanation for the different experience of American southern migrants and their children became clear, as demographer Stanley Lieberson showed in his 1980 book, *A Piece of the Pie: Blacks and White Immigrants Since 1880*. Most black migrants were gratification deferrers and tended to believe they would find genuine opportunities for themselves and their children in the northern states that had fought and won a war over slavery. Instead, they found racial stereotypes, social exclusion, housing and employment discrimination, and substandard educational opportunities premised on whites' assumptions of black inferiority. White northern racism was less virulent than southern racism, but it was little less effective at limiting black people's chances of achieving satisfying, materially successful lives.

The immigration-and-crime pattern was not replicated because whites blocked it. Recent work on early 20th-century settlement houses in northern cities shows a remarkable double standard (Muhammad 2011). They were established and operated in part to address the problems of immigrants' children, in recognition that they often experienced disadvantaged conditions and stunted life chances. Crime was seen as a regrettable but understandable by-product to be dealt with by addressing the conditions that underlay it. However, few settlement houses worked with black young people and even fewer made it a central mission to assist them. In contrast to prevailing understandings of immigrants' crimes as by-products of the structural conditions of their lives, crimes by black people were commonly portrayed as products of individual moral failure and an unhealthy black culture.

Black Americans continued throughout the 20th century to number disproportionately among offenders, in criminal courts, and in prisons (Mann 1993). Thirty percent of prison inmates in 1950 were black, 35 percent in 1960, and 40 percent in 1970. In the 1980s and early 1990s, the black percentage hovered around and occasionally exceeded 50 percent (Tonry 1995). Little was written about racial disparities in the American criminal justice system before 1980. A small literature on racial disparities in sentencing concluded that blacks were punished more severely than whites (Hagan and Bumiller 1983). Large-scale immigration into the United States stopped in the 1920s as a result of the xenophobic politics expressed in the federal Immigration Act of 1924. As the generations passed, the descendants of European immigrants were absorbed into the general population. Research on immigration and crime withered away.

II. IMMIGRATION, RACE, ETHNICITY, AND CRIME THROUGH THE MID-1990S

Problems of immigration, race, ethnicity, and crime reemerged in the 1980s in many countries. In continental Europe, the precipitant was the entrenchment in the resident

populations of many countries of guest workers recruited in the 1950s, 1960s, and 1970s; of refugees and economic migrants from many places; and, for both groups, of their descendants (Albrecht 1997; Junger-Tas 1997; Killias 1997; Martens 1997). In England and Wales, it was allegations of discrimination against Afro-Caribbean migrants and their children (Hood 1992). In the United States, the precipitant was the successes in the 1960s and after of the civil rights movement and resulting, renewed attention to problems of racism, racial injustice, and racial disparities (American Friends Service Committee 1971; Sampson and Lauritsen 1997). In Australia, Canada, and New Zealand, the precipitant was increased sensitivity to the disadvantaged lives of members of indigenous groups and enhanced awareness of disparities affecting them at every stage of the criminal justice system (Jackson 1987; Broadhurst 1997; Roberts and Doob 1997).

Research on race, ethnicity, and crime in developed countries through the mid-1990s tended to focus on group differences in victimization and offending and on disparities in arrest, conviction, and imprisonment. The ultimate questions of interest usually concerned the respective influences on disparities of group differences in criminality and biased criminal justice officials and processes. The effects of immigration on crime and the experiences of immigrants qua immigrants received relatively little attention.

The focus in individual countries was on the experiences of members of particular minority groups. These included African Americans; Afro-Caribbeans in England and Wales; indigenous populations in Australia, Canada, and New Zealand; Moroccans in the Netherlands; Turks in Germany; and North Africans in France and Belgium. Most of the groups characterized by relatively high crime involvement and by disparities in justice system processing included large proportions of native-born residents, whether or not their parents or recent ancestors were immigrants. Indigenous populations in Australia, Canada, New Zealand, and the United States were not immigrants at all. Most African Americans were descendants of long-time US residents. Large-scale immigration of Afro-Caribbean people into England and Wales and of guest workers into continental countries peaked in the 1950s and 1960s. To the extent that members of particular immigrant groups were disproportionately involved in crime, it was usually people of the second and third generations who, if the immigration-and-crime model applied, might be hypothesized to be disproportionately likely to be involved in crime.

Racial disparities affecting African Americans became a preoccupying research issue in the United States beginning in the early 1980s.¹ Surveys of research on sentencing disparities concluded that earlier work greatly exaggerated racial differences; controls for legally relevant sentencing criteria such as prior criminal records were seldom used, and when they were, sentencing differences became much less pronounced (Hagan and Bumiller 1983). Later surveys concluded that disparities in sentencing were importantly influenced by the sizable cumulative effects of relatively small racial differences at successive stages of the criminal justice system (Zatz 1987). Sentencing studies typically found relatively few racial differences in the likelihood of imprisonment, given a conviction, but significant differences in sentence lengths (Walker, Spohn, and DeLone 1996). Other work examined disparities in rates of imprisonment and concluded that they resulted largely from group differences in offending, particularly for violent crimes

for which African Americans had much higher arrest rates than whites (Blumstein 1982, 1993; Langan 1985).

Disparity research in the other wealthy English-speaking countries generally concluded that minority defendants received somewhat harsher sentences than majority defendants, partly because of systemic factors like guilty plea discounts and high levels of pretrial confinement, but that the largest part of disparities in imprisonment was attributable to differential involvement in imprisonable offenses.² On the basis of considerably smaller literatures, similar conclusions were reached concerning the Netherlands (Junger-Tas 1997), Germany (Albrecht 1997), Sweden (Martens 1997), and Switzerland (Killias 1997).

A number of patterns stood out in comparative work (Tonry 1997a). In every country, members of some socially and economically disadvantaged groups—but not all such groups—appeared from police data to be disproportionately involved in crime. Victimization and self-report data tended to confirm the police data. Victimization data typically showed that much offending is intragroup, which meant that minority offending could not responsibly be disregarded without also disregarding minority victimization. Criminal justice system data at every stage showed stark disparities affecting members of some groups. The disparities between groups appeared to reflect a combination of different rates of offending, differential handling of cases involving members of different groups, bias and stereotyping on the part of officials, and systemic case processing conventions that were facially neutral but in practice systematically and detrimentally affected minority suspects and offenders.

One systemic example was the English practice of awarding sentence discounts to defendants who pled guilty, with the amount of the discount declining the later the plea was made. Afro-Caribbean defendants were less likely than whites to plead guilty and typically did so later in the process; as a result, they were punished more severely than were comparable whites (Hood 1992). Another example is the finding in many countries that defendants held in pretrial detention were more likely, all else being equal, to be sentenced to imprisonment following conviction than were defendants who were released before trial.³ Because members of minority groups were disproportionately likely to be socially and economically disadvantaged, they were especially likely to be detained. Racial and ethnic disparities in imprisonment were high in all wealthy Western countries and had been rising since the early 1980s.⁴ In most Western countries, disparities were greatest for juvenile offenders, then for remand/pretrial prisoners, and least—although high everywhere—for convicted prisoners (Tonry 1998).

The ethnic groups experiencing high disparities in arrest rates and imprisonment were, in each country, socially and economically disadvantaged, but not all disadvantaged ethnic groups experienced high disparities. In the Netherlands, for example, Moroccans and Turks, both recruited as guest workers in the 1950s and 1960s, had similar educational, employment, and health profiles, but Moroccans had high arrest and imprisonment rates whereas Turkish rates were similar to those of ethnically Dutch residents (Junger-Tas 1997). In Germany, by contrast, Turks had much higher arrest and imprisonment rates than Germans (Albrecht 1997).

In England and Wales, for another example, Afro-Caribbeans and immigrants from the Indian subcontinent had similar socioeconomic profiles and experienced comparable housing and employment discrimination. Afro-Caribbeans experienced high arrest and imprisonment disparities compared with whites. Indians, Pakistanis, and Bangladeshis did not. Bangladeshis were the poorest and least employed and educated of all the groups but had lower arrest and imprisonment rates than the indigenous English (Smith 1997, 2004).

Swedish data showed that arrest rates varied widely between minority groups for both first-generation immigrants and their second-generation children (Albrecht 1996). This suggests that differences between groups made successful acculturation into Swedish society harder for some than for others, that Swedes responded differently to different groups, or some combination of both.

Some disadvantaged ethnic groups do not experience high justice system disparities. The experience of Indian subcontinent immigrants in England was typical of Asian immigrants in many countries, including the Netherlands, the United States, Canada, and Australia. For some groups, for example, Hong Kong Chinese in Canada, Ugandan Indians in England and Wales, and Indians in the United States, this may in part be because migrants were disproportionately affluent and well-educated. For other Asian minority groups in many countries, however, immigrants were not especially affluent and were indistinguishable economically from ethnic groups consisting largely of low-income economic migrants. This is true, for example, of Korean, Vietnamese, Khmer, and Chinese immigrants in the United States.

Members of indigenous populations in Australia, New Zealand, and North America are disproportionately poor and otherwise disadvantaged. So are African Americans in the United States and Afro-Caribbeans in England and Wales. All of these visible minority groups experienced high disparities in arrest and imprisonment compared to majority populations (Jackson 1987; Tonry 1994; Broadhurst 1997).

Immigration and crime per se received relatively little attention in the contemporary era before 2000. Exceptions included early work in the Netherlands contrasting the experiences of legal and illegal immigrants (e.g., Burgers and Engbersen 1996) and early work in the United States on recent Hispanic immigration and crime (Hagan and Palloni 1998, 1999).

III. RACE, ETHNICITY, CRIME, AND IMMIGRATION SINCE THE MID-1990S

Since 2000, there has been an explosion of research on immigration and crime in many countries and, in a few, a continuing accumulation of research on race and crime. Immigration research has repeatedly tested and broadly confirmed the classic multi-generational pattern, has involved new disciplines and methods, and has addressed

new subjects. Research on race or ethnicity and crime, as distinct from immigration research, has slowed. This is because race per se is more salient politically and culturally in English-speaking countries than in other wealthy immigration countries where ethnicity and nationality are more salient. Many more countries faced challenges of overrepresentation of minority groups in their criminal justice systems after 2000. In most, political and policy attention focused more on offenders as immigrants or nationalities than as members of “racial” groups. Race, ethnicity, and immigrant status are all socially constructed categories. The categories prevailing in particular countries may say more about the countries than about the people they characterize.

A. Race and Crime in the United States

Large numbers of American studies continued to examine racial differences in offending and treatment by the criminal justice system, but relatively little has been learned that is new (Baumer 2012). Smaller numbers examined racial profiling by the police (e.g., Gelman, Fagan, and Kiss 2007) and “racial threat” hypotheses (e.g., Eitle, D’Alessio, and Stolzenberg 2002; Keen and Jacobs 2009). Police, victimization, and self-report data continue to show that black Americans are more extensively involved in violent and ordinary property crime than are whites, but the differences are diminishing (Like-Haislip 2013). Use of illicit drugs is greater by blacks than by whites for some substances, but not for others; the differences in any case are small. There is no substantial evidence that blacks more often sell drugs than do whites, but they have been arrested for drug offenses in recent decades at rates four to six times higher (Fellner 2013). Blacks are also much more likely to be stopped on roads and sidewalks by police than whites or Hispanics but are no more likely to be in possession of drugs, guns, or other contraband (Engel and Swartz 2013). Black defendants are more likely than whites to be detained awaiting trial and to be treated somewhat more severely than whites by prosecutors and judges (Spohn 2013). Racial disparities in imprisonment, however, result primarily from the effects of policy decisions requiring severe punishments for violent and drug offenses for which blacks are disproportionately arrested, convicted, and imprisoned (Alexander 2010; Tonry 2011).

What are comparatively new, however, are increased amounts of ethnographic and other qualitative work on offenders’ lives (Harding 2013; Miller 2013), an increase in writing by political scientists on race-and-crime topics (Lerman and Weaver 2013), and a much larger and more sophisticated body of work on public attitudes, opinions, and beliefs about race and crime topics (Unnever 2013). These literatures have substantially enriched understanding. Whites no longer believe that blacks are inferior to whites, but racial resentments and anxieties continue to explain greater white than black support for harsh sentencing policies. Whites are much more likely than blacks to have confidence in the criminal justice system, especially police, and much less likely to believe officials treat minority suspects and defendants unfairly (Bobo and Thompson 2006; Peffley and Hurwitz 2010; Unnever 2013).

B. Race, Ethnicity, and Crime in Europe and the Antipodes

There has been much less recent research outside the United States on racial and ethnic differences in crime, victimization, and involvement with the criminal justice system. Only in the United States and England are official data on race and ethnicity routinely available. In Canada, curiously, collection of data on aboriginality is lawful but is unlawful on any other ethnic identities. This means that data are readily available in the United States on blacks, whites, Hispanics, and sometimes Native Americans; in England and Wales on whites, Afro-Caribbeans, and many Asian groups; and in Australia, Canada, and New Zealand on aboriginal and non-aboriginal people.

Collection or maintenance of official data on individuals' race or ethnicity remains unlawful in continental European countries (and Canada). Only data on nationality or national origins may be collected. This can be fundamentally misleading for at least two reasons. First, most countries are today multiethnic. Knowing a person's nationality is not the same thing as knowing his or her ethnicity. Turkish nationals, for example, may be Turks, Kurds, or Azeris. Moroccan nationals may be Arabs or Berbers. American nationals may be black, white, Hispanic, or from various Asian-American groups. Each of the countries named also contains citizens of other ethnic identities and national origins.

Second, because countries' naturalization policies vary widely, nationality labels can be fundamentally misleading. In Switzerland, for example, which has the Western world's most restrictive naturalization laws (Hochschild and Brown 2013), third-generation descendants of 1960s labor migrants from southern Europe often lack Swiss citizenship; in all but formal nationality, however, they are Swiss. Not surprisingly, Switzerland has the highest proportion of "foreign" prison inmates in Europe. In France, which has relatively generous naturalization laws, French citizens may be recent immigrants. Comparisons of, for example, the numbers of Algerian and French prison inmates in France are uninformative since there may be as many Algerians among the "French" as among the "Algerians." For those and other reasons, relatively little is written about race, ethnicity, and crime outside the English-speaking countries (or in Canada, except about indigenous First Nation citizens; cf. Thompson 2013).

Race, crime, and criminal justice patterns in England and Wales and Canada resemble those in the United States. Black people in those countries are more likely than whites to be victimized by crime and to be arrested, convicted, and imprisoned. Profiling by the police on the basis of race is common and controversial in all three countries and in England and Wales also for people with origins in the Indian subcontinent. Black residents of the three countries (and in England, Asians) have less confidence than do whites in the justice system and are more likely to believe members of minority groups are treated unfairly (Feilzer and Hood 2004; Shute, Hood, and Seemungal 2005; Parmar 2013; Thompson 2013).

Aboriginals in Australia, First Nation citizens in Canada, Maori in New Zealand, and Native Americans in the United States have disproportionately high victimization,

arrest, and imprisonment rates compared with whites. They are also to varying extents excluded from mainstream life and socially and economically disadvantaged for reasons relating to systematic discrimination and historical patterns of abuse and exploitation. Sizable efforts have been and are being made in Australia, Canada, and New Zealand to empower aboriginal communities, to adopt more culturally appropriate justice processes, and to develop sentencing policies that reflect aboriginal peoples' distinctive life situations. Much more needs to be done (Cunneen 2013; Marchetti and Downie 2013; Owusu-Bempah and Wortley 2013).

Less can be said about racial and ethnic differences in other developed countries because of the limited availability of ethnicity data. Strong distinctions between groups that were previously documented continue. In the Netherlands, Moroccans remain heavily overrepresented among suspects and prisoners, and Turkish patterns approximate those of the ethnic Dutch (Junger-Tas 2010; Engbersen, Leerkes, and Snel 2013). Turks remain heavily overrepresented in German criminal statistics (Albrecht 2010). In England and Wales, major long-documented differences persist in arrests and imprisonment between Afro-Caribbeans and Asians of all subgroups, including the most socioeconomically disadvantaged Bangladeshis (Smith 2004; Parmar 2013). This confirms a second long-documented pattern that economic migrants from Asian countries, including Japan, China, India, Pakistan, and Vietnam, do not fit the classic multigenerational immigration-and-crime model. As with European immigrants, members of the first generation typically have low levels of crime involvements and—unlike European immigrant groups—so do members of successive generations (Tonry 1997a).

C. Immigration and Crime

The most extensive bodies of research on immigration and crime have accumulated in the United States and the Netherlands. In the United States, this is partly because the scholarly community of criminology and criminal justice researchers is vastly larger than elsewhere, and immigration has attracted their attention. It is also because immigration has been a hotly contested political subject since the late 1990s, including the traditional—but incorrect—allegations that immigrants contribute disproportionately to crime and disorder and because Hispanics have become the largest U.S. minority ethnic group and are expected to continue to increase in numbers and influence. The Netherlands is one of many European countries beset by anti-immigrant politics and a strong nativist political movement (Buruma 2006). The burgeoning of research is partly attributable to the existence of a specialized research unit in Erasmus University that has for several decades carried out a strategic and cumulative program of immigration-and-crime research (e.g., Burgers and Engbersen 1996).

Research on immigration and crime proliferated in the United States after 2000, encompassing many new topics beyond documentation of crime and victimization patterns (Stowell and DiPietro 2013) and explanation of disparities in criminal justice system case processing. Historical studies have begun to emerge (e.g., Knepper 2013).

A wide range of studies using different strategies and methods at neighborhood, city, and national levels have confirmed the multigenerational model in the United States and elsewhere. With some exceptions, members of the second generations of economic immigrant groups typically have higher levels of involvement in crime than does the first generation (Bucerius 2012; Berardi and Bucerius 2013). Qualitative and ethnographic methods are increasingly deployed (O'Neill 2013). In the aftermath of enactment of xenophobic federal and state legislation and law enforcement practices, a number of literatures on the new laws' implementation and effects has emerged (Fan 2013; Simes and Waters 2013; Winders 2013).

In the United States, Hispanics make up the largest immigrant group, and people of Mexican origins make up the largest Hispanic subgroup. Among the results has been the "racialization" of Hispanics within American political and popular culture (Massey 2013). Work on Hispanic immigration and crime has regularly confirmed the multigenerational model (Kubrin and Trager 2013; Martinez and Mehlman-Orozco 2013). Mexican and Central American immigrants fit the classic pattern of self-selected economic migrants who can be expected to work hard and defer gratifications. Many are illegal. Legal and illegal immigrants are affected by xenophobic state laws and unprecedentedly vigorous criminal justice system enforcement of immigration laws. Such an environment provides even more incentive than economic migrants have traditionally had to maintain a low profile and stay out of trouble. One consequence of high levels of legal and illegal Hispanic immigration is that their presence is credited with contributing significantly to the decline in American crime rates since 1991 (Sampson 2008).

There is as yet little comparative or cross-national literature on immigration and crime, although one is beginning to emerge (Tonry 1997*b*; Hochschild and Brown 2013). Despite daunting challenges posed by data limitations and diverse naturalization policies, scholars in many countries are doing important and diverse work. Ethnographers are documenting the effects of cultural forces, social policies, and immigration regimes on young immigrants (Bucerius 2013; O'Neill 2013; Sandberg 2013). Other researchers are using diverse methods and data sources to investigate how immigration laws and enforcement practices affect immigrants' lives in particular countries (e.g., Crocitti 2013). As in the English-speaking countries, diverse researchers are attempting to explain justice system disparities and discrimination affecting immigrant groups (Body-Gendrot 2013; Parmar 2013; Roché, Gordon, and Depuiset 2013; Yamamoto and Johnson 2013). Dutch researchers have long distinguished between and examined the different experience of lawful and unlawful immigrants (Engbersen, Leerkes, and Snel 2013).

IV. THE FUTURE

Race and crime and immigration and crime are likely to remain bedeviling political and policy issues for decades to come. It is highly unlikely that trends toward

increasing heterogeneity in national populations will reverse course. Xenophobic politics were, in the 20th century, most virulent during periods associated with rapid social changes and difficult economic challenges. Recent years have been such a period, and there is at the time of writing reasonable basis to expect it to continue for some years to come.

In the middle and long terms, the only way forward will be toward the successful integration of immigrants and members of racial and ethnic minorities into the main-streams of their chosen countries' social and economic lives. If past be prologue, this will happen naturally for most immigrant groups. Well designed and implemented social policies can make it happen faster and more easily (Martens 1997).

The problems facing long-standing indigenous minority groups, especially in former European colonies, are more daunting. The passage of time and natural forces of adaptation, assimilation, and acculturation have not resulted, despite centuries, in the successful integration of indigenous populations into the mainstream lives of former colonial nations, nor of African Americans into the American mainstream.

The situations of Afro-Caribbeans in England and Wales, of Moroccans and some other national-origin groups in the Netherlands, of North Africans in France and Belgium, and of Turks in Germany fall in between. It is possible that normal immigration and crime patterns will unfold, but more slowly than it has in the past for other groups. It is also possible that these groups will continue to remain in positions of structural disadvantage, like African Americans in the United States or indigenous peoples in many countries.

Groups characterized by high levels of criminality and victimization by crime are everywhere socially and economically disadvantaged. The decent way forward is for governments everywhere to adopt the Scandinavian crime prevention strategy and slogan: "The best crime policy is a good social policy" (Lappi-Seppälä 2007, p. 274).

NOTES

1. A sizable number of books during this period examined racial disparities in sentencing and in the justice system generally: Wilbanks 1987; Miller 1992; Mann 1993; Tonry 1995; Kennedy 1997; Cole 1999. Except for Wilbanks (1987), which concluded that there were relatively few disparities in sentencing, all emphasized racial disparities in rates of imprisonment and the effects of policies, such as the War on Drugs, that contributed to them.
2. In England and Wales, Hood 1992; in Australia, Broadhurst 1997; in Canada, Roberts and Doob 1997; in New Zealand, Jackson 1987.
3. E.g., in the United States, Blumstein, Martin, Cohen, and Tonry 1983; in England and Wales, Hood 1992; in the Netherlands, Junger-Tas 1997.
4. In Australia, Broadhurst 1997; in England and Wales, Hood 1992; in France, Tournier and Kensey 1997; in Germany, Albrecht 1997; in the Netherlands, Junger-Tas 1997; in Sweden, Albrecht 1996; Martens 1997; in Switzerland, Killias 1997; in the United States, Tonry 1995.

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PART I



RACE, ETHNICITY, AND
CRIME IN THE
UNITED STATES



CHAPTER 1

THE RACIALIZATION OF LATINOS IN THE UNITED STATES

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RACE has been a basic feature of American society since colonial times, when Africans were singled out for slavery and Amerindians were targeted for displacement and sequestration. Over the centuries, each new wave of immigrants has been met by efforts on the part of natives to classify them as nonwhite and thus suitable for exclusion and exploitation. Despite these efforts, the descendants of Eastern and Southern European immigrants were ultimately successful in securing acceptance as members of the “white” population (Ignatiev 1995; Brodtkin 1998; Roediger 2006). Whether the same thing will happen to the millions of Asian and Latin-American immigrants who arrived in the past four decades is far less clear.

Here, I consider the case of Latinos and argue that processes of racialization have increasingly marked them as nonwhite. I begin by considering the nature of race as a social construct and then move on to describe the historical racialization of Mexicans in the United States. After discussing the rise of undocumented migration after 1965 and the boundary reifying mechanisms that followed in its wake, I discuss contemporary processes of racialization and conclude by reviewing the consequences that this racialization has had for Latinos’ social and economic well-being. In the course of this essay I show that:

- The racialization of Latinos has roots that extend back to the mid-nineteenth century.
- The restriction of opportunities for legal entry from Latin America after 1965 led to a sustained increase in undocumented migration that was accompanied by the rise of a “Latino threat narrative” depicting Latin-American immigrants either as a “tidal wave” threatening to “drown” American society and “inundate” its culture or

an “alien invasion” of “attacks” and “banzai charges” along the border that would lead to the “occupation” of the United States.

- Such threatening portrayals of Latinos in the media, seemingly corroborated by rising border apprehensions, pushed native whites in a conservative direction to support increasingly stringent immigration and border policies.
- The implementation of stricter policies backfired by reducing the rate of out-migration while having little effect on the rate of in-migration, thus accelerating undocumented population growth to unprecedented levels.
- At present, 11 million undocumented migrants live in the United States and constitute nearly 60 percent of all immigrants from Mexico and two-thirds of those from Guatemala and Honduras. More than one-fifth of all Latinos lack legal papers and are exceedingly vulnerable to processes of exclusion and exploitation.
- As a result, in the Latino population, wages have fallen, poverty rates have risen, discrimination has spread, and segregation has increased to push Latinos downward in the socioeconomic hierarchy to a level commensurate with African Americans, the nation’s traditional underclass.

I. THE SOCIAL CONSTRUCTION OF RACE

Race is a social construction created by the attribution of meaning to inherited characteristics, usually for purposes of exploitation or exclusion. Exploitation occurs whenever people are compelled to work for less than the full value of their labor, and exclusion occurs when they are denied access to resources otherwise available in society. Racial formation occurs through psychological and social processes. Psychologically, it occurs when boundaries between people are defined on the basis of inherited traits. The boundaries are established in social cognition through learning, observation, and experience and then either blurred or brightened through a framing process in which actors endeavor to attach positive or negative attributes to incumbents of the resulting social categories (Kahneman and Tversky 2000). Socially, racial formation occurs through processes of boundary reification, in which people undertake actions and create social structures to inhibit interaction between people in different social categories (Lamont and Molnar 2002).

Racialization happens to a social group over time as framing- and boundary-reifying mechanisms work to promote exploitation and exclusion on the basis of inherited, usually observable characteristics. Persons of African origin have long been racialized in the United States (Higginbotham 1996; Fredrickson 2002). Prior to emancipation, slavery was imposed on the basis of skin color, servitude followed the condition of the mother, exploitation took the form of unpaid labor, and exclusion was guaranteed by the enforcement of rigid barriers to black social mobility. After Reconstruction ended in 1876, subordination came to be defined according to a “one-drop” rule of hypodescent,

exploitation took the form of rampant wage discrimination, and exclusion was achieved through systems of *de jure* and *de facto* segregation (Massey and Denton 1993).

The racialization of Latinos in the United States has a shorter history. The term “Latino” refers to people who originated in territories colonized in the western hemisphere by Europeans from the Iberian peninsula. Latinos did not exist within the United States in significant numbers until 1848, when the United States annexed the northern portion of Mexico; even then, the number of people incorporated into the country was small, and Latinos remained regionally isolated for decades (Jaffe, Cullen, and Boswell 1980). Most Mexicans living in the United States today are immigrants or descendants of immigrants who arrived after 1900, mainly during two periods of mass migration from 1907 to 1929 and from 1965 to 2008.

The arrival of other Latino groups is even more recent. Although the United States took control of Puerto Rico in 1898, significant migration to the mainland did not occur until World War II and was concentrated in the period from 1950 to 1970. Large-scale immigration from Cuba began only in 1959, with the triumph of the Castro Revolution. Dominican migration only began in 1965, in response to a U.S. invasion following the assassination of dictator Rafael Trujillo. Mass migration from Central America dates only from the early 1980s, when disruptions stemming from the Contra Wars pushed people abroad. Movement from South America dates mainly from the late 1980s and occurred as a result of structural adjustment policies imposed on Latin-American economies by mandarins at the World Bank and International Monetary Fund.

The Spanish Caribbean was populated mainly by immigration from Europe and the importation of slaves from Africa, and, today, large shares of people from Puerto Rico, Cuba, and the Dominican Republic display visible African features. Caribbean racial systems, however, never developed a one-drop rule or anything resembling the formal strictures of Jim Crow (Telles 2004). As a result, many Caribbean Latinos self-identify as white despite visible African ancestry. Once they migrate to the United States, however, they are racialized according to U.S. racial criteria, classified not as Latinos but as black Americans on the basis of traits such as skin color, facial features, and hair texture. As a result, Latinos with darker skin and those identified as black or of mixed race earn lower wages and experience higher segregation than do their light-skinned, white-identified counterparts, other things being equal (Denton and Massey 1989; Gómez 2000; Frank and Akresh 2010).

An omnibus term for people originating in Latin America did not even exist until the late 1960s and was the result of a political process in which ethnic activists sought to consolidate power, gain influence, and facilitate civil rights enforcement through the addition of a pan-ethnic identifier to government censuses and surveys (Bean and Tienda 1987). The Census Bureau was compelled to add an item on Hispanic origin to a 5 percent sample of the 1970 census, which asked each individual if their “origin or descent” was “Mexican, Puerto Rican, Cuban, Central or South American, or Other Spanish.” In 1977, the Office of Management and Budget (OMB) issued its “Race and Ethnic Standards for Federal Statistics and Administrative Reporting” that required inclusion of an item on Hispanic origin in all federally collected data, and, since then,

the terms “Hispanic” and “Latino” have increasingly been used to identify persons originating in Latin America as a distinct category in American social cognition (Rodriguez 2000; Tienda and Mitchell 2006).

Over time, the recommended wording of the OMB question has evolved, however, and, as of 2010, the standard item asks of each person whether he or she is “of Hispanic, Latino, or Spanish Origin” and then offers the following response categories: “No, not of Hispanic, Latino, or Spanish Origin,” “Yes, Mexican, Mexican American, Chicano,” “Yes, Puerto Rican,” “Yes, Cuban,” and “Yes, another Hispanic, Latino, or Spanish Origin.” Respondents selecting the last option are then instructed to “Print origin, for example Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.”

II. THE HISTORICAL RACIALIZATION OF MEXICANS

Although Latinos may not have emerged as a recognizable social group in the United States until the 1970s, their racialization began much earlier, with the annexation of the northern Mexican territories in 1848. The process accelerated during the era of mass migration in the 1920s, climaxed in the deportation campaigns of the 1930s, and surged again during the 1940s and 1950s, before subsiding during the civil rights era of the 1960s and 1970s. It then rose again to new heights during the 1980s and 1990s.

The principal object of racial formation and the main target of racialization over time have been persons of Mexican origin, who constitute 63 percent of the entire Latino population. The ability of the average non-Hispanic white person to distinguish between Mexicans and other Central and South Americans is likely limited, at best. As a result, whereas Caribbean Hispanics are racialized as blacks because of their African origins, non-Caribbean Hispanics are racialized as Mexicans, given the latter’s dominance of the Latino population.

Mexicans first came into the United States in 1848, when the Treaty of Guadalupe Hidalgo ended the Mexican-American War and ceded the present states of Texas, Arizona, New Mexico, and California to the United States, along with parts of Utah, Colorado, and Nevada. With its signing, an estimated 50,000 Mexicans suddenly became U.S. citizens (Jaffe, Cullen, and Boswell 1980). The Gadsden Purchase of 1853 added 250,000 square miles of what is now southern Arizona and New Mexico, along with some unknown number of Mexicans to the population. The bulk of these new citizens lived in New Mexico and Texas, and the latter, being a slave state, quickly relegated Mexicans to a racialized status—not enslaved like African Americans, but certainly not accorded the rights and privileges of white Europeans (Gutierrez 1995).

Through a variety of mechanisms—some legal and some not—during the latter half of the 1800s, Mexicans in Texas were systematically stripped of their property and liberties and turned into landless laborers for white land and business owners (Zamora 1993;

De Leon 1999). Although Mexicans were disenfranchised and subordinated outside of Texas, the degree of subjugation elsewhere was not as severe initially, although it grew progressively worse over time as Mexican populations grew (Gutierrez 1995). By the end of the nineteenth century, Mexicans had been transformed socially and economically into a subordinate class subject to widespread discrimination and systematic exclusion by non-Hispanic whites (Grebler, Moore, and Guzman 1970).

The degree to which Mexicans had been transformed into a racialized source of cheap labor for whites is indicated by the U.S. Senate's Dillingham Commission report of 1911, which described Mexicans as "notoriously indolent and unprogressive in all matters of education and culture," doing dirty jobs fit only for "the lowest grade of non-assimilable native-born races," although their "usefulness is, however, much impaired by [their] lack of ambition and [their] proneness to the constant use of intoxicating liquor" (U.S. Commission on Immigration 1911, pp. 59, 94, 110).

The 50,000 Mexicans absorbed into the United States in 1848 expanded mainly through natural increase until the twentieth century. Although fertility rates were high, so were levels of mortality, and the rate of population growth was modest. In 1900, the Mexican-origin population of the United States numbered only around 150,000, and, in that year, just 237 Mexicans arrived as immigrants (Massey, Durand, and Malone 2002). Although racism against Mexicans was real and ongoing, their small numbers and geographic isolation meant that categorical mechanisms of inequality established to ensure their subordinate status had little effect on the nation as a whole.

This status quo was upset in 1907. In that year, the United States and Japan concluded a "gentlemen's agreement" under which the Japanese government agreed to prevent the departure of its citizens for the United States, in return for which the United States agreed not to inflict on Japan the indignity of prohibiting their entry (Zolberg 2006). This action caused a serious disruption of western U.S. labor markets because Japanese immigrants had been the backbone of the region's unskilled workforce. In response, western employers looked southward and began to recruit Mexicans, first to work on the railroads, then in mines and farm fields, and finally in factories (Cardoso 1980; Durand and Arias 2000). As the Dillingham Commission put it, "Mexican immigration may increase for some time as this race offers a source of labor to substitute for the Asiatics in the most undesirable seasonal occupations." Indeed, the Commission continued, "in the two southern California districts where the force of field workers is predominantly Mexican, the Mexican is preferred to the Japanese. He is alleged to be more tractable and to be a better workman in one case. In the other he is said to be a quicker and better workman than the Japanese" (U.S. Commission on Immigration 1911, pp. 50, 110).

Few Mexicans entered the United States before the gentlemen's agreement with Japan, but thereafter the flow of legal immigrants accelerated rapidly from near-zero in 1907 to 16,000 in 1909. With the outbreak of World War I in 1914, U.S. employers were cut off from supplies of immigrant labor in Europe as well as in Asia. As demand for American products grew because of the war, employers increased their recruitment of workers from south of the border (Cardoso 1980). When the United States entered the war in 1917, labor demand spiked and worker shortages became chronic as white factory

workers were mobilized for military duty. In response, the U.S. government established an official labor recruitment program to assist growers in the southwest (Reisler 1976; Morales 1982), and factory owners throughout the Midwest redoubled their private recruitment efforts (Durand and Arias 2000).

The number of contract workers entering the United States grew to 17,000 in 1920, and legal immigration reached an unprecedented 51,000 persons. American insecurities about all things foreign came to a head during the recession that followed the war, and the Red Scare of 1918–1921 was accompanied by a wave of anti-immigrant hysteria. Congress passed the first quota law in 1921, to curtail immigration from southern and eastern Europe, and enacted an even stricter version in 1924. During this period, both legal immigration and contract migration by Mexicans fell, reaching lows in 1922 of 18,000 and 12,000, respectively.

Economic recovery, however, led to the sustained economic boom of the Roaring Twenties and, given the new restrictions on European immigration and steadily tightening labor markets, recruitment of Mexicans soon resumed. Legal immigration surged again to peak at 88,000 in 1924, and the entry of contract laborers climbed to 18,000. Until this time, the Mexico–U.S. border was little more than a line on a map and was mostly unmarked (Massey, Durand, Malone 2002). In response to growing immigration from Mexico, however, in 1924 Congress created the U.S. Border Patrol and, for the first time, the border with Mexico became a tangible reality.

The creation of the Border Patrol brought into existence a new category of Mexican in the United States, the illegal migrant. During its first year of operation, the U.S. Border Patrol apprehended approximately 4,600 Mexicans attempting to enter the country without authorization (Massey, Durand, and Malone 2002). Legal entries rebounded in the middle part of the decade, however, to reach 68,000 documented immigrants and 17,000 contract workers in 1927. As these two streams declined in the late 1920s, illegal immigration correspondingly rose, with apprehensions reaching 18,000 in 1930.

From the gentlemen's agreement in 1907 until 1930, the number of Mexican-born persons in the United States more than quadrupled, from 178,000 to 739,000 in a little more than two decades, making Mexicans a visible minority in cities throughout the Southwest, Midwest, and Pacific regions (Durand and Arias 2000). With the crash of the American stock market in 1929, the surge in Mexican immigration ended as quickly as it began. In keeping with precepts laid out by the Dillingham Commission, Mexicans were considered expendable as workers and inassimilable as citizens. In an era of rising austerity, whites framed them as taking jobs that rightfully belonged to "real" Americans and burdening taxpayers with relief payments that rewarded their natural "indolence" (Hoffman 1974). Deportations were fueled by the widespread stereotyping of Mexicans as drug users, culminating in the 1937 federal criminalization of marijuana possession (Kaplan 1970; Grinspoon 1971; Bonnie and Whitebread 1974).

In keeping with these perceptions, federal authorities joined with state and local officials to organize a series of mass deportations that, over the course of a few years, cut the Mexican population of the United States in half (Jaffe, Cullen, and Boswell 1980). During the period of 1929–1937, some 458,000 Mexicans were arrested and expelled

from the United States without due process, including many native-born U.S. citizen children. By 1940, only 377,000 Mexican immigrants were left in the country (Jaffe, Cullen, and Boswell 1980). Those who remained were pushed to the margins of society, isolated in dilapidated barrios where they attended segregated schools and received inferior services (Grebler, Moore, and Guzman 1970). In these enclaves, Mexicans were transformed from aspiring immigrants into a self-conscious domestic minority, increasingly calling themselves not Mexicans but Chicanos (Sanchez 1995; Gutierrez 1995). The degree to which Mexicans were racialized during this period is indicated by the fact that, in 1930, the U.S. Census Bureau, for the first and only time in its history, enumerated Mexicans as a separate race, alongside blacks (Bean and Tienda 1987).

With the entry of the United States into World War II, however, American industry once again mobilized, and full employment resumed. In combination with military conscription, the war soon created labor shortages, especially in the American Southwest. Federal authorities quickly forgot about the deportations and quietly turned southward to negotiate a binational treaty for the “temporary” importation of Mexican workers, who became known as *braceros*. The resulting “Bracero Program” was operated by the U.S. Departments of State, Labor, and Justice in cooperation with the Mexican government, and, in September 1942, the first *braceros* arrived for agricultural work in Stockton, California (Calavita 1992).

The Bracero Program was instrumental in restarting a migratory flow that had been dormant for more than a decade. In the years leading up to 1942, Mexican immigration to the United States was virtually nil; although labor flows were revived by the Bracero Program, the number of contract workers remained rather small throughout the war. From 1942 through 1945, a total of only 168,000 *braceros* were recruited into the United States. Within urban areas, the children of earlier Mexican immigrants took advantage of the return to full employment and moved upward economically, working at unionized jobs in war industries and translating their newfound affluence into a flashy style known as *pachuco*, whose emblem was a baggy ensemble known as the “zoot suit” (Mazon 1984).

As with the Japanese earlier in the century, white Californians resented racial inferiors rising above their assigned station, and, in the charged atmosphere of wartime Los Angeles, anti-Mexican rioting broke out. On June 3, 1943, a group of servicemen on leave complained that they had been assaulted by a gang of *pachucos* wearing zoot suits (Obregon Pagan 2006). In response, an angry mob of white soldiers and civilians headed into the Mexican barrio of East Los Angeles, where they attacked all males wearing zoot suits and beat them severely while ripping off the offensive garments and burning them on the spot.

Rather than protecting the U.S. citizens of Mexican origin, the Los Angeles police swept into the barrio and arrested hundreds of already beat-up *pachucos* for “disturbing the peace”; several died in jail for want of medical treatment. Although nine white sailors were arrested over the next few days, eight were released without charge and one was let go after paying a small fine. The attacks on Mexicans only ceased when military authorities declared Los Angeles to be off-limits to service personnel. For Mexican

Americans, however, a strong message had been sent: even in progressive California, people of Mexican origin were not going to be accepted as equals, no matter where they were born, how much they earned, or how stylishly they dressed (Mazon 1984).

Although originally envisioned as a “temporary” wartime measure, the booming postwar economy perpetuated growers’ fears of a labor shortage, and, under pressure from the Texas and California congressional delegations, Congress extended the Bracero Program on a year-to-year basis through the late 1940s. Despite the extensions, the number of *bracero* visas remained insufficient to meet rising demand, and employers increasingly took matters into their own hands by recruiting illegal migrants, especially after 1950, when reinstatement of the draft during the Korean War markedly tightened U.S. labor markets. As Mexicans crossed the border in larger numbers on their way to farms and fields where they knew they would be hired, the annual number of apprehensions went from around 7,000 in 1942 to 544,000 in 1952.

With the end of the Korean War, a brief economic recession combined with another surge of antiforeign hysteria during the McCarthy era to make illegal migration a hot political issue. In 1953–1954, the U.S. Immigration and Naturalization Service (INS) responded to the rising clamor by launching “Operation Wetback” (Calavita 1992). In cooperation with state and local authorities, the INS militarized the Mexico–U.S. border and organized a mass arrest of Mexicans—or, more accurately, Mexican-looking people. During 1954, the number of Mexicans apprehended by the INS swelled to over 1 million for the first time in U.S. history.

A key difference compared with the deportation campaign of the 1930s was that, this time, Congress simultaneously acted to expand the number of temporary work visas, roughly doubling the annual number of *braceros* admitted per year. From 1955 through 1959, between 400,000 and 450,000 *braceros* were imported into the United States each year. Legal immigration also surged, from 9,600 in 1952 to 65,000 in 1956, before leveling off at around 50,000 per year (Massey, Durand, and Malone 2002). It was this increase in access to legal avenues for entry, more than stepped-up border enforcement, that reduced illegal migration to a trickle during the late 1950s. From a figure of 1.1 million in 1954, the number of apprehensions fell to just 30,000 in 1959, where it remained well into the 1960s.

III. THE NEW ERA OF RACIALIZATION

In the wake of Operation Wetback and the expansion of the Bracero Program, illegal immigration disappeared as a political issue. As the civil rights movement picked up steam, however, immigration became controversial in a different way. In addition to overturning Jim Crow and banning discrimination from U.S. markets, civil rights activists sought to purge the nation’s immigration system of its racist legacy. As a result, during the 1960s, both the Bracero Program and the national origins quotas came under attack.

The Bracero Program was viewed by civil rights advocates as a corrupt, coercive, and exploitive labor system, roughly on a par with black sharecropping in the South. Under intense pressure from religious groups, unions, and civil rights organizations, Congress downsized the Bracero Program in the early 1960s—reducing the annual number of work visas from 438,000 in 1959 to 178,000 in 1964—before voting in 1965 to end the program altogether. In the same year, Congress passed amendments to the Immigration and Nationality Act that finally abolished discriminatory national origins quotas and lifted the ban on immigration from Asia and Africa.

Instead of racist quotas, the new legislation set a neutral cap of 20,000 immigrant visas per year for each country outside the western hemisphere. These visas were allocated to people using a “preference system” that took into account national employment and humanitarian needs (Zolberg 2006). Although viewed as a landmark achievement by the civil rights movement, the 1965 Immigration Act also launched a new trend of restrictive immigration policies toward Mexico by imposing the first-ever numerical limits on immigration from the western hemisphere. Subsequent amendments successively put nations in the western hemisphere under the 20,000 per-country visa limit, abolished separate hemispheric quotas, and finally established a single worldwide ceiling of just 270,000 visas. Whereas in the late 1950s Mexicans had access to 450,000 temporary worker visas and a theoretically unlimited number of permanent resident visas, by the late 1970s, resident visas were capped at 20,000 and the guest worker program was gone.

These changes dramatically reduced the possibilities for legal entry and virtually guaranteed a rise in undocumented migration. Whereas close to 500,000 Mexicans entered the United States each year as *braceros* or legal immigrants during the late 1950s, the total inflow of Mexicans through legal channels fell to just 62,000 per year from 1965 to 1985. The gap between the demand for visas on the part of employers and workers and the paltry number offered by the government was increasingly made up through undocumented migration, and annual apprehensions along the border climbed steadily from 55,000 in 1965 to 1.6 million in 1985.

In essence, the shift in U.S. immigration policy after 1965 transformed Mexican migration from a *de jure* guest worker program based on the circulation of legal *braceros* into a *de facto* guest worker program based on the circulation of undocumented migrants (Durand and Massey 2003). Until 1985, the flow remained overwhelmingly circular, composed primarily of young men moving back and forth for seasonal work in agriculture, construction, manufacturing, and services (Massey, Durand, Malone 2002). Under the unofficial temporary worker program that prevailed between 1965 and 1985, Mexicans remained disposable as workers and unwanted as citizens, as in the Bracero Program; but now labor flows were regulated informally as a product of border enforcement rather than under the terms of a formal binational agreement.

The rise of undocumented migration after 1965 was accompanied by a new racialization of Mexicans as undocumented migrants, increasingly framed as a threat to the nation's security, workers, culture, and way of life. Chavez (2001) studied U.S. magazine covers devoted to immigration between 1965 and 2000 and classified them as

affirmative, alarmist, or neutral in their portrayal of immigrants. Covers coded as “affirmative” used text and images to celebrate immigration; “alarmist” covers used text and images to convey problems, fears, or dangers associated with immigration; and “neutral” covers were accompanied by articles that offered balanced and factual coverage of immigration issues.

This coding revealed that alarmist themes overwhelmingly predominated in coverage of immigration after 1965, characterizing two-thirds of all covers devoted to the topic from 1965 through 1999, compared with just 9 percent classified as neutral and 19 percent as affirmative. The frequency of alarmist covers also increased markedly over time. Whereas 18 percent of the alarmist covers appeared in the 1970s, 38 percent were published in the 1980s, and 45 percent appeared in the 1990s. Upsurges in alarmist text and imagery tended to coincide with recessionary periods in the United States (Chavez 2001, pp. 21–24).

The texts that accompanied the images generally reinforced the sense of alarm and urgency communicated by the pictures (Chavez 2001). In time-honored fashion, editors made heavy use of marine metaphors, depicting immigration as a “tidal wave” that was “flooding” the United States and threatening to “inundate” its culture. During the 1970s and 1980s, however, a new metaphor appeared with growing frequency as immigrants and immigration were framed increasingly in martial terms. The Mexico–U.S. border was portrayed as a “battleground” that was “under attack” from “alien invaders” who constituted a “time bomb” waiting to explode and destroy American culture and values. In this militarized portrayal, Border Patrol Officers became “defenders” who were “outgunned” as they tried to “hold the line” against attacking “hordes” (Dunn 1996; Andreas 2000).

Whether the metaphorical language was martial or marine, it always portrayed immigration from Mexico as a “crisis.” To capture the rising use of these metaphors, Massey and Pren (2012) turned to the Proquest Historical Newspaper files to search for instances in which the words “undocumented,” “illegal,” or “unauthorized” were paired with “Mexico” or “Mexican” and the words “crisis,” “flood,” or “invasion.” They focused their search on the nation’s leading papers—*New York Times*, *Washington Post*, *Wall Street Journal*, and *Los Angeles Times*—and found that the use of negative metaphors to describe Mexican immigration was virtually nonexistent in 1965, at least in major newspapers, but thereafter rose steadily, slowly at first and then rapidly during the 1970s to reach a peak in the late 1970s. Thereafter, the frequency oscillated in response to shifts in the economic cycle, peaking during periods of recession and subsiding during periods of expansion; but each peak was associated with the passage of another piece of anti-immigrant legislation or the launching of another restrictive enforcement operation.

The framing of immigration as a “crisis” and the increasing use of martial imagery was actively promulgated by immigration officials. In 1976, for example, the commissioner of the INS published an article in *Reader’s Digest* entitled “Illegal Aliens: Time to Call a Halt!” in which he warned Americans that “when I became commissioner of the [INS] in 1973, we were out-manned, under-budgeted, and confronted by a growing,

silent invasion of illegal aliens. Despite our best efforts, the problem—critical then—now threatens to become a national disaster” (Chapman 1976, p. 188). Similarly, in 1992, the chief of the San Diego sector of the Border Patrol, Gustavo de la Viña, filmed and released a video entitled “Border Under Siege,” which in one dramatic scene showed migrants scrambling over cars and dodging traffic on Interstate 5 to enter the United States without inspection in and around the San Ysidro Port of Entry, then the nation’s busiest (Rotella 1998).

Politicians quickly discovered the political advantage to be had by demonizing Latino immigrants. President Ronald Reagan asserted that illegal immigration was a question of “national security,” and, in a 1986 speech, he told Americans that “terrorists and subversives are just two days driving time from [the border crossing at] Harlingen, Texas” (quoted in Kamen 1990). In his 1992 reelection campaign, California Governor Pete Wilson called on Washington to “stop the invasion” and borrowed footage from “Border Under Siege” for a series of attack ads. As images of migrants dashing through traffic rolled, a narrator intoned, “they keep coming. Two million illegal immigrants in California. The federal government won’t stop them at the border yet requires us to pay billions to take care of them” (Massey, Durand, and Malone 2002).

In later years, pundits joined the anti-immigrant chorus to attract voters and sell books, with Lou Dobbs (2006) framing the “invasion of illegal aliens” as part of a broader “war on the middle class.” Patrick Buchanan (2006) charged it was part of an “Aztlán Plot” hatched by Mexicans to recapture lands lost in 1848, stating that “if we do not get control of our borders and stop this greatest invasion in history, I see the dissolution of the U.S. and the loss of the American southwest” (Chu 2006, p. 6). From his lofty Harvard perch, Samuel Huntington (2004) warned Americans that “the persistent inflow of Hispanic immigrants threatens to divide the United States into two peoples, two cultures, and two languages... The United States ignores this challenge at its peril.”

The shift in the legal auspices of Mexican migration transformed what had been a largely invisible circulation of innocuous guest workers into a yearly and highly visible violation of American sovereignty by people framed as alien invaders and threatening criminals. The relentless propagandizing had a powerful effect on public opinion, turning it decidedly conservative, not only on issues related to immigration, but with respect to political ideology more generally. Massey and Pren (2012) demonstrated this fact by pooling data from the General Social Survey from 1972 to 2010 to examine how the annual number of border apprehensions affected the likelihood that Americans self-identified as conservative. Their estimates showed that the annual number of border apprehensions very strongly predicted the likelihood that a respondent self-identified as a conservative, controlling for a variety of individual demographic, social, and economic characteristics, as well as for the nation’s overall economic climate.

The end result was a self-feeding cycle whereby rising apprehensions promoted greater conservatism, which led to more restrictive policies, which led to more apprehensions. According to the data marshaled by Massey and Pren (2012), the correlation between the annual number of apprehensions and the percentage of adult Americans self-identifying as conservative was 0.937 between 1965 and 1995. The correlation

between the percent of conservatives and the cumulative number of restrictive immigration laws passed from 1965 to the present was 0.683, but the relationship was exponential and, taking the natural log of the cumulative total of restrictive laws, increased the correlation to 0.969. At the same time, the correlation between percentage of conservatives and the log of total restrictive enforcement operations was 0.866. Together, cumulative restrictive legislation and cumulative restrictive enforcement operations explained 93 percent of the variance in the number of Border Patrol agents and 86 percent of the variance in the size of the Border Patrol's annual budget.

The increase in enforcement did not come in response to any increase in the underlying volume of undocumented migration, however, but instead arose because of the steady increase in apprehensions themselves, which were used by ambitious politicians and entrepreneurial bureaucrats to "prove" that the nation was being "invaded" by "threatening" aliens. In other words, rising border enforcement was not connected to objective conditions on the ground, but increasingly stemmed from a self-perpetuating enforcement cycle that fed on itself over time. The end result was a massive increase in punitive force directed at Latinos in the United States. From 1986 to 2009, the Border Patrol grew from 3,700 to 20,100 officers, its budget rose from \$151 million to \$3.5 billion, the total enforcement budget rose from \$474 million to \$5.9 billion, and deportations climbed from 25,000 to 393,000 per year (Massey and Sánchez 2010).

The militarization of the border and the escalation of internal enforcement broke the traditional pattern of circular migration that had historically prevailed (Massey, Durand, and Malone 2002). Whereas the probability that a Mexican would initiate undocumented migration remained relatively constant through the 1990s, the likelihood of returning to Mexico once entry had been achieved plummeted. Rather than deciding not to leave for the United States in the first place, undocumented migrants responded to the upsurge in enforcement by choosing to stay longer once they had run the gauntlet at the border and made it successfully into the country (Durand and Massey 2003).

The falling rate of out-migration and the steady rate of in-migration combined to raise the net volume of undocumented migration and caused an unprecedented acceleration in the number of Mexicans living north of the border. In essence, restrictive U.S. immigration and border policies backfired. Instead of reducing the net annual inflow of Mexican migrants, they doubled the volume. Within a few years, U.S. immigration and border policies had transformed Mexican immigration from a circular flow of male workers into a settled population of families. As of 2010, the number of undocumented Mexicans stood at 6.6 million, constituting 58 percent of all Mexican immigrants and 21 percent of all persons of Mexican origin in the United States. To a lesser extent, the same transformation occurred to Central Americans, as the number of unauthorized Salvadorans, Guatemalans, and Hondurans rose to 620,000, 520,000, and 180,000 persons, respectively by 2010, constituting 51 percent, 71 percent, and 77 percent of immigrants from those nations. Considering all persons of Salvadoran, Guatemalan, and Honduran origin, the percentage undocumented remains high, comprising 38 percent, 50 percent, 51 percent of all persons in those origin groups.

The rise in undocumented migration, combined with ongoing legal immigration from Latin America, dramatically transformed the size and composition of the Latino population. Between 1970 and 2010, the number of Latinos grew from 9.6 million to 50.5 million, and their share of the U.S. population rose from 4.7 to 16.3 percent. Latinos now dwarf blacks as the nation's largest minority, and Mexicans alone are on a pace to overtake them in numbers within a few years. Nearly 80 percent of all Latinos are from Mexico, Central America, or South America, whereas the share tracing their origins to the Caribbean has declined to just 15 percent. Meanwhile, the percentage of Latinos born abroad rose from 29 percent in 1970 to 39 percent in 2010, and the relative number present without authorization has grown from around 5 percent to almost 20 percent. Among immigrant Latinos, around 44 percent are now undocumented.

Very clearly, then, the lack of documentation is no longer confined to a small share of the Hispanic population, and the remarkable rise in illegality among Latinos has implications that extend far beyond the undocumented themselves. In addition to the 1.5 million undocumented children living in families containing an unauthorized parent, there are 4 million U.S.-born citizen children whose progress in society is held back by the very real fears and trepidations of their undocumented parents and siblings. These numbers do not take into account the millions of other older children of undocumented migrants and more distant relatives. Accordingly, in 2010, the Pew Hispanic Center found that 68 percent of Latino immigrants worried that they or someone they know would be deported; the figure was also quite high at 32 percent among the native born, who were presumably not at risk of deportation themselves but worried about friends or relatives being deported. Indeed, one-third of all Latinos said they knew someone who had been deported in the past year, and half believe that Americans are less accepting of immigrants than they were 5 years ago (Lopez, Morin, and Taylor 2010).

Although undocumented migration and the practices associated with it have historically been considered civil rather than criminal infractions, the situation has changed in recent years as Congress has progressively criminalized features of undocumented status. The legal foundations for this criminalization were laid by the 1996 Antiterrorism and Effective Death Penalty Act, which gave the federal government new powers for the "expedited exclusion" of any alien who had *ever* crossed the border without documents (irrespective of current legal status) or who had *ever* been convicted of a crime (no matter how long ago and irrespective of whether the debt to society had been paid). These provisions, coming on the heels of a decade of draconian drug laws and three-strikes legislation, instantly rendered thousands of legal resident aliens deportable, many of whom had entered as infants and spent their entire lives in the United States.

The law also delegated to the executive branch absolute authority to designate any organization as "terrorist," thereby making all members of groups so-designated immediately excludable and deportable. It also narrowed the grounds for asylum and added alien smuggling to the list of crimes covered by the Racketeer Influenced Corrupt Organizations (RICO) statute, while severely limiting the possibilities for judicial review of deportations. According to Legomsky (2000, p. 1616), the 1996 legislation constitutes "the most ferocious assault on the judicial review of immigration decisions" ever

launched, “by creating new removal courts that allow secret procedures to be used to remove suspected alien terrorists; by shifting the authority to make ‘expedited removals’ to immigration inspectors at ports of entry; and by setting unprecedented limits on judicial review of immigration decisions.”

The events of September 11, 2001 thus occurred against a background of rising animus toward immigrants and a growing assault on their civil liberties and social rights. In response to the terrorist attacks, on October 26, 2001, Congress passed the USA PATRIOT Act, which granted the executive branch further powers to deport, without a hearing or presentation of evidence, all aliens—legal or illegal—that the Attorney General had “reason to believe” might commit, further, or facilitate acts of terrorism. For the first time since the Alien and Sedition Act of 1798, Congress voted to permit the arrest, imprisonment, and deportation of noncitizens upon the orders of the Attorney General without judicial review.

Over the course of U.S. history, attacks on immigrants have waxed and waned. What distinguishes the current wave of anti-immigrant hysteria from its predecessors is not its demonizing of foreigners or its harsh treatment of noncitizens per se, but its use of the fear-of-foreigners to launch a broader assault on the civil liberties, not just of immigrants, but of all Latinos because the PATRIOT act also permits unprecedented surveillance and incarceration of U.S. citizens, again at the discretion of the executive branch and without review. As Zolberg (2006, p. 450) notes, “while the challenges posed by international migration are real and warrant a worldwide reconsideration of prevailing regimes, the resurgence of nativist responses constitutes a more immediate threat to liberal democracy than immigration itself.”

All of the boundary reification done by academics, pundits, and politicians to frame Latin American immigrants as a threat and categorize them socially as undesirable has affected public opinion, turning it steadily against Latinos. According to polls conducted by the Pew Charitable Trusts, as late as 2000, only 38 percent of Americans agreed that “immigrants today are a burden on our country because they take our jobs, housing, and health care.” Five years later, the percentage had risen to 44 percent, and, as the drumbeat of anti-immigrant rhetoric reached a crescendo in 2006, it became a majority viewpoint at 52 percent. In keeping with this shift, the percentage of Americans who rated immigration as a moderately big or very big national problem rose from 69 percent in 2002 to 74 percent in 2006 (Kohut and Suro 2006).

As of 2006, almost half of all Americans (48 percent) opined that “newcomers from other countries threaten traditional American values and customs,” and 54 percent said that the United States needed to be “protected against foreign influence.” Not surprisingly, given these views, 49 percent said they believed that “immigrants kept to themselves and do not try to fit in,” 56 percent said they “don’t pay their fair share of taxes,” and 58 percent believed that immigrants “do not learn English in a reasonable amount of time” (Kohut and Suro 2006).

Recent studies by Lee and Fiske (2006) applied the stereotype content model to various immigrant groups. Based on respondent and subject ratings, they plotted the position of different groups in a two-dimensional space defined by the intersection of

ratings of warmth and competence. As expected, the social space generally occupied by esteemed in-group members (high warmth, high competence) included groups such as Canadians, Europeans, documented immigrants, and third-generation immigrants. Likewise, the space generally occupied by envied out-groups (high competence, low warmth) was occupied by classic middlemen minorities such as Koreans, Chinese, Japanese, and Asians generally. However, the space of low warmth and low competence, typically occupied by despised out-groups such as drug dealers, criminals, prostitutes, and the homeless was inhabited by South Americans, Latinos, Mexicans, farm workers, and Africans—and the most despised group of all, undocumented migrants. In terms of American social cognition, this is dangerous territory, since it implies that Latinos in general and undocumented migrants in particular are not perceived as fully human at the most fundamental level of cognition, thus opening a door to the harshest, most exploitive, and cruelest treatment that human beings are capable of inflicting on one another (Harris and Fiske 2006).

IV. LATINOS AT THE CROSSROADS

Over the past several decades, the immigration enforcement system has become a major race-making institution in the United States and has assumed a new centrality in the exploitation and exclusion of Latinos. The implementation of employer sanctions under the 1986 Immigration Reform and Control Act increased discrimination against Hispanics in U.S. labor markets, lowering their wages, depressing the returns to human capital, and closing off long-established pathways of upward mobility (Massey and Gelatt 2010; Massey and Gentsch 2011). It also abetted a massive shift to subcontracting in unskilled labor markets (Massey, Durand, and Malone 2002). The steady militarization of the Mexico–U.S. border, meanwhile, increased the rate of undocumented population growth to increase the number of people in exploitable, powerless categories (Massey and Bartley 2005). Finally, as private discrimination increased and larger shares of the population were being exploited economically, Congress increased the social penalties for being poor, Hispanic, foreign, and undocumented, in 1996 even cutting off legal immigrants from public services for which they had heretofore qualified (Massey and Sánchez 2010).

Despite rising pressure from the government and growing hostility among the public, those undocumented migrants who are already here show no inclination to return home. Indeed, although the volume of undocumented migration has now slowed to a trickle, the volume of return migration has fallen even further and faster (Massey, Durand, and Pren 2009; Massey 2011). Latino immigrants thus find themselves in the difficult situation of being cut off from their homelands by a militarized border while being increasingly marginalized in the United States by rising hostility, official exclusion, and heightened repression from all levels of government. In the absence of a shift in U.S. policies, the only possible outcome for the United States is the creation of a large

underclass that is permanently divorced from American society and disenfranchised from its resources, with little hope of upward mobility.

Evidence suggests the process of underclass creation is already under way. On virtually every measure of socioeconomic well-being, Latinos in general and Mexicans in particular have fallen from their historical position in the middle of the American socioeconomic distribution—somewhere between blacks and whites—to a new position at or near the very bottom (Massey 2007). Whereas Latino males in 1970 earned 10 percent more than black males, and Latino females earned 4 percent more than black females, by 2010, Latino males earned 3 percent less and Latino females 4 percent less than their black counterparts (U.S. Bureau of the Census 2011). The decline in earnings was especially pronounced for Mexican immigrants, whose real wages fell by 23 percent between 1970 and 2007 as their returns to human capital plummeted (Massey and Gelatt 2010; Massey and Gentsch 2011).

Latinos experienced a huge wealth shock in the Great Recession of 2008. After rising from a value of \$4,656 in 1993 to \$18,359 in 2005, median wealth for Latinos dropped sharply to \$6,325 in 2009—a decline of 63 percent, compared with declines of 53 percent for blacks and 16 percent for whites (Taylor, Fry, and Kochhar 2011). The shifting fortunes of blacks and Latinos are also reflected in American poverty statistics. Historically, rates of Latino poverty were below those of blacks, but, over the course of the 1980s and 1990s, the differential disappeared and the two groups ended the twentieth century at rough parity in terms of material deprivation. As of 2010, the overall poverty rate stood at about 27 percent for both groups, but child poverty rates were highest among Latinos (Lopez and Velasco 2011).

Discrimination against Latinos also appears to be up in housing markets. In 2010, 61 percent of Latinos agreed that discrimination against them was a “major problem,” up from 47 percent in 2002 (Lopez, Morin, and Taylor 2010). Housing audits done by the federal government showed that whereas, in 1989, Hispanics were 19 percent less likely than blacks to experience adverse treatment in rental markets, in 2000, they were 8 percent more likely to suffer discrimination. Likewise, in home sales markets, blacks were twice as likely as Hispanics to experience discrimination in 1989, whereas, in 2000, Hispanics were 18 percent more likely than blacks to experience discrimination (Turner et al. 2002). In their audit of rental housing markets in the San Francisco metropolitan area, Purnell, Isardi, and Baugh (1999) documented extensive “linguistic profiling” that excluded speakers of Chicano English from access to housing.

As discrimination against Latinos in housing markets increased, so did levels of Hispanic residential segregation. Whereas the overall level of black segregation fell by 10 points over the past decade and black neighborhood isolation dropped by 12 points, Latino segregation rose by 6 points, on average, and isolation increased by 10 points (Charles 2003). Moreover, whereas Latinos did not satisfy the criteria for hypersegregation in any metropolitan areas during 1980 or 1990, by 2000, both New York and Los Angeles had earned the dubious distinction of becoming hypersegregated for Latino residents (Wilkes and Iceland 2004).

The rising tide of illegality in the Latino population is critical to understanding the nature of discrimination and exclusion in contemporary American society; whereas Latinos may be a protected category under civil rights legislation, undocumented migrants are not. Indeed, U.S. immigration law encourages and often compels employers, landlords, and service providers to discriminate against the undocumented, even as civil rights law requires them to remain neutral with respect to Hispanics. In recent years, the federal government has also stripped away legal protections from all noncitizens, not just the unauthorized but legal permanent residents as well.

The rising numbers of exploitable workers lacking both civil liberties and economic rights, when combined with rising enforcement and steadily more onerous sanctions against the undocumented and rising demonization against Latinos in public, have deepened their racialization and transformed them into the most vulnerable and disadvantaged minority group in the United States, even as their share of the U.S. population continues to rise. Unless the burden of illegality is lifted, Latinos are at grave risk of becoming America's newest underclass.

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CHAPTER 2

RACE AND CRIME IN AMERICAN POLITICS

From Law and Order to Willie Horton and Beyond

AMY E. LERMAN AND
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DURING the 2008 presidential contest, the Freedom Defense Fund aired a political advertisement against Barack Obama that highlighted his connection to former Detroit Mayor Kwame Kilpatrick. Viewers would first see several frames of Obama pictured next to Kilpatrick and hear a recording of him strongly commending the ex-mayor. Next, viewers would see a criminal mugshot of Kilpatrick in the Wayne County Jail as a long list of his offenses scrolled up the screen: perjury, obstruction of justice, misconduct in office. Then viewers were instructed that they should “know who Barack Obama’s friends are.”

The ad, which ran only in a predominantly white and working-class county near Detroit, Michigan, made no explicit mention of race. However, it garnered public attention for its “racial overtones.” Criticizing the ad, Michigan’s Governor, democrat Jennifer Granholm, argued: “The fact that it is being run in a predominantly white suburb tells you that there is an explicit effort to try to divide people by race.” Similarly, Ed Bruly, chairman of the county’s local Democratic Party, called the ad “race-oriented” and said that although “some people will be affected by it, others will see it for what it is” (Rutenberg 2008). This was not the first time that Americans would be treated to a mugshot of a black man in order to drum up opposition to a liberal candidate. Rather, the negative ad continued an enduring tradition in American politics of racialized crime appeals to the mass electorate.

In this essay, we review the historic and contemporary role of race in debates about punishment, documenting how the nation’s wars on crime and drugs both reflected and promoted racial discourse. Our emphasis is on the interconnected nature of race, crime,

and American politics over the past half century. The primary conclusions we draw from the body of existing literature are the following:

- Discussions of race and crime have powerfully affected electoral and party politics in America in the modern period.
- Understanding the confluence of race and crime politics also tells us much about the distinctive trajectory of criminal justice and punishment in America.
- Scholars disagree about the relative importance of race and have had little to say about whether and how it plays a role in contemporary debates over punishment.

The remainder of this essay is structured as follows. In section I, we begin by canvassing the political science and historical literature on the role of racialized crime discourse in shaping both party politics and policy outcomes in the civil rights era. We then examine the role of race and criminal justice in shaping politics over the subsequent decades, focusing on the role of crime rhetoric in shaping partisan dynamics. Our attention in section II turns to the centrality of race and crime in public preferences and attitudes and in media depictions. Finally, in section III, we discuss scholarly theories (and disagreements) about whether Americans' drive toward punitiveness is motivated by racial concerns. We conclude with a brief discussion of the state of the literature, pointing to remaining questions and directions for future research.

I. RACE AND CRIME IN AMERICAN PARTY POLITICS

Among scholars of modern party politics, debates over race and crime have long been considered central to modern political debates and partisan shifts. Indeed, these issues figured critically in the triumphant return of conservatism. Writing far afield of criminal justice and without a central stake in the politics of punishment, scholars whose key interest was in understanding the electoral realignments of the 1960s saw “Law and Order” and the southern strategy as a critical turning point in the story of how whites abandoned the Democratic Party. Specifically, they note the political capital that crime issues made available to elites to employ strategically in reshaping the issue agenda, the use of it implicitly to play on racial fears, and its linking with civil rights as a way to mount an attack on liberalism. The story is similar across accounts: civil rights, crime, and race were melded during the early part of the 1960s. Crime was rising apace, several “long, hot summers” of riots had left cities smoldering, student antiwar protests became violent, and the struggle for equality by blacks was increasingly viewed by the public as going “too far.” The racial unrest and crime increase of the 1960s mobilized a campaign by conservative political elites to strategically link race with crime and argue for “law

and order” and an end to “crime in the streets” (Beckett 1997; Murakawa 2005, 2008; Western 2006; Alexander 2010; Lopez 2010). As parties scholar James Sundquist notes, “these three issues—racial strife, Vietnam, and crime and lawlessness—were intertwined, through the rest of the decade” (Sundquist 1983, pp. 376–77). The trifecta “cut across the existing partisan alignment” and formed a new axis of ideology that was distinct from economics. Concerns over crime were high in almost every public opinion poll, but not a few scholars pointed out that fear of crime during this decade represented more than that alone, encompassing also a growing “fear of disorder, fear of riots, and fear of blacks” (Cronin, Cronin, and Milakovich 1981, p. 12).

A. The Rise of Law and Order and Decline of Liberalism

Political elites from both the Republican Party and the southern wing of the Democratic Party drew connections between the racial conflagrations occurring across the country, the civil rights demonstrations, and the rise in crime rates described in the Federal Bureau of Investigation (FBI) Uniform Crime Reports. In this, they saw a perfect set of conditions to rally an increasingly anxious set of white voters, some of whom had been previously supportive of expanding civil rights to black Americans. Although Barry Goldwater’s 1964 presidential campaign first deployed the message that crime was a critical political problem (“tonight there is violence in our streets”), the message quickly became a staple of conservative rhetoric (Rosch 1985, p. 20). Lawlessness became a central campaign theme in 1966, with Gerald Ford, then republican leader in the House (among others) decrying that:

The War at home—the war against crime—is being lost. . . . The homes and the streets of America are no longer safe for our people. This is a frightful situation. . . . the Republicans in Congress *demand* that this Administration take the action required to protect our people in their homes, on the streets, at their jobs. There can be no further administration excuse for indecision, delay, or evasion. When a Rap Brown and a Stokely Carmichael are allowed to run loose, to threaten law-abiding Americans with injury and death, it’s time to slam the door on them and any like them—and slam it hard! (Sundquist 1983, p. 385)

On the strong message that civil rights demonstrations “had undermined respect for the law and fostered criminal behavior” (Flamm 2007, p. 21), Republicans picked up 47 seats in the House, three in the Senate, and eight gubernatorial seats (Flamm 2007). By 1968, George Wallace and Richard Nixon made even greater use of this strategic appeal to white voters by creating a strong connection among riots, civil rights, and ordinary street crime. They blamed crime and violence on liberal court decisions that “hand-cuffed the police,” racial agitators stirring up violence, and political leaders who cared more for giving blacks civil rights than protecting the “silent majority”; Nixon famously quipped that the first civil right was the right to be free from violence. This “law and order” strategy was a brilliant political maneuver, as it allowed politicians to implicitly

appeal to racial concerns without directly calling up discredited norms of racial dominance. As Tali Mendelberg notes, “[Nixon] wanted to appeal to racial stereotypes, fears, and resentments, yet conform to the norm of racial equality” (2001, p. 97). Scholars writing at the time noted that “for many, the call to restore law and order was only a publicly acceptable way of expressing racist attitudes. But increasingly the civil rights movement, and later the war on poverty, would be made a scapegoat for the much-publicized rise in crime and violence” (Cronin, Cronin, and Milakovich 1981, p. 15).

Historians looking back at this moment in American political life also saw the focus on crime, dissent, and law and order as a reaction to the popular liberal civil rights agenda. As historian Michael Flamm notes in his treatment of law and order, “for conservatives, black crime would become the means by which to mount a flank attack on the civil rights movement when it was too popular to assault directly” (2007, p. 22). Similarly, in her book, *Race and the Making of American Liberalism*, Carol Horton describes how liberalism was linked with lawlessness and argues that crime was the solution that enabled conservatives to “develop a coherent position on race that would prove capable of successfully navigating the complex waters of white reaction, conservative principles, and discredited Jim Crowism” (2005, p. 200). Crime and disorder were “the linchpin of the backlash to civil rights in America” (2005, pp. 390–91).

The dominant theme in these accounts is that crime, race, and law and order were decisive issues that explained the victory of the GOP and the demise of New Deal and Great Society liberalism in American politics. Thomas and Mary Edsall argued that the liberal consensus and Democratic coalition was eroded by the “chain reaction” that occurred as a result of four “highly charged issues colliding,” including race and crime (Edsall and Edsall 1992). Michael Flamm, in his detailed treatment of law and order, documents how the issue “divided liberals and united conservatives” (Flamm 2007, p. 80). Liberals failed to come up with a compelling alternative to law and order and, as a result, “conservatives took decisive control of the issue in 1966, incorporating street crime, urban riots, and student protests into a comprehensive critique of liberalism’s failure to contain the crisis of authority that seemed pervasive in America” (Flamm 2007, p. 67). While Democrats countered these appeals with calls for civil rights legislation that would restore social order and lessen the violence, argued that the obsession with crime and disorder was a strategic distraction from the issue of civil rights, and maintained that the nation should deal with crime by addressing its structural “root causes” (Cronin, Cronin, and Milakovich 1981), their message was repudiated by the electorate in the next several election cycles. Democrats went on to lose all but one presidential election from 1968 to 1988, and their strength in Congress was likewise diminished (Sundquist 1983). Amid the widespread backlash to civil rights, the Democratic coalition was weakened and the mood of the country swung decisively to the Right, giving Republicans a lasting advantage for years to come.

The adjoining of the issues of racial unrest, crime, and civil rights by strategic vote-seeking politicians faded somewhat in the 1970s as riot-torn cities cooled and as civil rights battles were no longer as pitched. Responding to public sentiment, the Democratic Party carefully distanced itself from the race and crime issue and soon

converged with its counterparts on the Right in how “tough” they were on crime issues. As Sundquist describes: “Democratic candidates in 1970 wore flags in their button-holes, had their pictures taken inspecting police stations and shaking hands with the men in uniform . . . and advocated various legislative measures to aid the fight on crime” (Sundquist 1983, p. 390). As we describe in the next section, however, the strategic connection between blacks and crime in appealing to white voters remained a durable feature of modern campaigns.

B. Race, Crime, and Party Politics in the 1980s and 1990s

In the previous section, we provided a broad overview of the historical trajectory of a racialized politics of crime control and the consequences of the race–crime connection for American politics in the mid-20th century. Much of this work focuses on the decline of liberalism and the strategic use of white prejudice by political elites in the wake of civil rights. Far less theorizing has attempted to locate the role of race in shaping the politics of crime in the subsequent period. However, it is clear that what followed in the wake of this strident period of partisan negotiation over crime control was, as David Holian describes, the “Democratic Party’s 20-year struggle to contest Republican dominance on the crime-fighting issue” (Holian 2004, p. 95). Republicans, who had staked their claim in the 1960s on the punitive crime control position, garnered “ownership” of the crime control issue for the ensuing decades. “Through the Nixon, Reagan, and Bush administrations, Republicans talking crime were credible. For years, the Republican advantage on crime was synonymous with punishing the perpetrators” (p. 96). As such, Republican candidates were able to emphasize their conservative credentials and distinguish themselves from more liberal challengers by campaigning on a platform that advocated increasingly severe law and order policies (Ansolabehere and Iyengar 1994).

Why did liberals have so much difficulty gaining traction on the issue of crime? Clearly, no single answer will suffice. However, Susan Estrich, who served as Michael Dukakis’s campaign manager in his 1988 bid for the presidency, argues that the party’s historical positions with respect to civil rights played a pivotal role. In her view, Democrats found themselves caught in a political catch-22. Many liberal elites actually desired to produce a principled opposition to the Republican position by focusing on rehabilitation and the root causes of crime, but they were stymied by their (likely legitimate) fear of being perceived by the American public as coddling criminals. The result is that “we invest too little in prevention, for fear of being seen as soft on crime. Our under-investment in prevention, in turn, exposes the system to charges of racism, which are enough to paralyze but not to liberate liberals” (Estrich 1998, p. 92). In a review of Estrich, Jonathan Simon writes that:

Liberalism is in a “tight place,” caught between crime and race. To survive, it must escape to a wider space where its traditional coalition can thrive. Their [liberals]

commitment to undoing the effects of racism has made them reluctant to address crime and embrace punishment for lawbreakers. In contrast, conservatives like Ronald Reagan could express open-throated outrage about crime, unhampered by any fears of a resurgent use of penal justice to achieve racial domination. (Simon 1999, p. 858)

Indeed, throughout the 1980s, the Democratic Party continued to suffer from public perceptions that it was too soft on crime (Wattenberg 1995). This weakness was personified in the 1988 presidential election by Willie Horton, a black man who had been convicted of murder in Massachusetts and had subsequently kidnapped and assaulted a white couple while out on a weekend pass from prison. The Republican campaign seized on the story, running advertisements that relied on a menacing photo of Horton to invoke viewers' fears, which could then be linked to the overly permissive policies that had allowed the furlough program to persist. "The 'Willie' Horton imagery served several purposes for the Republicans—it not only conjured up white fears of black crime, but also reinforced the perception of many white voters that the Democrats were overly tolerant of social deviants (read, blacks)" (Klinkner and Smith 1999, p. 305).

The Bush campaign vigorously denied that the Horton appeal had anything to do with race, and the press generally supported this "colorblind" view of the campaign's tactics; the Horton story was not about race, but was instead "simply a public airing of the problem of crime and what the government might do about it" (Mendelberg 1997, p. 139). Yet, whatever the Bush campaign's intentionality was with respect to race, it trotted out Willie Horton in stump speeches and political advertisements as evidence that Dukakis—who had supported the furlough program while governor—was soft on crime. "The image of a dangerous killer being released from prison to prey on an unsuspecting family was used by Dukakis opponents to cast the Democratic Party as out of touch with the fears of ordinary law-abiding citizens and unable to inflict the punishments supported by such citizens" (Simon 1999, p. 855).

The nail in the coffin for Dukakis's public credibility on the crime issue was his seemingly dispassionate answer to a debate question regarding appropriate punishment in the hypothetical murder and rape of his wife. The governor's unwillingness to display emotion at the idea of this insult to a loved one, combined with his refusal to endorse a retributive response in light of his longtime opposition to the death penalty, was seen as further evidence that the candidate was simply not relatable to average Americans. "The governor's cold, unemotional response betrayed his total misunderstanding of what was happening on stage that evening" (Stark 1992, p. 303).

Democrats learned their lesson. In the wake of Dukakis's unexpected defeat (the Democrat had been leading in some polls by as much as 17 points during the summer before the election) (Simon 1999), Democrats took up their own "tough on crime" position, launching what would quickly become a "punitive policy bidding war" (Murakawa 2005). As assailing one's political opponent to be "soft on crime" became a tried-and-true campaign strategy, candidates from both parties began a game of one-upmanship, seeking to outdo one another on punishment. During this

period, crime policy was marked by “ideological confusion,” with both sides shifting the terms of the debate toward punishment and away from the root causes of crime. “The traditional structure of the liberal–conservative crime debate is a debate between punishment and rehabilitation, between their responsibility for breaking the law and our responsibility for creating a rotten society. It is a debate you don’t hear very much, except when conservative talk show hosts are debating themselves, for the very reason that the liberal position is politically untenable” (Estrich 1998, p. 67). Thus by the late 20th century, the broad liberal–conservative spectrum of policy options that marked the 1960s, which ranged from crime prevention to punishment, had “largely disappeared. . . . Instead, the major policy debate in the 1990s, at least in the congressional arena and in the media, centers on the punishment/crime control end of the spectrum” (Poveda 1994, p. 73).

By the time of Bill Clinton’s 1992 campaign, the Democratic presidential candidate made sure he “found time to demonstrate dramatically his commitment to law and order, and the lessons his campaign had learned from the Democrats’ inability to compete with Republicans on crime” (Holian 2004, p. 96). Moreover, Clinton’s proven commitment to a tough-on-crime agenda during his time in Arkansas made him a sizably harder target than Dukakis. Squarely staking his claim, Clinton remarked at a campaign stop in Ohio prior to the Democratic Convention in 1996:

I never thought of public safety as a political issue before; I never thought of it as a Republican issue, when they said they were tough on crime, because I’d been working on it for 20 years. It never occurred to me that when a person gets mugged, they don’t ask if you’re a Democratic or a Republican. I thought it was an American issue. (Poveda 1994)

And whereas part of his successful strategy for “stealing” (Holian 2004) the crime issue from Republicans was to reframe the debate, it was not by advocating a return to rehabilitation or a renewed focus on prevention. Although Clinton’s early rhetoric sparked optimism among liberal reformers who hoped that penal change had arrived, his politics in practice turned out to pair an “iron fist and [a] velvet tongue” (Kramer and Michalowski 1995); Clinton’s seemingly reformist stance on crime control was “a balance of gestures, rather than workable solutions” (Simon 1999, p. 866). In fact, Clinton’s strategy combined an increased focus on gun control with such traditionally Republican legislative staples as expanded policing, tougher penalties for offenders (including support for three-strikes-and-you’re-out), and an expansion of death penalty crimes; “essentially, Clinton adopted a ‘Yes, but’ strategy” (Holian 2004, p. 101). Even as he decried the Bush–Reagan strategy of creating racial resentment by blaming blacks for crime, Clinton was unveiling one of the largest crime-control packages of modern governance, which would serve to deepen the political commitment to a punishment approach to crime control, substantially expand the punitive apparatus, and ultimately exacerbate the racial disparities that would come to define the criminal justice system in the modern era (Kramer and Michalowski 1995).

II. THE BLACK–CRIME CONNECTION, PUBLIC ATTITUDES, AND IMPLICIT RACIAL APPEALS

What role did public conceptions of race and crime play in the partisan politicking just described? In this section, we explore the “race–crime correlation” in the public consciousness and the role of black stereotypes in shaping public attitudes toward crime control, politics, and social policy. As we described, during the 1960s hotbed of racial unrest, politicians relied heavily on the black–crime linkage to mount a terrific assault on the civil rights movement, arguing (as they had in lynching and segregation debates), first, that integration would produce a wave of black lawlessness, and, later, that black activism and black riots were a result of black propensities toward crime and violence. Polls during this period document that blacks were equated with crime and racial violence in the public imagination; when asked about the causes of race riots, 57 percent of whites in 1968 said, “desire of Negroes for violence” and 53 percent said, “desire of Negroes to loot stores” (nonexclusive categories, percentages include both “major cause” and “minor cause”) (Louis Harris and Associates 1968). Moreover, large percentages of whites attributed criminality to blacks: one-third of the public in 1963 believed “blacks breed crime” (Erskine 1967–68, p. 666); 43 percent of whites in 1969 agreed that “Negroes tend to breed crime more than white people;” in the same year, 42 percent of whites listed Negroes as a “major cause” of “breaking down law and order” (Louis Harris and Associates 1969); and a survey in 1967 found that 42 percent of people agreed that “negroes like physical violence more than white people” (Erskine 1967–68). These trends suggest “a clear attitudinal spillover and linkage from the crime issue to the race issue” (Scammon and Wattenberg 1970, p. 97).

The race–crime correlation continued to have political significance throughout the end of the 20th century, but it changed somewhat in both form and tone. Politicians, the media, and other elites continued to trot out the scourge of (black) crime whenever it could gain them votes, viewers, or legislative victories. However, as norms of racial equality came to be more widely held by the American public and open expressions of racist sentiment declined (Schuman et al. 1997), elites became increasingly hesitant to use overtly racial language in their political platforms, speeches, and campaigns. “In the wake of the civil rights movement, openly racist appeals to white voters fell from favor, even as white anxiety about rapid social change increased” (Lopez 2011, p. 54). Instead, political cues—and the public debate over race and crime—became increasingly subtle, even as the black criminality stereotype became ever more deeply embedded in the public consciousness (Jamieson 1992). In particular, the language of law and order gained traction as a seemingly race-neutral way to appeal to white voters’ lingering racial resentment. As Katherine Beckett and Angelina Godoy write: “Because punitive crime-talk ostensibly targets problematic behavior rather than particular social groups, it appears to be universalistic rather than particularistic, and thus meshes well

with the norm of formal equality that is the hallmark of liberal democracy. At the same time, punitive crime talk often has ‘coded’ meanings that enable those who mobilize it to tap into inter-group hostility or fear” (Beckett and Godoy 2008, p. 161). Ian Haney Lopez describes the colorblind ideology as a “form of racial jujitsu”:

Co-opting the moral force of the civil rights movement, it uses that power to attack racial remediation and simultaneously to defend structural racism—in the criminal context, directly by insisting that massive racial disparities are “not racism”; and indirectly, but still more powerfully, by providing cover for transparent appeals to racial anxiety. (Lopez 2010, p. 139)

Perhaps nowhere was this transition to a race-coded language of crime more clear than in the rise of the war on drugs, which had its most direct effects on largely black urban ghettos. The “discovery” of crack in the inner city, and the attendant fears it invoked among whites that crack use would not be contained among poor blacks but could potentially spread to their own neighborhoods, was a “key motivator for criminal sanctions” (Provine 2007; see also Gordon 1994; Reeves and Campbell 1994; Beckett and Sasson 1997). Political rhetoric about the scourge of drugs in “the ghetto,” the crisis of “the inner city,” and the devastating problems of “the crack baby” became new ways of referencing poverty and drugs in black America. In other words, politicians made increasing use of seemingly race-neutral language, such as “crime in the streets,” “law and order,” and its more recent incarnation, “inner-city violence,” which carried strong racial content but was safe from charges of racism, in the sense that it refers to race while being distinct from racism (understood as derogatory racial epithets or negative stereotypes). Using “crime control as a proxy language for race” (Lopez 2011, p. 54) allowed political elites to leverage the white public’s racial fears and stereotypes without opening themselves up to criticisms of “playing the race card.”

It was not that the war on drugs was motivated by racism, *per se*. Rather, it leveraged whites’ racial unease in the post-civil rights era in order to move forward a punitive tough-on-crime agenda—and to score political points with a public increasingly concerned with the issue of crime. Moreover, attending to a lack of “personal responsibility” among drug users dovetailed well with the rise of a new “symbolic racism” that focused attention on the moral failings of blacks, rather than on the claims of inherent biological inferiority that had underpinned traditional racism in previous decades (Sears and Kinder 1971; Sears and McConahay 1973; McConahay and Hough 1976; Sears et al. 1980). Thus, the war on drugs provided a platform and policy agenda through which a new (and more socially acceptable) incarnation of white racism could be acted out. As Michelle Alexander argues, “[t]he war on drugs, cloaked in race-neutral language, offered whites opposed to racial reform a unique opportunity to express their hostility toward blacks and black progress, without being exposed to the charge of racism” (2010, p. 53).

This veiled language of race and crime did not need to be manufactured to promote a more punitive criminal justice agenda; it was readily available. Americans have a long history of equating blacks with criminality. “Fear of crime could emerge

as a coded sop to white voters only because colorblindness provided a cover, however thin and transparent, for a racist narrative reaching back to slavery-era hysteria over black brutes, rape, and lawless mayhem” (Lopez 2011, p. 54). Indeed, the “ideological currency of black criminality” has long historical roots dating back to at least the first Reconstruction (Muhammad 2010, p. 3). The historian Khalil Muhammad demonstrates that black crime was central to the national racial imagination and shaped virtually every debate over blacks’ “fitness for citizenship.” Black crime statistics were relied on during the Progressive era to legitimate their isolation, limit white responsibility to help blacks, as a justification for violence against blacks, and as a shield against the charge of racial domination (Muhammad 2010). We can find countless examples of this rhetoric—and its analysis by scholars of race and crime—throughout history. Charles Harvey McCord’s 1914 polemic “The American Negro as a Dependent, Defective, and Delinquent” describes the “average negro” as “a child in every essential element of character, exhibiting those characteristics that indicate a tendency to lawless impulse and weak inhibition” (p. 108). In his 1928 article “The Negro Criminal: A Statistical Note,” for the *Annals of the American Academy of Political and Social Science*, Thorsten Sellin likewise notes that, at the time of his writing, it was “commonly believed that the negro in our country is more criminal than the white” (1928, p. 52). Although more than a half-century old, Sellin’s writing was remarkably prescient of the modern media environment, in which blacks are seen to be hyper-criminalized. Sellin writes:

The colored criminal does not enjoy the racial anonymity which cloaks the offenses of individuals of the white race. The press is almost certain to brand him, and the more revolting his crime proves to be the more likely it is that his race will be advertised. In setting the hallmark of his color upon him, his individuality is in a sense submerged, and instead of a mere thief, robber, or murderer, he becomes a representative of his race, which in its turn is made to suffer for his sins. (1928, p. 52)

Strategic politicians in the 1960s and beyond were not alone in mobilizing racial resentment using crime-related appeals. Media representations of crime during these decades also shifted: crime as a topic became ubiquitous in the media and conflated with race. Countless studies suggest that portrayals of crime and criminals remain frequently racialized, in both subtle and overt fashion. Most notably, several studies find that crime is among the most common themes of stories featuring blacks (Entman 1992, 1994; Poindexter, Smith, and Heider 2003) and that racial minorities in these stories are significantly less likely to be portrayed as the victims of crimes than as criminal perpetrators (Chiricos and Eschholz 2002; Poindexter, Smith, and Heider 2003; Bjornstrom et al. 2010). By contrast, whites are likely to be portrayed as both victim and offender (Dixon and Linz 2000a; Chiricos and Eschholz 2002). This is true across several types of media, including local television news (Gilliam et al. 1996; Dixon and Linz 2000b), entertainment television (Oliver 1994), and the print media (Barlow, Barlow, and Chiricos 1995). For example, Barlow, Barlow, and Chiricos found that 74 percent of references to an offender’s race were to nonwhites in mainstream newsmagazines, whereas only 28 percent of actual arrestees in these years were nonwhite (1995). Blacks are thus

overrepresented relative to whites, but also compared to what their share of offenses warrant. Black suspects are also more likely to be shown in handcuffs, in mug shots, in police custody, and as suspects in violent crimes, whereas whites were more likely to be pictured in suit and tie and accompanied by their lawyers (Entman 1990; Chiricos and Eschholz 2002). Moreover, crime stories portraying black perpetrators are more frequently about violence or drugs than are crime stories portraying whites (Entman 1994). In sum, “the typical news story on crime consists of two ‘scripts’: crime is violent, and criminals are nonwhite” (Gilliam et al. 1996, p. 288). These stories serve to stoke whites’ racial fears; “for whites, such stories are vivid reminders of the supposed threat they face from ‘aggressive’ and ‘violent’ minorities, including blacks” (Valentino 1999, p. 297).

Thus, fueled by both media coverage and partisan rhetoric (Beckett 1994), the specter of the “criminal blackman” (Russell-Brown 2006, p. 2) remained strong over the next few decades in popular perceptions. Polls again show the link: in a 1995 poll, when asked what type of person they think of when they hear about a crime being committed, the highest response category for both blacks and whites was “a black man” (NBC News Poll 1995); more than 40 percent of the public said blacks and whites were “different when it comes to the likelihood of committing a crime” and that blacks were more likely to commit crime (NBC News/Wall Street Journal Poll 1994). In 2008, when asked which kinds of people are more prone to violence in the United States, half of all people said blacks and Latinos (Los Angeles Times/Bloomberg Poll 2008). And, in a throwback to the polls of the 1960s, 21 percent of the public believed blacks “breed crime” as recently as 1988 (NAACP Legal Defense and Education Fund 1988).

Likewise, laboratory studies have found a strong and consistent correlation between whether individuals have typical Afrocentric physical features, such as kinky hair, darker skin tone, fuller lips, or a broader nose—essentially, whether people “look black”—and the likelihood that they will be perceived as criminal. These results held even when research subjects were explicitly instructed before the experiment that they should avoid using racial stereotypes in their judgments (Pizzi, Blair, and Judd 2005). Nor are law enforcement officials immune to these same biases. In experimental work by Jennifer Eberhardt and colleagues, police officers judged African Americans with more Afrocentric features (such as darker skin) as looking “criminal” more often than those who looked more European (Eberhardt et al. 2004). Officers in the experiment were also more likely to falsely identify a stereotypically black face when primed to think about crime; “indeed, thinking about the concept of crime not only brought black faces to mind, but brought stereotypically black faces to mind” (Eberhardt et al. 2004, p. 888). In fact, experimental subjects in other studies have been shown to remember a perpetrator more vividly and have stronger emotional reactions when the perpetrator was darker in skin tone (Gilliam and Iyengar 2000; Dixon and Maddox 2005).

The overrepresentation of blacks, particularly black men, in media coverage of crime is likely to have consequences for public orientations toward that social group by reinforcing stereotypes (Barlow, Barlow, and Chiricos 1990; Russell-Brown 1998; Dixon and Linz 2000a, 2000b; Dixon, Azocar, and Casas 2003). But, more generally, deep and persistent stereotypes linking blacks to crime and to other socially undesirable behaviors can be

activated by simply the presence of black faces; a black face in an otherwise race-neutral context brings to bear all of the schema-associated content, including negative stereotypes, that has come to be linked to blackness in the viewer's mind. The black-crime connection is therefore not only a cognitive correlation, but has tremendous consequence for the public's preference for what to do about crime and violence (Sears et al. 1980). Media coverage of crime provides the public with frames, symbols, and stereotypes that link race and crime in the public imagination. In turn, these simplistic and stereotyped versions of reality become a lens through which public policies are understood; one that is facially race-neutral but carries implicit racial cues. "Willie Horton is to crime control as the Welfare Queen is to welfare policy... these two black people were used as metonyms to caricature in their blackness and in their behavior entire areas of government policies" (Tonry 1996, p. 10). And because a majority of the public's information and understanding of the problems of crime come from media coverage (Roberts and Doob 1986; Alderman 1994), racial cues in crime news have important consequences for public perceptions of crime and criminality.

Thus, even as crime rates fell, public concerns about crime continued to manifest. As the media "bombarded" the public with a steady diet of "gruesome or notorious episodes of crime" (Gilliam et al. 1996, p. 7), the public responded with calls for more punitive policies toward criminal offenders. And race played a critical role in this regard; as Gillian et al. conclude:

The first distortion (the news media's focus on violent crime) is not, by and large, responsible for the public's heightened fear of crime. The second distortion, however (concerning the race of the perpetrator), is a much more significant cue: exposure to criminal activity committed by nonwhites in and of itself makes viewers more concerned about crime. Most important, the media has, in effect, defined crime in racial terms, and this serves to activate widely shared stereotypes about racial minorities. These stereotypes then become connected to viewers' opinions about crime. In effect, viewers are "primed" to consider crime through the lens of their racial stereotypes. (Gilliam et al. 1996, p. 8)

Across an array of studies, the single largest and most consistent predictor of crime policy preferences was beliefs about race; time and again in these studies, punitiveness is linked to beliefs about blacks (Cohn, Barkan, and Haltzman 1991; Soss, Langbein, and Metelko 2003; Federico and Holmes 2005; Hurwitz and Peffley 2005). Experimental studies that vary the race of the offender in crime news have found compelling evidence that black suspects prime racial attitudes (Valentino 1999) and affect support for punitive sentencing (Hurwitz and Peffley 1997; Gilliam and Iyengar 2000). Others have found that racially stereotypic crime news primes negative stereotypes and increases support for other punitive crime policies, but only for whites in racially homogenous contexts (Gilliam, Valentino, and Beckmann 2003). Racial animus, resentment, and stereotypes increase public support for the death penalty (Barkan and Cohn 2005), harsher courts and stricter sentences (Johnson 2003), and the crack-cocaine disparity (Bobo and Johnson 2004); and white's punitive attitudes, especially support for the death penalty, are highly correlated with Jim Crow and laissez-faire racism but not with economic

insecurity (Johnson 2001). Whites' beliefs about crime and punishment in general are strongly influenced by racial attitudes, but racial ideas have a greater effect on attitudes toward punitive policies as opposed to preventative policies (Hurwitz and Peffley 1997).

Perhaps more surprising are the spillover effects of the black-crime correlation for the public's political attitudes more broadly. In her book *The Race Card*, Tali Mendelberg outlines a theoretical perspective for how implicit racial appeals shape public attitudes (1997). She suggests that in the post-civil rights era whites generally adhere to norms of racial equality. They would therefore reject a political appeal that had explicit negative racial content. At the same time, however, they harbor lingering racial resentment toward blacks who are seen as having failed to embrace norms of hard work and individualism. Racial appeals that trigger negative racial schemas without being recognized as doing so—implicit appeals that use visual but not verbal racial cues, rather than explicit appeals that employ both visual and verbal cues—are those that are therefore most likely to be effective. Thus, for example, the Willie Horton ad served to shape public perceptions of racial policies precisely because it activated racial content while seemingly saying nothing about race. Just as Nixon's "law and order" campaign spots had done, the Horton ad could mobilize white racial resentment without violating now widespread egalitarian norms. Instead, the ad brought the image of a menacing black criminal to the front of white voters' minds and thereby activated negative black stereotypes. Mendelberg argues that this image powerfully influenced public sentiment not just at the polls but on several prominent policy issues even after the campaign ended, leading to "greater resistance to policies perceived as illegitimately benefitting African Americans" (1997, p. 151). She and others suggest stories about crime and criminals that carry implicit racial content can powerfully shape public preferences. "[I]f opinions about two substantively unrelated issues, like welfare and crime, are linked in memory to one's racial attitudes, then exposure to crime should also activate race and should subsequently activate other race-relevant issues, such as welfare" (Valentino 1999, p. 295).

Implicit racial priming can also be an important factor in candidate evaluations. Nicholas Valentino argues that Democrats became linked to blacks as a social group in the minds of voters. It is Democrats who are therefore disadvantaged when news about crime activates negative racial content. In experimental work, Valentino found that exposure to crime reporting, especially when it features black suspects, primed voters to employ Clinton's performance on crime and other race-coded policies in their overall evaluations of the president, as well as priming racial group concerns more generally, and that such priming served to significantly decrease support for Clinton while boosting support for his Republican challenger, Bob Dole (Valentino 1999). Similarly, Valentino and colleagues in a later study found that implicit racial content, particularly when it implies that blacks are undeserving of government aid, primes race-based schemas. These schemas increase the accessibility of negative stereotypical content, such as "lazy," "drug," and "crime." In turn, by increasing the salience of racial attitudes to candidate evaluations, implicit racial primes increased support for Republican George Bush relative to Democrat Al Gore (Valentino, Hutchings, and White 2002).

Taken together, these studies make clear that the racial nature of the crime issue has emerged as an important theme in scholarship on American politics and histories of the civil rights era and beyond. It has appeared in research on discussions of racial realignments (Scammon and Wattenberg 1970; Sundquist 1983), histories of “law and order” and the “southern strategy” (Button 1978; Cronin, Cronin, and Milakovich 1981; Flamm 2007), accounts of civil rights (Klinkner and Smith 1999; Horton 2005), and studies of implicit racial appeals in electoral politics by vote-seeking politicians (Mendelberg 2001). But because the aim of these scholars was not to explain a shift in punishment policies but rather to explain modern party dynamics and the rise of conservatism, they focus primarily on the impact of the race–crime connection on partisan shifts and public opinion. How the “law and order” appeal changed punishment and criminal justice in America is taken up by a different set of scholars, to whom we now turn.

III. RACE AND CRIME AS A SYMBOLIC ISSUE AND THE RISE OF THE CARCERAL STATE

Scholars of the carceral state have also taken the 1960s debates over law and order as a formative moment, this time to explain the nation’s unparalleled shift toward greater punishment. Much like the accounts concerned with shifting partisan politics, punishment scholars point to changes in crime discourse during this period as setting the stage for later developments in American crime policy. Their accounts overlap with and extend what we know from political and historical accounts of the rise of conservatism, the law and order strategy, and the strategic connection of race, civil rights, and crime.

One of the earliest treatments is political scientist Stuart Scheingold’s *The Politics of Law and Order: Street Crime and Public Policy*. Scheingold argued that what observers of the 1960s took for granted was that calls for law and order transcended concerns over crime and tapped deep public anxieties about “rapid and unwelcome social change” (Scheingold 1984, p. xi). Politicization of the crime issue was distinct from increases in the crime rate and, as such, shifting punitiveness was the result more of political choices about punishment than “functional imperatives” (p. 5); crime was neither necessary, nor sufficient. Indeed, punitive responses to crime show less correlation than we might imagine with the actual rate of crime, violence, and victimization in society. Instead, Scheingold suggests that the crime issue was manipulated by politicians for political gain and electoral opportunity; in his words, crime was the “politicization of social conflict” (p. 28), and criminality was “a status conferred by the political order” (p. 5). Cracking down on crime was a way for political elites to redirect social angst toward crime; the opportunity to call for more punitiveness is at its greatest when there is a racial crisis or threat to order. Thus, Scheingold saw punishment as “addressed to the law-abiding rather than lawbreakers,” serving as an important signal to voters and a “symbol of resistance to unwelcome changes of all sorts” (Scheingold 1984, p. 86).

It is thus not simply the case that politicians responded to a public that demanded more punitive action to deal with crime. According to Katherine Beckett, political initiatives in this period actually preceded a shift in punitive sentiment; public concern over crime and more punitive policy preferences came *after* elite crime appeals and attention to the issue. In fact, it was often the case that elite discourse on crime was entirely separate from the crime rate; for instance, Clinton's 1994 crime package was sent to Congress as real crime rates were decreasing. Similarly, Reagan proclaimed a nationwide drug epidemic that called for immediate legislation through a "war on drugs," even though drug use and distribution were on the decline.

To explain why the crime issue emerged when it did and how it was framed, scholars of the "punitive turn" again pointed to the strategic considerations of political elites, the rapidly shifting racial landscape, and the viability of crime as a mobilizing issue. As Naomi Murakawa aptly describes, "rising black civil rights compelled national leaders to put crime on the national agenda, and waning support for black civil rights helped to forge a new punitive consensus" (2005, p. 136). Political dynamics, over and above crime, helped transform the arena in which crime policy rose to prominence. Murakawa posits a "race-laden electoral connection" in which crime policy is developed in a context in which parties and legislators have powerful electoral incentives to proffer racial framings of the crime problem. Because the costs of these policies are "racially concentrated," there are few checks on the "punitive bidding wars" that result. Katherine Beckett, in *Making Crime Pay*, likewise argues that "the creation and construction of the crime issue in the 1950s and 1960s reflect its political utility to conservative opponents of social and racial reform" (Beckett 1997, pp. 28–29). Political rhetoric around street crime was linked to antagonism toward "excessive" civil rights legislation, to permissive Great Society programs, and to liberal court decisions that "coddled" criminals (Beckett 1997). "In stark contrast to the social consensus dominant since the New Deal, which envisioned the poor as trapped by large-scale forces largely beyond their ability to overcome through personal effort alone, the language of lawbreaking relied on and promoted a social vision of individual failure rooted in moral depravity" (Lopez 2010, p. 14). For example, in a campaign speech, Barry Goldwater linked welfare programs to crime, saying, "if it is entirely proper for the government to take away from some to give to others, then won't some be led to believe that they can rightfully take from anyone who has more than they? No wonder law and order has broken down, mob violence has engulfed great American cities, and our wives feel unsafe in the streets" (Beckett 1997, p. 35).

However, the connection between crime and race did not suddenly emerge in the 1960s. Katherine Beckett suggests that the law and order theme was first employed by southern politicians to "discredit" the civil rights movement. "The rhetoric of law and order was first mobilized in the late 1950s as southern governors and law enforcement officials attempted to generate and mobilize white opposition to the civil rights movement" (Beckett 1997, p. 11). Naomi Murakawa is even more specific, finding that concern over crime was central to controversies over civil rights in congressional debates long before Goldwater, Nixon, and GOP candidates during the 1960s. "Alongside arguments for state's rights and segregation's merits, southern Democrats opposed civil

rights legislation in criminological terms, arguing that forced race-mixing breeds crime, that civil rights legislation rewards black lawbreaking, and that blacks are responsible for street crime” (Murakawa 2005, p. 81). Indeed, talk of street crime was used in opposition to the civil rights bills of 1956, 1957, 1960, and 1963. Arguing that racial equality and integration would generate crime, southern Democrats even proposed that the Civil Rights Commission be charged with collecting crime data (Murakawa 2005, p. 88). Michael Flamm notes that debates about racial integration often featured arguments about bringing black crime to white neighborhoods: “in Mississippi, for example, the Citizens Council of Greenwood prepared a lurid pamphlet entitled ‘Crime Report Reveals Menace of Integration’” (Flamm 2007, p. 21). Later, racial conservatives argued that further civil rights legislation would simply “reward” rioters.

In Naomi Murakawa’s account, by the 1960s, both parties spoke of crime in race-specific framings; while Republicans suggested that civil rights agendas breed crime, liberal nonsouthern Democrats argued that “crime is a manifestation of racial and socio-economic equality not gone far enough” (Murakawa 2005, p. 30). In this way, the parties’ contests over civil rights hinged centrally on how they presented the crime issue to the national public. By the mid to late 1960s, however, the racialized crime discourse “moved from congressional debates on civil rights to congressional debates on crime” (Murakawa 2005, p. 92). Murakawa (2005), Beckett (1997), and Weaver (2007) all show that new federal intervention on crime policy during this decade, most notably the Safe Streets Act and D.C. Crime Control Act, were linked to debates over civil rights and racial equality.

What made continuing calls for law and order significant was not simply their thinly veiled race-based appeal to white voters and the backlash they engendered; what made them important is that policy changes soon followed. Cries for law and order resulted not just in weakened support for civil rights policies and a slowing of the agenda on racial equality, but in a massive shift in the scope and mode of punishment. The “crime in the streets” and “law and order” campaign of the 1960s utterly transformed the criminal justice system; it set new precedents for federal action, it resulted in the birth of a new bureaucracy (the Law Enforcement Assistance Administration), it lavished billions in crime aid to states that engaged in a wave of their own reforms, and it ultimately resulted in a complete reversal of the racial composition of prisons. The result was a large and racially disproportionate system of criminal surveillance, adjudication, and punishment. As Michelle Alexander notes, more blacks are in custody or under supervision today than on the eve of slavery’s demise (2010). Just as Jim Crow poll taxes, white primaries, and literacy tests sought to diminish black voting, modern felon disenfranchisement statutes have expelled more blacks than before the 15th Amendment was passed.

It has now become commonplace in scholarly and popular accounts to suggest that the nation’s long, sordid racial cleavages had something to do with how punitive we are and why punishment expanded on the heels of one of the largest expansions in civil rights. Even so, scholars disagree about how important a factor it was and about the mechanisms that drove these unprecedented changes. And, although it is generally agreed that race played some role in America’s modern fascination with punishment,

surveillance, and control, there is precious little in the way of rigorous theorizing about this link. Were the law and order, war on drugs, and 1994 crime bills attempts to control the black population, undermine the expansion of political rights, or regulate surplus labor?

One group of scholars argues that the prison is a modern instrument of racial and social control, offering a way to manage disadvantaged segments of the labor force and preserve white racial dominance; according to this perspective, incarceration represents the most recent adaptation and evolution of racial hierarchy. In *Punishing Race*, Michael Tonry suggests that drug and crime policies are designed to “maintain political, social, and economic dominance over blacks” (Tonry 2011, p. 99). The most muscular account of this thesis was presented by legal scholar Michelle Alexander. In her widely acclaimed book, *The New Jim Crow*, Alexander argues that American punishment, and particularly the war on drugs, is the latest racial caste system. She compares mass incarceration to prior systems of racial hierarchy and racial social control and argues that the similarities between them overwhelm the differences. Many black men are now “part of a growing undercaste,” relegated to the margins of our social and political order.

Alexander gives thumbnail historical sketches of America’s earlier racial castes, showing how they were created, maintained, and how they eventually evolved into new racial caste systems. Each, she maintains, took on a “common sense” quality. But the latest caste system based on the war on drugs receives the bulk of her attention, as she details the ways that mass incarceration presented itself as a new mechanism of control that could be justified in race-neutral terms even as millions were “banished to a political and social space not unlike Jim Crow” (Alexander 2010, p. 56). Although this most recent caste system rests on new justifications, its results are strikingly similar: “rather than rely on race, we use our criminal justice system to label people of color ‘criminals’ and then engage in all the practices we supposedly left behind. . . . We have not ended racial caste in America; we have merely redesigned it” (Alexander 2010, p. 2).

Alexander describes how the system works: first, blacks are arrested through police targeting poor black communities and wide police discretion in who to stop; once convicted, they receive sentences outside international norms due to harsh drug laws and mandatory sentences passed by enterprising politicians; inside, they receive less than the minimum wage for prison labor; and, once let out, they are marked by civil death and excluded from normal employment, education, benefits, and even jury service, and they become fearful of further contact with government authorities. Their undercaste status is sealed.

The mechanics of this new racialization as she outlines them are complex—everything from pretextual stops to preemptory strikes to the pecuniary incentives given law enforcement officials for buy-and-bust drug operations and overzealous prosecutors extracting guilty pleas—but, central to its functioning is the fact that it is very difficult to call out as racist, which helps shield it from opposition in popular and political discourse and keeps it “immunized from legal challenge” (Alexander 2010, p. 5). This racial caste system therefore contains a new twist: first, unconscious biases are “given free reign” in officials’ decisions about who to stop, search, arrest, and charge; and then, only explicit

operation of racial bias can be used to challenge devastatingly racialized criminal justice outcomes, thus sealing it off from challenge. This two-step design “has helped to produce one of the most extraordinary systems of racialized social control the world has ever seen” (Alexander 2010, p. 101). In fact, Alexander argues that this racial caste system will prove more durable than earlier systems simply because it “is not explicitly based on race . . . it is the genius of the new system of control that it can always be defended on nonracial grounds” (Alexander 2010, p. 100). This new “common sense” narrative allows a racialized system of control to operate without conscious racial animus: “today, the political fanfare and the vehement, racialized rhetoric regarding crime and drugs are no longer necessary. Mass incarceration has been normalized, and all of the racial stereotypes and assumptions that gave rise to the system are now embraced (or at least internalized) by people of all colors, from all walks of life, and in every major political party” (p. 181). In other words, the new racial control has adapted to modern rules and norms of racial equality while achieving many of the same results, including the “exclusion of black men en masse from the body politic.” Just as the earlier systems featured widespread discrimination against blacks, so too is the modern racial order structured by the drug war’s disproportionate impact on urban blacks: “young black men today may be just as likely to suffer discrimination in employment, housing, public benefits, and jury service as a black man in the Jim Crow era—discrimination that is perfectly legal, because it is based on one’s criminal record” (pp. 180–81). Hers is a call to make incarceration a racial justice issue, and so her purpose is not to test her argument but to awaken us to the need to dismantle the newest racial caste system. Although Alexander’s position is provocative, ultimately, it is a difficult one to test; even she acknowledges that the evolution, morphing, and adaptation of racialized systems of control are “easier to see in retrospect.” In addition, by focusing primarily on the drug war and its consequences, Alexander gives short shrift to the more complicated (and less sympathetic) issue of enhanced sentencing rates for violent felonies, which has also played a primary role in producing the racial disparities that mark incarceration in the modern era.

Maintenance of an evolving racial order also plays a role in Loic Wacquant’s writings. Like Alexander, he too analogizes the carceral state with historical systems of racial control, arguing that there is a functional equivalence between slavery, Jim Crow, the ghetto, and the prison as systems of race control that replaced each other chronologically (Wacquant 2000). As blacks were liberated from Jim Crow, “the prison abruptly returned to the forefront of American society and offered itself as the universal and simple solution to all manners of social problems” (Wacquant 2000, p. 384; Wacquant 2001). And although Wacquant would seem to agree with Alexander that mass incarceration is a new racial caste system, he contends that the system depends not just on controlling blacks but also on managing the poor. For Wacquant, the rise and collapse of the urban ghetto is important to understanding the rise of the penal state, and class is as important as (and interacts with) race. The function of the ghetto was to “permit the economic extraction and social ostracization” of a dishonored population. Through “stigma, constraint, spatial confinement, and institutional encasement,” the ghetto was the primary institutional mechanism for controlling urban blacks until the 1970s, when

deindustrialization, immigration, suburbanization, and urban protest made the economic utility of the ghetto obsolete. “As the ghetto lost its economic function and proved unable to ensure ethnoracial closure, the prison was called upon to help contain a population widely viewed as deviant, destitute, and dangerous” (Wacquant 2010, p. 81).

The growth in the prison did not proceed alone, but was accompanied by the downsizing of the social safety net and the desocialization of wage labor. Wacquant argues that the shrinking welfare state, the retrenchment of the formal labor market in the metropolis, and the shift to workfare are part of the same institutional transformation as the rise of the carceral state, what he calls the “double regulation of poverty” (Wacquant 2009, p. 108). This twin transformation has created a new type of relationship to the state for the urban poor. The scaling up of the prison and the rollback of the welfare state have “not been driven by raw trends in poverty and crime, but fueled by politics of resentment toward categories deemed undeserving and unruly” (Wacquant 2010, p. 74). For Wacquant, it is this penalization of poverty that explains the situation of people at the bottom of the class and ethnic order today.

But was it really our nation’s need to control blacks and the poor that drove punishment expansion and the exceptional political development in America, one that meant jeremiads against crime would routinely erupt in the political landscape and leave massive crime control institutions in their wake? One of the most developed accounts that casts doubt on the singular importance of racial politics is Marie Gottschalk’s, *The Prison and the Gallows*. Although Gottschalk agrees with Murakawa, Weaver, and others that strategic political considerations did play some role in the push for more punishment, she warns us that these accounts are “incomplete,” failing to explain cross-national differences and focusing too much on the recent past. Instead, “varying institutional settings help us understand why politicians and public officials in the United States tended to pursue punitive options and why these options found more receptive soil in the United States than elsewhere” (Gottschalk 2006, p. 79). Unlike many accounts, including those just described, which place emphasis on the 1960s as a watershed moment in both crime policy changes and the link between blacks and crime in elite, media, and public attention, Gottschalk argues that “contemporary penal policy actually has deep historical and institutional roots that predate the 1960s” (Gottschalk 2006, p. 4). Indeed, it is misleading to cast the past few decades as the first time crime was politicized. In contrast to Murakawa, Weaver, Beckett, Flamm, and others, Gottschalk reminds us that “law and order” was a “recurrent and major theme in American politics long before the 1960s and long before the modern Republican Party strategically wielded this issue to achieve national political domination” (Gottschalk 2008, p. 239).

Gottschalk also calls into question theories of punishment that single out race as the motivating factor or that suggest that prison expansion “was merely the latest chapter in a book that began with slavery and moved on to convict leasing, Jim Crow, and the ghetto to control African Americans” (Gottschalk 2008, p. 239). She notes that, although these institutions reveal some similarities, it is important not to “flatten the differences.” More to the point, whereas race has been a major part of America’s development and politics, our nation “did not end up with the carceral state merely because racial

cleavages have been so central” to our politics (Gottschalk 2008, p. 239). Instead, race is just one of several features of our political and institutional context that affected debates over crime and punishment. Providing an interesting counterpoint to studies that highlight the important role of race, Gottschalk notes that, at some points in our history, racial concerns helped facilitate the carceral state but that, at many other points, they also “acted as a check on the development of criminal justice institutions” (Gottschalk 2008, p. 240). Sometimes those calling for greater “law and order” and more federal intervention into criminal justice were not conservative politicians, but liberals. For one example, early “law and order” efforts to make lynching a federal crime were repeatedly defeated by racial conservatives. Gottschalk’s own analysis underscores the role of liberal groups in facilitating the growth of the carceral state. For example, reform movements led by feminists framed the need for punitive penal policy as a gender equity issue in their campaign against rape and domestic violence. To explain why the drive toward punishment has been so much stronger in the United States than abroad, Gottschalk’s account emphasizes a unique set of institutions in the United States—the power and independence of the prosecutor, the weak welfare state, the adversarial legal system, and a longstanding moralistic tradition, among others—as well as key interests such as the victim’s rights movement, feminist groups, and the like.

Other accounts likewise add complexity to the narrative that race drove our punitive response. Michael Tonry’s recent book, *Punishing Race: A Continuing American Dilemma*, argues that three factors—race, moralism, and America’s unique system that fails to insulate criminal justice from electoral politics—“created a political climate that was long on vindictiveness, and short on empathy, and governmental institutions that were quick to adopt policies of unprecedented severity” (Tonry 2011, p. xi). Tonry does not downplay the role of race; however, his analysis adds other overlooked components to the story of America’s carceral development. He points to the “historical tendency in American life to political extremism” and notes that this helped set the United States on a different path of carceral development than witnessed abroad. Our nation’s longstanding “paranoid style” of politics and religious fundamentalism meant that symbolic crusades against wrongdoers would become a major feature of our crime politics. Periodically, moral panics against drugs, prostitution, and other sinners would be waged. These moral crusades had even more impact because criminal justice policies were less insulated from electoral politics here.

David Garland’s *Culture of Control* also takes into account a broad set of forces that shaped the punitive turn. In his “history of the present,” Garland indicts a “network of governance and social ordering” that surrounds and supports criminal justice institutions, including “the legal system, the labour market, and welfare state institutions” (2002, p. 5). In so doing, Garland identifies social and political change related to race as part of a complex story about “postmodernity” and how it has recast responses to crime control. Like other scholars, he points to the redefinition of race and class, whereby the poor and black were increasingly cast as criminal in the public imagination. However, for Garland, these concerns are just part of a broader social upheaval and economic uncertainty that marks the modern era, trends that have left citizens increasingly

concerned about crime and disorder and more responsive to symbolic calls for penal populism.

IV. CONCLUSION

In this essay, we have provided a broad overview of the racial politics of crime in America over the last half-century. Understanding the deep links among politics, race, and crime is an important task, not only because it helps us to understand the rise of the modern criminal justice system and its attendant racial impacts, but also because it helps us to understand the role of race in politics more broadly. As Ian Haney Lopez argues, “a racialized fear of crime and a racialized distaste for the poor have remained central elements of American electoral politics for the last four decades. Race has served as a way to refashion the state, building an enormous carceral system while hamstringing the willingness and even the ability of government to provide for the health, safety, and welfare of the public” (Lopez 2010, p. 19). In reading the mass of existing work, we cannot help but conclude that crime control has played a central role in the development of modern partisan and racial politics in America. As scholars, it is clear that we simply cannot understand a variety of major features of modern politics, from the fall of liberalism and the conservative ascendancy to modern public opinion toward racial policies, without attending to the intersection of race and criminal justice.

At the same time, although crime control has long been a symbolic issue in America, it has also had profound consequences for the building of government institutional capacity in the latter half of the 20th century. As victories of the tough-on-crime era were institutionalized, what was a relatively short-lived political strategy led to a stable shift in institutions, interest groups, and state-level criminal justice reforms. Courts, policing, and incarceration now comprise a substantial proportion of state budgets, criminal justice personnel make up a sizable proportion of state public employees, and states have invested enormous resources in physical infrastructure related to criminal justice over the past several decades. Moreover, as we have argued elsewhere, criminal justice has become an increasingly frequent point of contact between citizens and the state, particularly minority and low-income Americans, and now serves as an important site of political socialization. Those who have had contact with criminal justice through police searches, courts, prisons, and jails are less trusting of government and less likely to participate in democratic life (Weaver and Lerman 2010). And, as others have shown empirically, the rise of mass incarceration and America’s relatively punitive felon disenfranchisement laws have conspired to substantially diminish the political voice of blacks in America more directly; more than 8 percent of the black voting-age population was excluded from the vote in the 2004 presidential election, compared to less than 2 percent of the nonblack voting-age population (Uggen, Behrens, and Manza 2005). Thus, whether coincidental or as the result of a concerted effort, much of the gains in equality from the expansion in voting rights during the 1960s have been undone by greater black imprisonment.

Indeed, the campaign against street crime served not only as a symbolic issue to rally a whole host of societal fears but as a way of redefining the political agenda writ large. To Jonathan Simon, the 1960s represented a key turning point not just in crime policy and punishment, but also in our broader political order. Cast against the malaise of the 1960s, politicians needed to shore up the legitimacy of the state. Simon argues that whereas civil rights was a probable issue for “recasting New Deal governance,” instead, leaders turned to crime to redefine the power and authority of the state and “as a vehicle for constructing a new political order.” As he explains, the crime issue offered the path of least resistance for government innovation and intervention (Simon 2007). “Other than crime, the major objectives on the conservative agenda were constitutionally out of reach, or obstructed by the difficulty of changing settled policy in the legislative system” (Simon 2007, p. 29). Crime policies in the 1960s, like the Safe Street Act, were therefore the “first legislative fruit of a reordering of government around the problem of crime” (Simon 2007, p. 159). Marking the end of the Great Society and New Deal political orders (and the end of liberal dominance), the realization of a new governing coalition around the problem of crime had tremendous consequences for government and punishment over the next few decades. Simon argues that crime rhetoric, strategies, and symbols became the “dominant interpretive grid” of American politics.

Yet, despite the growing body of research on these important trends, many central questions remain unanswered. There is a surprising lack of literature on the role of the race–crime connection in American politics post-1980. Unlike most accounts of the conservative ascendancy, in which race is central, race is curiously absent from many accounts of the modern partisan history of crime control, particularly those that emphasize the Clintonian shift. Few empirical studies have attempted to assess the partisan dynamics of crime in the ‘80s and ‘90s through a racial lens, and, although scholars of the drug war have talked at great length about the racial effects of those policies, the role of race in bringing them about has been much less well theorized.

This is, first and foremost, because the role of racial dynamics in elite political strategies has become more difficult for scholars to discern. During the 1960s, there is no shortage of explicit references to blacks in elite rhetoric, making clear the racial intentionality behind their actions. Even those who recognized the changing landscape of racial tolerance often made little secret about their intent to employ race as a strategic political tool. For example, H. R. Haldeman, chief of staff to President Nixon, wrote in his personal diaries that “President Nixon emphasized that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to” (Parenti 2000, p. 3). However, just as racism in the mass public has become far less socially acceptable to express, so, too, have expectations for the racial ideas and language of political elites changed over time. The result is that even if modern politicians are intentionally playing “the race card” in the modern era, they are less likely to admit it or to do so overtly. Scholars can therefore only speculate about the true racial motivations of elites who employ implicit racial cues, where once they could trace the explicit use of race through elite discourse and writing.

A second reason that race has become harder to locate, however, is that the role of the race–crime connection itself has likely changed. There is little disagreement that white racial hostility was a powerful contributor to the creation of the modern criminal justice system at its inception. However, path dependence is likely to have played a sizable role in its later growth. As Marie Gottschalk shows through a sweeping historical analysis, debates about crime control were actually central to debates around state power and authority for much of the nation’s history. Specifically, Gottschalk identifies several early crusades against crime and argues that although each of these crime campaigns (and the social movements with which they interacted) did not increase incarceration initially, they left behind the institutional “scaffolding” that would expand federal authority over crime; these would be the building blocks of later, truly massive expansions in the criminal justice system (Gottschalk 2006). For instance, early institutional developments like the creation of the FBI and Bureau of Prisons and the subsequent professionalization of the police mattered for the course that criminal justice would follow much later on.

Thus, once the path was set by America’s sordid racial history, overt and intentional racism was no longer needed to build on a status quo. “Racial politics constituted a prime mover in the rise of racialized mass incarceration, but once institutionalized and available as a form of social ordering, crime control and the carceral state more generally achieved ever-greater autonomy from race” (Lopez 2011, p. 16). Instead, once prisons were built and economic interests were aligned, it was fairly easy to continue along this path even without the impelling force of white racism. Eventually, a new political stasis was able to take hold. In this new equilibrium, criminal justice and its racial implications became a normalized feature of American politics. Features of the system that would have seemed unimaginable in the 1970s—like the more than 7 million Americans under correctional supervision (on probation, in jail or prison, and on parole) in 2010, whereas 30 years before there had been fewer than 2 million—became fairly unremarkable (Garland 2002). This is not to say that race was no longer important or that it receded as a relevant part of the story of crime and politics. Rather, race was no longer necessary as a causal prior in the modern criminal justice story. Instead, it became an important outcome of crime control processes.

The primary puzzle of race in the modern period, then, is a story of why the proverbial dog *doesn’t* bark. That is to say, while racial bias may no longer provide a compelling explanation for criminal justice expansion, it likely plays a role in why there is so little opposition to what should otherwise be alarming statistics about racial disproportionality. One probable reason for the relative silence of the American public on the growth of surveillance and incarceration over the past 40 years is that it has been largely concentrated among low-income and minority citizens—target groups about which, scholars have shown, whites continue to harbor mixed emotions. If more whites were going to prison, the story goes, we would likely have begun to decarcerate decades ago.

This, of course, begs the question of how reform might finally occur. Scholars in recent years have tentatively noted a shift back from the punitive policies of the 1970s, 1980s, and 1990s; rehabilitation may not yet be “saved” (Cullen 2005), but it is certainly “back on the table” (Simon 2008; see also Lynch 2008). If race was critical in getting us here, it

would seem sensible to locate the role of race (or its contrasting absence) in the current period. One possibility, of course, is that this most recent trend has nothing to do with race. Some posit that, in light of the recession, state budgets have overwhelmed other concerns and that states have increasingly come to see their bloated criminal justice systems as an economic (and therefore potentially political) liability (Jacobson 2005; Steen and Bandy 2007). In this account, race is shunted to the background and is only relevant in so far as it does not emerge strongly enough to counter these economic imperatives.

Other readings of the recent decline in incarceration might more centrally consider the role of race. An optimistic account of this kind would suggest that America has finally moved beyond white racism, such that Americans are now concerned enough with the disproportionate negative impact that the modern criminal justice system has had on black citizens and their communities to swing the pendulum. A more cynical reading on the role of race in the recent shift might suggest that the criminal justice system has expanded to the point that it has ensnared enough white Americans to finally engender criticism from white America. In either case, injecting a discussion of race into these politics as they unfold is a task to which scholars would do well to attend.

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CHAPTER 3

RACE, CRIME, AND PUBLIC OPINION

JAMES D. UNNEVER

AN extensive body of research examines the question of whether public opinions about crime control policies have become racialized.¹ Opinions are racialized when there are significant differences between African Americans and whites in their attitudes. Opinions are also racialized when racial prejudices and animosities are a principal reason why dominant group members strongly support punitive crime control policies. The findings from this body of research suggest that dominant group members—whites—embrace harsh policies in part because they know they will negatively affect minorities.

United States policies on crime control have disproportionately affected members of minority groups, especially African Americans. This can be shown in a number of ways. Although African Americans are approximately 12 percent of the population, nearly half of those on death row are black, and African Americans constitute 38 percent of the prison population. In 2007, the incarceration rate for African-American men was 6.5 times greater than the rate for white men. African Americans are four times more likely than whites to have a close friend or relative who is currently incarcerated. African Americans are nearly twice as likely as whites to be convicted of drug offenses. One of every three black men and one of every 18 African-American females born in 2004 is expected to be imprisoned at some point in his or her lifetime. African-American youth are six times more likely than white youth to spend time in a secure facility (Mallett and Stoddard-Dare 2010; Harmon 2011; Spohn 2011). Scholars argue that racialized opinions about crime control are a major reason for the mass incarceration of African Americans (Unnever, Cullen, and Jonson 2008; Bobo and Thompson 2010; Peffley and Hurwitz 2011).

Using a variety of datasets, methodologies, measurements, and statistical analyses, a sizable body of research has generated support for the racialization thesis:

- Whites are more likely than African Americans to support punitive crime control policies.

- Opinions about the “war on drugs” are racialized.
- African Americans are substantively more likely than whites to distrust the criminal justice system and believe that it is racially biased.
- Public opinions regarding policies to reduce crime are racialized.
- Whites tend to associate African Americans with crime and violence; these stereotypes are related to support for more punitive crime control attitudes.
- The relationship between racial or ethnic intolerance and support for harsh policies may be a cultural universal in countries with conflicted relations between dominant and minority groups.
- The election of Barack Obama will have little effect on altering African-Americans’ belief about the fairness of the criminal justice system.
- African Americans’ and whites’ opinions about why black men have been massively incarcerated are racialized.

In this essay, I discuss research that explores whether public opinions about crime control policies are racialized. Section I discusses the theoretical framework for the racialization of crime control thesis. Most often, scholars have used some version of the group-based threat thesis coupled with Unnever and Cullen’s theory of empathetic identification and punitive attitudes to explain why opinions about crime control have become racially polarized.

Section II reviews the research designs that have been used to test the racialization thesis. Most scholars have analyzed secondary survey-based datasets (e.g., the General Social Survey [GSS], the American National Election Studies [ANES], Gallup polls, Pew surveys). Some have included vignette-based experiments within their surveys. These vignette surveys include multiple versions that allow researchers to expose some respondents to racial cues to assess whether they alter their opinions about crime control issues. In addition, data on the opinions of African Americans have been collected by employing qualitative methods, particularly intensive interviews. Last, this section reviews how researchers have measured the core concepts associated with the racialization thesis. These include the respondent’s race, racial animosities, pejorative stereotyping, punitiveness, and perceptions of the criminal justice system.

Section III reviews research that examines whether attitudes are racially polarized and whether racial animosities are related to opinions about crime control policies. Issues discussed include support for the death penalty, the war on drugs, whether African Americans and whites similarly perceive the criminal justice system, whether public opinions on policies to reduce crime and on white-collar crime are racialized, and whether whites’ stereotypes of blacks as the “criminal-other” are related to support for harsh policies. I also discuss research on whether the relationship between racial or ethnic intolerance and support for punitive crime control policies is a cultural universal in countries with conflicted minority relations, whether the election of Barack Obama will alter African Americans’ belief about the fairness of the criminal justice system, and whether opinions about why black men have been massively incarcerated are racialized.

The final section draws conclusions and identifies theoretical issues that need additional development and areas of research that warrant further investigation.

I. THEORETICAL FRAMEWORK

There is no a priori reason why there should be a racial divide on public opinion about crime control–related issues or why racial resentments should be related to such opinions. These policies are race-neutral (Peffley and Hurwitz 2002; Unnever, Cullen, and Jones 2008). Any criminal justice policy that explicitly targeted a racial or ethnic group such as African Americans would be declared unconstitutional. The death penalty would be declared unconstitutional if it was only applicable to African Americans convicted of murder. There is no a priori reason why there should be a racial divide or why racist whites should be more supportive of crime control policies than nonracist whites especially after taking into consideration other relevant factors (e.g., liberal vs. conservative, religious beliefs and practices). However, this is not the case. There is a huge racial divide.

A. Group-Based Threats

Scholars use group-based conflict theories to frame their work on why public opinion about crime control policies has become racialized. Inspired by conflict theory, these group-based theories have various labels, including realistic group conflict theory (Levine and Campbell 1972; Wolfe and Spencer 1996; Esses, Jackson, and Armstrong 1998; Esses et al. 2001), the racial threat thesis (Blalock 1967; Ousey and Unnever, 2012), the group-position thesis (Blumer 1958; Weitzer and Tuch 2005), comparative conflict theory (Hagan, Shedd, and Payne 2005; Buckler and Unnever 2008), ethnic conflict theory (Coenders and Scheepers 1998), and minority group threat theory (Jackman and Muha 1984; Bobo and Hutchings 1996; Jacobs, Carmichael, and Kent 2005).

Elaborating on the minority group threat thesis, Jackman and Muha (1984) argue that Western capitalist democracies actively foster egalitarian ideologies while producing no tangible commitments to the elimination of racial or ethnic inequalities. They suggest that these democracies develop individualistic explanations and “symbolic responsiveness” as a means of diverting and muting the demands of subordinate groups. They argue that racialization of punishment attitudes occurs when criminality is associated with those generally defined as the “other” or “them.” This association becomes a powerful tool in the maintenance of the dominant group’s cultural hegemony. Racialization simultaneously achieves two ends. First, it is a conduit for solidifying racial or ethnic prejudices that emerge from early child-rearing experiences and group-based interests (Sears and Jessor 1996). Members of the privileged group can righteously voice their prejudices toward outsiders by claiming that they are disrupting the normative order by

being overly criminal. Under this veneer of legitimacy, dominant group members can also claim that they “do not hold anything against” individual members of the out-group but that, as a group, minorities need to be carefully controlled. Second, associating “others” as criminal reinforces the privileged groups’ reluctance to endorse any policies that would “level the playing field.” It is difficult to crystallize support among dominant group members for minority-targeted policies such as welfare or affirmative action if these policies are perceived disproportionately to benefit those who flagrantly violate the law (Neubeck and Cazenave 2001).

Scholars have long noted the relationship between racial and ethnic intolerance, political opinion, and repressive public policies, arguing that associating criminality with well-defined “others” brings into sharp focus why members of minority groups are “legitimate” objects of harsh criminal justice policies (Sullivan and Transue 1999). This association provides a justification among members of the dominant group for publicly supporting punitive crime control policies such as the death penalty (Chiricos, Welch, and Getz 2004; Newburn and Jones 2005). It allows members of the dominant group to believe that harsh policies, even when they disproportionately negatively affect “others,” are necessary because members of these groups are more likely to victimize innocent people. The dominant group can believe that minorities are “getting nothing more than they deserve” (Hurwitz and Peffley 1997, 2005; Peffley and Hurwitz 2002; Hogan, Chiricos, and Gertz 2005).

Racial and ethnic typifications of crime also serve a political purpose: political officials exploit these typifications to solidify support among members of the dominant group (Mendelberg 1997; Garland 2002; Beckett and Sasson 2003; Hogan, Chiricos, and Gertz 2005). Politicians frame the issue of punishment with implicit racial and ethnic cues—for example, the infamous Willie Horton commercial in the 1988 presidential election—with the intent of solidifying their support among members of the dominant group. In this way, they can shore up their support, especially among those who harbor racial and ethnic prejudices, by being “tough on crime” (Hurwitz and Peffley 2005; Jacobs and Kent 2007). Accordingly, associating crime with “others” becomes one of the vehicles that political officials use to foster their own agendas and win public support for harsh policies. This association has an additional insidious consequence; it solidifies, legitimates, and extends racial and ethnic prejudices among politicians’ constituents. Theories of group threat hypothesize that perceived minority group threats result in dominant groups associating crime with minorities and supporting harsh crime control policies.

Some, for example John Hagan and colleagues, have criticized group threat theories because they focus on the dominant group’s response while generally ignoring the formation and articulation of minority group opinions. They argue that minority group opinions are forged in response to a “long history of public dishonor and ritualized humiliation” by the criminal justice system at the behest of whites (Hagan, Shedd, and Payne 2005, p. 382). Unnever and Gabbidon (2011) argue that this long history of public humiliation has given African Americans a different worldview than dominant group members. African Americans nearly universally share a belief that race and racism

matter in their interactions with the criminal justice system (Unnever 2008). Weitzer and Tuch (2005) argue that the racial divide in public opinion reflects whites' perception that the criminal justice system as an institution protects their position in society. Conversely, African Americans perceive the criminal justice system as a blunt, oppressive instrument used to "keep them in their place" (Unnever and Cullen 2005, 2007a, 2007b). Group threat theories thus posit that the racialization of opinions about punishment reflects racist beliefs among the dominant group and a rejection of those beliefs among African Americans.

B. Empathetic Identification and Punitiveness

The racial threat thesis provides an overarching rationale for why there is a racial divide in public opinion and why racial or ethnic animosities are related to attitudes about punishment. However, it does not explain individual differences in punitiveness. That is, not all dominant group members support harsh policies. Some dominant group members are more supportive of a rehabilitative approach than a punitive one. The research shows that most dominant group members are pragmatic in their views about crime. They support policies that have both a punitive component (e.g., support for incarceration) and an emphasis on rehabilitation of offenders (Unnever et al. 2009).

The group threat thesis coupled with Unnever and Cullen's (2009) middle-range theory of empathetic identification and punitiveness provides a fuller framework for understanding the racialization of opinions about punishment. The ability to empathetically identify with the offender—for examples, African-American youths convicted of a mugging or white executives convicted of a corporate crime—is a key predictor of why people differ in their opinions (Unnever, Cullen, and Fisher 2005). There are a number of reasons why the ability to empathize with the offender should be related to punitiveness, including that it dulls the need to retaliate, it increases the likelihood that people will try to understand why people engage in criminal behavior, and it enhances the likelihood of forgiveness and reconciliation.

The ability to empathize emerges from diverse sources but is especially influenced by constructed images of offenders that reflect those disseminated by elites, the media, and popular culture (Unnever and Cullen 2009). When individuals form their opinions about crime control policies, they form a mental image—they have "pictures in their head"—of the kinds of people who will be especially affected when the laws are applied. That social construction of images of typical offenders is part of the "sensibilities" (Tonry 2004) or "cultural scripts" (Garland 2000, 2005) created at particular historical junctures within societies (Savelsberg 1999). Unnever and Cullen (2009) argue that the current prevailing stereotype, particularly for street crimes, is infused with racist beliefs. That is, the "picture in the head" for some is the unremorseful urban black offender—the "superpredator" or the "criminal-other." However, these toxic stereotypes are dynamic and change as social and political forces realign. And, they are unevenly distributed across populations.

Unnever and Cullen (2009) further posit that individual differences in punitiveness are shaped by a person's race and by his or her racial, political, and religious beliefs. African Americans are less punitive than whites because they can more readily identify with the "typical" black offender. Unnever and Cullen posit that the most punitive attitudes toward street crime are found among those whites who typify crime with people toward whom they feel animus, that is, African Americans.

Political beliefs are a robust and consistent predictor of punitiveness. Conservatives are more prone to support harsh crime control policies than are liberals. Unnever and Cullen (2009) attribute this relationship to less empathetic views of conservatives that tend to attribute wrongdoing to personal failures. Conservatives tend to believe that crime results from an exercise of free will rather than from structural disadvantages; offenders choose to commit the crime and, therefore, they deserve to be harshly punished. Unnever and Cullen (2009) also theorize that religious beliefs and practices can both mitigate (e.g., because of belief in a loving god, often attending religious services) and exacerbate punitive attitudes (e.g., because of belief in a vengeful god).

The literature suggests that group-based explanations can help us understand why there is racial divide in punitiveness and why racist beliefs predict support for harsh crime control policies. Unnever and Cullen's (2009) theory of empathetic identification and punitiveness provides an explanation for why macrolevel group-based threats differently affect punitiveness at the individual level. Thus, macrolevel group threats result in elites and the media constructing negative images of minorities and supporting the ideological view that offenders choose to commit crime and therefore deserve to be harshly punished. Some dominant group members, particularly those who are already prejudiced, readily embrace these negative stereotypes and become adamant supporters of efforts to further police and control "dangerous minorities."

However, some dominant group members and most African Americans do not perceive macrolevel group threats. Thus, they reject criminal attributions and labels of racial or ethnic groups as the "criminal-other." They are less likely to support policies that disproportionately negatively affect racial or ethnic minorities. They can readily identify with minority offenders. Consequently, they are likely to advocate for rehabilitation of offenders and for the alleviation of structural barriers related to crime (e.g., more employment and better schools). African Americans are especially likely to reject the legitimacy of harsh policies.

C. Core Hypotheses

The racialization of public opinion about crime control thesis has generated two core hypotheses. First, the *racial divide hypothesis* posits that African Americans should hold different opinions than whites in relation to harsh policies and whether the criminal justice system treats people fairly. Whites should be more punitive than African Americans. Whites should perceive that the criminal justice system is not racially biased but blacks should perceive that it discriminates against them because of their race.

Second, the *racial animosity hypothesis* posits that whites who are racially prejudiced should be the most supportive of harsh policies and be more likely than other people to deny that the criminal justice system discriminates against African Americans. A large, diverse literature provides strong support for these two hypotheses.

II. RESEARCH DESIGNS

W. E. B. Du Bois showed over a hundred years ago that African Americans' opinions about punishment are different from those of whites (Du Bois 1899). By analyzing survey data he collected in Philadelphia, Du Bois found that racist beliefs pervade public opinion about crime control. Researchers have continued with this tradition. The vast majority of this research has used survey data. Most has analyzed national probability datasets that are recognized for the validity of their measures and their generalizability and reliability. These include the GSS (<http://www3.norc.org/GSS+Website>), the ANES (<http://www.electionstudies.org>), Gallup polls (<http://institution.gallup.com>), and *The Washington Post*, Henry J. Kaiser Family Foundation, and Harvard University 2006 African-American Survey (Unnever and Cullen 2005; Unnever 2008; Warren 2011). These datasets allow researchers to control for a wide array of factors (e.g., age, race, gender, political orientation) and to do trend analyses (e.g., see Unnever and Cullen 2012) while testing the racialization thesis.

A. Data Collection Methods

Scholars have explored the racial or ethnic dynamics of public opinion using innovative survey research designs. Bobo and Johnson (2004) created the Race, Crime, and Public Opinion Study (RCPOS) in 2001, which sampled 978 white and 1,010 black respondents. The survey was administered over the Internet to a representative sample of U.S. households generated using a complex sample stratification design that took into account the known probabilities of selection associated with geographical location, the numbers of phone lines and people in each household, and whether the phone number was listed. Every household that participated received free hardware, free Internet access, free e-mail accounts, and ongoing technical support (see also, Weitzer and Tuch 2004).

The RCPOS included a three-way split-ballot survey design, which allowed Bobo and Johnson to first establish baseline data and then compare these data with how individuals responded once prompted with different racial cues. Four experiments were embedded within the research design. In one experiment, Bobo and Johnson (2004) assessed whether there was a racial dynamic associated with public support for punishing crack cocaine users more severely than powder cocaine users. In one set of surveys, respondents were asked a baseline question that assessed their general level of support for more severely punishing crack users. A second set of surveys included a racial bias cue

condition. These surveys prompted respondents with the following statement, “Most of those convicted for crack cocaine use are Blacks and most of those convicted for powder cocaine use are Whites.” They included the racial prompt to assess whether respondents were more willing to support harsher punishments when they knew that most crack users were African Americans.

A second experiment assessed whether a racial cue would affect the level of support for capital punishment. One set of respondents received a baseline death penalty question with no racial cue, one-third received the racial cue of African-American overrepresentation on death row, and one-third received a negative racial cue concerning the disproportionate commission of homicides by blacks. Bobo and Johnson (2004) hypothesized that the third question should elicit the greatest support for the death penalty. The third experiment altered the racial cue by providing information about whether the murderer killed a white or black person. They hypothesized that respondents would be more punitive toward people who murder whites than toward those who murder nonwhites, regardless of whether the murderer was African American or white. The fourth experiment was unrelated to race. Bobo and Johnson (2004) established a baseline by asking whether respondents were more likely to support a gubernatorial candidate who opposed the death penalty because there was too great a risk that innocent people might be executed. Other respondents were asked their level of gubernatorial support after they were informed that 79 people convicted and sentenced to death since 1976 were later found to be innocent and released from prison.

Hurwitz and Peffley (2010) administered the National Race and Crime Survey (NRCS) in 2001. This was a nationwide telephone survey of approximately 600 non-Hispanic whites and 600 African Americans in the 48 contiguous states and included vignettes in randomly distributed surveys. White respondents were selected through a variant of random digit dialing (RDD) procedures, along with a stratified oversample of black respondents.

Hurwitz and Peffley (2010) included a police brutality experiment to assess whether there was a racial divide in perceptions of policing. Respondents were presented with a vignette involving a police officer accused of brutalizing a civilian who—in different versions—was white or African American. Individuals were asked about “a recent incident in Chicago in which a police officer was accused of brutally beating a [White or Black] motorist who had been stopped for questioning. The police department promised to investigate the incident. How likely do you think it is that the police department will conduct a fair and thorough investigation of the policeman’s behavior?” (Hurwitz and Peffley 2010, p. 465). Respondents were randomly assigned the two versions of the question. Their dependent variable was a four-point scale ranging from “very likely” to “very unlikely” that the police department would conduct a fair investigation.

Hurwitz and Peffley (2010) also embedded a death penalty experiment that included a racial cue. One-third of respondents were asked a general question regarding their level of support for capital punishment. These were used to establish the baseline level of support. Another third were exposed to a racial cue. They were asked the same death penalty question, but it was preceded by the statement: “Here is a question about the death penalty. Some people say that the death penalty is unfair because most of the people who

are executed are African Americans.” The remaining third of respondents were asked the same death penalty question preceded by the statement: “Some people say that the death penalty is unfair because too many innocent people are being executed.” (For the use of vignettes with students, see Mbuba [2010].)

The vast majority of studies on opinions about crime control are based on survey-based research. However, the public opinion literature has been enriched by use of qualitative methods, such as intensive interviews (Weitzer 2000). Brunson and colleagues (Brunson and Miller 2006a, 2006b; Brunson 2007; Brunson and Weitzer 2009, 2011) have examined attitudes of inner-city African Americans toward the criminal justice system. One dataset was generated from an interview-based study of 44 adult African-American residents of East Saint Louis, Illinois (ESL). ESL is almost entirely African American (98 percent), as is its police department. The research design used a purposive sample with the goal of interviewing people with considerable knowledge about the city. Brunson asked research team members to identify and approach individuals 18 years of age and older who lived in ESL. Interviews lasted approximately 1 hour and took place in private residences and offices. They were audio-recorded and semistructured with open-ended questions that allowed for considerable probing. The interviewees ranged in age from 18 to 70, with a mean age of 45. The sample included 25 women and 19 men. The interviews were conducted between fall 2007 and summer 2008. Respondents were paid \$25 for their participation, and their confidentiality was assured; each was assigned a pseudonym.

Brunson (Brunson and Miller 2006a, 2006b) created a similar dataset of African-American youth. Respondents were recruited with the cooperation of several organizations working with at-risk and delinquent youths. They included one local community agency and two alternative public high schools. Nearly equal numbers of respondents were drawn from each location. The community agency was a neighborhood-based drop-in center in North Saint Louis where local youths were free to congregate and socialize. Brunson taught a photography class at the center the summer before data collection and was familiar with the youths in his sample. The two alternative schools drew youths from the Saint Louis public school catchment area and served youths who were expelled from Saint Louis public schools. Counselors were asked to identify and approach youths who lived in disadvantaged neighborhoods in the city. The focus of the intensive interviews was African Americans’ perceptions of the criminal justice system.

B. Measurement of Core Concepts

The core assumption of the racialization thesis is that race and racism matter in the formulation of public opinions. Consequently, tests of this thesis are centered on constructing valid measures of the respondent’s race.

1. *Race.* With few exceptions, research on the racialization thesis analyzes secondary data from preexisting surveys. As a result, researchers have had to rely on the measures included within these datasets. Most often, secondary datasets measure race with

a standard, but limited, self-report question. The GSS has used the following question, “What race do you consider yourself?” The proffered responses are “white,” “black,” or “other” (Smith 1997). Researchers have two ways to measure the respondent’s race when presented with these responses. First, they can construct a binary variable with either white or black coded one and the other two remaining responses coded zero (e.g., 1 = black; 0 = white and “other”). The second option is to delete the “other” category and contrast black versus white opinions. Both options should be accompanied by a footnote that indicates whether including the “other” category in the analysis affects the degree to which there is a racial divide in opinions.

Including the “other” category may attenuate the size of the racial divide if it is predominantly populated by Hispanics. Opinions of Hispanics about punishment have tended to fall between those of whites and African Americans (Buckler and Unnever 2008; Welch et al. 2011). Thus, if a questionnaire has a unique category for Hispanics, it is best to include them as a separate variable rather than creating a binary variable with African Americans coded one and all others coded zero. Creating a separate category for Hispanics also allows for a further exploration of whether the racialization thesis is equally applicable to disadvantaged minorities other than African Americans.

Two other issues should be considered. First, researchers need to recognize that there is variation among individuals who self-report that they are “black” or “African American.” Three million, or 8 percent, of the 37.3 million people who self-identified as black on the 2010 Census form were foreign-born (with the two largest percentages born in Jamaica [19 percent] and Haiti [17 percent]) (Grieco 2010). Research shows that foreign-born blacks do not fully share identical opinions with blacks born in the United States because they may not share the same worldview (see Unnever and Gabbidon 2011). Indeed, many foreign-born blacks define themselves as immigrants and secondly as black (Unnever and Gabbidon 2013). Including foreign-born blacks in analyses may narrow the racial divides between whites and African Americans born in the United States. Second, researchers should recognize that a person’s racial identity is a social and developmental construct that can vary across time, space, and situation (Unnever and Gabbidon 2011). Thus, scholars may wish to explore whether a person’s racial identity is related to opinions about crime control policies. For example, are American-born blacks who are proud to be African American more likely to perceive criminal justice injustices than are those who hold their race in low regard (Lee, Steinberg, and Piquero 2010; Lee et al. 2011)?

2. *Racial Animosity.* African Americans in recent decades have made substantial political, economic, and social gains (Wilson 2011). These gains are consequences of the hard-won victories of the civil rights movement (Loury 2004). Research suggests a decline in the overt racism—the Jim Crow racism—that has characterized much of the experience of African Americans in the United States. Jim Crow racism was grounded in adamant support for racial segregation and the belief that African Americans were innately inferior. This belief was advanced by some of the “Founding Fathers” of the United States who owned slaves. Thomas Jefferson (1785/1999, p. 266) in his *Notes on the State of Virginia* observed that blacks “are inferior to the whites in the endowments of both body and mind” and “that in imagination they are dull, tasteless, and anomalous.”

Polling data on attitudes of whites toward interracial dating illustrate the decline in Jim Crow racism. In 1987, the public was divided down the middle, with 48 percent approving of interracial dating and 46 percent disapproving. By 2007, more than 80 percent of Americans agreed that “it’s all right for blacks and whites to date,” which reflects the most dramatic change among racial attitudes Pew polls have tracked over time (Pew Research Center for the People and Press 2007). Attitudes toward interracial dating are age-related. Nearly two-thirds of Americans born before 1946 (65 percent) say it is acceptable for whites to date African Americans compared with 84 percent of baby boomers, 87 percent of members of generation X, and 94 percent of those born since 1977 (Pew Research Center for the People and Press 2007).² Scholars have also documented a steady decline in the belief that African Americans are innately inferior. Bobo (2001, p. 269) concluded that “the single clearest trend shown in studies of racial attitudes has involved a steady and sweeping movement toward general endorsement of the principles of racial equality and integration.”

The demise of Jim Crow racism, however, does not equal the end of institutionalized or individual prejudice. Some researchers contend that Jim Crow has been superseded by a more politically correct form of racism (Bonilla-Silva and Dietrich 2011). Various labels have been given to this new form of racism including “modern racism,” “color-blind racism,” “symbolic racism,” “laissez-faire racism,” “aversive racism theory,” and “group position–group threat racism” (Bobo 2011). Systematic racial inequalities (e.g., income and wealth disparities) are not attributed to the innate inferiority of African Americans but to “the product of market dynamics, naturally occurring phenomena, and their alleged cultural deficiencies” (Bonilla-Silva and Dietrich 2011, p. 191). Theorists argue that whites now tend to express racial prejudices covertly through the use of code words that symbolically embrace a narrative that justifies racial inequalities (Wilson and Nielson 2011). This narrative is based on denial of the reality of racial prejudices that pervade the everyday lives of most African Americans (Essed 1991) and includes the assessment that “if blacks really wanted to achieve they could; they only need to try harder.” Racist whites are said to attribute racial inequalities to the breakdown of the African-American family, the belief that blacks do not exert enough effort, and the belief that blacks share inappropriate values (Bonilla-Silva and Dietrich 2011).

Scholars have created empirical measures of this new form of racism (Kinder and Sanders 1996; Wilson and Davis 2011). Most often, they use some derivative of the following four statements:

“Irish, Italians, Jewish, and many other minorities overcame prejudice and worked their way up. African Americans should do the same without any special favors”;

“Over the past few years, African Americans have gotten less than they deserve”;

“It’s really a matter of some people not trying hard enough; if African Americans would only try harder they could be just as well off as whites”;

“Generations of slavery and discrimination have created conditions that make it difficult for African Americans to work their way out of the lower class.” (Unnever, Cullen, and Jones 2008)

Racial animosities predict public opinion on race-targeted issues such as the fair treatment of African Americans in employment, the role of the federal government in providing assistance to blacks, and the justifiability of affirmative action programs in employment and higher education (Tarman and Sears 2005). The strength of these relationships indicates that some whites' support for social programs considered to be race-based is founded not on self-interest and class identification but on group identification. Therefore, some whites can be expected to oppose race-targeted policies even if they might personally profit from them. Kinder and Sanders (1996), however, report finding no relationship between racial resentments and race-neutral social policies such as abortion and civil rights for homosexuals. They conclude that the influence of racial resentments depends on whether the national policy is race-neutral or race-targeted. White racists oppose race-targeted policies such as affirmative action that explicitly favor minority groups.

Traditional measures of racial resentments, however, do not accurately assess the degree to which whites are racist (Unnever and Cullen 2007a). Measures of white racism should be assessed in relation to the perspective of African Americans. Standard measures of racial resentment do not have a baseline that defines the point at which individuals express racist opinions. To correct this measurement problem, Unnever and Cullen (2007a) defined individuals as "white racists" when they scored above the African American mean on racial resentment scales. Individuals were characterized as racists if they viewed African Americans with more racial resentment than the average African American has toward his or her own race.

Unnever and Cullen (2007a) assessed the usefulness of this measure by seeing whether it predicted support for the death penalty. A substantial percentage of the racial divide in support for capital punishment resulted from their measure of white racism. One-third of the effect of the race coefficient on support of the death penalty was mediated by the measure of white racism to identify individuals who possessed more racial resentment than the average African American. Only a slim majority of nonracist whites—54 percent—supported the death penalty, and the difference between African Americans and whites was narrowed to 10 percent. That is, public opinion on capital punishment is roughly similar among nonracist whites and African Americans. Greater insights into the effects of racial resentments can be gained with measures that are relative to minority group views.

The argument that there is a new racism—a new form of racial resentment—has been criticized (Schuman 2000). Critics do not dismiss the hypothesis that systematic and personal prejudices shape whites' opinions. They argue that the instruments used to measure racial resentment (e.g., "It's really a matter of some people not trying hard enough; if blacks would only try harder they could be just as well off as whites") are conflated with those used to measure opinions about race-targeted policies (e.g., "Some people feel that the government in Washington should make every effort to improve the social and economic position of blacks. Others feel that the government should not make any special effort to help blacks because they should help themselves"). Carmine, Sniderman, and Easter (2011, p. 112) conclude, "Racial resentment's relationship with

racial policy attitudes is so exceptionally strong precisely because the measure of ‘racial resentment’ is primarily a measure of racial policy attitudes.”

Even if this critique is valid concerning race-targeted policies, it is much less persuasive concerning racialization of views about crime control policies. These are not overtly race-targeted; they are race-neutral. Measures of racial resentment do not conflate with support for the death penalty. That is, there is no a priori reason why whites’ support for the death penalty should be conflated with their attitudes toward racial and ethnic minorities, unless they associate crime with race and race with crime—that is, unless they have racialized beliefs about crime. In addition, regardless of how racial prejudices are measured—the racial resentment scale, “feeling thermometers,” or measures of stereotypes—they predict public support for harsh policies. The more prejudiced whites are—whether it is ethnic or racial prejudice—the more likely they are to support harsh policies (Unnever, Cullen, and Fisher 2005). Finally, racial resentment and racial prejudice predict punitiveness after controlling for political ideology and dispositional or structural attributions of inequalities and crime (Unnever, Cullen, and Jones 2008; Wilson and Nielson 2011).

3. *Pejorative Racial Stereotypes.* A key component of the racialization thesis is that whites pejoratively stereotype African Americans and negatively associate African Americans with crime and crime with African Americans. Unnever and Cullen (2009) argue that the stereotype that African Americans are criminal is a principal conduit through which whites’ perceptions of racial threats are made manifest in support of greater punitiveness. Those whites who are most likely to support harsh policies are those who pejoratively stereotype African Americans as criminals. Thus, the racialization thesis is supported if whites stereotype African Americans as prone to crime and violence, and those stereotypes are related to support for harsh policies, all else being equal.

Stereotypes of African Americans as criminal or prone to violence have been investigated in a number of ways. I highlight three: providing respondents with a checklist of adjectives, asking respondents to estimate the level of crime committed by minorities, and having respondents evaluate African Americans’ proneness to violence. As an example of the first, Devine and Elliot (1995, p. 1142) provided 147 white students a checklist with 93 adjectives and asked them to mark those that “make up the cultural stereotype of Blacks.” This checklist included positive (e.g., kind, honest, sensitive) and negative terms. They added “criminal” and “hostile” to the checklist of 84 adjectives originally constructed decades earlier. There were three relevant findings. First, pejorative stereotypes of African Americans endured from 1933 to the mid-1990s. Second, the content of the negative stereotypes changed over time. Third, the newly added adjectives “criminal” and “hostile” were in the top ten adjectives used to describe African Americans. Others were athletic, rhythmic, low in intelligence, poor, lazy, and loud. None of the top ten was a positive trait, such as kind, ambitious, honest, or sensitive (Devine and Elliot 1995).

Researchers have asked respondents to assess the degree to which they believe minorities commit crime (Welch et al. 2011). Chiricos, Welch, and Gertz (2004) conducted

a national survey of a random sample of nearly 900 adults to examine whether their measure of the racial typification of crime increased support for punitive attitudes (e.g., “making sentences more severe for all crimes,” “executing more murderers”). Their assessment was based on a scale that summed across three questions: “What percent of people who commit violent crimes in this country would you say are black?”; “When you think about people who break into homes and businesses when nobody is there, approximately what percent would you say are black?”; and “When you think about people who rob other people at gunpoint, approximately what percent would you say are black?” Welch et al. (2011) constructed a similar index of three questions that assessed perceptions of Latino involvement in violent crime, burglary, and robbery (e.g., “When you think about people who rob other people at gunpoint, approximately what percent would you say are Latino?”) and a scale composed of eight questions measuring support for punitive crime control policies.

It can be misleading simply to ask whites to evaluate the level of crime that African Americans commit unless there is a baseline comparison because African Americans are disproportionately often arrested for violent crimes. Thus, some white respondents may know that African Americans account for 50–60 percent of arrests for robbery. When such people respond to the question, “When you think about people who rob other people at gunpoint, approximately what percent would you say are black?” with the answer “60 percent,” they might wrongly be classified among those who most strongly stereotype African Americans (if 60 percent is on the high end of the recorded responses).

Researchers have also asked whites about the degree to which they believe minorities are prone to violence (Barkan and Cohn 2005). In 1990 and 2000, the GSS included questions related to ethnic stereotypes (Smith 2001, p. 45). A set of questions asked respondents to rate whether people in their self-designated group were mostly closer to one or the other of two polar statements (Smith 2001). Analyzing the 1990 and 2000 GSS datasets, Unnever and Cullen (2012) used the polar responses “not violence-prone” and “violence-prone” (coded 1) to create a measure of whites’ pejorative stereotypes of African Americans. Respondents were asked to rate different groups on violence-proneness. Similarly, Peffley, Hurwitz, and Sniderman (1997) analyzed the 1991 National Race and Politics Survey and created a measure of whether respondents stereotyped African Americans as prone to violence. The measure was based on a question that asked respondents to use a scale from 0 to 10 to express the degree to which “most blacks” were or were not violence-prone.

Unnever and Cullen (2012) argue that measures of whether respondents pejoratively stereotype African Americans should assess the extent to which minorities are seen as departing from what whites consider to be “normal.” This relative standard is defined by how much whites believe minorities’ violence departs from the threat of their own group. A “white-centric” measure should be used: a racial or ethnic typification of crime occurs when whites believe that a minority group commits more crime than whites do. It occurs when the dominant group believes “it is not us but them who commit all the crime” (Loury 2004, p. 2008).

4. *Dependent Variables: Opinions About Punishment.* Researchers have used a variety of measures to assess whether people embrace punitive attitudes. Because much of the research on punitiveness involves secondary analyses, researchers have been limited to questions included in surveys. One question routinely asked is whether respondents support the use of the death penalty for convicted murderers. Its inclusion in many surveys is why it is the most often analyzed measure of punitiveness. Of course, scholars have also focused on capital punishment because it is the “ultimate weapon” to punish criminals (Longmire 1996).

Since 1974, the GSS has routinely included the following question on its surveys, “Are you in favor of the death penalty for persons convicted of murder?” The GSS provides only three responses “yes, favor,” “no, don’t favor,” and “don’t know.” These answers, unlike those in other national probability surveys, cannot assess the degree to which individuals support capital punishment (e.g., strongly agree to strongly disagree).

Other measures of punitiveness have been used, such as whether individuals support “three-strikes legislation” (Applegate et al. 1996; Tyler and Boeckmann 1997), the drug war (Bobo and Johnson 2004; Bobo and Thompson 2006), and sentencing of white-collar criminals (Unnever, Benson, and Cullen 2008). Indices have been constructed that assess punitiveness across various questions. Chiricos, Welch, and Gertz (2004) created an index that included eight indicators, “making sentences more severe for all crimes,” “executing more murderers,” “making prisoners work on chain gangs,” “locking up more juvenile offenders,” and “sending repeat juvenile offenders to adult courts.” Punitiveness has also been measured with such questions as whether adult offenders should be sentenced “to lock them up so that they are not able to harm anyone again” or “to treat and help them with their problems so that they do not commit other crimes” (Unnever et al. 2009).

Efforts to conceptualize and measure punitiveness raise difficult issues (Hough and Roberts 1998; Roberts and Hough 2002, 2005, 2011; Roberts 2008). Hutton (2005, p. 246) argues that attempts to measure support for harsh crime control policies are “likely to be influenced by the method of inquiry, the degree of information provided, and the framing of the accounts of crime and punishment used” and concludes that contradictory attitudes are always present but rarely measured. Unnever et al. (2009) argue that this is particularly true when respondents are asked to express their views with yes or no responses. Unnever and Cullen (2005) demonstrated that how a capital punishment question is worded affects the percentage of people who report that they support capital punishment. Seventy-five percent of respondents to a Gallup poll reported they supported the death penalty when forced to answer yes or no. When the same respondents were offered a choice between capital punishment and life imprisonment without the possibility of parole, only 53 percent selected capital punishment.

National surveys rarely ask questions about relative support for progressive crime control policies, and they rarely allow respondents to prioritize which method of crime control they most prefer. Separate questions fail to capture the complexities of American public opinion because they do not measure the degree to which Americans simultaneously support both punitive and progressive policies.

Unnever et al. (2009) analyzed a Pew survey conducted in 2000 to show that individuals can simultaneously embrace both punitive and progressive attitudes. The Pew survey prompted respondents with the following statement, “I am going to read you some things that might be done to reduce violent crime in this country. As I read each one, please tell me if you think it would reduce the amount of violent crime a lot, a little, or not at all.” They analyzed the frequencies of two options: “More job and community programs for young people” and “longer jail terms for those convicted of violent crimes.” More respondents (65 percent) said crime would be reduced “a lot” by a structural approach—more job opportunities—than by a punitive one—longer jail sentences (52 percent). A cross-tabulation revealed that 55 percent of respondents who expressed strong support for a structural solution to crime also believed that longer prison sentences are needed to reduce violent crime. Unnever et al. (2009) argue that these findings illustrate how individual single-item questions with limited response categories can inaccurately portray public opinion (see also Roberts and Hough 2011). A majority of Americans believe that crime reduction policies must address underlying structural causes of crime and hold individuals responsible for their behavior.

Researchers need to capture the complexities of opinion formation when they test the racialization thesis. Modeling these complexities will allow more accurate assessments of whether those individuals who are the most punitive are also those who harbor the deepest racial resentments and believe the justice system evenhandedly treats African Americans and whites.

5. *Dependent Variables: Perceptions of the Criminal Justice System.* A cornerstone of the racialization thesis is that whites and African Americans have significantly different opinions about the criminal justice system. Whites, especially those who are racially prejudiced, will perceive that the criminal justice system tends to treat everyone equally whereas African Americans believe that it discriminates against them. Scholars have used a variety of measures to assess this component of the racialization thesis. Some simply ask whether respondents believe minorities are treated unfairly; others ask more general questions on whether respondents believe the justice system treats people fairly.

Unnever, Gabbidon, and Higgins (2011), analyzing a 2008 Gallup poll, included two measures related to perceptions of the criminal justice system, “How much confidence do you have in the local police in your area to treat blacks and whites equally?” and “Do you think the American justice system is—or is not—biased against blacks?” Analyzing the 2001 New York Youth Survey conducted by the *New York Times* and the New York City Police Department, Buckler and Unnever (2008) analyzed four questions:

“It has been reported that some police officers stop people of certain racial or ethnic groups because the officers believe that these groups are more likely than others to commit certain types of crimes. Do you believe that this practice is widespread in New York City, or not?”

“How common do you think brutality against minorities is by members of the New York City Police Department? Is it widespread, or is it limited to a few isolated incidents?”

“Do you think the police in New York City generally treat both whites and African Americans fairly, or do they favor one race over the other?”

“Do you think that police are more likely to use deadly force when they are faced with an African-American suspect than if they are faced with a white suspect, or do you think the police treat suspects the same regardless of race?”

Weitzer and Tuch (2004) constructed a survey that was administered over the Internet by the Knowledge Network, Inc. to assess whether people perceive that the police treat people fairly. They asked respondents, “How often do you think police officers stop people on the streets of (your neighborhood; your city) without good reason?”; “How often do you think police officers, when talking to people in (your neighborhood; your city) use insulting language against them?”; and “When police officers use force against people, how often do you think they use excessive force (that is, more force than is necessary under the circumstance) against people in (your neighborhood; your city)?”

The vast majority of research on racial differences in opinions about the criminal justice system has focused on the police. A few studies have examined opinions about the fairness of the courts. Buckler, Cullen, and Unnever (2007) analyzed a national survey of U.S. citizens conducted and coordinated by the National Center for State Courts. This survey included two questions directly related to race and ethnicity (i.e., do courts treat African Americans worse, do courts treat Hispanics worse) and many questions related to whether the courts are fair (e.g., are courts sensitive to the concerns of average people, do courts produce fair outcomes, do courts use fair procedures). Higgins et al. (2009) analyzed the survey’s findings.

III. A REVIEW OF THE RESEARCH

Studies have been conducted of racial differences in attitudes, opinions, and beliefs concerning capital punishment, harsh punishment policies, the war on drugs, punishment of white-collar criminals, and attempts to address the “root” social and economic conditions associated with criminality. Other research has examined racial differences in beliefs about the causes of crime and the fairness of the justice system.

A. The Death Penalty

There is an enduring and deep racial divide in support for capital punishment (Unnever and Cullen 2007*b*; Unnever and Gabbidon 2011). A majority of whites and a minority of African Americans support it (Unnever, Cullen, and Jonson 2008). Despite social and economic gains made by African Americans and the moderation of racial attitudes among whites, there has for the past 30 years been a persistent 34 percentage point difference in support for capital punishment (Unnever, Cullen, and Jonson 2008).

Researchers have explored the underlying dynamics of this difference. Using data from the GSS, Unnever and Cullen (2007*b*) examined the influence of class, political

orientation, religious affiliation, confidence in government officials, and whether one was a native southerner. Factors that might be expected to lead to common outlooks—such as class, conservative politics, religious fundamentalism, confidence in government, and regional location—do not narrow the racial divide or have only modest effects. Unnever and Cullen (2007*b*) concluded that the entrenchment of the racial polarization has two related causes: first, black opposition to capital punishment is rooted in African Americans' shared history of racial oppression generally and by the justice system (Beck, Massey, and Tolnay 1989; Keil and Vito 2009); and second, white support is inextricably related to racialized opinions about crime control.

Unnever and Cullen (2005) analyzed a 2003 Gallup poll to assess whether believing an innocent person had been executed affected support for the death penalty. That belief enhanced racial polarization; support fell more among African Americans than among whites. Peffley and Hurwitz (2007) report a similar finding: African Americans were more responsive to considerations that were racial (i.e., the death penalty is unfair because most of those executed are black) and nonracial (i.e., innocent people are executed) than were whites. Support for the death penalty among whites increased when they learned that most of those executed are African Americans. Black support decreased. Peffley and Hurwitz (2007) conclude that these differences are explained, in part, by the degree to which people attribute the causes of African Americans' criminality to dispositional forces (i.e., flaws in the individual) or systematic ones (i.e., the racial biases of the criminal justice system).

A large body of research has investigated whether racist whites are more likely to support the death penalty (Barkan and Cohn 1994; Soss, Langbein, and Metelko 2003; Bobo and Johnson 2004; Unnever, Cullen, and Fisher 2005; Dambrun 2007; Buckler, Davila, and Salinas 2008; Matsueda and Drakulich 2009; Unnever and Cullen 2010*a*, 2010*b*; for a review of this literature see Unnever, Cullen, and Jonson 2008). Unnever and Cullen (2010*b*) analyzed the 2000 ANES and tested three competing theoretical explanations for support for the death penalty: an escalating crime distrust model (fear of crime and mistrust of government fuel punitive attitudes), a moral decline model (support for harsh policies is driven by the perception that the moral and social consensus that holds society together is declining), and a racial resentment model (punitiveness is related among whites to the degree to which they have racial animus). There was support for the escalating crime-distrust model and the moral decline model. However, the most salient and consistent predictor of support for the death penalty was racial animus. This finding held even after controlling for the other two competing theoretical models. Whites' resentments toward African Americans are a major reason why they are adamant supporters of harsh policies (Unnever and Cullen 2010*b*).

B. The War on Drugs

The war on drugs nearly tripled drug-related arrests in 20 years—from 580,900 in 1980 to 1,579,566 by 2000 (King and Mauer 2002; Tonry and Melewski 2008, 2011; Unnever

and Gabbidon 2011). The number of inmates incarcerated for drug offenses in state and federal prisons and local jails increased by more than 1,000 percent between 1980 and 1999. In 2002, there were 251,200 drug offenders in state prisons, incarcerated at a cost of about \$5 billion annually. King and Mauer (2002) showed that 56 percent of drug prisoners were African American and that this percentage exceeded their respective rate (13 percent) of overall drug use. Fellner (2009) showed that urban African Americans accounted for approximately 6 percent of the population but 29.8 percent of all drug arrests in 2007. Drug arrests for African Americans in the largest American cities rose at three times the rate for whites between 1980 and 2003—225 percent compared with 70 percent—and black drug arrests increased in 11 cities by more than 500 percent. No other crime control policy has contributed more to racial disparities in arrests and imprisonment than the war on drugs (Alexander 2010).

The “crack versus powder cocaine” controversy has been particularly racially divisive (Kennedy 1994; Beckett and Sasson 2003). Bobo and Johnson (2004) investigated whether there is a racial divide in support for harsher punishments for crack offenses. Their analysis of the 2001 Race, Crime, and Public Opinion Study, which oversampled African Americans, revealed a substantial racial polarization; 23 percent of whites compared with 45 percent of blacks “strongly disapproved” of more severe punishments for crack. Race produced the largest effect in their multivariate analyses of support for harsher punishment of crack cocaine users, even after controlling for other attitudes including how important crime issues were to respondents.

Bobo and Johnson (2004) also investigated whether racial resentments are related to support for harsher punishments for crack cocaine. Their measure of racial resentments included questions such as, “It’s really a matter of some people not trying hard enough; if Blacks would only try harder, they could be just as well off as Whites” and “Irish, Italian, Jewish and many other minorities overcame prejudice and worked their way up. Blacks should do the same without any special favors” (Bobo and Johnson 2004, p. 158). Whites who are poorly educated, politically conservative, or racially resentful, and who deny the existence of racial bias in the criminal justice system, are the strongest supporters of harsher punishment of crack offenders. Interestingly, African Americans who harbor racial resentments are also more likely to support the crack versus powder sentencing differential; their measure of racial resentment had a stronger effect on African Americans’ support for harsh crack penalties than it did among whites. Bobo and Johnson (2004) suggest that this last finding characterizes a segment of the African-American population that came of age prior to the civil rights movement, is probably more fearful of crime, and is more likely to have been influenced by anti-black cultural ideas, including the desire to punitively control young people’s involvement in the crack trade.

C. Perceptions of the Criminal Justice System

Opinions about the fairness of the criminal justice system are racially polarized. Given that the criminal justice system is inextricably related to the racial subordination of

African Americans (Wacquant 2010), it is not surprising that blacks more deeply distrust it (Gabbidon, Higgins, and Potter 2011; Peffley and Hurwitz 2011). African Americans believe that the criminal justice system is the part of government most likely to discriminate against them (Unnever 2008). Fifty-one percent of African Americans report being unfairly stopped by the police, compared with lower percentages who report being denied a job for which they were qualified (28 percent), being physically threatened or attacked because of their race (26 percent), “people acting as if they are afraid of you” (21 percent), and “people acting as if they think you are not smart” (14 percent). Most African Americans believe that their race matters in ways that damage them.

African Americans’ negative attitudes toward the criminal justice system are also shaped by vicarious experiences (Unnever and Gabbidon 2011). Some argue that the historical subjugation of African Americans has caused them to have a heightened, collectively shared awareness of perceived criminal justice injustices (Warren 2010, 2011; Zhao et al. 2011). Brunson and Weitzer (2011) outline ways in which African Americans vicariously experience criminal justice injustices by observing how the criminal justice system treats others and from media reporting. Brunson and Weitzer (2011) found that African Americans are three times more likely than whites to report that someone in their household had been stopped by police in their city without good reason and that someone in their household had been verbally abused by a police officer. Any widely publicized, seemingly racist behavior by the criminal justice system, such as the beating of Rodney King, is vicariously experienced by most African Americans (Browning et al. 1994).

When asked in a 1991 Gallup poll whether they knew of anyone who had ever been physically mistreated by the police, 40 percent of African Americans said they had, compared with only 17 percent of whites (Warren 2011). Rosenbaum et al. (2005) interviewed 2,500 randomly selected Chicago residents as part of a citywide evaluation of community policing and found that African Americans were more likely than whites to hear about criminal justice injustices from their friends. Whites were more likely to hear negative accounts about police behavior from the media, whereas African Americans more frequently heard negative accounts about police behavior from friends and family. These differences amplify distrust of police among African Americans. People who have vicariously experienced police misconduct are significantly more likely to perceive disrespect during direct interactions with police (Warren 2011).

Other research documents racial polarization in opinions about the police. Weitzer and Tuch (1999) found that 44.5 percent of African Americans but only 10.5 percent of whites believed that racist police practices were “very common.” Weitzer and Tuch (2002) report that more African Americans (81.6 percent) than whites (60.2 percent) perceive that racial profiling by the police is widespread. They also found that African Americans were eight times more likely than whites to believe that blacks are stopped while driving because they are black. Weitzer and Tuch (2005) found that African Americans were 37 times more likely than whites to report having been racially profiled. Weitzer (2002) additionally reported that African Americans are more likely than whites to be negatively influenced by cases of highly publicized police misconduct.

Johnson and Kuhns (2009) found that African Americans, but not whites, are less likely to support the police use of excessive force if they believe that the police are racially biased. They conclude that “these results suggest that blacks and whites interpret police–citizen interactions in different ways. Blacks’ more negative response to a police officer striking a black offender than a white offender is rooted in the long-standing concern in the black community about racial bias in the criminal justice system” (Johnson and Kuhns 2009, p. 615).

Hurwitz and Peffley (2010) found that African Americans are significantly more likely to believe that an investigation of police brutality depends on the race of the victim; most whites perceive it does not matter whether the victim was white or black. Hurwitz and Peffley (2010) conclude that whites perceive that the criminal justice system treats blacks and whites similarly and that African Americans deserve harsher treatment because they are more often in violation of the law. African Americans believe that police unjustifiably target them (Unnever 2008; Hurwitz and Peffley 2010).

Attitudes toward the police are thus highly racialized. There is a substantial divide between African Americans and whites in their confidence in the police and in their beliefs about whether police are racist, about police use of excessive force, and about racial profiling. These gaps persist when other known covariates of public opinions are controlled for (Weitzer and Tuch 2004; Noble 2006; Gabbidon and Higgins 2009; Higgins, Gabbidon, and Vito 2010; Mbuba 2010; Vogel 2011). Consumption of crime-related media boosts confidence in the police among whites but has no effect on African Americans or Latinos (Callanan and Rosenberger 2011).

Whites and African Americans also differ in their perceptions of whether the courts are race-neutral. Bobo et al. (1994) found that, in Los Angeles, approximately 80 percent of African Americans, but only 39 percent of whites, believed that blacks usually do not receive fair treatment in the courts and criminal justice system. Buckler, Cullen, and Unnever (2007) report that African Americans are significantly more likely than whites to report that the courts are discriminatory and are not egalitarian, and were less likely to express satisfaction with how courts handled cases. Tyler (2001) found that African Americans are significantly more likely than whites and Latinos to believe that the courts treat people unfairly (see also Higgins et al. 2009). Finally, Peffley and Hurwitz (2011) report that whites are more than twice as likely as African Americans to believe the courts give everyone a fair trial.

D. The Root Causes of Crime

Unnever, Cullen, and Jones (2008) examined whether attitudes concerning policies to reduce crime are racialized. Based on a sample drawn from the 2000 ANES, they investigated whether race was related to opinions about the best way to reduce crime. Respondents were asked whether it is best to address the social problems that cause crime (i.e., bad schools, poverty, and joblessness) or to make sure criminals are caught, convicted, and punished. African Americans were significantly more likely to endorse

addressing social problems rather than punishment. Egalitarian beliefs (e.g., “If people were treated more equally in this country we would have many fewer problems”) mediated the relationship between race and attitudes toward how best to reduce the level of crime. African Americans were significantly more likely than whites to embrace a less punitive approach because they embraced more egalitarian beliefs about the structural causes of inequality.

Unnever, Cullen, and Jones (2008) also found that white Americans with racial resentments were more likely to endorse the punitive approach. Racial animus was the most robust predictor of preference for harsher approaches to dealing with crime. These results indicate that white Americans are more swayed by their level of racial resentment than by egalitarian principles, educational levels, authoritarian beliefs, or political ideology. Americans who harbor racial resentments are significantly more likely to want to address crime by arresting, convicting, and incarcerating criminal offenders. Unnever, Cullen, and Jones (2008) conclude that, in 2000, racial resentments were the single most important issue influencing American opinions about dealing with crime.

E. Getting Tough on Corporate Crime

African Americans tend generally to express less punitive attitudes toward crime than do whites. This difference is related to African Americans attributing crime to structural causes and whites to individual causes (Peffley and Hurwitz 2011). Unnever, Benson, and Cullen (2008), however, found in analyzing a 2002 ABC News and *Washington Post* poll that, controlling for other factors, African Americans were significantly more likely than whites to support further regulation of the stock market and harsh punishment of corporate criminals.

They offer two reasons for this result. First, African Americans and whites view crime control issues through different racial lenses. Getting tough on corporate crime is an opportunity for African Americans symbolically to resist white racism by urging that corporations and corporate criminals—symbolic surrogates for white domination—be held accountable (Unnever, Benson, and Cullen 2008, p. 183). Second, this support for punitiveness is related to the perception among African Americans that they are denied equal opportunities to achieve executive positions. Opinions about white-collar crime are racially polarized because African Americans “want to harshly punish corporate executives because they symbolically represent the excesses of an unjust system of white domination” (2008, p. 183).

F. Racial Stereotypes and Public Opinion About Crime Control

The racialization thesis argues that the stereotype of African Americans as the “criminal-other” is the key conduit by which racial animus is expressed in opinions

about crime control (Hurwitz and Peffley 1997; Unnever and Cullen 2009) and that racist whites support punitive policies because they believe those policies will adversely affect black people (Unnever and Cullen 2009).

Few studies, however, use national polling data to investigate whether whites pejoratively depict African Americans as criminals or as prone to violence. Even fewer studies examine whether those stereotypes are related to opinions about crime control (Unnever and Cullen 2012). Few studies analyze whether whites conflate race with crime and crime with race and whether that conflation is related to opinions about crime control. Researchers have, however, shown that other negative stereotypes, including depictions of minorities as “lazy,” “less intelligent,” or “untrustworthy,” predict support for harsh policies (e.g., Hurwitz and Peffley 1997; Unnever, Cullen, and Jones 2008).

In 2002, Chiricos, Welch, and Gertz (2004) conducted a national survey of a random sample of nearly 900 adults to learn whether a measure of the racial typification of crime increased support for harsh policies (e.g., “making sentences more severe for all crimes,” “executing more murderers”). They used a scale that summed across three questions: “What percent of people who commit violent crimes in this country would you say are black?”; “When you think about people who break into homes and businesses when nobody is there, approximately what percent would you say are black?”; and “When you think about people who rob other people at gunpoint, approximately what percent would you say are black?” One important predictor of having punitive attitudes was the degree to which people negatively typify African Americans as criminal. The effect of the racial stereotype on punitiveness was greater among those who were not especially concerned about crime.

Peffley, Hurwitz, and Sniderman (1997) analyzed the 1991 National Race and Politics Survey and found that whites were more likely to support stops and searches of African-American criminal suspects if they embraced the stereotype that African Americans are hostile and use foul language. However, whites who were confronted with disconfirming information—that is, African Americans who were well behaved and not using foul language—“bent over backwards” to afford them more rights. Whites judged whites more harshly than comparably situated African Americans when they were provided information inconsistent with their stereotypes of hostile African Americans.

Analyzing the 2000 GSS, Barkan and Cohn (2005) found that, controlling for other factors (e.g., gender, age, education), whites who stereotype African Americans as violence-prone are more likely to support spending money to reduce crime. (Similar negative stereotypes of Latinos did not have the same association.) The relationship between support for spending money to reduce crime and racial stereotypes of violence-proneness varied across levels of white prejudice. There was a strong relationship between spending preferences and violent stereotypes among the more prejudiced whites but not among the less prejudiced. Nielsen, Bonn, and Wilson (2010), while controlling for other factors, found no relationship between stereotypes that depict African Americans and Latinos as prone to violence and attitudes toward spending more money on drug rehabilitation.

Welch et al. (2011) conducted a national telephone survey to test whether criminal typifications of minorities predicted punitive attitudes. They constructed an index composed of three questions that assessed the perceived percentage of Latino involvement in violent crime, burglary, and robbery (e.g., “When you think about people who rob other people at gunpoint, approximately what percent would you say are Latino?”) and a scale composed of eight questions that measured support for punitive crime control policies. Using a multilevel modeling strategy that included state-level measures (e.g., percent born in Latin America), Welch et al. (2011) established that, controlling for other factors, individuals who typify Latinos or African Americans as violent supported punitive policies.

Unnever and Cullen (2012) examined whether the degree to which whites negatively depict African Americans and Latinos as violence-prone changed over time and whether the relationship changed between these pejorative stereotypes and support for the death penalty. These were two distinct time periods. The late 1980s were characterized by a record-breaking volume of black-on-black violent crime, especially juvenile murders. By contrast, early in the 21st century, the United States experienced its lowest recorded rate of violent crime since the 1960s, and it affected all racial and ethnic groups.

Analyzing the 1990 and 2000 GSS, Unnever and Cullen found that whites’ beliefs that African Americans and Latinos were more violent than whites declined 340 percent from 1990 to 2000. In 1990, whites thought blacks were 15 times more likely than whites to be very violent; in 2000, whites thought blacks were five times more likely. The decrease in whites’ perception of Latino violence was substantial but smaller—a 250 percent decline. In 1990, whites believed that Latinos were five times more likely to be very prone to violence and in 2000 that Latinos were two times more likely.

They also found that, in 1990, whites who perceived African Americans and Latinos as especially violent were substantially more likely to support capital punishment. By 2000, this relationship was no longer significant. However, in both years, whites who harbored racial or ethnic prejudice (on a scale composed of attitudes toward interracial or interethnic marriage and racial or ethnic segregation) were more likely to favor capital punishment.

Unnever and Cullen (2012) conclude that this diminution is related to whether whites perceive minority violence to be within the limits of their relative prejudiced conceptions of African American and Latino violence. That is, whites may demand “that something be done” when they perceive that African-American and Latino violence is “getting out of control.” Thus, in 1990, when minority crime was being socially constructed as a serious social problem, both racial or ethnic prejudice and negative violent stereotypes predicted support for capital punishment (Unnever and Cullen 2012).

G. Racial Resentments and Crime Control: A Cross-Cultural Universal

Most research on racialization of opinions about crime control has focused on the United States. Recently, however, researchers have begun to investigate whether racial or ethnic resentments predict support for harsh policies elsewhere. Unnever and Cullen

(2010a) used datasets from Canada and 16 European countries to examine whether greater “racial/ethnic intolerance” leads to stronger support for capital punishment and more severe punishments generally. They used multiple measures to assess racial or ethnic intolerance, including responses to the following four statements: “The presence of foreigners adds to the strength of (Our Country)”;

“I’m glad that foreigners live in (Our Country)”;

“Foreigners living in (Our Country) are full members of (Nationality) society”;

and “Foreigners living in (Our Country) should have same rights as the (Nationality).”

Respondents who were intolerant of racial or ethnic minorities expressed more support for the death penalty and for harsher punishments. Regardless of which measure of racial or ethnic intolerance was used, there was a significant positive relationship between racial or ethnic animus and punitiveness. Unnever and Cullen conclude that “racial or ethnic intolerance as a source of punitiveness is a *cultural universal* in countries with conflicted minority relations” (2010a, p. 849; emphasis in original).

Ousey and Unnever (2012) investigated conditions that may affect racialization of opinions about crime control. Using data from individuals in 27 European countries, they examined whether the relative size of the country’s minority-foreign population affects punitiveness indirectly via its effect on individual intolerance toward ethnic minorities. Their measure of racial or ethnic resentment was based on scaled responses to the following statement, “Immigrants contribute a lot to our country.” Greater racial and ethnic diversity at the country level affected individuals’ attitudes toward minority groups, which in turn increased support for severe punishments. The analysis supported Unnever and Cullen’s (2010a) thesis that the relationship between racial or ethnic resentments and punitiveness is a cultural universal in countries with conflicted minority–majority group relations. Racial or ethnic intolerance was a robust and substantive predictor of individual support for harsh policies across a wide sample of countries.

H. The Election of Barack Obama

The election of Barack Obama is a milestone in the history of American race relations. Some believe his election marks a significant turning point and that the “Obama effect” will reduce white racism and ameliorate racial discrimination (Marx, Ko, and Friedman 2009; Plant et al. 2009; Columb and Plant 2011).

Analyzing a 2008 Gallup poll, Unnever, Gabbidon, and Higgins (2011) tested whether the “Obama effect” lessened racial polarization in perceptions of the criminal justice system. They examined whether African Americans’ and whites’ attitudes are related to their opinions about Obama’s election. Opinions about the criminal justice system are racialized; African Americans (74 percent) were twice as likely as whites (34 percent) to believe that the criminal justice system is racially biased. Whites (40 percent) were three times more likely than African Americans (13 percent) to express a great deal of confidence that the police are not biased. African Americans (16 percent) were nearly three

times more likely than whites (6 percent) to report that they had no confidence that the police were unbiased.

There was a racial divide in the opinions concerning the effects of Obama's election. Whites were nearly twice as likely as African Americans to believe it will worsen race relations. Whites were also more likely to believe Obama's election will neither make it easier for African Americans to advance in their own careers nor open up opportunities for other blacks in national politics. Whites were less optimistic than African Americans that Obama can positively affect American race relations (Unnever, Gabbidon, and Higgins 2011).

African Americans' favorable opinions about Obama were not related to their nearly homogenous belief that the criminal justice system is racially biased. Thus, none of the Obama measures predicted African Americans' opinions about racial bias in the criminal justice system. The results reveal an ironic contradiction. African Americans are confident that Barack Obama's election will significantly improve race relations, but their optimism had no effect on their perceptions of the fairness of the criminal justice system (Unnever, Gabbidon, and Higgins 2011).

I. Racialized Mass Incarceration

Harsh crime control policies have resulted in mass incarceration of African Americans. Opinions about this are substantially racially polarized. Analyzing data from the 2006 African American Survey, Unnever (2008) investigated whether there is a racial divide in perceptions of why African Americans are disproportionately imprisoned. Seventy-one percent of African Americans reported that police bias is a "big reason" for black imprisonment compared with only 37 percent of whites who said this. Sixty-seven percent of blacks reported that a "big reason" African Americans are imprisoned is that courts are more likely to convict black men than whites; only 28 percent of whites believed this. Unnever (2008) found clear evidence that African Americans and whites do not share a common "sensibility" or "cognitive landscape" when thinking about mass incarceration of black men.

Unnever (2008) also investigated sensibilities of African Americans and whites. The analysis showed that education created a divide among whites. Better-educated whites tended to believe that failing schools and fewer job opportunities for African-American men are reasons for their mass incarceration. Educated whites were more likely to believe police target black men and that courts are more likely to convict them. Other important measures, including social class, gender, age, religious beliefs and practices, education, political orientation, urbanity, regional residence (i.e., living in the south), and prior arrests revealed no consistent and substantive differences among African Americans in their opinions about why blacks are disproportionately imprisoned.

Only one factor altered the nearly universally held belief among African Americans that mass imprisonment is racialized: personal experiences with racial discrimination.

The more African Americans reported that they had personally experienced discrimination, the more likely they were to believe mass incarceration resulted from racist beliefs and practices.

IV. CONCLUSION

The racialization thesis claims that a racist ideology permeates whites' attitudes about crime control. Whites tend to associate being black with involvement in crime. Whites also tend to believe that the criminal justice system is relatively "color blind" (Peffley and Hurwitz 2011). This means that whites tend to deny that race and racism matter. Bobo (2001, p. 281) argues that whites "tend to think of discrimination as either mainly a historical legacy of the past or as the idiosyncratic behavior of the isolated bigot." Thus, the racialization thesis argues that racist whites support "neutral" harsh policies because they will negatively affect African-American offenders.

The racialization thesis predicts that African Americans and whites should perceive crime control policies through different racial lenses (Unnever 2008). African Americans' distinctive worldview is also racialized because it was forged in a "long history of public dishonor and ritualized humiliation" carried out principally by the criminal justice system at the behest of elite whites (Hagan, Shedd, and Payne 2005, p. 382). At the core of blacks' worldview are beliefs that whites have purposefully constructed laws and policies to disproportionately negatively affect African Americans and that the criminal justice system discriminates on the basis of race. African Americans are more likely than whites to believe that the criminal justice system is racist, and they are more likely than whites to oppose harsh policies.

A large body of research supports the core hypotheses of the racialization thesis. First, whites tend to associate violence and crime with being black. Second, African Americans hold different opinions than whites in relation to harsh policies and whether the criminal justice system is racially biased. Whites are more likely than African Americans to support harsh policies (e.g., the death penalty). African Americans are significantly and substantially more likely than whites to believe that the criminal justice system is racially biased. Third, racist whites—those who harbor racial resentments—are especially likely to support harsh policies and to deny that the criminal justice system discriminates against blacks.

Public opinion about crime control policies is racialized. Unnever and Cullen (2010a) contend that the racialization of public opinion about crime control is a cultural universal in places with conflicted racial or ethnic relations. This racial polarization undermines potential for constructive dialogue between African Americans and whites. As long as African Americans believe that they will continue to encounter racial discrimination, and whites continue to reject the validity of that belief, the racialization of public opinion about crime will endure (Bobo 2001).

Future Research

Five related areas warrant further development. First, researchers should more fully elaborate how the larger social context affects the racialization of opinions. The racial threat thesis suggests that the racialization of whites' opinions should intensify when they perceive minorities to be a greater threat. Recent research hints at this possibility. Unnever and Cullen (2012) found that the relationship between holding pejorative stereotypes of African-American and Latino violence-proneness and supporting the death penalty may depend on whether whites perceive minority crime to be within "tolerable limits." Ousey and Unnever (2012) found cross-cultural evidence that increasing percentages of foreigners enhance individual levels of racial or ethnic intolerance; this, in turn, increases the racialization of opinion about punishment. Various possible developments, including increases in minority employment, minority income, and white unemployment, could intensify the racialization of white opinion. Racial threat theorists, however, need to recognize the possibility that other structural conditions (e.g., a decrease in racial or ethnic segregation) may lessen racial polarization of opinions (Mears, Mancini, and Stewart 2009). Using longitudinal data, future research should document the structural conditions that enhance or diminish whites' perceptions of racial threats and how those changes affect racialization of opinions about crime control.

Second, future research should specify structural conditions that can exacerbate or ameliorate the racialization of African Americans' opinions about crime control. Researchers should investigate the effects of higher rates of interracial marriage, greater economic opportunities, and more educational opportunities. Scholars should explore how the actions of African Americans—such as race rebellions, civil protests, landmark legal decisions, and the election of a black president—affect the racialization of opinions.

Third, scholars should further explore why there are individual differences among African Americans in their opinions about crime control. A minority of African Americans do not fully embrace the belief that the criminal justice system and other institutions are racist (Bobo and Johnson 2004). However, few studies have used other than simple demographic measures (e.g., age, level of education) to examine the causes for variations among African Americans' beliefs (Gabbidon, Higgins, and Potter 2011).

Relatedly, researchers should more precisely identify the attitudes among some African Americans that might diminish their deep skepticism about the criminal justice system (Slocum et al. 2010). A few studies find that some African Americans are more trusting of the police in the context of community-oriented policing (or quality-of-life policing) and if they personally know individual officers (Wehrman and De Angelis 2011; Zhao et al. 2011). Minority police officers may be more open to non-traditional, community-oriented policing and problem-solving policing styles, and they rate themselves as better able to police diverse communities (Black and Kari 2010; Boyd 2010).

However, there are few such studies and those are not particularly rich in detail. Perhaps researchers need to conduct in-depth interviews to pinpoint exactly what needs to happen for African Americans to change their attitudes toward crime control. Researchers should explore whether attitudinal differences among African Americans are related to their racial identity. The dynamics of how people construct racial or ethnic identities are complex. Research on connections between racial or ethnic identity formation and opinions about crime control will be similarly complex (Rice, Reitzel, and Piquero 2005; Lee, Steinberg, and Piquero 2010; Lee et al. 2011).

Fourth, researchers should more fully integrate Unnever and Cullen's (2009) theory of empathetic identification and individual differences in punitiveness into their work. Not all whites perceive African Americans as threatening, and not all whites have racialized opinions about crime control. Conversely, a small minority of African Americans believe that crime control policies and the criminal justice system are no longer racially biased. Unnever and Cullen's (2009) theory suggests that these differences may be explained by whether individuals can empathetically identify with "typical" offenders because they do not pejoratively stereotype them. This line of research has noteworthy policy implications because it can identify possible between-group coalitions. The research could identify those whites who reject racialized opinions about crime control and who are more supportive of rehabilitative approaches. Conceivably, these whites could form coalitions with like-minded African Americans to resist policies that result in racialized mass incarceration.

Fifth, there is a need for research that more fully tests whether the racialization of public opinion is a cultural universal in societies with conflicted group relations. Expansion of this kind of research would facilitate cross-cultural variation in the composition of the dominant group and of the stereotyped minority groups. If Unnever and Cullen's (2010a) cultural universal hypothesis is correct, dominant groups, regardless of their composition, should create racist ideologies that support the mass incarceration of their particular subordinate groups (Ousey and Unnever 2012). The need for this kind of research is increasingly urgent in a period when countries throughout the world are experiencing the strains of conflicted group relations.

NOTES

1. This essay mostly reviews the black–white divide in public opinion because the vast majority of the research analyzes racial differences. However, scholars have begun to investigate how other ethnic minorities (e.g., Latinos, Asians, immigrants) perceive crime control–related topics (e.g., see Hagan, Shedd, and Payne 2005; Buckler, Cullen, and Unnever 2007; Solis, Portillos, and Brunson 2009; Correia 2010; Higgins, Gabbidon, and Vito 2010; Lai and Zhao 2010; Wu 2010; Buckler et al. 2011; Chu and Song 2011; Unnever, Gabbidon, and Higgins 2011; Wu, Sun, and Smith 2011). This emerging literature suggests that the opinions of members of other ethnic groups about crime control related topics falls in between the attitudes expressed by African Americans and whites (for an exception, see Vogel [2011]).

2. Black-white marriages are the least common form of intermarriage for whites (Lewis and Ford-Robertson 2010).

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CHAPTER 4

RACIAL AND ETHNIC PATTERNS IN CRIMINALITY AND VICTIMIZATION

TOYA LIKE-HAISLIP

THE relationship among race, ethnicity, and crime has long been studied and debated. The debate can be attributed, in part, to use of varied definitions and measurements of race and ethnicity and the inconsistent findings across data sources that resulted. Scholars have sought to define race and ethnicity—with many emphasizing that these are related yet separate sociological constructs¹—and to assess data sources and research findings. Understanding the nature and prevalence of racial and ethnic differences has important implications for public policy concerning crime prevention.

Awareness of such differences also has the potential to exacerbate discrimination, biases, and racism. It is likely that such differences provide fuel to current debates on the growth of the prison industry in the United States and racial disparity in incarceration. Black males are nearly seven times more likely to be imprisoned than are white males. African Americans, in general, are far more likely than whites to be questioned by the police, arrested, and convicted (Miller 1996; Kennedy 1997). Statistics that show racial disparities in criminality can then become justification for racialized policies and practices, such as the racial profiling of African-American males as drug couriers and dealers or mandatory minimum prison sentences for crack cocaine abuse, which has disproportionately affected blacks.

Criminologists are thus in a precarious position regarding the study of race, ethnicity, and crime. However, ignoring racial and ethnic variations in crime can be just as problematic. Racialized practices and policies have long existed and, without documentation of their extent, nature, and causes, these may go on unchecked. Much research has demonstrated racial and ethnic differences and drawn attention to explanations for them, ranging from structural disadvantages in neighborhood contexts to subcultural ideologies.

Consequently, various efforts have been undertaken to allow for systematic assessments of group differences in crime and criminality. Police data are compiled nationally in the Uniform Crime Reports (UCR) and victims' reports in the National Crime Victimization Survey (NCVS). Self-report data are available from the National Youth Survey (NYS), the Monitoring the Future (MTF) survey, and the National Longitudinal Study on Adolescent Health (Add Health). Each has been widely used in the study of crime, and each has contributed to the literature. However, definitions and measures of race and ethnicity vary across them, and each possesses distinctive limitations. Detailed findings from these sources vary, but each demonstrates racial and ethnic variations in criminality and thus provides the impetus for continued research on the explanations of such differences. A number of generalizations, however, emerge:

- Black arrest rates for most serious property and violent crimes are higher than white rates, but the differences have becoming less in recent years.
- Black–white arrest rate differences are distorted in each group to an unknown degree by the inclusion of Hispanics, for whom rates are not separately reported.
- Arrest rates for Asian Americans are the lowest for any group and, although methodological problems make confident assertions impossible, arrest rates and violence involvement for Native Americans are among the highest for any group.
- Self-report data indicate that black–white differences are smaller than arrest rate data indicate; overall self-reported offending is comparable, with the exceptions that blacks are somewhat more likely to be involved in serious violence and, among active offenders, offend at higher rates.
- Drug use in all racial and ethnic groups has declined since the early 1980s; self-reported drug use is consistently higher for blacks than for whites; Native Americans have the highest rates of drug use of any group, and Asian Americans the lowest.
- Violent victimization has declined substantially since the early 1990s and is much higher in all groups for males than for females; highest rates are experienced by American Indians and the lowest by Asian Americans, with blacks and whites in between.
- Racial offending differences between groups largely disappear when statistical controls for social, economic, and community factors are used.

This essay discusses the sources, their major findings, and their respective contributions to the study of race, ethnicity, and crime. Section I provides an overview of the two central issues (definition and measurement) plaguing this area of study. It begins with a discussion of definitions of race and ethnicity and then discusses the measurement and findings of racial and ethnic variations in crime and victimization. Section II emphasizes the effects of variations in methodology and research on theoretical explanations. Given disparate findings across these data sources, scholarly debate on causes of racial and ethnic differences in criminality will likely long persist.

I. DEFINITIONS, MEASUREMENTS, AND FINDINGS

It is imperative to start with general definitions of race and ethnicity and to note how they are commonly measured. The term “race” is mostly used to describe the physical attributes of a group (e.g., skin tone), whereas ethnicity is typically used to refer to a groups’ cultural background; this can include such factors as nation of origin and language (Gabbidon and Greene 2009, pp. 2–5). These two concepts are measured separately in the United States and are systematically tracked by the Census Bureau. There were 15 categories of race and two categories of ethnicity on the 2010 Census questionnaire. The race categories are collapsed into the following groups: “white,” “black,” “Asian,” “American Indian or Alaskan Native (AIAN),” “Native Hawaiian or other Pacific Islander (NHPI),” “some other race,” and “two or more races.” Ethnicity is bifurcated into two groups: “Hispanic/Latino” or “non-Hispanic/Latino” (see Table 4.1). In the 2000 and 2010 censuses, individuals self-reported separately on both their race and their ethnic origin, following guidelines set forth by the U.S. Office of Management and Budget’s 1997 *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*.

In 2010, the majority of the population self-identified as non-Hispanic white (63.7 percent). Hispanics were the second largest group, comprising 16.3 percent of the U.S. population. This group can be of any racial background. The majority (53 percent) reported their race as white. Non-Hispanic blacks comprised nearly 12.2 percent of the U.S. population and were followed by non-Hispanic Asians (nearly 5 percent). Non-Hispanics of two or more races and non-Hispanic AIANs accounted, respectively, for 1.9 percent

Table 4.1 Racial and ethnic classifications in 2010 U.S. Census Bureau

Racial Classifications	Ethnic Classifications
White	Non-Hispanic
Black, African American, or Negro	Hispanic
American Indian or Alaskan Native	Mexican, Mexican American, or Chicano
Asian	Puerto Rican
Japanese	Korean
Chinese	Vietnamese
Indian	Native Hawaiian
Filipino	Guamanian or Chamorro
Other Asian	Other Pacific Islander

Source: Humes, Jones, and Ramirez (2011), “Overview of Race and Hispanic Origin: 2011 Census Brief.”

Table 4.2 Population percentages by race and ethnicity, 2000–2010

Racial/Ethnic Group	2000 (%)	2010 (%)	Percentage Point Change
Hispanic	12.5	16.3	3.8
NH White*	69.1	63.7	–5.4
NH Black	12.1	12.2	0.1
NH Asian	3.6	4.7	1.1
NH American Indian/Alaskan Native	0.9	0.9	0.0
NH Hawaiian Native/Pacific Islander	0.1	0.2	0.1
NH Other	0.2	0.2	0.0
NH Two or More Races**	~	1.9	~

* NH represents Non-Hispanic.

** Errors in data processing for this group resulted in an overestimate of this population in 2000 (see Humes, Jones, and Ramirez 2011).

Source: Humes, Jones, and Ramirez (2011), "Overview of Race and Hispanic Origin: 2011 Census Brief" and U.S. Census Bureau, "Census 2000 Redistricting Data (Public Law 94-171) Summary File, Tables PL1 and PL2."

and 0.7 percent of the population. Non-Hispanic NHPs and others were the smallest groups, with each accounting for only 0.2 percent of the U.S. population. These figures represent notable changes since 2000. The Hispanic population experienced the largest growth, rising from 12.5 percent of the total in 2000 to 16.3 percent in 2010. The increase for non-Hispanics was only 5 percent. The non-Hispanic white share of the population declined by 1.2 percent (see Table 4.2) (Humes, Jones, and Ramirez 2011).²

These groups' experiences with crime vary substantially. Some sources provide greater insight into the experiences of some racial and ethnic groups (e.g., whites and blacks) than of others (e.g., AIANs).

A. Arrest Data

The UCR is the most commonly used source of official data. The Federal Bureau of Investigations (FBI) compiles crime statistics from law enforcement agencies across the country, with more than 90 percent of them participating in the UCR program (Bureau of Justice Statistics [BJS] 2004). The UCR includes data on crimes known to the police and demographic information on persons arrested. The crimes reported in the UCR are referred to as Part I (or Index) and Part II crimes. The most reliable and consistent data collection has been for Part I Index crimes, which include murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson (which was included in the mid-1980s). Twenty-one additional

crimes, including embezzlement, prostitution, and vandalism, are included in Part II. The UCR also provides demographic information on arrestees' gender, age, and race. The UCR does not classify arrestees as Hispanic or non-Hispanic but racially as white, black, American Indian or Alaskan Native, or Asian or Pacific Islander.³

UCR data show that crime rates have fluctuated over time, with notable increases after World War II. Rates were relatively low and stable between 1946 and 1960, but grew rapidly beginning in the 1960s (LaFree 1998). For instance, the murder rate increased by 113 percent from 1963 to 1974, and the robbery rate increased by 222.5 percent between 1961 and 1971 (LaFree 1999). Crime rates reached a peak in 1991 (LaFree 1998). By 1995, the violent crime and property crime rates had dropped by about 10 percent (Federal Bureau of Investigation [FBI] 1995*a*). Rates continued to drop substantially through 2010 (FBI 2000*a*, 2010*a*). Murder and robbery rates fell by approximately 30 percent between 1991 and 1997 (LaFree 1999) and substantially more thereafter (FBI 2010*b*).

UCR data have consistently demonstrated racial disparities in arrests. LaFree (1995) found that overall arrest patterns for whites and blacks from 1946 to 1990 were quite similar in that arrests for both groups increased in the 1960s and 1970s before declining until 1981, when rates peaked again. This period was followed by drops until 1986, rises until 1991, and drops in subsequent years. However, although arrest trends were similar, arrest rates were generally significantly higher for blacks. Arrest rates were more comparable for serious property crimes (theft and burglary), with the greatest disparities being for serious violence (murder, rape, and robbery). As Table 4.3 shows, the black-to-white ratio for murder arrests was 6.89 in 1946 and reached its highest level at 16.01 just 10 years later. By 1966, it fell to 11.59, indicating that blacks were approximately 11.5 times more likely than whites to be arrested for murder. The gap in murder arrests declined further by 1976, when blacks were nearly nine times more likely than whites to be arrested for murder. By 1986, the ratio had fallen to 7.2, before climbing to 8.5 by 1990 but still remaining well below the 1950s ratio. By contrast, the differences in arrest rates

Table 4.3 Ratio of black to white arrest for murder and theft for select years, 1946–1990

	Murder	Theft
1946	6.89	3.97
1956	16.01	3.47
1966	11.59	3.59
1976	8.95	3.81
1986	7.2	3.35
1990	8.53	3.09

Source: LaFree (1999).

for theft were markedly smaller, fluctuating from a high of 4.18 in 1947 to a low of 3.09 in 1990 (LaFree 1995).

Similarly divergent arrest rate patterns are shown in Table 4.4 for 1995–2010. On average, during this period, blacks constituted 30 percent of arrestees for property offenses and 39 percent for violent offenses. Yet blacks accounted for only 12–13 percent of the U.S. population in 2000 and 2010 (Humes, Jones, and Ramirez 2011). Blacks, however, experienced greater declines in arrest rates than whites. The proportion of blacks arrested for property crimes fell from 32.7 percent in 1995 to 28.2 percent in 2004. The white share increased from 64.7 percent in 1995 to 69.3 percent in 2004. Between 1995 and 2010, property crime arrests for blacks declined 3.7 percentage points but increased by about the same amount for whites.

Likewise, blacks' arrest rates for violent crimes were higher than whites'; their decline from 1995 to 2010 was greater. Their proportion of violent crime arrests dropped from 43.7 percent in 1995 to 37.6 percent in 2001. Whites' share of violent arrests increased from 54.3 percent in 1995 to 60.2 percent in 2001.

Black arrests, however, rose to roughly 39 percent in 2005 and remained there until 2009, before falling to about 38 percent in 2010. The proportion of violent crime arrests for whites fluctuated less after 2001, generally staying at 59–60 percent. As with property crime trends, from 1995 to 2010, the black arrest share for violence decreased (by 5.6 percent), and the white share increased (by 5 percent).

LaFree, O'Brien, and Baumer (2006) examined whether the violent crime arrest rates for blacks and whites converged or diverged between 1960 and 2002. Overall, they found more evidence of convergence. The convergence effect was more pronounced for rape and aggravated assault than for homicide and robbery, but they concluded that convergence for the latter crime types is also likely, even if delayed. They postulated that "the main reason why black–white arrest convergence is less for homicide and robbery is the rapid increase in black rates of these offenses during the 1960s, and to a lesser extent, the rise in black rates during the mid-1980s" (LaFree, O'Brien, and Baumer 2006, p. 196; see also LaFree, Drass, and O'Day 1992; LaFree and Drass 1996).

Unreliable estimates of the population for some racial and ethnic groups and changes over time in the classification of persons based on these characteristics in the UCR preclude researchers from moving beyond white–black comparisons (see LaFree 1995; Gabbidon and Greene 2009, p. 47). However, using more precise population estimates for American Indians and Asians, LaFree (1995) calculated 1990 UCR Index crime rates for these groups. Except for robbery, American Indians' arrest rates fell between those for blacks (the highest) and whites. Asians had the lowest rates. Some have questioned the quality of early UCR data on arrests of American Indians because of their small numbers compared with other groups (e.g., LaFree 1995).

There have been many criticisms of using UCR data as the basis for racial comparisons in criminality. First, arrest statistics are largely a reflection of the exercise of police discretion in who is arrested and who is not. Differential treatment by law enforcement in the United States of minority groups and blacks, in particular, is well-documented (Mann 1993; Chambliss 1995; Mann 1995; Miller 1996; Kennedy 1997). Slave patrols

Table 4.4 Arrest percentages for property and violent crime* by race, 1995–2010

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>Property Crime</i>																
Whites	64.7	64.7	64.8	65.3	65.7	66.2	66	67.7	68.2	69.3	68.8	68.2	67.9	67.4	67.6	68.4
Blacks	32.6	32.4	32.4	31.9	31.4	31	31.4	29.6	29.1	28.2	28.6	29.4	29.8	30.1	29.8	28.9
American Indians	1.1	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1.2	1.2	1.3	1.3
Asians or Pacific Islanders	1.6	1.7	1.7	1.6	1.7	1.6	1.5	1.5	1.4	1.3	1.3	1.2	1	1.3	1.3	1.3
<i>Violent Crime</i>																
Whites	54.3	54.6	56.8	57.7	59.2	59.9	60.2	59.7	60.5	60.9	59	58.5	58.9	58.3	58.7	59.3
Blacks	43.7	43.2	41.1	40.2	38.7	37.8	37.6	38	37.2	36.9	38.8	39.3	39	39.4	38.9	38.1
American Indians	0.8	0.9	0.9	1	1	1	1	1.1	1	1.1	1.2	1.1	1.2	1.2	1.2	1.3
Asians or Pacific Islanders	1.2	1.3	1.1	1.1	1.2	1.3	1.2	1.2	1.2	1.1	1.1	1.1	0.9	1.1	1.1	1.2

* Property crimes are burglary, larceny-theft, motor vehicle theft, and arson. Violent crimes are murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault.

Source: Federal Bureau of Investigation (FBI), "Crime in the United States." Adapted from Table 43 of the reports for each year presented (FBI 1995–2010, including 2008a & 2010a).

of the pre-Civil War period and the ensuing control tactics employed throughout the Jim Crow era are evidence of historical discriminatory policing of African Americans (Kennedy 1997, pp. 76–167). More recent scholarship has pointed to the continued maltreatment of African Americans by law enforcement well into the 21st century (e.g., Miller 1996), with phrases such as “driving while black” encapsulating widely held views of racial profiling by the police (e.g., Harris 1999).

Several studies have demonstrated that race plays an important role—albeit a complex one—in police decision making (see Smith and Petrocelli 2001; Novak et al. 2002; National Research Council 2004; Warren et al. 2006; Roberg et al. 2012, pp. 280–87; but see also Engel et al. 2002 and Novak 2004). Others, however, contend that more recent UCR data may not be as susceptible to police bias, given the lesser degree of discretion afforded the police in recent years when making arrests for serious crimes. These crimes are more likely to come to the attention of the police or be reported to them, and arrests in these cases are thus “typically made on the basis of physical evidence and witness reports” and are therefore less vulnerable to police discretion (Hawkins et al. 2000, p. 2). Moreover, researchers using UCR data often point to high correlations between UCR and victimization survey data on race-specific rates of serious violent offending (LaFree, Drass, and O’Day 1992; LaFree 1995; LaFree and Drass 1996; LaFree, O’Brien, and Baumer 2006; see also Hindelang 1978, 1981).

These considerations may somewhat enhance the utility of UCR race-specific data, particularly for serious violent crimes and for recent years, but they do not diminish problems associated with overreliance on UCR data. As LaFree (1995) warns, “because of changes in the way the UCR collected arrest data over time, trend analysis for groups other than blacks and whites is probably not defensible. And even with the analysis of blacks and whites, we should proceed with the utmost caution” (p. 174).

A second major criticism centers on measurement of demographic characteristics. The classification of race and ethnicity in the UCR has changed extensively over time. Initially, only three classifications were used—white, black, and other. At various times, however, the ethnic origins of arrestees were included in UCR data. From 1934 until 1941, arrestees could also be classified as Mexican. The broader ethnic classification of Hispanic, under which Mexican heritage would fall, was included in 1980 but dropped by 1985.

The categorization of arrestees based on Asian ancestry has also changed over time. Between 1953 and 1970, arrestees could be classified as either Chinese or Japanese, until the more inclusive category of Asian American or Pacific Islander began to be used (Gabbidon and Greene 2009, p. 47). These variations in racial and ethnic identification of arrestees have contributed, in part, to the narrow focus on white–black differences in the study of group differences in crime patterns and trends.

The UCR currently classifies arrestees as white, black, American Indian or Alaskan Native, or Asian or Pacific Islander, but such categorization ignores ethnic differences within these groups and thus their possible divergent experiences with crime. For example, blacks can include people of African, Haitian, and Jamaican ancestry, but is it reasonable to assume that their arrest rates are comparable? Questions such as this

cannot be answered using UCR data. Given that Hispanic origin is not considered in the current classification, it is unclear how Hispanics or Latinos are identified. They are likely categorized by the police racially (i.e., according to their skin tone) or by Hispanic surname, and it is quite possible that these individuals are overwhelming grouped into either the white or black categories, thereby resulting in overreporting of criminality for these two groups (Steffensmeier et al. 2011; Tonry 2011). Hispanics can be of any racial background, with the majority reporting their race as white. Consequently, the rate of arrests for whites especially may be inflated. This may also affect rates for blacks because darker-skinned Latinos (e.g., Cubans or Puerto Ricans) may be included in this racial category.⁴

Arrest rates for Asians and American Indians must also be viewed with caution in light of unreliable estimates of their population sizes. American Indians, unlike other racial groups, are commonly subject to tribal and nontribal law enforcement authorities. Following the passage of Public Law 83-280, criminal justice responsibilities, including policing, for American Indian tribal lands was transferred from federal to state authorities and was made mandatory in some states and optional in others (Goldberg and Singleton 2005; BJS 2011*b*). But later, many tribal nations assumed these responsibilities because of inadequate police protection and resources afforded to tribes; thus, they “often share criminal jurisdiction with federal and state agencies” (Greene and Gabbidon 2012, p. 231; see also Wakeling et al. 2001; Hickman 2003; Goldberg and Singleton 2005). American Indian arrestees can be handled by tribal, state, or federal authorities; however, the effects of this on UCR estimates of arrest for this group remain unclear.

Finally, UCR data are limited to those incidents that come to the attention of or are reported to the police. Self-report surveys consistently demonstrate that a sizable portion of crime incidents are not reported to the police. Hart and Rennison (2003), for instance, found that only 39 percent of the 25.4 million crimes recorded in the NCVS for 2000 were reported to the police. Violent offenses were more likely than property offenses to be reported (49 percent vs. 36 percent). The percentage of violent crimes reported is an increase from the average annual rate of 43 percent recorded from 1992 to 1999.

Some violent crimes are more likely to be reported than are others. In 2000, 60 percent and 58 percent, respectively, of robberies and aggravated assaults were reported. Rates for rape (48 percent) and simple assault (44 percent) were noticeably lower. Reporting of property crime also varied: motor vehicle theft (81 percent), burglary (53 percent), and theft (29 percent) in 2000 (Hart and Rennison 2003). Reporting by specific crime types in 2010 was nearly identical to the 2000 pattern (Truman 2011). The most common reasons given for not reporting are that the incident was a personal/private matter, that the incident was not important enough, or that the incident was reported to some other official (see Table 4.5) (Hart and Rennison 2003).

Even more important are racial and ethnic disparities in crime reporting, especially for violence. Between 1992 and 2000, violent crimes involving black victims (49 percent) were significantly more likely to be reported to the police than were those involving

Table 4.5 Reasons for not reporting violence to the police by crime type, 1992–2000

Reason for Not Reporting	Violent Crimes				
	All (%)	Rape and Sexual Assault (%)	Robbery (%)	Aggravated Assault (%)	Simple Assault (%)
Personal/Private Matter	20	23	11	18	22
Not Important Enough	17	6	18	15	19
Reported to Another Official	14	7	7	9	16
Not Important to Police	6	4	9	7	5
Fear of Reprisal	5	12	6	6	4
Not Clear a Crime Occurred	4	3	1	3	4
Lack of Proof	4	2	10	6	2
Protect the Offender	3	6	1	4	3
Inconvenient	3	3	5	4	3
Other Reason	25	34	33	28	23

Source: Hart (2003), "Reporting Crime to the Police, 1992–2000." Adapted from Table 9 of the report.

Table 4.6 Police notification by crime type and race of the victim and race of the offender, 1992–2000

	Race of the Victim		Race of the Offender	
	White (%)	Black (%)	White (%)	Black (%)
All Violence	42	49	42	47
Rape/Sexual Assault	31	35	29	39
Robbery	56	59	55	59
Aggravated Assault	54	61	54	59
Simple Assault	37	41	38	38

white victims (42 percent), as shown in Table 4.6. Violent incidents believed to have been perpetrated by black offenders (47 percent) were more often reported than were incidents believed to have been committed by whites (42 percent). The rate of reporting for crimes involving American Indian victims (48 percent) fell just below that for blacks but was higher than for white (42 percent) and Asian (40 percent) victims. The reporting rate for crimes involving Hispanic victims was 44 percent (Hart and Rennison 2003).

By 2010, victimization survey data showed that violent crime reporting for blacks and whites was more comparable, with about 50 percent of crimes being reported. The

Hispanic rate, nearly 58 percent, was higher (Truman 2011).⁵ Reasons for these variations (and shifts) are likely to be complex. Some research has considered the influence of microlevel conditions such as victim, offender, and incident characteristics and macrolevel conditions including neighborhood characteristics on police notification (e.g., Baumer 2000). That nearly half (or more) of violent victimizations are excluded from UCR data hinders its utility and raises doubts about its reliability and validity.

B. Self-Report Data

Because of these limitations with official data, researchers have looked to self-report data. Three national sources have been commonly used: the NYS, MTF, and Add Health. The NYS “employed a probability sample of households in the continental United States based upon a multistage, cluster sampling design” that yielded a targeted sample of 2,375 youths with a 73 percent response rate based on this sample (Elliott and Ageton 1980, p. 100). The NYS contains seven waves of data collection, with the first occurring in 1976 when the sample members were between ages 11 and 17. For the initial interview, youth and a respective parent or guardian were interviewed (Elliott 1977). The second through fifth waves occurred annually and included only personal interviews of the sampled youth. By the fifth wave, the sample ranged in age from 15 to 21 years (Elliott 1977, 1978, 1979, 1980). The last two waves followed subjects well into young adulthood: ages 17–26 in wave 6 and 20–29 in wave 7 (Elliott 1983, 1987).

Consistently higher volumes of delinquent behavior were reported using NYS data compared with official data. Findings from official data overestimate the magnitude of demographic differences in criminality: no significant differences in self-reported offending by race were found (Elliott, Huizinga, and Morse 1986). Elliott and Ageton (1980), however, acknowledged that previous work based on self-report data was skewed because self-report data include more nonserious offenses than do official data.

These differences may have contributed to the findings among studies using self-report data that race is not significantly related to criminality. Elliott and Ageton (1980) found partial support for the hypothesis that blacks are overrepresented among violent offenders, reporting significantly greater involvement than whites for aggravated assault, but not for robbery, once methodological differences between these data sources are considered. There were significant differences between blacks and whites in their frequency of offending. Whites’ and blacks’ rates of low-frequency property crime offending (four acts or less in the past year) were virtually identical (70.6 percent vs. 70.7 percent), but blacks were twice as likely (4.2 percent) as whites (1.9 percent) to report having committed more than 50 such acts in the previous year. Consequently, Elliott and Ageton (1980) concluded that racial differences are likely limited to high frequency and serious offenses—those most likely to be reflected in police data. They pointed out:

Self-report studies are capturing a broader range of persons and levels of involvement in delinquent behavior than are official arrest statistics. Virtually all youth report

some delinquent activity on self-report measures, but for the vast majority the offenses are neither very frequent nor serious. Police contacts, on the other hand, are most likely to concern youth who are involved in either very serious or very frequent delinquent acts. Police contacts with youth thus involve a more restricted segment of the general youth population. (Elliott and Ageton 1980, p. 107)

There is thus considerable overlap in self-report and official statistics when serious, repeat offending is considered: racial and ethnic differences were significant. These differences were most pronounced for lower-class blacks who more often self-reported committing serious violent crimes and committing offenses at greater frequency than did black and white youth of different class backgrounds. However, few, if any, racial (or class) differences were reported for less serious offenses, including simple assault and minor property crimes, which are far more common in occurrence (Elliott and Ageton 1980).

Subsequent studies that considered less serious crimes using NYS data provide some support for this conclusion. For example, in an assessment of adolescent sexual behavior (a status offense), Lauritsen (1994, p. 878) found that “race does not significantly predict intercourse among young women once family structure and neighborhood conditions are taken into account.”⁶ Other studies using NYS data have shown that racial and ethnic differences are reduced once contextual factors such as religious involvement, peer relationships, family structure, and neighborhood conditions are considered (e.g., Jang and Johnson 2001; Elliott et al. 1996; see also Johnson et al. 2000).

The MTF survey has provided further evidence that racial and ethnic differences are not as pronounced as official data would suggest and especially for less serious criminal behaviors. MTF is an annual, nationally representative survey of eighth, tenth, and twelfth graders’ prevalence of self-reported cigarette, alcohol, and other substance use. Through the use of a multistage sampling design, the MTF includes approximately 420 schools and 50,000 students within these schools each year. Since 1975, data have been collected annually from high school seniors, and, in 1991, the survey was extended to eighth and tenth graders (Monitoring the Future 2011). Results have consistently demonstrated that a large proportion of American youth have consumed alcohol or used an illicit drug by the time they graduated from high school. The rates for heavy/binge drinking and overall illicit drug use peaked in the early 1980s at 41 percent and 66 percent, respectively. By 1992, both had reached their lowest points, with binge drinking dropping to 28 percent and illicit drug use falling to 41 percent. Increases in rates for both behaviors followed these declines, with illicit drug use rising to 55 percent in 1995 before declining to 48 percent in 2010. Marijuana has been the most widely used substance.

MTF results have consistently shown over time that “contrary to popular assumption, at all three grade levels African-American students have substantially lower rates of use of most licit and illicit drugs than do whites. These include any illicit drug use, most of the specific illicit drugs, alcohol, and cigarettes” (Johnston et al. 2011, p. 45). Rates of alcohol and substance use by Native Americans have generally been found to be higher than

that for whites, and rates for Asians are found to be below that for African Americans. Rates for Latino youth tend to be closer to those of whites and notably higher than those for blacks.⁷ For instance, from 1996 to 2000, nearly 37 percent of high seniors reported having used marijuana in the past year. Rates were highest among American Indians (45 percent), followed by comparable rates for whites, Puerto Ricans, and Cuban- and Mexican-American youth (40 percent). Rates for other Latin-American and black youth were notably lower, at about 30 percent, and Asian American youth had the lowest rate of 22 percent (Wallace et al. 2002). Similar patterns characterize other drugs (see Table 4.7). These patterns have generally been consistent between 1976 and 2000 and exist when data are disaggregated by gender (Bachman et al. 1991; Wallace et al. 2002; Wallace et al. 2003). Wallace et al. (2003) reported that, despite higher rates of alcohol and marijuana use among boys than girls, there is evidence of convergence over time. For cigarette, alcohol, and marijuana, rates were highest among Native American girls but lowest for African Americans and Asians, with whites' and Latinas' rates falling in between (Wallace et al. 2003; also see Bachman et al. 1991).

The Add Health survey findings are very similar to those found in self-report data. Add Health draws on a nationally representative sample of seventh through twelfth graders who were followed into young adulthood. It examines their “social, economic, psychological, and physical well-being with contextual data on [their] family, neighborhood, community, school, friendships, peer groups, and romantic relationships” (Harris and Udry 2011, p. iii). For data collection, a multistage, clustered sampling technique was used to obtain a representative sample of 132 middle and high schools from which students were chosen. There were four waves of data collection. The first wave occurred during the 1994–95 school year and involved two stages in which approximately 90,000 students were administered surveys at school, and a representative

Table 4.7 Racial and ethnic distribution of annual prevalence of selected drug use among high school seniors, 1996–2000

	White	Black	Mexican American	Cuban American	Puerto Rican	Asian American	American Indian
Drug Type							
Any Illicit	42.8	32.6	44.5	45.1	42	24.5	41.2
Marijuana	38.6	30.1	40.4	36.2	37.6	21.7	36.4
Inhalants	7.7	1.9	5.1	9.1	4.7	3.3	6.4
Hallucinogens	10.7	1.6	7.9	15.5	8.1	4.7	10
Cocaine	5.9	0.9	8.9	10.8	4.1	2.8	5
Heroin	1.2	0.4	1.3	5.4	1.9	0.5	1.6
Alcohol	77.1	59.9	74.2	77.7	73.6	57	69

Source: Wallace et al. (2002)

subsample of all students drawn from school rosters was chosen to complete in-home surveys, yielding a subsample of 20,745 adolescents. Additional information was collected from parents (preferably the respondents' mothers), peers or schoolmates, school administrators, and siblings. In 1996, 14,738 adolescents were re-interviewed at home,⁸ and follow-up interviews were conducted with school administrators during wave 2 of data collection. For waves 3 and 4 samples of more than 15,000 of the in-home group were re-interviewed in 2001–2002 and 2007–2008. The respondents—ranging from 18 to 26 years—and their romantic partners were interviewed during wave 3. In wave 4 sample members were between ages 24 and 32; personal interviews and bio-specimen collections were conducted during this phase of data collection (Add Health 2011; see also Harris and Udry 2011).

Add Health findings demonstrate that status offenses are far more common than serious delinquent acts. Twenty-two percent of younger adolescents had had sexual intercourse by age 15. However, the proportions of youth who engaged in serious delinquency, such as drug dealing or using or threatening to use a weapon, were much lower. These incidents were extremely rare for girls and, even among boys, only 4 percent had engaged in either act by age 13; this percentage remained unchanged for weapons use among boys by age 17. Although the rate for drug dealing for boys grew from 4 percent to 13 percent by age 17, this proportion was still notably lower than that found for underage sexual intercourse (Harris et al. 2002). Findings across racial and ethnic groups were generally consistent with those of the NYS and MTF surveys. Similar to results from MTF, studies using Add Health data have shown that African-American youth are significantly less likely than whites to use cigarettes (Kandel et al. 2004), alcohol (Watts and McCoy Rogers 2007), and illicit drugs such as marijuana (Roettger et al. 2010). Levels of alcohol and drug use were highest among Native Americans but lowest among Asians and blacks, and rates for Hispanic youth were lower than those for whites (McNulty and Bellair 2003, p. 724).

These rankings are nearly reversed, however, when serious violent offending is considered—a finding similar to that in the NYS. Native American and black youth were significantly more likely to self-report involvement in violent delinquent acts than were white and Asian youth (McNulty and Bellair 2003). Rates for Hispanic youth were higher than those for whites (Estrada-Martinez et al. 2011). Yet, as with NYS analyses, researchers have concluded that racial and ethnic variations are largely accounted for by environmental factors such as labor market opportunity (Bellair, Roscigno, and McNulty 2003), neighborhood disadvantage, social bonds, exposure to gangs (McNulty and Bellair 2003), and family dynamics (Estrada-Martinez et al. 2011). McNulty and Bellair (2003) reported that significant differences in violent offending between African-American and white and Asian youth were reduced to nonsignificance once community disadvantage was taken into account. Gang membership and exposure to violence explained significant differences in violent offending between Hispanic and white and Asian adolescents; differences between Native-American and white and Asian youth were accounted for by familial, school, and neighborhood social bonds (McNulty and Bellair 2003).

The self-report data offer numerous advantages compared with official data in that they are not bound by police notification, include broader classifications of race and ethnicity, and consider a broader range of offenses, especially those that are more common in occurrence. There are also disadvantages. The reliability and validity of self-reported offending data have been extensively debated among scholars. The accuracy of reporting across racial and ethnic groups, in particular, is a source of contention. Some suggest that blacks, compared with whites, underreport such behavior. Others find no support for this notion (Bachman et al. 1991; Hawkins et al. 2000; see also Wallace et al. 2003).

These methodological concerns and others have been raised for the leading self-report data sources. Researchers have questioned the reliability and validity of self-reported delinquency in longitudinal panel design studies, such as that employed by the NYS. Lauritsen (1998) critiqued the data in two regards. First, she argued that a maturation effect likely produced errors in responses to survey items over time, noting:

It is likely that questions such as “How many times in the last year have you hit (or threatened to hit) other students?” has a different meaning to a subject when s/he is 12 years of age compared to 17 years of age. It seems reasonable to expect that the content validity of this kind of question (or the domain of behavior subjects consider relevant to the question) may change over time, particularly among younger respondents. (p. 149)

Second, she posited that NYS data are subjected to repeat testing (or panel) effects that influence the reliability and validity of responses, given that “subjects may learn through repeated testing to report the kinds of events that interviewers are ‘really interested in,’ especially because the first five waves were collected annually” (Lauritsen 1998, p. 150). She concluded that both issues biased the NYS results and therefore precluded criminologists from drawing definitive theoretical conclusions about the causes of delinquency or criminality on the basis of its data (Lauritsen 1998, 1999; but see rebuttals offered in Jang 1999a, 1999b).

The reliability and validity of MTF and Add Health findings have also been questioned. Adolescents who skip school are not well captured in MTF and Add Health data. Both surveys employed school-based sampling methods and therefore omitted youth who may be most susceptible to delinquent behavior—those who do not regularly attend school or have dropped out. The relationship between school attachment and delinquency is long-standing (Gottfredson 2001). This is particularly a problem in studies of race and ethnic differences since dropout rates are notably higher for Hispanic and Native American youth than for whites and African Americans.

Many scholars have suggested that this omission likely decreases the magnitude of racial and ethnic differences reported in studies using these sources; the extent of these disparities would be greater if youth who did not attend school were also included in the samples (see, for example, Bachman et al. 1991; Wallace et al. 2002; Wallace et al. 2003). Still, the influence of irregular school attendance, and dropping out in particular, on self-reported measures of delinquency remains speculative. Wallace et al. (2003)

concluded “future research should also examine the extent to which differential rates of dropping out might confound ethnic differences” (p. 233).

Like the UCR, all three self-report measures are conceptualized in such a way that within-group differences cannot be examined. Racial and ethnic classifications, such as Native American, white, Asian, black, and Hispanic, ignore the vast variation and possibly distinct backgrounds of groups included in these larger aggregations. These differences, in turn, may affect subgroup (or within-group) experiences with delinquency and criminality. And although MTF and Add Health are less susceptible to this limitation, given their greater inclusion of diverse populations of youth and greater specification of racial and ethnic identity (e.g., consideration of Cuban, Mexican, or Puerto Rican origin among Hispanic respondents), for Native Americans, whites, and blacks, the broad classifications are problematic.

Assessments of Hispanic youth, for example, demonstrate significant variation in rates of offending among Cuban, Mexican, and Puerto Rican adolescents (e.g., Delva et al. 2005; Estrada-Martinez et al. 2011). Using MTF data, Delva et al. (2005) found that Mexican-American youth reported significantly higher levels of heavy drinking and marijuana use than did Puerto Ricans or Cuban Americans. The prevalence of cocaine use, however, was significantly higher among Cuban and Mexican Americans than among Puerto Ricans.

Divergent findings across Hispanic youth for more serious forms of delinquency are also reported. Using NYS data, Estrada-Martinez et al. (2011) showed that Puerto Rican youth were significantly more likely to self-report involvement in violent crimes than were Cuban- and Mexican-American adolescents. Similar consideration of ethnic variations among whites, blacks, and Native Americans will allow for examination of plausible within-group differences among these racial groups as well.

C. Victimization Data

The NCVS serves as an alternative to official and self-report offending data. The NCVS was designed to get at the “dark” or “hidden” figures of crime and thus supplement the UCR. Moreover, it provides extensive details on crime incidents, victim characteristics, and offender characteristics (as perceived by victims) that are not typically included in self-report offending data. The NCVS, started in 1973, is an annual survey of a representative sample of American households that is administered twice a year by the U.S. Census Bureau. A multistage, clustered sampling design is used to obtain the household samples. Households typically remain in the study for 3 years. In recent years, approximately 76,000 households and 135,000 persons aged 12 and older per household have been surveyed annually. One household member is selected to report on the property crimes of burglary, motor vehicle theft, and thefts experienced by the household in the past year. Each household member separately reports on his or her own experiences in the past year with the following violent crimes: rape, sexual assault, robbery, and simple and aggravated assault (BJS 2004, 2011a). To improve the measurement and accuracy of

reporting these incidents, the survey underwent extensive redesign in 1992 (Kinderman, Lynch, and Cantor 1997; Rand, Lynch, and Cantor 1997).

The NCVS has reported higher volumes of criminal incidents than are reported in the UCR, but NCVS trend data have generally mirrored UCR trends. It, too, demonstrates that crime has significantly declined in recent decades. In 2010, there were an estimated 18.7 million violent and property crimes among Americans aged 12 and older; this represented a 12 percent decline in violent crime and a 5 percent decline in property crimes since 2009. These declines exceeded average annual declines observed between 2000 and 2009. The 2009 to 2010 drop for violent crime was 3 times higher than the average decline from 2000 to 2009, and the property crime drop was about twice as high. The 2010 rates—14.9 and 120.2 per 1,000 for violent and property crime, respectively—are markedly lower than in the early 1990s, when violent victimization peaked. The 2010 rates constituted a 70 percent decline in violent victimization and a 40 percent decline in property victimization since 1993 (Truman 2011). The less dramatic drops for property crime during this period are offset by a steady rate of decline in property victimizations since 1974. For instance, the 1999 rate represented a 32 percent decrease from the 1974 peak, and the 2008 rate represented an even greater drop of 76 percent (Rand 2009). Violent crime, however, increased between 1973 and 1981 before declining until 1986, when it rose again and subsequently peaked by 1994. This period was followed by immediate, sharp declines, including a 10 percent drop from 1994 to 1995 and a 25 percent drop between 1999 and 2001 (Rennison 2002a; Rand 2009). Rates reported in 2010 were the lowest levels of property and violent victimization since 1973.

The NCVS shows significant differences among racial and ethnic groups, especially for violent crimes,⁹ a finding consistent with those provided by UCR, NYS, and Add Health data. Except for rape and sexual assault and nonstranger (especially intimate partner) victimizations, males were more often victims of violent crimes than were females regardless of race and ethnicity (Catalano et al. 2009). In 2010, the highest rate of violent victimization was experienced by American Indians (42.2 per 1,000). This was more than twice the rates for blacks and Hispanics (20.8 and 15.6 per 1,000) and more than three times higher than that of whites (13.6 per 1,000). Asians had the lowest rate at 6.3 per 1,000.

As Table 4.8 shows, these rankings have remained consistent over time, although the gaps between groups have narrowed. Between 1992 and 2006, the annual average rates of violent victimization for American Indians exceeded those for the other racial and ethnic groups, and rates for Asians were consistently lowest. At their peaks, from 1992 to 1996, the rate of violent victimization for American Indians was 124 per 1,000, compared with 29 per 1,000 for Asians. The rates for blacks and whites (61 and 49 per 1,000, respectively) were significantly higher than for Asians also but drastically lower than that of American Indians. These differences subsided following this period. When annual average rates from 1993 to 2000 (a period of rapid decline) are compared with those from 2002 to 2006 (when the decline was steadier), rates for American Indians fell nearly 49 per 1,000 and for blacks and Hispanics by 21 and 22 per 1,000, respectively. The rate drop was slightly lower for whites, at 18 per 1,000, and lowest for Asians at 11 per 1,000.

Table 4.8 Average annual rate of violent victimization* by race and ethnicity, 1992–2006 (per 1,000 persons 12 and older)

	1992–1996	1993–2000	2002–2006
Whites	49	41	23
Blacks	61	51	29
American Indians	124	105	56
Asians	29	22	11
Hispanics**	~	45	24

*Violent victimizations include rape, sexual assault, robbery, and simple and aggravated assault.

**The rates for Hispanics are not recorded in the report by Greenfield and Smith (1999), as they only provided rates by race. Although uncertain, this may be because the years observed were prior to the 1997 federal guidelines on classification of individuals according to their race and ethnic (Hispanic) origin.

Source: Greenfield and Smith (1999) for 1992–1996 rates, Rennison (2002a) for 1993–2000 rates, and Harrell (2009) for 2002–2006 rates.

The trajectories of decline for American Indians, blacks, and Hispanics were different. The latter two groups experienced steady declines between 1993 and the early 2000s. Rates for American Indians fluctuated more, dropping sharply between 1995 and 1997 but rising thereafter until declining again after 2000. Consequently, from 1993 to the early 2000s, the rates of violent victimization for blacks and Hispanics declined 57 percent and 56 percent, respectively, but no significant differences were observed for American Indians, especially between 1993 and 1998 (Rennison 2001, 2002a, 2002b; Harrell 2007). Conversely, the rates dropped at a more rapid pace for American Indians thereafter, contributing to lesser disparity between their rates and those for other groups by 2010. Importantly, and similarly to other data sources, racial and ethnic differences are largely explained by variations in micro- and macrolevel contextual factors including routine activities, family structure, community disadvantage, and racial inequality (Lauritsen and White 2001; Baumer et al. 2003; Lauritsen 2003; Lauritsen and Rennison 2006; Like 2011; Like-Haislip and Miofsky 2011; Like-Haislip and Warren 2011). Lauritsen and White (2001), in a study aptly titled “Putting Violence in Its Place,” used a special collection of the NCVS that included neighborhood indicators and found that community disadvantage significantly increased risks for stranger and nonstranger violent victimization among whites, blacks, and Latino/as. Moreover, they concluded that community disadvantage serves as a primary explanation of differences in victimization risks across these groups.

NCVS weaknesses hinder its utility in the study of race, ethnicity, and crime. First, one common criticism is that the survey excludes individuals under age 12 and therefore underestimates childhood victimizations. This is especially problematic since scholars studying youth victimization have argued that young people, including those under age

12, experience more victimization than do adults (Finkelhor and Dziuba-Leatherman 1994). Moreover, the NCVS does not investigate other crimes commonly experienced by children and adolescents, such as parental kidnapping, molestation, and other forms of family violence (Finkelhor and Dziuba-Leatherman 1994; Finkelhor et al. 2005). The NCVS also likely underestimates domestic and family violence in general in that it is a household-based survey, and respondents may underreport such incidents in these settings (Hawkins et al. 2000). Importantly, youth victimization (Finkelhor et al. 2005) and family violence (Catalano et al. 2009) have both been shown to vary across racial and ethnic groups. Thus, the NCVS is limited in that the extent and nature of youth victimizations and familial violence are either ignored or underestimated.

Second, the NCVS is plagued by concerns regarding the measurement of race and ethnicity and classification of individuals across these characteristics. The NCVS originally identified respondents as white, black, or other, with American Indians and Asians included in the latter category. Ethnicity based on Hispanic origin was not measured until 1977 (Gabbidon and Greene 2009, p. 47). In early years, examinations of racial differences were largely limited to white–black comparisons.

Racial and ethnic categories included in the NCVS have expanded over time to include whites, blacks, Hispanics, Asians, and American Indians, but estimates of victimization risks for the latter two groups are likely biased and unreliable due to their small sample size, thus potentially affecting the validity of comparisons between groups. NCVS reports often caution that rates for these groups are based on “10 or fewer” reported incidents (e.g., Rennison 2001, p. 4). Last, these classifications of race and ethnicity do not allow for consideration of intraracial or intraethnic differences. Although it is likely that victimization risks vary within groups, this possibility cannot be explored using NCVS data (i.e., Martinez and Nielsen 2006).

II. THE LASTING EFFECTS OF METHODOLOGICAL VARIATIONS

In sum, official and self-reported measures indicate that there are racial and ethnic differences in crime and victimization. The sources, however, disagree on the nature and extent of these variations, with official data arguably overestimating and self-report data underestimating such differences.

Despite its shortcomings, the NCVS augments the UCR in that it is not bound by crimes reported to the police, and it provides more nuanced measures of race and ethnicity. The Add Health data improves on its predecessor, the NYS, in that it includes self-reports from youth and also from parents, siblings, peers, and school administrators. Youth are not simply reporting on their perceptions of their parents, peers, and schools, but their assessments can be compared with those from the other groups, thereby increasing the validity and reliability of findings.

Overall, these data sources complement one another and collectively provide a comprehensive picture of crime, criminality, and victimization. They also contribute to understanding of these phenomena and their relations with race and ethnicity. Based on these sources, it is reasonable to conclude that minorities, particularly African Americans and American Indians, are disproportionately often serious crime victims and offenders. Racial and ethnic variations are less pronounced for other crimes, such as illicit drug use and delinquent behavior. Findings suggest that white youths are more likely to use most drugs and alcohol, and little evidence points to significant differences across groups for less serious forms of delinquency.

However, much of what these sources tell us about racial and ethnic differences must be viewed with caution. Methodological differences between and limitations across these data sources have contributed to the divergent findings in the study of race, ethnicity, and crime. These methodological concerns have consequentially led to long-standing debates among scholars about theoretical explanations for racial and ethnic differences.

Positivist thought, postulating that racial and ethnic differences in crime were attributable to genetic and other biological influences, reigned through the late 19th century and early into the next. These theories posited that racial and ethnic minorities suffered from various genetic, physiological, evolutionary, and intellectual deficits (Gabbidon and Greene 2009). Positivist explanations, however, were largely dismissed when greater attention was paid to environmental conditions, and sociological explanations have since dominated criminological theory. Hawkins (1995) noted, “given its origins as a paradigmatic challenge to notions of biological determinism, modern social science has had an almost singular goal—the refutation of many commonly held notions of human *nature* and its relationship to social behavior” (p. 12, emphasis in original). The focus of sociological theories range widely, with some emphasizing structural conditions (e.g., socioeconomic disadvantages) that give rise to crime and criminality with others turning to cultural explanations (e.g., competing social norms). In explaining racial and ethnic differences, structural theories posit that inequalities built into the social structure of environments (e.g., societies, regions, cities, and neighborhoods) influence differential rates of and involvement in crime across these groups (Gabbidon and Greene 2009).

Theories embracing structural-cultural explanations mark the new direction of criminological theory on racial and ethnic differences. In the words of one research team, “cultural explanations assert that certain race and ethnic groups, for a variety of reasons, are more likely to have norms and attitudes that promote or at least tolerate violence” (Lauritsen and Rennison 2006, p. 303). These theories argue that variations in the structural conditions under which racial groups live produce cultural adaptations that are either inhibitory or conducive to violence (Sampson and Wilson 1995; Sampson and Bean 2006).

Theorists remain divided over whether general or race-specific explanations are needed. General theories posit racial or ethnic invariance in the causes of crime. They posit that “race holds no distinct scientific credibility as a cause of violence—rather, it is a marker for the constellation of social contexts that are differentially allocated by racial status in American society” (Sampson and Bean 2006, p. 8). Studies using data from the sources discussed earlier have found overwhelming support for the racial invariance hypothesis.

Others, however, have contended that race-specific explanations are warranted, given the unique experiences of different racial and ethnic groups in the United States. For instance, Unnever and Gabbidon (2011) offer a theory of African-American offending that considers both structural and cultural influences but also gives primacy to the long-standing effects of racism and racial subjugation experienced by African Americans. They argue that this experience is distinct from the experiences of other racial and ethnic minorities and thus shapes African Americans' disproportionate involvement in criminal behavior.

This argument, however, does not acknowledge the question of whether similar race-specific theorizing would help explain the experiences of other racial and ethnic groups. Various sources have indicated that Native Americans' risks for violent offending and victimization are higher than that of African Americans, yet their experiences have been understudied in relation to those of blacks because of the overwhelming white-black dichotomy in criminological research. Although limited, these works have highlighted the historical and ongoing nature of racism and repression experienced by American Indians and its influence on their criminalization (Lujan 2006). Likewise, an explanation for the unequivocally low rates of offending and victimization of Asian Americans must be further explored. Some find that differences between Asians and other racial and ethnic minorities are the product of environmental factors (e.g., McNulty and Bellair 2003), thus advocating for a general theory. Other works suggest that findings of lower crime rates among Asian Americans have led to a "model minority stereotype" being applied to them. The stereotype can obscure attention to "social and structural constraints that systematically impede Asian Americans" and ignore within-group variations in disadvantage and thus experiences with crime (Nakayama 2006, p. 102; see also Kim 2006). A race-specific theory may provide better insight into Asian Americans' experiences of criminality and victimization.

A consensus on the causes of racial and ethnic differences in crime may be long coming because of methodological inconsistency in definitions and measurements of these characteristics. As research in these areas continues to evolve, broader and improved assessments of the race, ethnicity, and crime relationship will also evolve. Indeed, research has expanded over time, to move beyond the white-black dichotomy and consider the experiences of other racial and ethnic groups, examine the influence of immigration and increased population diversity on crime rates, and consider intraracial and intraethnic variations. Movement in these directions can only improve our understanding of the causes of racial and ethnic differences in criminality and victimization and thus improve strategies for ameliorating them.

NOTES

1. Historically, and to a lesser extent now, some posit that race and ethnicity are biological traits. Social scientists, however, disagree. They do not deny that physical racial characteristics (e.g., skin tone) are the product of biological factors, but usually argue that race and ethnicity are socially and politically constructed and that associations among

- race, ethnicity, and behavior are environmental, not biological (see Gabbidon and Greene 2009, p. 2).
2. Humes, Jones, and Ramirez (2011) note that the observed changes in racial and ethnic composition in the 2000 and 2010 census could be due to birth and mortality rates and migration patterns, and also that changes in the wording of the race and Hispanic origin questions since 2000 that “could have influenced reporting patterns in the 2010 census” (p. 3, footnote 9).
 3. See LaFree (1995) and Gabbidon and Greene (2009, p. 47) for a full description of the changes in racial and ethnic classifications in UCR data over time.
 4. Studies using NCVS data, which allows for the classification of respondents by Hispanic origin and race, have demonstrated that overreporting for whites is likely when Hispanic origin is not considered (e.g., Lauritsen and White 2001, pp. 42–43; Like 2011, p. 453 footnote 2).
 5. Using NCVS data for 2010, Truman (2011) reported racial and ethnic variations in police notification by gender. Percentages are based on the averages of male and female rates for each racial and ethnic group. Estimates were not provided for American Indians or Asians.
 6. Race, however, was a significant predictor for sexual intercourse among young men; Lauritsen (1994) cautioned that limits in the reliability and validity of self-reported sexual history among young men, especially black males, may have influenced the results.
 7. The only exception to this pattern is for eighth grade, when Latino rates overall are higher than for whites. Lower rates for Hispanics by twelfth grade are likely influenced by demographic trends, such as high dropout rates (see Delva et al. 2005). Similar patterns are found in other studies including youth who have dropped out of high school. The principal investigators for MTF concluded that their estimates of subgroup differences “would be even higher had we accounted for drug use by dropouts” (see Wallace et al. 2002, p. S74).
 8. This group is comprised of the subsample of those interviewed at home during wave 1, with a few exceptions. Excluded were those who were twelfth graders during wave 1 and not a part of the sibling/genetic sample, as well as members of a disabled sample of respondents. However, 65 youth who were part of the sibling/genetic sample who were not interviewed at wave 1 were included in wave 2 (see Add Health [2011] for full discussion of the exceptions and the genetic and disabled sample descriptions).
 9. Until 1993, the differences in household property victimizations across racial and ethnic groups were generally nonsignificant. However, by 2005, “non-Asian households were more likely to experience property crime than Asian households,” with the highest rates being found for American Indians, followed by Hispanics, blacks, and whites (see Harrell 2009, p. 6). Rates of household property crime are typically not disaggregated by race and ethnicity in NCVS reports, impeding discussion of these differences in years prior to 1993 and after 2005.

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CHAPTER 5

RACE, CRIME, AND POLICING

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ONE of the most controversial topics in social science is the impact of race and ethnicity in our society, particularly as it relates to crime and policing. As many have noted over the years, few issues generate such passionate discussion while simultaneously invoking tremendous silence (Sampson and Wilson 1995; Piquero and Brame 2008). Identifying and explaining racial disparities has been a consistent theme across research studies since the field of criminal justice emerged as its own academic area of study in the 1960s (Walker 1990). And, although there is no dispute regarding the racial and ethnic disparities at every stage of the criminal justice system, the evidence regarding the reasons for these disparities continues to be a matter of debate. Historically, in the United States, certain racial and ethnic groups have been treated differently by the criminal justice system. For example, the oppression of blacks dates back to slavery, Jim Crow laws, and other legal discrimination through the 1960s. During the late 19th century and into the 20th century, Native Americans were also oppressed by the white majority. Native Americans were excluded from white society and often perceived as enemies (Guillemín 1989). In addition, Hispanics and Mexican Americans living in the southwest of the United States have also historically been perceived as being treated differently by the American criminal justice system.

Due to the deep roots of discrimination against blacks in the United States, coupled with the consistent and drastic overrepresentation of blacks within the criminal justice system, most research studying the relationship between race and crime focuses on the differential treatment between blacks and whites (Skogan and Frydl 2004). However, more recently, in response to the overrepresentation of Hispanics within the criminal justice system, this ethnicity has gained more attention from researchers. Whereas Native Americans are slightly overrepresented in the criminal justice system, they comprise such a small proportion of the overall population (about 1 percent) that they do not draw much research attention (Federal Bureau of Investigation 2011). Therefore, due to historical treatment, overrepresentation in the criminal

justice system, and the availability of research studies, this essay focuses on the evidence regarding disparities in police outcomes for blacks and Hispanics compared to whites.

Given the sheer volume of work that has been produced regarding race, crime, and policing, there are many different ways to structure this essay. Our approach is to review the evidence regarding racial and ethnic disparities in policing practices, along with what is known about the reasons for these disparities. The most recent trend in policing has been identifying and implementing evidence-based practices (Weisburd and Eck 2004; Weisburd and Neyroud 2011). Academics and practitioners have focused on “what works” in policing and have advanced practices that are effective and efficient at reducing crime and disorder. What has been neglected in this movement toward evidence-based approaches in policing, however, has been a similar focus on identifying and advancing best practices regarding *equity* in policing.

This essay is organized into three sections. Section I provides a detailed review of the evidence on the racial and ethnic disparities across various coercive outcomes. These outcomes include arrests, use of force, traffic and pedestrian stops, and searches and seizures. The evidence indicates that, regardless of the outcome examined, racial and ethnic disparities exist. However, much of this research does not answer *why* these disparities exist. Therefore, Section II presents the two major competing theoretical perspectives as to why these racial and ethnic disparities may exist. In addition, specific theories under these two global perspectives are presented. Unfortunately, the extant literature examining why these disparities exist is inconsistent. However, in Section III, we highlight the consistency of findings within the citizens’ perceptions literature, which illustrates that, routinely, blacks have the most negative perceptions of police. This section concludes with a discussion of potential policy recommendations when this body of evidence is considered as a whole.

A number of findings stand out:

- Regardless of the police decision examined, some level of racial and ethnic disparities are commonly reported across research studies.
- Although it has been consistently reported that racial and ethnic disparities exist, theory development and testing regarding *why* disparities exist has been limited.
- In part because there is no consensus regarding the reasons for racial and ethnic disparities in police outcomes, efforts to reduce these disparities are ineffective.
- The evidence regarding citizens’ perceptions of police consistently indicates that black citizens report the most negative perceptions of police and are most likely to view the police as racially biased.
- Regardless of the empirical evidence regarding the existence of racial and ethnic disparities in police outcomes, because citizens believe bias exists, police legitimacy is threatened.

I. RACIAL AND ETHNIC DISPARITIES IN POLICING: THE EVIDENCE

One of the most consistent historical concerns regarding American policing is a perception that minorities are not treated fairly. What do we know about racial and ethnic disparities in policing? A systematic review of the impact of race on policing really begins in the 1960s, when researchers connected to the American Bar Foundation studies “discovered” discretion and ethnographies about police behavior and police organizations exposed the extralegal factors that were often driving the use of that discretion (Walker 1992; Bernard and Engel 2001). Policing research emerged as a distinct field of study after a handful of ethnographic works portrayed what police actually did, rather than what the law provided they should do. These studies described police agencies and culture (e.g., Wilson 1968; Van Maanen 1974; Manning 1977; Reiss 1983), police–citizen encounters (e.g., Skolnick 1966; Reiss 1971; Muir 1977), and the use of coercive power during interactions, particularly with minorities (e.g., Westley 1953; Skolnick 1966; Bayley and Mendelsohn 1969; Bittner 1970; Westley 1970). Researchers initially asked “What do the police do?” and “How do they do it?” From this beginning, a series of standard questions emerged that focused almost exclusively on explaining the gap between the “law on the books” and the “craft of policing” as it emerged in practice (Bernard and Engel 2001). Early police researchers assessed how the police act, rather than assessing implicit expectations of how police *should* behave. This research was often critical of police practices, bringing to light issues surrounding racial bias, abuse of force, corruption, and poor police–community relations. Importantly, this body of research also led to a significant rethinking of policies, strategies, and tactics (e.g., Goldstein 1977; Walker 1977; Skolnick and Bayley 1986).

Although many Presidential commissions detailing the state of policing and criminal justice more generally have been convened over the years to provide recommendations for reform, the Kerner Commission played a particularly important role. The National Advisory Commission on Civil Disorders (more commonly known as the Kerner Commission) was created to examine the causes of widespread rioting during the 1960s. They reported that a national crisis in race relations existed: “Our nation is moving toward two societies, one white, one black—separate and unequal” (National Advisory Commission on Civil Disorders 1968, p. 1). The report highlighted the deeply rooted racial tensions and hostility between black citizens and the police. The recommendations provided by the Kerner Commission emphasized the hiring of police personnel who reflected the demographics of the neighborhoods they served to improve police–citizen relations, which led to an increase in the hiring of minorities within police agencies (National Advisory Commission of Civil Disobedience 1968). The report also endorsed proactive policing and crime prevention that laid the foundations for community policing and indicated the need to increase the level of professionalism

within policing, resulting in the creation of minimum standards for law enforcement personnel (National Advisory Commission of Civil Disobedience 1968). In addition, the President's Commission on Law Enforcement and Administration of Justice (1967) (also known as the Crime Commission) had a significant impact on criminal justice reform. Based on research findings from the American Bar Foundation studies, now classic works produced by Goldstein (1960), LaFave (1965), and Newman (1966) formed the base of the Crime Commission's recommendations (Walker 1992).

Based on early discretion studies, and set against the backdrop of the civil rights movement and presidential commissions, a more quantitative body of research developed that focused on explaining coercive outcomes of police–citizen interactions that could be easily counted using official data sources (i.e., citations, arrests, use of force). Originally, this research focused nearly exclusively on whether citizens' characteristics influenced police behavior. From simple bivariate comparisons of police decisions and citizen characteristics (e.g., Piliavin and Briar 1964; Black 1971, 1980), this body of research evolved into the use of multivariate statistical techniques in an effort to isolate the effects of extralegal factors (e.g., citizens' race, age, gender, demeanor, etc.) on police decision making, after controlling for legal factors (e.g., Smith and Visser 1981; Smith, Visser, and Davidson 1984; Worden 1989; Klinger 1994; Mastrofski et al. 2000). The result was the emergence of a large body of research that compared the influence of legal versus extralegal factors influencing police decision making. Although these studies differed in the decisions examined (e.g., arrest, use of force, citations, etc.) and the emphasis placed on the particular types of extralegal factors examined (e.g., suspects' race, demeanor, gender, neighborhood, etc.), they all sought to determine whether police used their considerable discretion in a morally defensible manner. Critical to this research was the routine discovery of at least some racial and ethnic differences in coercive outcomes.

A. Arrest

Early research focused on the arrest decision and examined whether suspects' race, among other legal and extralegal factors, influenced arrest (e.g., Black and Reiss 1970; Black 1971; Smith and Visser 1981). Findings from this literature were often mixed and indicate that both legal factors (e.g., criminal involvement or crime seriousness) and suspects' race played a role in police decision making (Black 1971; Hindelang 1978; Visser 1983). Arrest studies, however, diverge on the strength of the race effect or whether suspects' race, net of legal factors, predicts an arrest outcome (Skogan and Frydl 2004).

As this research progressed, scholars included in their studies a wider array of possible influences on officer decisions. Sherman (1980) developed the canonical typology of these hypothetical influences: (1) situational factors (e.g., suspect, victim, encounter, and legal characteristics); (2) individual factors (e.g., officers' characteristics, including gender, race, experience, training, attitudes, and demeanor); (3) organizational factors (e.g., agency size, supervision, and managerial styles); and (4) community factors (e.g.,

neighborhood characteristics and political contexts). Others reviewing the field subsequently followed this framework (e.g., Riksheim and Chermak 1993; Skogan and Frydl 2004). The purpose of measuring these factors was to understand police decision making better in an effort to identify effective methods for controlling problematic use of police discretion. Studies using multivariate statistical models generally demonstrated that legal factors had a much stronger influence over police arrest behavior than suspects' race and other extralegal factors (e.g., Riksheim and Chermak 1993; Klinger 1994; Brooks 2001). Yet studies demonstrating racial and ethnic disparities in arrest continued to accumulate.

Concerns regarding racial and ethnic disparities in arrest often focused on issues surrounding drug use, apprehension, and sentencing. The "war on drugs" throughout the 1980s and 1990s led to dramatic changes in criminal justice strategies nationally, including the aggressive targeting of drug offenders at the street level and increased rates of incarceration and sentence length (Harris 1999; Scalia 2001; Tonry 2011). Targeted enforcement strategies were especially felt by juvenile minority males, who were disproportionately subject to police surveillance and imprisonment for drug offenses (Kennedy 1997; Harris 2002; Walker 2001). A research summary by the American Sociological Association highlights this disproportionate impact by noting that, in 1980, the rates of juvenile drug arrests for black and white males were similar, but by 1993, they were more than four times higher for black than white youths (Rosich 2007, p. 6). This disparity remains, and the existence of racial and ethnic differences in contact with police related to drug offenses is without debate. Research into its causes, however, continues to be inconclusive.

Although racial and ethnic disparities in drug cases have been noted throughout the criminal justice system, and in particular in the sentencing literature (Albonetti 1991, 1997; Steffensmeier and Demuth 2000; Johnson 2005; Brennan and Spohn 2008, 2009), examination of racial and ethnic disparities at the initial arrest decision is critical to understanding the full impact of drug control policies. Unfortunately, research that addresses local police drug enforcement and racial bias is relatively rare, and the limited studies that are available continue to demonstrate conflicting findings (Beckett, Nyrop, and Pfingst 2006; Ramchand, Pacula, and Iguchi 2006; Golub, Johnson, and Dunlap 2007; Engel, Smith, and Cullen 2012).

In the early 2000s, the National Research Council convened the Committee to Review Research on Police Policy and Practices to review the volumes of research that had amassed regarding policing (Skogan and Frydl 2004). After reviewing decades of research that examined the influence of citizens' race while controlling for other legal and extralegal factors, the Council concluded that the findings regarding the impact of race were inconclusive:

There is a widespread perception of systematic police bias against racial and ethnic minority groups. The evidence is mixed, ranging from findings that indicate bias against racial minorities, findings of bias in favor of racial minorities, and findings of no race effect. The results appear to be highly contingent on the measure of police

practice, other influences that are taken into account, and the time and location context of the study. (Skogan and Frydl 2004, pp. 122–23)

The inconclusive nature of the evidence regarding police bias once legal factors were taken into account has been an enduring description of the policing research (e.g., Riksheim and Chermak 1993; Brown 2005).

Most recently, however, Kochel, Wilson, and Mastrofski (2011) have challenged the conclusions of executive summaries regarding the impact of race on police decision making, suggesting that “mixed findings” is not the most appropriate description of this body of research. Based on findings from their meta-analysis of 40 arrest studies using 23 different datasets, Kochel, Wilson, and Mastrofski (2011) boldly asserted that “race matters” for arrest decisions. They noted that although previous panels of policing experts have described the collective research findings as “mixed” regarding the effects of race, their comprehensive analyses show otherwise:

From our findings, we can conclude more definitively than prior nonsystematic reviews that racial minority suspects experience a higher probability of arrest than do whites. We report with confidence that the results are not mixed. Race matters. Our finding is consistent with what most of the American public perceives, and that finding holds over time, research site, across data collection methods, and across publication type. (Kochel, Wilson, and Mastrofski 2011, p. 498)

Their comprehensive review of the available research, however, is necessarily limited by the quality of the individual studies reviewed. Due to the nature of meta-analysis as a technique, the meta-analytic results are of high quality only if the individual studies included in the meta-analysis are of high quality (Gendreau and Smith 2007). Their analyses cannot systematically explain why, how, and when race matters in arrest decisions; only that it does. In addition, their assertion that “race matters” only applies to situations involving arrest. Such comprehensive meta-analyses have not yet been conducted for other types of police-related outcomes such as use of force, traffic and pedestrian stops, or searches and seizures.

Currently, minorities (and especially blacks) are arrested at much higher rates than their representation in the general population. This disparity is especially large for juveniles. Although all subgroups have experienced declines in recent years, in 2009, African-American youth comprised 51 percent of total arrests for violent crimes and 33 percent of those for property crime—despite only having a prevalence of 16 percent in the aged 10–17 population (Puzzanchera and Adams 2011). This translates to a national relative rate index (RRI) of 2.2 for African Americans and 1.7 for all minority youth (Puzzanchera and Adams 2011). The question remains, what is the cause of these disparities in arrests?

B. Use of Force

Police use of force is another coercive action that has been routinely explored in research studies. Prior to *Tennessee v. Garner* (471 US 1 [1985]), a U.S. Supreme Court case that

limited the use of deadly force to situations involving defense of life, studies demonstrated significant racial disparities in the use of deadly force (Fyfe 1986). As agencies changed their policies and practices, racial disparities in lethal force were significantly reduced, yet some disparities remained (Blumberg 1981; Fyfe 1988; Fyfe and Walker 1990). For example, a reanalysis of deadly force in the Memphis Police Department (the police agency involved in the *Tennessee v. Garner* case) demonstrated “clear evidence that the deadly force rule implemented as a result of the *Garner* decision in 1985–89 was effective in achieving its desired goal: both the overall shooting rate and the apparently discriminatory application of lethal force in Memphis were reduced greatly as a result of the post-*Garner* deadly force policy” (Sparger and Giacopassi 1992). Likewise, Brown and Langan (2001) reported that the rate at which blacks were killed by police nationally in 1978 was eight times the rate of whites killed, compared to four times the rate of whites killed by police in 1998. Use of force studies, however, consistently reported that the use of force is a statistically rare event and that most use of force incidents involved relatively minor forms of force (Adams 1996, 1999; Brown and Langan 2001; Langan et al. 2001; Garner, Maxwell, and Heraux 2002).

Examinations of nonlethal force have focused primarily on measurement issues surrounding the operationalization of force, and the wide variety of methods and measures across studies leads to difficulties comparing across studies or providing comprehensive and definitive summaries (Garner, Maxwell, and Heraux 2002). Some multivariate statistical analyses have indicated that citizens’ race is associated with an increase in the prevalence or level of the use of force (Smith 1986; Worden 1995; Terrill and Mastrofski 2002; Engel and Calnon 2004), whereas others have demonstrated no race effect after controlling for other legal and extralegal factors (Friedrich 1980; Garner et al. 1995; Engel, Sobol, and Worden 2000; Garner, Maxwell, and Heraux 2002).

Research has also examined potential contextual effects regarding use of force. Terrill and Reisig (2003) found that the context in which the police–citizen encounters occurred mattered and that the race of the suspect is mediated by neighborhood context. Their hierarchical analysis indicated that, even after controlling for other factors, officers are significantly more likely to use force in neighborhoods that suffer from higher levels of concentrated disadvantage and homicide. In contrast, although it has been proposed that the race of the officer may also influence use of force, research has consistently indicated that officers’ race does not have a significant influence over the use of force (Fyfe 1981; Smith and Klein 1983; Worden 1989, 1995; Riksheim and Chermak 1993; Engel 2000; Terrill 2001).

In summary, although the evidence regarding racial disparities in the use of force is somewhat inconsistent, most studies demonstrate that the strongest predictors of use of force are citizens’ resistance and other behaviors, along with other legal factors (Engel, Sobol, and Worden 2000; Klahm and Tillyer 2010). Race, when found to have a significant influence, is generally substantively weaker than other factors (Klahm and Tillyer 2010). Because the control of force is exclusively at the local level, what is needed is systematic rigorous testing of methods to reduce the need to use force. With the exception of a handful of recent studies examining the impact of less-lethal weapons (e.g.,

Smith, Petrocelli, and Scheer 2007; MacDonald, Kaminski, and Smith 2009), we know little about the types of policies, equipment, training, and managerial oversight that are most effective at reducing use of force incidents without compromising officer safety. We know even less about what techniques might reduce racial and ethnic disparities in the use of force.

C. Traffic and Pedestrian Stops

Beginning in the mid-1990s with Lamberth's (1994, 1996) reports interpreting racial disparities in vehicle stops as evidence of racial discrimination, dozens of published studies and agency reports have examined the degree to which various police agencies over-stop African-American and Hispanic drivers, relative to white drivers (e.g., Fridell 2004; Tillyer, Engel, and Wooldredge 2008). By the mid-2000s, police agencies across the country had spent millions of dollars collecting information about traffic and pedestrian stops based on legislative mandates, court orders, or internal policy changes (Tillyer, Engel, and Wooldredge 2008). Although fraught with methodological limitations, this body of research has generally demonstrated a relatively consistent trend of racial and ethnic disparities in traffic and pedestrian stops and the outcomes citizens receive (Engel and Johnson 2006; Warren et al. 2006; Tillyer, Engel, and Wooldredge 2008). Unlike the larger body of research examining police discretion, findings from these traffic stop studies have been remarkably consistent in reporting racial and ethnic disparities in police behavior. For example, based on a summary of the literature, Withrow (2006) reported that roughly 80 percent of published studies reported racial and ethnic disparities in traffic stops. This consistency in reported disparities, however, may be due to limitations in measuring the factors known to influence officer decision making in official traffic and pedestrian stop data (Engel, Calnon, and Bernard 2002; Smith and Alpert 2002).

Despite the abundance of academic study devoted to this topic, researchers have few theories to explain the mounting evidence of racial and ethnic disparities. Although some researchers developed partial theories to explain these disparities post hoc (e.g., Parker et al. 2004; Tomaskovic-Devey, Mason, and Zingraff 2004; Warren et al. 2006; Smith and Alpert 2007), none has been properly tested. For example, scholars have described the social conditioning model derived from social psychology, which explains racial bias at the individual officer level as primarily an unconscious function of social conditioning and stereotyping (Smith and Alpert 2007). Other scholars have considered the important role that police deployment plays in the creation of racial and ethnic disparities (Tomaskovic-Devey, Mason, and Zingraff 2004; Engel, Smith, and Cullen 2012). Likewise, racial threat theory and individual theories of racial prejudice and bias have been considered (Parker et al. 2004; Tomaskovic-Devey, Mason, and Zingraff 2004). Despite this theoretical development, direct empirical tests of these theories are generally lacking. Academics have not determined why these disparities exist in police stops with any scientific validity, claims to the contrary notwithstanding. There is no

evidence to suggest that the amount of racial disparities has been reduced as a result of this research. In fact, national estimates of police–citizen contacts with minorities have remained relatively stable over time (Langan et al. 2001; Durose, Langan, and Schmitt 2005, 2007). Although new statistical techniques used in racial profiling research are promising (Ridgeway and MacDonald 2010), this area of study will not make significant progress until theories of police discretion grounded in the daily work of police officers are developed.

D. Searches and Seizures

Recently, racial profiling research has expanded to include analyses of search and seizure practices (e.g., Gould and Mastrofski 2004; Alpert, MacDonald, and Dunham 2005; Engel and Johnson 2006; Warren and Tomaskovic-Devey 2009; Rosenfeld, Rojek, and Decker 2012; Tillyer, Klahm, and Engel 2012). Similar to the racial and ethnic disparities reported in traffic and pedestrian stops, the majority of studies examining search rates have demonstrated that minorities are significantly more likely to be searched than whites (Tillyer and Engel 2013). For example, Engel and Johnson's (2006) review of traffic stop data from 13 state police agencies demonstrated racial and ethnic disparities in searches conducted during traffic stops in every agency. Black motorists ranged from being 1.7 to 5.4 times more likely to be searched by state patrol agencies than were white motorists, whereas Hispanic motorists were 1.8 to 9.6 times more likely to be searched (Engel and Johnson 2006). Researchers now distinguish between mandatory searches (i.e., searches based on policy or law) and those based on officers' discretion (Engel 2008). Again, studies generally demonstrate racial disparities in discretionary searches, including consent searches. The most recent research suggests, however, that other driver characteristics (e.g., age and gender) may be partially responsible for the racial differences reported (Rosenfeld, Rojek, and Decker 2012; Tillyer, Klahm, and Engel 2012).

Some researchers employing an economic perspective have considered an alternative analytical strategy (i.e., the outcome test) to determine racial and ethnic discrimination by police (Borooah 2001; Knowles, Persico, and Todd 2001; Ayres 2002; Dominitz 2003; Hernandez-Murillo and Knowles 2004; Persico and Castleman 2005; Anwar and Fang 2006; Persico and Todd 2006). Commonly referred to as "hit rates," researchers measure whether searches result in the discovery of contraband, and they define those that do as "successful" searches. When applied to police searches, the outcome test is a statistical comparison of search success rates across racial and ethnic groups (Engel 2008). Using this method, researchers have generally reported evidence of racial "discrimination" when the hit rates for minority searches are lower than the hit rates for whites (Knowles, Persico, and Todd 2001; Persico and Todd 2006).

The outcome test, however, is based on a number of underlying assumptions regarding police and citizen behaviors that do not coincide with what is known about decision making during police–citizen encounters. For example, Engel (2008) notes that, when

applied to police searches and seizures, the outcome test assumes that all searches are based on police discretion; yet many searches are mandatory and conducted as a matter of policy. Even if the outcome test is only applied to the select few nonconsent discretionary searches, there are still a number of underlying assumptions of the model that cannot be met. For example, the outcome test assumes that motorists' characteristics are exogenous and that racial and ethnic groups carry contraband with equal probability, regardless of other characteristics observable by police. This assumption, however, does not match with reality. When the outcome test is applied to police searches and seizures, there is an underlying assumption that the factors used to predict outcomes are equally valid across groups. In the case of search decisions, officers are trained to look for particular clues of suspiciousness. However, contrary to the underlying assumptions of the outcome test, these clues are not equally distributed across racial and ethnic groups. Applying the outcome test to police searches also requires that officers are monolithic in their search decisions (Anwar and Fang 2006). That is, it is assumed that all officers will respond in a similar manner when presented with the same situation. This assumption is also highly unlikely. As a result of these and other considerations, the conclusions generated using outcome tests have been called into question (Anwar and Fang 2006; Engel 2008; Engel and Tillyer 2008; Ridgeway and MacDonald 2010). Therefore, although racial and ethnic disparities in searches and seizures have been routinely reported, there is no clear evidence that these disparities are based on officer discrimination.

E. Research Summary

Although examining racial and ethnic disparities in arrest, use of force, and search and seizure practices is critical, many other police decisions dramatically impact citizens and are in need of analysis. Unfortunately, other types of police decision making and behavior (e.g., community policing, problem solving, service activities, citizen behavior toward officers, etc.) have largely gone unstudied, with a handful of important exceptions (e.g., Mastrofski, Snipes, and Supina 1996; Parks et al. 1999; Mastrofski et al. 2000; DeJong, Mastrofski, and Parks 2001; Skogan 2006). This preliminary work suggests that, here too, race may affect police decision making to a limited degree, yet there are too few studies to determine general trends.

Studies have also focused nearly exclusively on patrol officers' behavior, due in part to a reliance of systematic social observation (SSO) or official data collected during traffic stops as the primary data collection techniques. Although early ethnographic work focused across organizational units (e.g., Manning 1980), data collected using SSO are generally used to examine the behavior of patrol officers during police-citizen encounters (Mastrofski and Parks 1990; Mastrofski, Parks, and McCluskey 2010); likewise, official data routinely used by researchers often tap work conducted by patrol officers. Researchers have sparse information on the current investigatory functions of police. We also know very little regarding the daily work and decision making of officers working in specialized units such as vice, homicide, personal crimes, intelligence, criminal

interdiction, SWAT, task forces, and the like and how their decision making impacts racial disparities. We have focused nearly exclusively on coercive police actions that can be easily quantified, but have failed to capture more nuanced decision-making points, including how race and ethnicity may impact the development and interpretation of cues of suspicion (see Alpert, MacDonald, and Dunham 2005) and decisions to patrol certain neighborhoods (Tomaskovic-Devey, Mason, and Zingraff 2004).

Three important points summarize the bulk of research findings regarding race and policing. First, this research—particularly the earlier qualitative studies—was instrumental in establishing the desperate need for police reform, and it generated ideas regarding what form these changes should take. As a result, community policing, problem solving, and other innovative policing reforms were adopted across the country (Trojanowicz 1989; Goldstein 1990). Second, in reviews of this work—particularly the later quantitative research—despite differences in measures and methods, a majority of the studies demonstrate that legal factors have the largest effect on police behavior (Klinger 1996; Skogan and Frydl 2004). Finally, despite the relatively strong findings regarding the influence of legal factors over police behaviors, unexplained racial and ethnic disparities remain (Kochel et al. 2011; Tonry 2011). The causes of these unexplained disparities are the center of the controversy between police and minority communities. Research into its causes, however, continues to be a daunting task producing inconclusive results. Understanding the causes of these disparities remains critical to implementing policies and practices to reduce them.

II. THEORIES OF RACIAL AND ETHNIC DISPARITIES

As noted by the American Sociological Association's review, "without a doubt, great racial disparities and overrepresentation of minorities exist at all decision points in criminal justice processing, and have significant social consequences, but they may not all reflect race biases" (Rosich 2007, p. 21). What are the reasons for the persistently reported racial and ethnic disparities in police-related outcomes? Unfortunately, as research findings accumulate on racial and ethnic disparities, theories and evidence explaining these disparities remain sparse. The lack of credible, testable theories of racial and ethnic disparities in policing is especially problematic because understanding the cause of disparities is critical to producing effective reform efforts to reduce disparities.

In general, the field has divided into two primary competing global explanations for racial disparities in offending. First, researchers have identified the differential involvement hypothesis, or "differential offending" (Piquero and Brame 2008; Tillyer and Engel, forthcoming). Here, researchers consider the proposition that racial disparities in criminal justice outcomes simply reflect the criminological reality that minority populations are disproportionately involved in criminal activity. Second, academics have

considered the criminal justice system selection bias hypothesis or “differential processing” (Piquero and Brame 2008; Tillyer and Engel, forthcoming). Within this framework are a variety of diverse theories regarding forms of bias embedded within criminal justice actors, organizations, and the system as a whole.

A. Differential Offending

The differential offending hypothesis proposes that blacks simply participate more in the types of criminal behaviors that result in a greater likelihood of police contact than do whites (Hawkins et al. 2000; Piquero and Brame 2008). For whites, criminal behavior tends to desist as they move into adulthood, but, for blacks, criminal behavior is more likely to persist into adulthood and criminal trajectories differ between races (Elliott 1994; Moffitt 1994; Haynie, Weiss, and Piquero 2008; Cohen, Piquero, and Jennings 2010; Higgins et al. 2010). In summary, the differential offending hypothesis suggests that blacks, and, to a lesser degree, Hispanics, commit more crime relative to whites and that criminal involvement is more likely to persist into adulthood. Recognizing the overrepresentation of the involvement in violence for blacks and Hispanics is important because these are the types of crimes that are more likely to be reported to the police, more likely to result in arrest, and more likely to result in a serious sanction (Piquero and Brame 2008). Therefore, if blacks and Hispanics do commit more violent crimes, this would explain why more blacks and Hispanics are arrested, convicted, and incarcerated.

For decades, criminologists have repeatedly found racial and ethnic differences in offending patterns. Hindelang (1978) was one of the first to provide evidence in support of differential criminal involvement across race and ethnicity groups. Since Hindelang’s initial study, research has fairly consistently indicated across official, self-report, and longitudinal data that violent offending among adult and juvenile blacks, Hispanics, and Native Americans is more prevalent than among whites (Farrington et al. 1996; Hawkins et al. 2000; D’Alessio and Stolzenberg 2003; McNulty and Bellair 2003). At virtually every stage in the criminal justice system, blacks are overrepresented compared to their population (Krivo and Peterson 2000; Federal Bureau of Investigation 2011). In general, research that used official and victimization data consistently demonstrated support for the differential offending hypothesis. For example, according to the 2010 Uniform Crime Report (UCR), blacks, who made up 13.6 percent of the U.S. population, accounted for 28 percent of all arrests and 38 percent of all violent arrests. Victimization data also reveal overrepresentation in criminal offending. Blacks are more frequently identified as the perpetrator for the crimes of robbery, rape, and assault (Hindelang 1978; Hawkins et al. 2000; Baumer 2002). For example, the 2008 National Crime Victimization Survey indicated that blacks were 6.5 times more likely than whites to be reported by victims as perpetrators of robberies involving one offender and 30 times more likely for robberies involving two or more offenders (Bureau of Justice Statistics 2010).

In the late 1960s, self-report data were introduced to address some of the limitations of previous analyses and to validate findings from official statistics (Sampson and

Lauritsen 1997). Early self-report studies (e.g., Chambliss and Nagasawa 1969; Gould 1969; Hirschi 1969) found little or no differences in rates of offending across race and ethnicity groups. However, as measures of self-reported delinquency evolved, findings emerged that indicated a race-crime relationship (e.g., Elliott and Ageton 1980; Elliott, Huizinga, and Morse 1986; Sampson, Morenoff, and Raudenbush 2005). The self-reported differences in offending across racial and ethnic groups, however, were generally smaller with self-reports than with official and victimization data. These data demonstrate little or no difference in the prevalence of self-reported involvement in violent offending across race (Elliott 1994; Hawkins, Laub, and Lauritsen 1998). The variation in the magnitude of racial differences in offending rates reported across data types is likely because many self-report studies focus on less serious offenses, whereas the strongest racial differences reported in official data include more serious crimes, especially violence. In addition, some studies have demonstrated racial differences in the accuracy of self-report data (Hindelang, Hirschi, and Weis 1981).

Finally, some studies have demonstrated that minorities are more likely to engage in risky driving behaviors that increase their likelihood of being stopped by police. For example, independent observations have demonstrated that black drivers exceeded the posted speed limit more frequently and exceed the speed limit at higher speeds than do white drivers, which places them at increased risk for traffic stops by police (Lange, Blackman, and Johnson 2001; Smith et al. 2003; Engel and Calnon 2004; Engel et al. 2005; Lange, Johnson, and Voas 2005; Lundman and Kowalski 2009; Cherkauskas 2011). Similar racial and ethnic differences in seatbelt usage, motorcycle helmet usage, cell phone usage while driving, and other risky driving behaviors have been reported (Baker et al. 1998; Royal 2000; Everett et al. 2001; Braver 2003).

In summary, based on an extensive body of literature, there is general agreement that minorities, and more specifically blacks, are more likely to commit serious violent crimes than are whites. The evidence is less conclusive regarding whether blacks are also differentially involved in less serious offending, but the evidence regarding differential involvement in traffic offenses that lead to police stops is growing. Whether these differences in offending can adequately explain racial and ethnic disparities in the criminal justice system, however, continues to be a matter of rigorous debate (Wilbanks 1987; Tonry 2011).

Researchers have used various theoretical explanations to explain racial differences in offending. For example, at the individual level, explanations focus on latent trait, developmental, and social process models (McNulty and Bellair 2003). At the macrolevel, researchers propose that racial differences are due to a subculture of violence (Wolfgang and Ferricuti 1967; Anderson 1999; Stewart and Simons 2010), social disorganization (Shaw and McKay 1942), and other macrolevel processes such as historical discrimination, residential segregation, and concentrated disadvantage (Sampson and Wilson 1995). More recent studies have attempted to use contextual theories to take both individual- and aggregate-level processes into account (McNulty and Bellair 2003). However, even after numerous studies exploring each of these explanations, the race-crime relationship remains unsettled.

B. Differential Processing

The differential processing hypothesis generally assumes that differential offending patterns either do not exist, or, if they do, they cannot adequately explain all of the racial and ethnic disparities reported at various stages in the criminal justice system. Differential processing assumes that there is something about the criminal justice process itself (either intentional or unintentional) that results in inflated rates of minorities being processed through the criminal justice system. Several different and diverse theories can be generally classified as espousing to the differential processing hypothesis. Several of the more readily used theories under the broader rubric of differential processing are described in greater detail below.

1. *Individual Police Bias*. The individual police bias perspective refers to discrimination that is a result of individual police officers' biases. This perspective argues that some police officers possess personal beliefs or values that are simply prejudiced against minority citizens, and they allow these biases to influence their behavior (Tomaskovic-Devey, Mason, and Zingraff 2004; Warren et al. 2006). The social cognition literature demonstrates that racial attitudes are automatic and implicit (Greenwald and Krieger 2006). Humans use stereotypes and readily apparent characteristics to categorize people (Stangor et al. 1992). Because this process of categorization has an almost automatic effect on humans' perceptions, it has serious implications for police outcomes, in which there is a tendency to show favoritism based on group classification (Tomaskovic-Devey, Mason, and Zingraff 2004). Therefore, if officers categorize individuals based on race, and have developed negative thoughts or attitudes toward that race, they are likely to act based on those biases (Levinson 2007). This perspective proposes that discrimination is not system-wide or even department-wide, but rather that individual officers' attitudes toward race influences their behavior, which can then lead to disparities (Walker, Spohn, and Delone 2007). The individual police bias perspective proposes that it is the actions of "bad apples" within police agencies that might result in racial disparities (Sherman 1974; Klockars et al. 2000).

When researchers attribute findings of racial and ethnic disparities to individual officer bias, they make important assumptions about officers' motivations, which are often unmeasured. Research in this area has been primarily limited to post hoc assessments of officer decision making and often results in unsubstantiated conclusions regarding the underlying reasons for police decision making (Tillyer and Engel 2013). Although the conclusion often reached is that differential outcomes indicate unwarranted or unjustified differential treatment of minorities by the police, this conclusion is often not directly tested. Although police officer bias is the implicit (and sometimes explicit) theory used to explain racial disparities (e.g., see Lamberth 1994, 1996; Harris 1999, 2002), some researchers have questioned the utility of this theory to explain the widespread and consistent racial disparities reported across jurisdictions (Engel, Calnon, and Bernard 2002).

2. *Social Conditioning Model.* The social conditioning model perspective is derived from social psychology and explains racial bias at the individual officer level as primarily an unconscious function of social conditioning and stereotyping (Smith and Alpert 2007). Psychological research suggests that police officers may develop stereotypes based on repeated exposure to negative social stimuli involving minority groups and that such stereotypes can influence officer behavior (Smith and Alpert 2007). In the human mind, cognitive scripts (or schema) develop as shorthand for categorizing events in memory. These scripts, which form from past experiences, play a key role in predicting future responses to previously encountered persons, places, and events (Bower, Black, and Turner 1979; Read 1987; Brehm, Kassir, and Fein 2002). Moreover, biases may be triggered when judging the behavior of a person that accords with one's preexisting mental image for that group, especially when the observed behavior is ambiguous (Sagar and Schofield 1980; Darley and Gross 1983).

Collectively, the research on stereotype formation suggests that attitudes, beliefs, and stereotypes are most likely to develop when police have repetitive contacts of a similar type with persons from the same group. Moreover, stereotypes act as organizational scripts for social memory and thus guide perceptions of future encounters (Noseworthy and Lott 1984). If police repeatedly encounter whites and minorities under differential conditions of criminality, they likely will begin to develop cognitive scripts that reflect this experiential reality. This, in turn, makes it more likely that the police will process new situations through the filter of existing schemas, which can result in an ecological fallacy (Robinson 1950) as perceived group generalizations are applied to individuals regardless of their individual characteristics (Grant and Holmes 1981). The end result can be biased decision making.

Based on this perspective, we would anticipate that racial groups will be treated differently by police according to neighborhood context. Through differential contacts, officers may develop stereotypical scripts that could result in bias against any racial group that comprises a significant majority of offenders in a particular area, including whites. Accordingly, we would expect to see disproportionate arrests of the racially dominant group in a given neighborhood resulting from officers' latent biases that operate at an unconscious level (Smith and Alpert 2007). Initial examinations of this theory demonstrated some support; however, the core concepts underlying this theory have not been tested directly using police officers (Tillyer and Engel, forthcoming).

3. *Racial Threat Hypothesis.* The racial threat hypothesis is a conflict-based theory predicated on the assertion that the relative power of a given social group dictates social order (Blalock 1967). The notion of "threat" underlies the conflict perspective. From this perspective, police are used to suppress and control any segment of society that poses a threat to the status quo (Vold 1958; Dahrendorf 1959; Quinney 1970; Turk 1970; Black 1976). In a capitalist society, in which economic resources equate to power, it is in the interest of the ascendant class to maintain economic stratification in order to dictate the existing legal and political structures (Taylor, Taylor, and National Deviancy Conference 1973; Quinney 1974, 1975; Chambliss 1976; Chambliss and Seidman 1982). Thus, the dominant class in the United States (upper- and middle-class whites) will respond by

increasing social control on minorities to keep their economic and political power in check (Blalock 1967; Quinney 1970; Turk 1970).

Tests of racial threat theory have been conducted using neighborhoods, cities, and counties as the units of analysis. Some studies demonstrated initial support for the racial threat hypothesis (e.g., Green 1970; Liska, Lawrence, and Benson 1981; McCarthy 1991), whereas others have reported limited or no support (e.g., Petrocelli, Piquero, and Smith 2003; Stolzenberg, D'Alessio, and Eitle 2004; Parker and Maggard 2005). As a result, the evidence surrounding racial threat hypothesis is best described as mixed. An inherent weakness of this theory when applied to police decision making is the inability to explain individual variation within a larger jurisdiction.

Indeed, the confounding relationship between racial disparities in police decision making and neighborhood demography has been highlighted in the work of scholars such as Smith (1986) and Terrill and Reisig (2003), who found that neighborhood context can have an important influence on police behavior. Other things being equal, their research suggests that poor and minority neighborhoods experience more arrests and more use of force than other kinds of neighborhoods. Their findings also highlight the need for a theoretical explanation of police discretion that takes geographic context into account.

4. *Deployment Hypothesis.* Although a bright line has been suggested between differential offending and differential processing theories, it is entirely possible that these two broad views are both accurate. For example, most scholars would agree that criminal behavior is not evenly spread across populations and geography and that police are more likely to intervene when they detect criminal behavior. If you begin with a presumption of racial disparity that is not racially motivated (i.e., differential behavior leads to differential enforcement patterns), the question then becomes not how much of the disparity is caused by individual police officers' decisions, but rather, how do policing strategies and organizational practices—even when applied by unbiased officers—create racially disparate outcomes?

Despite the contributions of research on racial and ethnic disparities in police stops and arrests, most studies have neglected the important role of police deployment strategies in understanding these disparities. The deployment hypothesis as a form of structural discrimination has been proposed to clarify the conceptual differences in racial bias processes and their associated distributions in official traffic and pedestrian stop data (Tomaskovic-Devey, Mason, and Zingraff 2004). Saturation of police patrols in crime-prone areas is a common police deployment strategy, which may lead to increased contacts with minority citizens. This type of deployment may result in differential enforcement patterns across racial and ethnic groups that are unintentional by individual officers (Warren et al. 2006).

Although widely recognized by practitioners as an explanation of police behavior, the importance of workload, as measured by reported crime or calls for service, has been underused in criminal justice research (Skogan and Frydl 2004). The first systematic workload formula for police deployment based on requests for service and reported crimes was developed in the 1940s (Wilson 1941; also see Leonard and More 1993). Most

police agencies across the country rely on workload formulas to determine the number and location of patrols throughout their jurisdiction, based on the now empirically demonstrated premise that calls for service and criminal activity are not evenly distributed across geographic areas and that focusing on “hot spots” of criminal activity can reduce crime (e.g., Sherman, Gartin, and Buerger 1989; Weisburd and Green 1995; Braga et al. 1999). These findings have led police administrators to focus even more heavily on adequate deployment and directed policing practices in high-crime areas. Crime analysts within police agencies are now routinely employed to identify high-crime areas (based on crime reports and calls for service data) and incorporate this information into a managerial oversight mechanism for rapid and focused deployment of personnel and resources (Weisburd et al. 2003; Willis, Mastrofski, and Weisburd 2007).

Although the need for temporal and geographic differences in police deployment patterns across jurisdictions is obvious, the differential impact that these deployment patterns have on risks of criminal apprehension by race and ethnicity is less understood. Some research has suggested that policing styles in high-crime areas tend to be more proactive and aggressive than policing styles in other lower crime areas (Smith, Visher, and Davidson 1984; Smith 1986; for review, see Skogan and Frydl 2004). Racial and ethnic segregation in many urban areas has resulted in minorities disproportionately residing in high-crime, low-income areas (Logan and Messner 1987; Massey and Denton 1993; Shihadeh and Flynn 1996). Therefore, individuals in these communities have an elevated risk of criminal apprehension based strictly on their residence. If the deployment theory is accurate, however, one would expect racial and ethnic disparities in police activity across geographical areas, but not within them (Tomaskovic-Devey, Mason, and Zingraff 2004). Some initial studies have shown support for this hypothesis, although systematic testing of these propositions has not been conducted (Engel, Smith, and Cullen 2012).

C. Theory Summary

There remains no consensus on why consistent racial and ethnic disparities are reported across various policing outcomes. Although Sampson and Wilson (1995, p. 37) described the larger body of race, crime, and criminal justice research as “mired in an unproductive mix of controversy and silence” nearly two decades ago, it is still unclear today why racial disparities exist. Unfortunately, most police research examining racial disparities is not guided by strong theories, and, when theories are used, they tend to be insufficient and not grounded in scientific theories of human behavior. As a result, many of the theories outlined here have not been adequately developed and tested.

For research to evolve, scholars need to look beyond the traditional policing literature to identify and apply evidence-based generalized theories of individual cognition, organizational arrangements, economics, and politics, rather than create special theories of police divorced from the scientific literature in other disciplines. These theories will better guide research questions and lead to more meaningful interpretations of racial

and ethnic disparities. In addition, theories that are developed need to be systematically tested to determine their feasibility.

III. CONCLUSION

What is evident from a comprehensive review of the evidence regarding police and race is that for every police decision examined, some level of racial and ethnic disparities is routinely reported. This has led some researchers to indicate that the more important question is not whether there are racial and ethnic disparities, but rather, how much disparity is too much? Crutchfield, Fernandes, and Martinez (2010) addressed this question regarding racial and ethnic disparities across the criminal justice system and conclude that *any* disparity is too much. They suggested that allowing even modest racial disparities to persist in the criminal justice system contributes to minority citizens' perceptions of injustice. As they note, "minimizing the importance of racial and ethnic disparities by the scholarly community only reifies what is believed on the street; that criminal justice in America continues to mean 'just us'" (2010, p. 932). In contrast, Wilbanks (1987), among other criminologists, commented that even studies that revealed a statistically significant race effect are not substantively significant and, therefore, do not matter (Crutchfield, Fernandes, and Martinez 2010).

Considerations of evidence-based practices in policing must include the equitable distribution of policing across society, whether measured by objective data or through perceptions of police fairness and legitimacy. Our first step is to better understand the reasons for the racial and ethnic disparities reported. These reasons will likely vary across time and space, but researchers' attention to this variation is crucial for effective police reform efforts. We believe asking "how much is too much racial disparity" is a premature question until we understand why these disparities exist in the first place. We recognize that the answer to the "why" question will vary across jurisdictions, and therefore the likely answer to "how much is too much" will also vary. Therefore, we argue that, based on the evidence regarding citizens' perceptions presented in the next section, the question of "how much disparity is too much" obscures more important considerations regarding police–race relations and will not assist police agencies in reducing disparities when such a reduction is warranted.

A. Citizens' Perceptions of Police

Although conclusions regarding the existence and reasons for racial and ethnic disparities in policing vary, the evidence regarding citizens' perceptions of racial and ethnic disparity by police is markedly consistent. The literature documenting perceptions of police across several decades has generally reported that race and social class are associated with individuals' perceptions of police (Bayley and Mendelson 1969; Reiss 1971).

This research has consistently shown that white survey respondents tend to be the most positive in their views about police, followed by Hispanics (when examined); in contrast, black respondents consistently reported the most negative perceptions (e.g., Tuch and Weitzer 1997; Weitzer and Tuch 1999; Taylor et al. 2001; Reitzel, Rice, and Piquero 2004; Skogan 2006; Weitzer and Tuch 2006). Studies showed that blacks were more likely than whites to report mistreatment by police and less police protection in their neighborhoods, and to believe that racism among police was widespread (Tuch and Weitzer 1997; Weitzer and Tuch 1999; Weitzer 2000; Brunson and Stewart 2006).

Studies have also demonstrated that one of the most important predictor of perceptions of police is direct experience with police (see Weitzer and Tuch 2006; Brunson and Miller 2006). Likewise, the treatment citizens experience during interactions with police, along with officers' demeanor, are significant predictors of citizens' satisfaction with police–citizen encounters (Brown and Benedict 2002). The literature examining the influences of race, social class, and neighborhood context demonstrates that these demographics and structural characteristics lead blacks citizen in particular to have more direct contact with police. Although direct interaction with police is the most influential on citizens' perceptions of police, research has also indicated the importance of vicarious experiences with police. For example, Warren (2011) demonstrated that it is not only an individual's direct interaction with police that contributes to his or her perceptions of police but that these perceptions are also developed through cumulative experiences—both direct and vicarious—along with interactions with other social institutions. Due to an increased presence of police in predominantly black neighborhoods characterized by poverty and higher crime rates, blacks are more likely to have vicarious experiences with police, as well as more direct experiences. It is this repeated exposure—whether direct or vicarious—that likely contributes to more negative perceptions and dissatisfaction with police simply due to an increase in opportunities for negative encounters.

This body of research suggests that, regardless of the reality of police behavior, citizens' perceptions of that behavior have the potential to significantly influence all aspects of police–community relations. Studies demonstrate that citizens care about the process—the way they are treated by police—regardless of the outcome, and that citizens who believe they were treated fairly are more likely to comply with police requests (Tyler 1990; Tyler and Huo 2002; Engel 2005; Meares 2009). Therefore, efforts to increase citizens' perceptions of police legitimacy will provide enormous benefits to agencies and the communities they serve.

B. The Future

Researchers have an important opportunity to assist jurisdictions in the reduction of racial and ethnic disparities in coercive police actions. However, rather than simply continuing to document possible disparities in the distribution of police actions, researchers must do more to develop and rigorously test interventions designed to reduce such

disparities. Demonstrating racial and ethnic disparities is often of little consequence without a firm understanding of what is causing these disparities and how they might be reduced. How do we know, for example, that the increased emphasis and training on cultural sensitivity (and other antibias curricula used by police agencies across the country) actually reduces racial and ethnic disparities? There is no consistent empirical evidence showing that it does. We need stronger research designs to test the effects of policy and training changes designed to reduce racial and ethnic disparities. Likewise, we have inadequately considered how studying police behavior could make police more equitable in their decisions or less forceful in their choice of actions. After decades of research examining police behavior, we still do not adequately know why, on occasion, police base decisions on citizen characteristics, nor do we have adequate theories that can predict situations that are likely to result in inappropriate decisions.

As noted by Skogan and Frydl, “researchers still have plenty to learn about the effects of legal and extra-legal situational influences on police practices, but future research will make especially valuable contributions to *improving* policing if it can determine the *sources* of variation in these effects” (2004, p. 153; emphasis in the original). To accomplish this goal, research related to equity issues will necessarily have to broaden the current, narrow scope of police decision-making research to consider comparisons of outcomes across individuals, neighborhoods, and police jurisdictions. We might also consider how equitable the delivery of police services is compared to other types of public agencies. We need to invest in future research that actually *could* affect police behavior during police–citizen interactions (e.g., studies examining first-line supervision, managerial oversight, accountability mechanisms, training, policy changes, etc.).

Although policing scholars have focused for years on implementing, evaluating, and even promoting policing strategies that are effective in reducing crime (Goldstein 1990; Kelling and Bratton 1993; Trojanowicz and Bucqueroux 1994; Sherman and Weisburd 1995; Braga et al. 2001; Weisburd and Eck 2004; Weisburd and Braga 2006; Corsaro, Brunson, and McGarrell 2010), little work has been done to examine what policing strategies are most effective at reducing racial and ethnic disparities and increasing police legitimacy. We need to develop an evidence-based set of practices that police agencies can use to reduce inappropriate use of force, racial and ethnic bias, or other problematic outcomes. As noted by the National Research Council, “given the regular recurrence of allegations of racial injustice by the police and the inconclusive nature of the available findings, the committee judges it a high research priority to establish the nature and extent to which race and ethnicity affect police practice, independent of other legal and extra-legal considerations” (Skogan and Frydl 2004, pp. 125–26).

Researchers need to design studies to discover and then promote “what works” to reduce racial and ethnic disparities in police decision making and then work in partnership with police agencies to implement these practices. In addition, researchers need to assist agencies to promote policies and practices that have been shown to reduce citizens’ negative perceptions of police. Using the police effectiveness literature as a model, it is time to increase the scientific rigor of studies examining equity in policing. Once a body of evidence is gathered that speaks to “what works” in reducing racial and ethnic

disparities, police–researcher partnerships should be developed and used to implement and refine these practices (Engel and Whalen 2010). This work, we believe, is essential for improving and promoting equity in policing.

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CHAPTER 6

RACIAL DISPARITIES IN PROSECUTION, SENTENCING, AND PUNISHMENT

CASSIA SPOHN

IN March 1931, nine black teenage boys were accused of raping two white girls on a slow-moving freight train traveling through Alabama. They were arrested and taken to Scottsboro, Alabama, where they were indicted for rape, a capital offense. One week later, the first case was called for trial. When this first defendant appeared without counsel, the judge hearing the case simply appointed all members of the local bar to represent him and his co-defendants. An out-of-state lawyer also volunteered to assist in the defendants' defense, but the judge appointed no counsel of record.

The nine defendants were tried and convicted, and eight of them were sentenced to death. They appealed their convictions, arguing that their right to counsel had been denied. In 1932, the U.S. Supreme Court reversed the defendants' convictions and ruled that due process of law required the appointment of counsel for young, inexperienced, illiterate, and indigent defendants in capital cases (*Powell v. Alabama*, 287 U.S. 45 [1932]).

The Supreme Court's ruling provided the so-called Scottsboro Boys with only a short reprieve. They were quickly retried, reconvicted, and resentenced to death, despite the fact that one of the alleged victims had recanted, and questions were raised about the credibility of the other victim's testimony. Once again, the defendants appealed their convictions, this time contending that their right to a fair trial by an impartial jury had been denied. All of the defendants had been tried by all-white juries, and they argued that the jury selection procedures used in Alabama were racially biased. In 1935, the Supreme Court, noting that the exclusion of all African Americans from jury service deprived black defendants of their right to the equal protection of the laws guaranteed by the Fourteenth Amendment, again reversed the convictions (*Norris v. Alabama*, 294 U.S. 587 [1935]).

Less than 8 months after the Supreme Court's decision, a grand jury composed of 13 white persons and one black person returned new indictments against the nine defendants. Four of the defendants were convicted; one was sentenced to death, and the other three received prison sentences of 75 to 99 years. One defendant pled guilty to an unrelated charge after the prosecutor agreed to drop the rape charge, and, in 1937, the state dropped all charges against the remaining four defendants. The state's decision to drop charges against four of the nine defendants led editorial writers for newspapers throughout the United States to call for immediate release of the defendants who previously had been convicted. The Richmond *Times-Dispatch* stated that the state's action "serves as a virtual clincher to the argument that all nine of the Negroes are innocent" (Carter 1969, pp. 376–77), and the *New York Times* called on the state to "do more complete justice later on" (Carter 1969, p. 377).

Although one defendant's death sentence was commuted to life imprisonment in 1938, the Alabama Pardon and Parole Board repeatedly denied the five defendants' requests for parole. One of the defendants finally was granted parole in 1943, and, by 1950, all of them had gained their freedom. Collectively, the nine Scottsboro Boys served 104 years in prison for a crime that many believe was "almost certainly, a hoax" (Kennedy 1997, p. 104).

The infamous Scottsboro Case illustrates overt discrimination directed against black criminal defendants. However, those events took place in the 1930s and 1940s, and much has changed since then. Legislative reforms and Supreme Court decisions protecting the rights of criminal defendants have made it less likely that criminal justice officials will treat defendants of different races differently. But, despite these reforms, inequities persist. Racial minorities, particularly blacks and Hispanics, are the victims of unequal justice at various stages in the criminal justice process. In fact, a 2004 report by the Sentencing Project on the 50th anniversary of *Brown v. Board of Education* (347 U.S. 483 [1954]), the landmark Supreme Court case that ordered desegregation of public schools, noted that whereas many institutions in society had become more diverse and more responsive to the needs of people of color in the wake of the *Brown* decision, the American criminal justice system had taken "a giant step back-ward" (The Sentencing Project 2004, p. 5). To illustrate this, the report pointed out that, in 2004, there were nine times as many blacks in prison or jail as on the day the *Brown* decision was handed down—the number increased from 98,000 to 884,5000. Moreover, the incarceration rate for blacks was seven times the rate for whites.

Although the racial disproportionality in imprisonment rates is striking and should, as the Sentencing Project (2004, p. 5) noted, be "shocking to all Americans," this is not the only disparity found in the criminal court system. As this essay demonstrates, there are continuing racial disparities in decisions regarding bail and pretrial detention, charging and plea bargaining, and capital and noncapital sentencing.

In the sections that follow, empirical evidence of disparate treatment of blacks and Hispanics is discussed. The first section focuses on the pretrial process—decisions regarding bail and pretrial detention and prosecutorial decision making, with an

emphasis on charging and plea bargaining. This is followed by a discussion of research on the noncapital and capital sentencing process. In each section, efforts to reduce disparities are discussed and research on the effectiveness of these efforts is summarized. The final section discusses policy recommendations designed to reduce racial/ethnic disparities in the decisions examined, as well as directions for future research. The main points covered in this article include the following:

- The bail reform movement notwithstanding, there is evidence that blacks and Hispanics are more likely than whites to be detained in jail prior to adjudication and, perhaps more important, that pretrial detention produces cumulative disadvantage for these offenders through its effect on conviction and sentencing.
- The highly discretionary decisions made by prosecutors also are a source of racial and ethnic disparity. Although the evidence is somewhat dated and not entirely consistent, studies reveal that race and ethnicity affect charging and plea bargaining decisions in both capital and noncapital cases.
- There is compelling historical and contemporary evidence that the race of the victim plays an important role in charging and sentencing decisions in capital cases. Those who victimize whites—and especially racial minorities who victimize whites—are more likely to be charged with capital crimes, to proceed to trial before death-qualified juries, and to be sentenced to death.
- Blacks and Hispanics—particularly those who are young and male—pay a “punishment penalty” in both state and federal courts. There is convincing evidence that blacks and Hispanics are more likely than similarly situated whites to be sentenced to prison, and, among offenders prosecuted in federal courts, receive longer sentences than whites, especially for drug offenses.
- Whether because of conscious bias, unconscious stereotypes linking race with crime, or colorblind application of racially tinged policies, judges’ and prosecutors’ decisions regarding bail, prosecution, and sentencing are not racially neutral. Although the flagrant racism that characterized the criminal justice system at the time when the Scottsboro Boys were prosecuted has been eliminated, equality under the law has not been achieved.
- There are a number of steps that can be taken to reduce or eliminate racial disparity in the criminal court system: reduce reliance on incarceration, eliminate laws and policies that have a disparate effect on blacks and Hispanics (habitual offender and three-strikes-and-you’re-out laws, laws that punish crack cocaine more harshly than other drugs, mandatory minimum sentences), institute use of racial impact statements, and implement management information systems designed to identify racial/ethnic disparities in decision making and to delineate the sources of these disparities.
- Future research should examine closely decisions made during the pretrial process, which have not been accorded the same degree of scrutiny as have sentencing decisions.

I. THE EFFECTS OF RACE AND ETHNICITY ON PRETRIAL DECISION MAKING

Research on the treatment of racial minorities charged with crimes has tended to focus on the final stage of the process—the decision to incarcerate the offender and, if so, the length of the sentence. Research examining decisions made during the pretrial process is much more limited. However, these earlier case processing decisions obviously are important; not only do they have the potential to deprive the defendant of his or her liberty (i.e., decisions regarding bail and pretrial detention), they also have spillover effects on later stages in the process. For example, research has consistently shown that pretrial detention influences the severity of the sentence imposed by the judge and that charging and plea bargaining decisions affect both the likelihood of conviction and sentence severity.

A. Bail and Pretrial Detention Decisions

Critics of the traditional money bail system argue that the system discriminates against poor defendants (Myrdal 1944; Burns 1973; Mann 1993). They also contend that the system discriminates, either directly or indirectly, against racial minorities. These critics contend that, historically, black and Hispanic defendants were more likely than white defendants to be detained prior to trial, either because the judge refused to set bail or set bail at an unaffordable level (Myrdal 1944). “As a result,” according to one commentator, “the country’s jails are packed to overflowing with the nation’s poor—with red, brown, black, and yellow men and women showing up in disproportionate numbers” (Burns 1973, p. 161).

Arguments such as these prompted state and federal reforms designed to reduce the likelihood of pretrial detention. Encouraged by the results of the Manhattan Bail Project, which found that the majority of defendants released on their own recognizance did appear for trial (Thomas 1976), local jurisdictions moved quickly to reduce reliance on money bail and to institute programs modeled on the Manhattan Bail Project. Many states revised their bail laws, and, in 1966, Congress passed the Bail Reform Act, which proclaimed release on recognizance the presumptive bail decision in federal cases. However, the rising crime rate of the 1970s generated a concern for crime control and led to a reassessment of bail policies (Walker 1993). Critics challenged the traditional view that the only purpose of bail was to assure the defendant’s appearance in court and argued that guaranteeing public safety was also a valid concern and that pretrial detention should be used to protect the community from dangerous offenders. These arguments led to the second bail reform movement, which emerged in the 1970s and emphasized preventive detention (Austin, Krisberg, and Litsky 1985; Goldkamp

1985; Walker 1993). By 1984, a majority of the states and the federal government had enacted legislation giving judges the right to deny bail to defendants deemed dangerous (Goldkamp 1985).

Studies examining the effect of race on bail decision making have yielded contradictory findings. Some researchers conclude that judges' bail decisions are based primarily on the seriousness of the offense and the defendant's prior criminal record and ties to the community; race has no effect once these legally relevant factors are taken into consideration (Stryker, Nagel, and Hagan 1983; Katz and Spohn 1995). Other researchers contend that the defendant's economic status, not his or her race or ethnicity, determines the likelihood of pretrial release (Clarke and Koch 1976). If this is the case, one could argue that bail decision making reflects indirect racial discrimination, given that black and Hispanic defendants are more likely than white defendants to be poor. There is also research documenting direct racial and ethnic disparities in bail decision making and pretrial release outcomes (Albonetti et al. 1989; Bridges 1997; Demuth 2003; Demuth and Steffensmeier 2004; Spohn 2009), as well as studies showing that the defendant's race/ethnicity interacts with other variables, such as type of attorney and employment status, that are related to bail severity (Farnworth and Horan 1980; Chiricos and Bales 1991).

One of the most comprehensive studies of the influence of race and ethnicity on bail and pretrial detention is Demuth and Steffensmeier's (2004) analysis of outcomes for felony defendants in the 75 largest counties in the United States during the 1990s. The authors of this study found that blacks and Hispanics were significantly more likely than whites to be detained in jail prior to trial, a pattern of results that characterized outcomes for female as well as male defendants. Findings from this study also provided clues as to the reasons why blacks and Hispanics were more likely to be held in jail prior to trial. For blacks, the increased likelihood of detention was because they were almost two times more likely than whites to be held on bail, whereas for Hispanics, the higher odds of detention reflected not only their inability to pay bail but also the fact that they were more likely than whites to have to pay bail for release, and the amount they were required to pay was higher than the amount that similarly situated whites were required to pay.

Concerns about disparities in bail decision making focus not only on the fact that black and Hispanic defendants who are presumed to be innocent have a greater likelihood than whites of being jailed prior to trial, but also on the fact that those who are detained are more likely to be convicted and receive more severe sentences than those who are released pending trial (LaFrenz and Spohn 2006; Johnson and Betsinger 2009; Spohn 2009; Ulmer, Eisenstein, and Johnson 2010). In the federal context, there also is evidence that pretrial detention reduces the likelihood that the offender will receive a downward departure for providing substantial assistance (Johnson and Betsinger 2009; Spohn 2009; Ulmer, Eisenstein, and Johnson 2010). The fact that pretrial detention has "spillover effects" on later case processing decisions, in other words, means that race and ethnicity can influence these later decisions through their effects on pretrial detention.

Evidence of this process of cumulative disadvantage was revealed in a study of pretrial detention and case outcomes in three U.S. district courts (Spohn 2009). The author of

this study compared pretrial detention rates and sentences for black and white offenders convicted of drug trafficking offenses, finding that blacks had significantly higher odds of pretrial detention than did whites. She also found that the likelihood of pretrial detention was substantially higher for black male offenders than for all other offenders and that offenders who were in custody at the time of the sentencing hearing received sentences that averaged 8 months longer than those who were not detained before the hearing (Spohn 2009). Spohn speculated that these results might reflect judges' interpretations of the federal bail statute, which allows them to take the offender's dangerousness into account. As she noted, if judges "stereotype black drug traffickers and male drug traffickers as more dangerous and threatening than whites or females engaged in drug trafficking, their interpretation of the legally relevant criteria may lead to higher rates of pretrial detention for black offenders and for male offenders" (Spohn 2009, pp. 898–99).

Based on research conducted in state and federal courts, it appears that the reforms instituted since the 1960s have not produced racial equality in bail decision making. Although racial minorities are no longer routinely jailed prior to trial because of judicial stereotypes of dangerousness or because they are too poor to obtain their release, there is evidence that judges in some jurisdictions take race and ethnicity into account in deciding on the type and amount of bail. There also is evidence that the higher rates of pretrial detention for blacks and Hispanics produce cumulative disadvantage for these offenders as they are processed through the criminal justice system.

B. Charging and Plea Bargaining Decisions

In contrast to bail decisions, which in many jurisdictions are structured by bail schedules and by clearly articulated criteria that judges are required to take into consideration in deciding whether defendants should be denied bail, whether defendants should be required to pay bail, and, if so, how much they should pay, prosecutors' charging and plea bargaining decisions are highly discretionary and largely unregulated. According to the Supreme Court, "So long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion" (*Bordenkircher v. Hayes*, 434 U.S. 357 [1978]).

However, the prosecutor's discretion, although broad, is not unfettered. The Supreme Court has ruled that the decision to prosecute may not be "deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification" (*Bordenkircher v. Hayes*, 434 U.S. 357 [1978]). Thus, prosecutors cannot legitimately take the race or ethnicity of the defendant into account in deciding whether to file charges, whether to file a charge carrying a sentence enhancement for use of a weapon or for being a habitual offender, whether to file a motion for a downward departure from the sentencing guidelines, or whether to reduce the severity of the charges or the number of counts during plea negotiations. However, the fact that these are all highly discretionary

decisions opens the door to the possibility that race and ethnicity will enter into the decision calculus.

Analyzing prosecutorial decision making is complicated by the fact that prosecutors' decisions are affected by police decisions to arrest or not; that is, the cases on which prosecutors make decisions regarding charging and plea bargaining typically are those that are presented to them following arrest. If arrest decisions reflect systematic racial/ethnic disparities, the sample of cases presented to the prosecutor will incorporate these biases, making it difficult to interpret findings of discrimination (or no discrimination). For example, if police are more likely to arrest racial minorities than whites in cases in which the evidence is ambiguous or was obtained using unconstitutional methods, a finding that racial minorities are no more likely (or even less likely) than whites to be prosecuted does not necessarily signal a racially neutral process (for evidence of this, see Petersilia 1983; Barnes and Kingsnorth 1996). If cases with black or Hispanic defendants have substantially weaker evidence than cases with white defendants when they are presented to the prosecutor for filing consideration, then cases with black or Hispanic defendants should have *higher rates* of dismissal than cases with white defendants.

Relatively few studies have examined the effects of race and ethnicity on prosecutorial decisions and, like research on bail decision making, the results of these studies are mixed. A 2002 review of post-1970 research on race and presentencing decisions found that 15 of 24 studies of the decision to prosecute (rather than dismiss the charges) revealed that race did not affect this decision (Free 2002; examples of more recent studies finding no race effect on charging or plea bargaining decisions include Spohn and Holleran 2001; Beichner and Spohn 2005; Franklin 2010; Shermer and Johnson 2010). However, Free cautioned that this did not mean that prosecutors' charging decisions were racially neutral; he noted that there was evidence that the defendant's race affected decisions in some types of cases, as well as decisions made after indictment. Similar findings were reported by Miller and Wright (2008), who compared the racial makeup of defendants presented to prosecutors in New Orleans by the police with the racial makeup of defendants charged with crimes by prosecutors. They found that whereas the percentages of white and black defendants "entering and exiting the prosecutorial pipeline were virtually identical" (p. 157) when all crimes were considered, for some crimes, prosecutors either increased or decreased the percentage of blacks in the defendant pool. The "net prosecutor impact" was to increase the percentage of blacks for aggravated assault, damage to property, and possession of drug paraphernalia; the effect was to decrease the percentage of blacks for drug possession and two categories of theft. These findings led Miller and Wright (2008, p. 159) to emphasize the importance of disaggregating the data; as they noted, "the picture looks different once we break down the numbers by crime, or by class of crime, or by subgroups of prosecutors in an office, or by other subcategories."

Although much of the research is dated, a number of studies conclude that prosecutors' charging and plea bargaining decisions in noncapital cases are affected by race and/or ethnicity (Bernstein et al. 1977; Spohn, Gruhl, and Welch 1987; Crutchfield et al. 1995; Weitzer 1996; Albonetti 1997; Maxfield and Kramer 1998). One study of prosecutors'

initial charging decisions in King County (Seattle), Washington, for example, found that prosecutors were substantially more likely to file felony charges (rather than file misdemeanor charges or decline to prosecute the case) against blacks and Native Americans than against whites (Crutchfield et al. 1995). These differences were especially pronounced for violent crimes and drug offenses. There also are several studies that conclude that white defendants are offered plea bargains more frequently and get better deals than do racial minorities (but see Ball [2006] for findings of no racial/ethnic disparities in plea bargaining decisions in Cook County [Chicago], Illinois). A study of the charging process in New York, for example, found that race did not affect charge reductions if the case was disposed of at the first presentation. Among defendants who did not plead guilty at the first opportunity, however, blacks received less substantial reductions than whites (Bernstein et al. 1977). An analysis of criminal cases in California similarly concluded that whites were more successful than racial minorities during the plea bargaining process; whites were more likely than blacks or Hispanics to get charges reduced or dropped and were less likely than blacks or Hispanics to be charged with offenses that carried sentencing enhancements (Weitzer 1996).

An analysis of plea bargaining under the federal sentencing guidelines also concluded that whites received better deals than did racial minorities (Maxfield and Kramer 1998; see also Albonetti 1997). This study, which was conducted by the U.S. Sentencing Commission, examined sentence reductions for offenders who provided “substantial assistance” to the government—that is, information that led to the arrest and prosecution of another offender. The authors found that blacks and Hispanics were less likely than whites to receive a substantial assistance departure; among offenders who did receive a departure, whites received a larger sentence reduction than either blacks or Hispanics. According to the Commission’s report, “the evidence consistently indicated that factors associated with either the making of a §5K1.1 motion and/or the magnitude of the departure were not consistent with principles of equity” (Maxfield and Kramer 1998, p. 21).

Another highly discretionary area of prosecutorial discretion involves the filing of charges that trigger mandatory minimum sentences or sentence enhancements associated with habitual offender laws, three-strikes-and-you’re-out laws, or laws requiring consecutive sentences for use of a weapon during the commission of a crime. Because judges are required to impose the mandatory minimum sentence or the sentence enhancement if the defendant is convicted of the triggering charge, prosecutors play an important role in determining the eventual sentence for these defendants. Research in both federal and state courts demonstrates that prosecutors file charges that trigger mandatory minimum sentences or sentence enhancements in a minority of cases involving defendants who are eligible for them and that they are more likely to file these triggering charges if the defendant is black or Hispanic (Loftin, Heumman, and McDowall 1983; Crawford, Chiricos, and Kleck 1998; Crawford 2000; Farrell 2003; Bjerck 2005; Kautt and DeLone 2006; Ulmer, Kurlychek, and Kramer 2007). Two studies (Farrell 2003; Bjerck 2005) found that racial minorities were more likely than whites to be sentenced under mandatory minimum sentences, and two other studies (Crawford

et al. 1998; Crawford 2000) found that eligible racial minorities were substantially more likely than eligible whites to be sentenced as habitual offenders.

A somewhat different pattern of results emerged from a study that used Pennsylvania data to examine outcomes for offenders who were eligible to receive a mandatory minimum sentence (Ulmer, Kurlychek, and Kramer 2007). The authors found that prosecutors filed motions to apply the mandatory minimum sentence to a small fraction of offenders. They also found that Hispanics, but not blacks, were more likely than whites to receive mandatory minimum sentences and that young Hispanic males faced the highest odds of receiving mandatory minimums, particularly in drug trafficking cases. The authors of the study concluded that “legally relevant factors, case processing concerns (i.e., rewarding guilty pleas), and social statuses (i.e., gender, ethnicity, and age) shape prosecutors’ perceptions of blameworthiness and community protection, and thus their decisions to apply mandatorics” (Ulmer, Kurlychek, and Kramer 2007, p. 452).

A number of studies demonstrate that the race of the victim, or, alternatively, the racial composition of the defendant/victim pair, influences prosecutors’ charging decisions. One study (LaFree 1980), for example, found that blacks arrested for raping white women were more likely to be charged with felonies than were either blacks arrested for raping black women or whites arrested for raping white women. An analysis of Florida data (Radelet 1981) found that defendants arrested for murdering whites were more likely to be indicted for first-degree murder than those arrested for murdering blacks, and another study (Sorensen and Wallace 1999) of prosecutors’ charging decisions in death penalty cases found that homicide cases involving black defendants and white victims were more likely than cases involving other race-of-defendant/race-of-white combinations to result in first-degree murder charges. The prosecutor in the Midwestern jurisdiction where this latter study was conducted was also more likely to file a notice of aggravating circumstances and to proceed to a capital trial if the defendant was black and the victim was white. Research in California (Lee 2007) similarly found that prosecutors were less likely to file death-eligible charges in homicide cases involving Hispanic victims than in cases involving white victims.

Research on sexual assault case processing decisions in Detroit reached a somewhat different conclusion (Spohn and Spears 1996). The authors of this study used data on sexual assaults bound over for trial in Detroit Recorder’s Court to examine the effect of defendant race, victim race, and other case characteristics on the decision to dismiss the charges (rather than fully prosecute the case). Contrary to their hypothesis, they found that black-on-white sexual assaults were more likely than other sexual assaults to result in the dismissal of all charges. Spohn and Spears (1996) concluded that this unexpected finding suggested that black-on-white sexual assaults with weaker evidence were less likely to be screened out during the preliminary stages of the process. According to the authors, if police and prosecutors regard sexual assaults involving black men and white women as inherently more serious than intraracial sexual assaults, they may be more willing to take a chance with a reluctant victim or a case with evidence problems. If this is true, then cases with black defendants and white victims may be more likely to “fall apart” before or during trial.

In summary, although the evidence concerning the effects of race (and ethnicity) on prosecutors' charging and plea bargaining decisions is both scanty and inconsistent, a number of methodologically sophisticated studies have found that black and Hispanic suspects—particularly those who victimize whites—are more likely than white suspects to be charged with a crime and prosecuted fully. The limited evidence of race on plea bargaining decisions is even less consistent. Given the importance of these initial charging decisions, these findings “call for the kind of scrutiny in the pretrial stages that has been so rightly given to the convicting and sentencing stages” (Spohn, Gruhl, and Welch 1987, p. 189).

II. THE EFFECT OF RACE AND ETHNICITY ON SENTENCING AND PUNISHMENT

In 1918, the Bureau of the Census published a report on the “Negro Population” (U.S. Department of Commerce, Bureau of the Census 1918). The authors of the report noted that blacks made up only 11 percent of the population but constituted 22 percent of the inmates of prisons, penitentiaries, jails, reform schools, and workhouses. The authors then posed a question that would spark debate and generate controversy throughout the 20th century:

While these figures... will probably be generally accepted as indicating that there is more criminality and lawbreaking among Negroes than among whites and while that conclusion is probably justified by the facts... it is a question whether the difference... may not be to some extent the result of discrimination in the treatment of white and Negro offenders on the part of the community and the courts. (p. 438)

This question—whether the disproportionate number of racial minorities incarcerated in state and federal prison might be “to some extent the result of discrimination”—is a question that is still being asked today. Those on one side of the debate contend that the war on crime and, particularly, the war on drugs has caused “the ever harsher treatment of blacks by the criminal justice system” (Tonry 1995, p. 52). Although some critics charge that the overrepresentation of blacks in arrest and imprisonment statistics reflects systematic racial discrimination (Mann 1993), others contend that these results can be attributed primarily to the disproportionate involvement of blacks in serious criminal activity (Blumstein 1982) and argue that the idea of systematic discrimination within the criminal justice system is a “myth” (Wilbanks 1987). Others take a more moderate position, arguing either that the disparities result “to some extent” from differential treatment but denying that they reflect systematic discrimination (Steffensmeier et al. 2011; Walker, Spohn, and DeLone 2012) or suggesting that they result from crime control policies, particularly those affecting drug offenders, that have disparate effects on racial minorities (Tonry 1995; Miller 1996; Mauer 2006; Western 2006; Provine 2007; Tonry and Melewski, 2008; Alexander 2010; Tonry 2011).

A. Racial Disparities in Incarceration

There are two types of evidence of racial/ethnic disparity in sentencing and punishment. The first is evidence derived from national statistics on prison admissions and prison populations (Bureau of Justice Statistics 2010). At the end of 2009, there were 1,613,740 persons incarcerated in state and federal prisons; 38 percent of these inmates were black, 34.2 percent were white, and 20.7 percent were Hispanic (the remaining 7.1 percent were American Indians, Asians, Alaska Natives, Native Hawaiians, other Pacific Islanders, and persons identifying two or more races/ethnicities). Blacks, in other words, comprised only 13 percent of the United States' population but 38 percent of the prison population; Hispanics comprised 16 percent of the total population but nearly 21 percent of the prison population.¹ The disparities were even more dramatic for males, particularly for males in their 20s and 30s. As shown in Table 6.1, the incarceration rates for black males in these age groups were 6 to 7 times higher than the rates for white males and 2 to 2.5 times higher than the rates for Hispanic males. Although the absolute numbers are much smaller, the pattern for females is similar. The incarceration rates for black females are significantly greater than the rates for Hispanic or white females.

There is also evidence of racial disparity in the imposition of life sentences. In fact, the disparity among offenders serving life sentences is even greater than the disparity in the general prison population. According to a report by the Sentencing Project (Nellis and King 2009, p. 11), in 2008, blacks accounted for nearly half (48.3 percent) of the life-sentenced population; in 13 states and the federal prison system, blacks comprised more than 60 percent of persons serving life sentences. The disparity is even more pronounced among offenders serving sentences of life without parole (LWOP); in 2008, 56.4 percent of the LWOP population was black. Nellis and King (2009) also reported that, although Hispanics comprised a smaller proportion of persons serving life or LWOP sentences than their proportion of the general prison population, in five states,

Table 6.1 Number of persons incarcerated in state and federal prison, per 100,000 residents, 2009

Age	Males			Females		
	White	Black	Hispanic	White	Black	Hispanic
20–24	886	5,339	2,365	86	186	124
25–29	1,001	6,927	2,682	115	287	164
30–34	1,204	7,721	2,481	155	361	178
35–39	1,220	7,490	2,305	164	426	187

Source: US Department of Justice, Bureau of Justice Statistics, 2010. *Prisoners in 2009*. Washington, DC: Author, Appendix, Table 15.

they accounted for 25 percent or more of the LWOP population. Blacks also constituted disproportionately high percentages of juveniles serving life (47.3 percent were black) or LWOP (56.1 percent were black) sentences. In a number of states, the proportion of youth serving life or LWOP sentences that was black was 70 percent or higher.

Researchers have used a variety of strategies to determine whether and to what extent these racial/ethnic disparities in incarceration rates reflect differential involvement in crime, differential treatment by the criminal justice system, or some combination of differential involvement and differential treatment. The most frequently cited work compares the racial disparity in arrest rates for serious crimes with the racial disparity in incarceration rates for these crimes. According to Blumstein (1982), if there is no discrimination following arrest, then “one would expect to find the racial distribution of prisoners who were sentenced for any particular crime type to be the same as the racial distribution of persons arrested for that crime” (p. 1264). To determine the overall portion of the racial disproportionality in prison populations that could be attributed to differential involvement in crime, Blumstein calculated the proportion of the prison population that, based on arrest rates, was expected to be black for 12 separate violent, property, and drug offenses. He then compared these expected rates with the actual rates of incarceration for blacks. Using 1979 data, he found that 80 percent of the racial disproportionality in incarceration rates could be attributed to racial differences in arrest rates (Blumstein 1982). He reached a similar conclusion when he replicated the analysis using 1991 data: 76 percent of the racial disproportionality in incarceration rates was accounted for by racial differences in arrest rates (Blumstein 1993).

Blumstein’s conclusion that 80 percent (76 percent in 1991) of the racial disproportionality in prison populations could be explained by racial differences in arrest rates has not gone unchallenged (Hawkins and Hardy 1987; Sabol 1989; Crutchfield, Bridges, and Pitchford 1994; Tonry 1995; Mauer 2006; Tonry and Melewski 2008). His work has been criticized for assuming that arrests are good measures of criminal involvement and that the number of arrests for serious violent crimes is the primary determinant of the number of persons incarcerated. He also has been criticized for using national-level data, which may mask discrimination in some regions or states, and for failing to consider the possibility of “off-setting forms of discrimination that are equally objectionable but not observable in the aggregate” (Tonry 1995, pp. 67–8). If, for example, blacks convicted of murdering or sexually assaulting whites face a substantially higher likelihood of imprisonment than whites, whereas blacks convicted of murdering or sexually assaulting other blacks have significantly lower odds of imprisonment than whites, the overall imprisonment rate for blacks might be very similar to the rate for whites. Aggregating the data, as Blumstein did, would mask differences in the treatment of blacks based on the race of the victim.

It is important to point out that Blumstein’s estimate that most of the racial disproportionality in imprisonment could be explained by racial differentials in arrest rates did not apply to each of the crimes he examined. As shown in Figure 6.1, for some crimes, arrest explained more than 80 percent of the disparity, but, for others, arrest accounted for substantially less than 80 percent. In both 1979 and 1991, there was a fairly

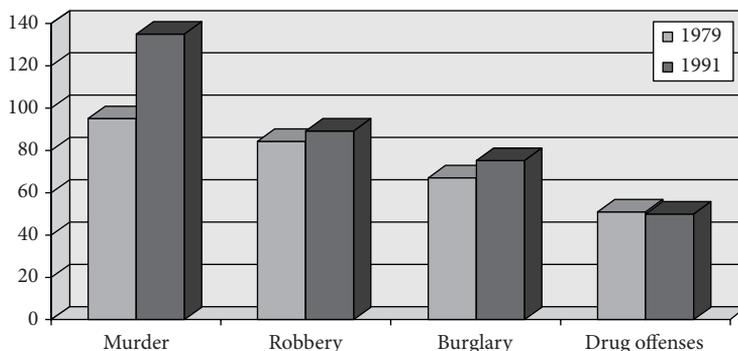


FIGURE 6.1 Percentage of racial disproportionality in imprisonment explained by racial disproportionality at arrest: Blumstein's 1979 and 1991 data.

Source: Alfred Blumstein, "Racial Disproportionality of U.S. Prison Populations Revisited," *University of Colorado Law Review* 64:743–60, Table 2.

close match between the race distribution in prison and the race distribution at arrest for homicide, robbery, and (to a lesser extent) burglary. For drug offenses, on the other hand, blacks were overrepresented in prison by nearly 50 percent. Racial differences in arrest rates for drug offenses, in other words, could explain only half of the racial disproportionality in imprisonment for drug offenses.

Blumstein (1993) himself acknowledged the significance of this finding. He noted that the percentage of drug offenders in the prison population had increased almost fourfold (from 5.7 percent to 21.5 percent) from 1979 to 1991. Blumstein also noted that "arrests for drug offenses are far less likely to be a good proxy for offending patterns than they are for aggravated assault, murder, and robbery" and that the black arrest rate for drug offenses had "grown dramatically in the late 1980s" (p. 752). In other words, the fact that drug offenders comprised an increasing share of the prison population coupled with the fact that blacks were increasingly likely to be arrested for drug offenses meant that "a declining proportion of the prison population can be explained by higher rates of crime" (Mauer 2006, p. 128).

The most recent replications of "the Blumstein Approach" reach conflicting conclusions regarding the proportion of the racial disproportionality in imprisonment that is unexplained by racial differences in arrests. Tonry and Melewski (2008) used data from 2004 and found that, for all crimes, 38.9 percent of the imprisonment disparity was unexplained; the percentage of black prisoners that was not explained by arrest ranged from 58.8 percent for assault and 57.4 percent for drug offenses to 11.6 percent for murder and non-negligent manslaughter. However, their analysis also revealed that the percentages of blacks among those arrested for violent crimes declined from 1985 to 2006. According to these authors (Tonry and Melewski 2008, p. 31), "The declining involvement of blacks in serious violent crime has had no effect on racial disparities in prison." Research conducted by Steffensmeier and his colleagues (Steffensmeier et al. 2011) reached a different conclusion. Steffensmeier et al. argued that Unified Crime Reports (UCR) arrest rates

are misleading because they do not identify arrestees by ethnicity and because Hispanics, most of whom are white, represent an increasing proportion of offenders in the criminal justice system. Thus, “rates that blend Hispanic origin across race inflate White rates and deflate Black rates” (Steffensmeier et al. 2011, p. 201). Their analysis, which adjusted for the “Hispanic effect” on crime data for violent crime, showed that, although disparities in arrest rates for violent crimes fluctuated from 1980 to 2008, there was little overall change across the entire time period; that is, “the relative Black involvement in violent crime” did not diminish “much, if at all,” during the nearly 3 decades examined (p. 234). Their analysis also revealed that—at least for the four violent crimes of homicide, rape, robbery, and aggravated assault—there was little change in the “incarceration–arrest imbalance” over the time period. They concluded (p. 235) that their findings illustrated that “it is crucial that these analyses be conducted in ways that take into account the growth in Hispanic peoples both in the U.S. population and in the criminal justice system.”

The research conducted during the past 3 decades suggests that an answer to the question posed by the Bureau of the Census in 1918 remains elusive. The results of the studies conducted by Blumstein and by those who replicated and refined his approach indicate that a substantial portion of the racial disproportionality in prison populations can be attributed to the fact that blacks are arrested for serious violent crimes at a higher rate than whites. Even those most critical of Blumstein’s approach acknowledge that the higher black arrest rate for violent crimes is the *main reason* that blacks, particularly young black males, are locked up at dramatically higher rates than whites. Kennedy (1997, p. 22) observes, “that relative to their percentage of the population, blacks commit more street crime than do whites is a fact and not a figment of a Negrophobe’s imagination.”

It is also true, however, that the black–white disparity in incarceration rates, which has worsened since the Bureau of the Census published its report in 1918, results “to some extent” from racial discrimination. Blumstein (1982, p. 1230) conceded that at least some of the “other 20 percent”—that is, the 20 percent of the racial disproportionality that could not be explained by arrest—might reflect “a residual effect that is explainable only as racial discrimination.” The fact that the proportion of blacks arrested for serious violent crime has not increased but the proportion of blacks arrested for drug offenses has skyrocketed, coupled with the fact that increasingly large proportions of prisoners are incarcerated for drug offenses, suggests that the extent to which racial disparity in imprisonment can be accounted for by racial differences in arrests for serious violent crimes may be declining. It also suggests that a primary source of the discrimination in imprisonment is the war on drugs and the concomitant belief that incarceration is the appropriate penalty for drug offenses.

B. Racial/Ethnic Disparities in Sentencing Decisions in Noncapital Cases

The second type of evidence of racial/ethnic disparity in punishment comes from studies of judges’ sentencing decisions. In fact, social scientists and legal scholars have

conducted dozens of studies designed to untangle the complex relationship between race and sentence severity. The studies that have been conducted vary enormously in theoretical and methodological sophistication. They range from simple bivariate comparisons of the likelihood of incarceration for whites and racial minorities to methodologically more rigorous multivariate analyses designed to identify direct race/ethnicity effects, to more sophisticated designs incorporating tests for indirect race/ethnicity effects and interaction between race and other predictors of sentence severity, as well as tests for the effects of contextual factors. The findings generated by these studies and the conclusions drawn by their authors also vary.

Studies conducted from the 1930s through the 1960s generally concluded that racial disparities in sentencing reflected overt racial discrimination. For example, the author of one of the earliest studies claimed that “equality before the law is a social fiction” (Sellin 1935, p. 217). Reviews of these early studies (Hagan 1974; Kleck 1981), however, found that most of them were methodologically flawed: they typically used simple bivariate statistical techniques, and they failed to control adequately for crime seriousness and prior criminal record. The conclusions of these early reviews, coupled with the findings of its own review of sentencing research (Hagan and Bumiller 1983), led the National Research Council Panel on Sentencing Research to state (in 1983) that the sentencing process was not characterized by “a widespread systematic pattern of discrimination.” Rather, “some pockets of discrimination are found for particular judges, particular crime types, and in particular settings” (Blumstein et al. 1983, p. 93). Zatz (1987), who reviewed the results of four waves of race and sentencing research conducted from the 1930s through the early 1980s, reached a somewhat different conclusion. Although she acknowledged that “it would be misleading to suggest that race/ethnicity is *the* major determinant of sanctioning,” Zatz (1987, p. 87) nonetheless asserted that “race/ethnicity is *a* determinant of sanctioning, and a potent one at that.”

The three most recent reviews (Chiricos and Crawford 1995; Spohn 2000; Mitchell 2005) of research on race and sentencing confirm Zatz’s assertion. Chiricos and Crawford (1995) reviewed 38 studies published between 1979 and 1991 that included tests for the direct effect of race on sentencing decisions in noncapital cases. The authors’ assessment of the findings of these 38 studies revealed “significant evidence of a *direct* impact of race on imprisonment” (p. 300). This effect, which persisted even after the effects of crime seriousness and prior criminal record were controlled, was found only for the decision to incarcerate or not; it was not found for the length of sentence decision. Chiricos and Crawford also identified a number of structural contexts that conditioned the race–imprisonment relationship. Black offenders faced significantly greater odds of incarceration than did white offenders in the South, in places where blacks comprised a larger percentage of the population, and in places where the unemployment rate was high.

Spohn’s (2000) review of noncapital sentencing research that used data from the 1980s and 1990s also highlighted the importance of attempting to identify “the structural and contextual conditions that are most likely to result in racial discrimination” (Hagan and Bumiller 1983, p. 21). Spohn reviewed 40 state- and federal-level studies

examining the relationship among race, ethnicity, and sentencing. Consistent with the conclusions of Chiricos and Crawford, Spohn reported that many of these studies found a *direct race effect*. At both the state and federal levels, there was evidence that blacks and Hispanics were more likely than whites to be sentenced to prison. At the federal level, there was also evidence that blacks received longer sentences than whites. Spohn's review also identified four patterns of contextual effects: (1) the combination of race/ethnicity and other legally irrelevant offender characteristics (i.e., sex, age, employment status, education) produced greater sentence disparity than race/ethnicity alone (see Albonetti 1997; Steffensmeier, Ulmer, and Kramer 1998; Spohn and Holleran 2000; Curry and Corral-Comacho 2008; Brennan and Spohn 2009; Doerner and Demuth 2010); (2) the effects of race and ethnicity were conditioned by a number of process-related factors—pretrial detention, type of disposition, type of attorney, and receipt of a downward departure from the sentencing guidelines—which did not operate in the same way for whites and for racial minorities (see Albonetti 1997; Hartley, Maddan, and Spohn 2007; Spohn 2009; Spohn and Fornango 2009); (3) the race of the offender interacted with the race of the victim to produce more severe sentences for blacks (and to some extent Hispanics) who victimized whites (see Walsh 1987; LaFree 1989; Spohn and Spears 1996); and (4) the effects of race and ethnicity were conditioned by the nature of the crime (see Myers 1989; Spohn and Cederblom 1991; Leiber and Blowers 2003; Auerhahn 2007).

The most recent review of research on race and sentencing is Mitchell's (2005) meta-analysis of published and unpublished studies that included controls for offense seriousness and prior criminal record. In contrast to the narrative reviews described previously, Mitchell's quantitative analysis focused on the direction and size of the effect (the "effect size") of race on sentencing. His analysis revealed that 76 percent of the effect sizes from the nonfederal studies and 73 percent of the effect sizes from the federal studies indicated that blacks were sentenced more harshly than whites, especially for drug offenses, and especially for imprisonment decisions. The effect sizes were smaller in studies that used more precise controls for offense seriousness and criminal history; they were larger in jurisdictions that did not utilize structured sentencing guidelines. Moreover, the analysis revealed that the amount of unwarranted disparity in sentencing had not changed appreciably since the 1970s. Mitchell (2005, p. 462) concluded that his findings "undermine the so-called 'no discrimination thesis,'" given that "independent of other measured factors, on average blacks were sentenced more harshly than whites."

The fact that a majority of the studies reviewed by Chiricos and Crawford (1995), Spohn (2000), and Mitchell (2005) found that blacks and (in the case of Spohn's review) Hispanics were more likely than whites to be sentenced to prison, even after taking crime seriousness and prior criminal record into account, suggests that racial/ethnic discrimination in sentencing is not a thing of the past. These findings also provide additional evidence that the disproportionate number of racial minorities incarcerated in state and federal prisons reflects "to some extent" racial discrimination within the criminal justice system.

C. Racial/Ethnic Disparities in Sentencing Outcomes in Capital Cases

In 1987, the U.S. Supreme Court rejected Warren McCleskey's claim that the Georgia capital sentencing process was administered in a racially discriminatory manner (*McCleskey v. Kemp*, 481 U.S. 279 [1987]). McCleskey, a black man who was convicted of killing a white police officer during the course of an armed robbery, claimed that those who killed whites—particularly blacks who killed whites—were substantially more likely to be sentenced to death than were those who killed blacks. In support of his claim, McCleskey offered the results of a study conducted by David Baldus and his colleagues (Baldus, Woodworth, and Pulaski 1990). The “Baldus study,” which was widely regarded as a comprehensive and methodologically sophisticated analysis of the death penalty, concluded that the race of the victim was “a potent influence in the system” and that the state of Georgia was operating a “dual system” for prosecuting homicide cases (Baldus, Woodworth, and Pulaski 1990, p. 185).

Although the majority in the *McCleskey* case accepted the validity of the Baldus study, the Supreme Court nonetheless refused to accept McCleskey's argument that the disparities documented by the study signaled the presence of intentional racial discrimination. Writing for the majority, Justice Powell asserted that the disparities were “unexplained” and stated that “at most, the Baldus study indicates a discrepancy that appears to correlate with race” (*McCleskey v. Kemp*, 107 S. Ct. at 1777). The Court concluded that the Baldus study was “clearly insufficient to support an inference that any of the decision-makers in McCleskey's case acted with discriminatory purpose” (*McCleskey v. Kemp*, 107 S. Ct. at 1769).

Although issues other than race and class animate the controversy that continues to swirl around the use of the death penalty, these issues are clearly central. The questions asked and the positions taken by those on each side of the controversy mimic to some extent the issues that dominate discussions of the noncapital sentencing process. Supporters of capital punishment contend that the death penalty is administered in an evenhanded manner on those who commit the most heinous murders. They also argue that the restrictions contained in death penalty statutes and the procedural safeguards inherent in the process preclude arbitrary and discriminatory decision making (see, for example, the Supreme Court's ruling in *Gregg v. Georgia*, 428 U.S. 153 [1976]). Opponents contend that the capital sentencing process, which involves a series of highly discretionary charging, convicting, and sentencing decisions, is fraught with race- and class-based discrimination. Moreover, they argue that the appellate process is unlikely to uncover, much less remedy, these abuses.

The controversy surrounding the death penalty differs in one important respect from that surrounding noncapital sentencing. Whereas most researchers and commentators acknowledge that sentencing decisions, including the decision to incarcerate, are not based primarily or even substantially on the race/ethnicity of the offender or victim, many social scientists and legal scholars conclude that the capital sentencing process is

characterized by systematic racial discrimination (Amsterdam 1988; Gross and Mauro 1989; Kennedy 1997; Walker, Spohn, and DeLone 2012). Those who take this position cite historical and contemporary evidence of discrimination based on the race of the offender and the race of the victim. They argue that the data show “a clear pattern unexplainable on grounds other than race” (Gross and Mauro 1989, p. 110).

A number of studies conducted since the Supreme Court upheld the guided discretion statutes that were enacted by states in the mid-1970s (*Gregg v. Georgia*, 428 U.S. 153 [1976]) confirm that the race of the offender and the race of the victim influence the capital sentencing process (Arkin 1980; Bowers and Pierce 1980; Radelet 1981; Baldus, Pulaski, and Woodworth 1983; Paternoster 1984; Radelet and Pierce 1985; Smith 1987; Ekland-Olson 1988; Baldus, Woodworth, and Pulaski 1990; Keil and Vito 1990; U.S. Department of Justice 2000, 2001; Williams and Holcomb 2004; Pierce and Radelet 2005; Lee 2007; Paternoster and Brame 2008). A 1990 report by the U.S. General Accounting Office (GAO), which reviewed 28 post-*Gregg* studies, noted that the race of the victim had a significant effect in all but five studies. Those who murdered whites were more likely to be charged with capital murder and to be sentenced to death than were those who murdered blacks. Moreover, these differences could not be attributed to differences in the defendant’s prior criminal record, the seriousness of the crime, or other legally relevant factors. The GAO also stated that although the evidence regarding the race of the defendant was “equivocal,” about half of the studies did find that blacks were more likely than whites to be charged with capital crimes and to be sentenced to death (GAO 1990, p. 6). The overall conclusion proffered by the GAO was that there was “a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the Furman decision” (GAO 1990, p. 5).

Evidence in support of the GAO’s conclusion comes from the Baldus study and from more recent analyses of capital sentencing outcomes in Southern and non-Southern jurisdictions. Baldus and his colleagues (Baldus, Woodworth, and Pulaski 1990) analyzed the effect of race on the outcomes of more than 600 homicide cases in Georgia from 1973 through 1979. The authors of this study—which analyzed both the prosecutor’s decision to seek the death penalty and the jury’s decision to sentence the offender to death—controlled for more than 200 variables that might explain racial disparities in the use of the death penalty. Their models included controls for the defendant’s background characteristics and prior criminal record, the circumstances and the heinousness of the crime, and the strength of evidence against the defendant. Although the race of the offender had only a weak relationship to death penalty decisions once these factors were taken into consideration, the race of the victim had a strong effect on both the prosecutor’s decision to seek the death penalty and the jury’s decision to impose a death sentence. Those who killed whites were more than four times as likely to be sentenced to death as those who killed blacks. Noting that “the race-of-victim effects are about the same or stronger in the post-*Gregg* period,” the authors of the study concluded that their findings “are squarely at odds with the Supreme Court’s assumption in *Gregg v. Georgia* that the only factors that would influence decisions in post-*Gregg* Georgia were the

culpability of the offender and the strength of the evidence” (Baldus, Woodworth, and Pulaski 1990, pp. 185–86).

Evidence from other states confirms these findings. For example, Gross and Mauro (1989), who examined death penalty decisions in eight states, found that the race of the victim had a large and statistically significant effect on the odds of a death sentence in the three states (Georgia, Florida, and Illinois) with the largest number of death sentences. After controlling for other legally relevant factors, they found that those who killed whites were four times more likely than those who killed blacks to be sentenced to death in Illinois; the ratio was five to one in Florida and seven to one in Georgia. They found a similar pattern in the other five states. These findings led Gross and Mauro (1989, p. 109) to conclude that “the major factual finding of this study is simple: There has been racial discrimination in the imposition of the death penalty under post-*Furman* statutes in the eight states that we examined.”

The two studies just described provide compelling evidence of victim-based racial discrimination in the use of the death penalty in the years immediately following the *Gregg* decision. Recent research in states such as Maryland (Paternoster and Brame 2008), North Carolina (Unah and Boger 2001), Ohio (Welsh-Huggins 2005), and California (Pierce and Radelet 2005; Lee 2007) provides equally compelling evidence of racial disparities in the capital sentencing process during the 1990s and early 2000s. Research conducted in California illustrates this more recent trend. In 2005, California had the largest death row population in the United States, with 648 inmates under sentence of death (NAACP Legal Defense Fund 2005). Thirty-nine percent of those on death row were white, 36 percent were black, 20 percent were Hispanic, 3 percent were Asian, and 2 percent were Native American.

To determine whether these figures reflected racial/ethnic bias in the imposition of the death penalty in California, Pierce and Radelet (2005) examined the characteristics of all persons sentenced to death in the state from 1990 through 2003 (for homicides committed from 1990 to 1999). They found that offenders who killed whites were 3.7 times more likely to be sentenced to death than those who killed blacks and were 4.7 times more likely to be sentenced to death than those who killed Hispanics (Pierce and Radelet 2005). To address the possibility that these differences were due to the fact that the murders of whites were more aggravated or more heinous than the murders of non-whites, the authors divided the homicides in their sample into three categories: those with no aggravating circumstances, those with one aggravating circumstance, and those with two or more aggravating circumstances. The results of their analysis did not support the hypothesis that those who killed whites were sentenced to death more often because their crimes were more heinous. Although the death sentencing rate increased for each of the three groups as the number of aggravating circumstances increased, at each level of aggravation, those who killed whites were substantially more likely than those who killed blacks or Hispanics to be sentenced to death. These findings were confirmed by the results of a multivariate analysis, which simultaneously controlled for the number of aggravating circumstances, the race/ethnicity of the victim, and the population density and racial makeup of the county in which the crime occurred. Even after taking these

factors into account, the authors found that those who killed blacks or Hispanics were significantly less likely than those who killed whites to be sentenced to death.

The Supreme Court's assumption that the guided-discretion statutes enacted in the wake of the *Furman* decision would eliminate racial and ethnic disparities in the application of the death penalty appears to be incorrect. Carefully designed and methodologically rigorous research documents the persistence of racial discrimination in the capital sentencing process. Evidence of victim-based discrimination is found in both the prosecutor's decision to seek the death penalty and the jury's decision to impose the death penalty. It is found in non-Southern as well as Southern states. Although evidence concerning discrimination based on the race of the offender is, as the GAO report noted, "equivocal," most studies do reveal that blacks accused of murdering whites are substantially more likely than any other race-of-defendant/race-of-victim category to be charged with a capital crime and sentenced to death.

III. CONCLUSION, POLICY RECOMMENDATIONS, AND DIRECTIONS FOR FUTURE RESEARCH

The criminal court system that prosecuted and sentenced the Scottsboro Boys no longer exists, in the South or elsewhere. Reforms mandated by appellate courts or adopted voluntarily by state and federal governments have eliminated much of the blatant racism directed against racial minorities who find themselves in the arms of the law. Black and Hispanic criminal defendants are no longer routinely denied bail or tried by all-white juries without attorneys to assist them in their defense. They are not routinely prosecuted and convicted despite less than convincing evidence of their guilt. And black and Hispanic offenders do not consistently receive sentences that are substantially harsher than those imposed on similarly situated white offenders.

Implementation of these reforms, however, has not produced equality of justice. There is evidence that a defendant's race and ethnicity continue to affect decisions regarding bail, charging, plea bargaining, and sentencing. Some research suggests that race and ethnicity have direct effects on these outcomes, but other evidence suggests that the effects are indirect and subtle. There also is evidence that decisions regarding pretrial release and charging have spillover effects on decisions regarding adjudication and sentencing and that these effects result in cumulative disadvantage for blacks and Hispanics. Although studies document the persistence of inequalities at all stages of court processing, the most compelling evidence of inequality comes from studies of the capital sentencing process, which consistently reveals that the race of the victim—and, to a lesser extent, the race of the offender—plays a key role in determining who will be sentenced to death.

The weight of the evidence suggests that although the flagrant racism that characterized the criminal court system at the time when the Scottsboro Boys were prosecuted

has been eliminated, equality under the law has not been achieved. Disparities in the treatment of similarly situated white, black, and Hispanic defendants persist, and it is not unreasonable to conclude that these disparities result “to some extent from discrimination.”

A. Policy Recommendations

The U.S. criminal justice system is predicated on the notion of equality under the law. Disparate treatment of racial minorities is inconsistent with this principle and must be eliminated. Doing so will require, not just changes in attitudes, but changes in the laws and policies that disadvantage blacks, Hispanics, and other racial minorities. An effective step would be to reduce the size of the prison population. As Tonry (2011, p. 16) has pointed out, “the only way to reduce the massive damage current policies do to black Americans is to reduce the prison population substantially.” Cutting the prison population by half would mean 500,000 fewer blacks in prison, which, in turn, would reduce the collateral consequences that flow to individuals, families, and communities as a result of incarceration. In addition, states and the federal government should repeal policies that have a disparate impact on racial minorities: laws that punish crack cocaine more severely than other drugs, habitual offender and three-strikes-and-you’re-out laws, mandatory minimum sentences, and sentence enhancements. These are all policies that “do unnecessary damage to black Americans” (Tonry, 2011, p. 22).

There also are measures that state and federal governments can take to prevent the enactment of laws and the implementation of policies that disadvantage black and Hispanic Americans. They should, for example, order that proposed crime control policies be subject to a racial/ethnic disparity impact analysis. That is, proposed laws regarding bail, charging, plea bargaining, and sentencing should be analyzed to determine whether their implementation would have a disparate negative effect on racial minorities. Similar to the fiscal analyses that governments routinely employ to ensure that proposed legislation does not have an unreasonable negative impact on their budgets, this type of analysis would identify—before their adoption and implementation—those laws and practices likely to produce disproportionately harsh outcomes for racial minorities.

Another proactive strategy would be for decision makers to implement management information systems designed to identify systemic racial/ethnic bias, diagnose the mechanisms that produced the bias, and develop strategies designed to reduce or eliminate it. As Miller and Wright (2008, p. 162) point out, internal regulation such as this “simply asks if racial disparity is present, whether it is a necessary by-product of other important goals, and whether the prosecutor [or judge] has the power to change the disparity.” As they also note (p. 162), this type of regulation is a forward-looking strategy designed to identify solutions, rather than a backward-looking strategy that focuses on “moral blame and legal responsibility.” As such, it is likely to be much more palatable to decisions makers and their supervisors.

B. Directions for Future Research

Given their spillover effects on conviction and sentence outcomes, decisions regarding bail and pretrial detention should be subjected to the same type of methodologically rigorous research that has been conducted on the sentencing process. To reach valid conclusions regarding the effects of race and ethnicity on these pretrial outcomes, researchers should include in their models indicators of the factors that judges are allowed and/or required to take into consideration, including the defendant's stakes in conformity, record of appearances at previous court hearings, and history of substance abuse

Similarly, researchers should examine more carefully prosecutorial charging and plea bargaining decisions. These highly discretionary and largely invisible decisions have important—some would argue deterministic—effects on conviction and sentence outcomes and deserve the type of scrutiny that has rightly been applied to the sentencing process. However, implementation of this recommendation will require that prosecutors be open to collaboration with researchers and willing to make their data available to them, something which most prosecutors have thus far not been prepared to do. A first step might be researcher–prosecutor collaborations designed to implement the type of internal regulation previously described (see also Miller and Wright 2008). If prosecutors have positive experiences working with researchers on these projects, they may be willing to move forward with empirical research projects designed to produce quantitative and qualitative data on prosecutorial outcomes.

Implementing policy reforms and conducting research designed to identify and ameliorate racial and ethnicity disparities in bail, charging, and sentencing decisions will not, in and of themselves, solve the problems that plague the system. But failure to take these important steps will ensure that the disparities remain hidden and unaddressed.

NOTE

1. Prior to 1999, Bureau of Justice Statistics (BJS) data on prisoners was broken down into three categories: white, black, and other races. In 1999, BJS added the Hispanic category. As Tonry (2011) has pointed out, the racial disproportionality would be even greater if the BJS data are adjusted for the estimates of black and white percentages among Hispanics. As he noted (p. 31), in 2008, 34 percent of state and federal prisoners were non-Hispanic whites and 38 percent were non-Hispanic blacks.

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CHAPTER 7

RACE AND DRUGS

JAMIE FELLNER

MILLIONS of people have been arrested and incarcerated on drug charges in the past 30 years as part of America's "war on drugs." There are reasons to question the benefits—or even rationality—of that effort: the expenditure of hundreds of billions of dollars has done little to prevent illegal drugs from reaching those who want them, has had scant impact on consumer demand, has led to the undermining of many constitutional rights, and has helped produce a large, counterproductive, and expensive prison system. But perhaps the single most powerful indictment is that war has been waged overwhelmingly against black Americans who have been disproportionately arrested and incarcerated on drug charges as a result.

Racial disparities generated or deepened by public policies should always be cause for concern. But such disparities in the criminal justice system are particularly troubling. The choice of arrest and imprisonment as the primary antidrug strategy has thwarted efforts to improve the opportunities and living standards of black Americans, deepened the disadvantages of poverty and social marginalization, and threatened hard-fought civil rights progress. In addition to losing their liberty, prisoners endure the rigors of living in harsh, tense, overcrowded, barren, and often dangerous facilities. Maintaining contact with their families is extremely difficult; family stability and well-being are jeopardized when a breadwinner or parent is taken away. The consequences of a criminal conviction last far longer than the time spent in jail or prison. People with criminal records experience what can be a lifetime of stigma and legal discrimination in employment, housing, education, public benefits, jury service, and the right to vote. Families and communities are injured by these policies as well (Mauer and Chesney-Lind 2003; Western 2006; Clear 2007).

A number of conclusions leap from readily available data:

- Black Americans are much more likely than white Americans to be arrested and incarcerated for drug crimes.
- Depending on the substance, the differences between black and white rates of self-reported drug use are small.
- In absolute numbers, many more whites than blacks use illicit drugs.

- The best available evidence indicates that blacks are no more likely than whites to sell drugs. In absolute numbers, there are many more white than black drug dealers.

In short, racial disparities in arrest and imprisonment for drug crimes cannot be explained by racial patterns of drug crime. There are operational reasons for the disparities; most importantly, drug law enforcement activities are concentrated in inner city areas with high minority populations. But law enforcement's strategic choices in turn reflect the longstanding influence of race on how the United States has defined the drug problem.

Section I of this article discusses and documents the role of race in the development of drug control efforts in the United States and presents statistics revealing that black Americans have been and continue to be arrested, convicted, and incarcerated on drug charges at rates far higher than those for whites.¹ Blacks are arrested on drug charges at three times the rate for whites and are sent to state prison on drug charges at 10 times the rate for whites. The net result is that more black than white Americans are doing time for drug offenses in a country in which only 12.6 percent of the population is black. The arrest and incarceration disparities cannot be explained by racial differences in drug offending because there are far more white than black drug offenders. Section II discusses research findings on racial and ethnic patterns in drug use and sales. Overall, slightly larger percentages of black people have used illegal drugs in the past year or month, although a higher percentage of white people have used drugs in their lifetime. In absolute numbers, however, the numbers of white users of illicit drugs—even crack—dwarf black numbers because there are five to six times as many white as black Americans. Evidence of racial patterns in drug trafficking is less strong than concerning use, but what there is suggests that black drug-selling rates are little or no higher than white rates and, accordingly, that there are many more white than black sellers.

Section III discusses racial patterns of drug arrests. Arrest rates are much higher for blacks than whites largely because police focus drug law enforcement on places, principally inner cities, with high minority populations and target their resources where drug arrests are easiest—on the streets, rather than in private home or office buildings.

Section IV discusses racial disparities in imprisonment for drug crimes and the reasons for them. Imprisonment disparities are even worse than arrest disparities with blacks more likely to be sentenced to prison for drug offenses and to receive longer sentences than whites. To some extent, longer sentences for black drug offenders reflect federal and some state drug laws that mandate especially severe penalties for crack offenses for which blacks are disproportionately arrested. They also reflect the fact that black drug arrestees are more likely to have prior convictions that lead to sentence enhancements.

Section V discusses the war on drugs from a human rights perspective. Racial disparities in drug law enforcement result from the combined effects of many social, geographic, and political factors operating at federal, state, and local levels, but they also reflect the influence of racialized considerations and concerns in the decisions of legislators, police, prosecutors, and judges. Overt racial prejudice may not be at work, but

extensive research and analysis over the past few decades leave little doubt that antidrug efforts are rooted in and reflect the unconscious racial bias of whites against blacks as well as race relation dynamics that benefit whites to the detriment of blacks. In the war on drugs, race matters.

Under human rights law, in contrast to U.S. constitutional law, unwarranted racial disparities even in the absence of racist intent violate the rights to equal protection of the law and freedom from discrimination. The United States has a human rights obligation to end such disparities, but it cannot do so until it acknowledges how deeply racial discrimination has permeated its antidrug efforts.

I. RACE AND DRUG LAWS

Crimes are social constructs, reflecting historically evolving and culturally specific sets of moral views and social and political imperatives. The wrongfulness of certain behavior, for example, murder, is intuitively understood by most people to warrant criminalization. Whether and why the possession and sale of certain substances used for recreation should be criminalized is far less easy to understand (Husak 1992, 2008). The history of U.S. drug laws reflects diverse and sometimes conflicting perspectives on morality, health, medical practice, community well-being, and the role of government. It is also a story about race and ethnicity: group antagonisms, fears, and tensions have played powerful roles in shaping U.S. drug control efforts (Provine 2007; Tonry 2011). Criminalization of drugs was historically one way that dominant, white social groups sought to maintain control over racial and ethnic minorities who troubled, angered, or scared them (Musto 1999). Advocates of criminalization have consistently painted drug users as morally weak (if not depraved), dangerous, and a threat to community standards and upstanding people. Advocates of criminalization have also tended to be most concerned about drugs associated with racial and ethnic groups that, in various ways, they thought threatened white America.² Overt and virulent racism was pervasive in alcohol and drug control debates from the 1870s through the 1960s, giving social and political heft to public health messages and the efforts of prohibitionist “moral entrepreneurs.” Proponents of criminalization insisted the stern hand of the law was necessary to protect white communities from Negro cocaine fiends, Chinese opium addicts, Mexican marijuana smokers—and later, from black crackheads (Musto 1999; Provine 2007).

Although overt racism disappeared from drug policy debates after the civil rights movement took hold, racial concerns nonetheless helped propel the modern “war on drugs” launched during the Reagan administration (Reinarman and Levine 1997; Tonry 1995, 2011). The use of cocaine, primarily powder cocaine, increased in the late 1970s and early 1980s, particularly among whites, but did not provoke the “orgy of media and political attention” that occurred in the mid-1980s when a cheaper, smokable form of cocaine, in the form of crack, appeared. Although the use of crack was by no means limited to low-income, minority neighborhoods, it was those neighborhoods that more

visibly suffered from addiction to crack and the violence that accompanied competition among drug-dealing groups to establish control over its distribution. Sensationalist media stories portrayed African Americans as the paradigmatic users and sellers of crack. Although many of crack's putative effects (e.g., "crack babies") were subsequently proven to have been greatly exaggerated or just plain wrong (U.S. Sentencing Commission 1995), poor urban minority neighborhoods have remained the principal "fronts" in the war on drugs.

The emergence of crack cocaine offered American policy makers an important opportunity to think carefully about the best way to address addictive and dangerous drugs. They could have emphasized a public health and harm-reduction response, giving priority to drug education, substance abuse treatment, and increased access to medical assistance. They could have sought to stem the spread of drug use and the temptations of the drug trade in crumbling inner cities by making the investments needed to build social infrastructure, improve education, increase medical and mental health treatment, combat homelessness, increase employment, and provide more support to vulnerable families. They could have restricted the use of imprisonment to only the most serious drug offenders (e.g., major traffickers).

Unfortunately, crack emerged when the country was in no mood to consider anything but a punitive response. The momentum for "tough on crime" policies was growing nationwide. The belief that severe sentences were needed to restore law and order to America reflected a "perfect storm" (Austin et al. 2007) of factors, including the white majority's concerns about the deterioration of inner cities, fear of crime, unwillingness to tackle social inequalities, politicians' willingness to use crime as a partisan issue, and the anxiety and resentments triggered by disruptions to long-standing economic and social structures. As Reinerman and Levine have noted, crack was a "godsend to the Right," as it offered the opportunity to reinvigorate a conservative moral and political agenda (Reinerman and Levine 1997, p. 38). A punitive response to crack was in perfect harmony with a politically vigorous assertion of "traditional family values"—individual moral discipline and abstinence—and with the demand for serious consequences for those who failed to conform to them, including hippies, war protesters, and restive black youth.

Concern about drugs and those who used them figured prominently in the Republican "southern strategy" to woo white southern Democrats who were anxious and angry about their declining status in the post civil rights era. Avoiding explicit racial appeals to resentful whites, the strategy relied on racially coded messages about drugs, crime, and welfare (Beckett 1999; Tonry 2011). A "seemingly race-neutral concern over crime" became a vehicle to continue to fight racial battles (Loury 2008, p. 13). Not to be outdone by the Republicans, the Democrats became equally fervent apostles of tough-on-crime policies.

With little debate or reflection, the federal and state governments responded to crack specifically and drug use more generally with soaring law enforcement budgets and ever more punitive laws and policies that increased arrests of low-level drug offenders, the likelihood of a prison sentence upon conviction of a drug offense, and the lengths of prison sentences. The federal Anti-Drug Abuse Act of 1986 and the Anti-Drug Abuse

Act of 1988 imposed far higher penalties for the sale of crack cocaine than for powder cocaine. Under the notorious federal 100-1 law governing powder and crack sentences, federal defendants with 5 grams of crack cocaine received the same mandatory minimum 5-year sentence imposed on defendants with 500 grams of powder cocaine. Fourteen states also imposed harsher sentences for crack compared to powder cocaine offenses (Porter and Wright 2011), and all states ratcheted up sentences for drug law violations regardless of the drug involved (Human Rights Watch 2000, 2008; Mauer 2006).

Harsh penalties for crack were easily enacted because that drug was uniquely linked in the mainstream's collective consciousness with dangerous, poor, minority inner-city dwellers who supposedly threatened white suburban America. Federal District Judge Clyde Cahill described the racial underpinnings of federal crack sentencing legislation:

The fear of increased crime as a result of crack cocaine fed white society's fear of the black male as a crack user and as a source of social disruption. The prospect of black crack migrating to the white suburbs led the legislators to reflexively punish crack violators more harshly than their white, suburban, powder cocaine dealing counterparts." (*United States v. Clary* 1994)

When public officials, legislators, and the media talked about crack in terms of addiction and violence, the subtext was understood to be race:

[C]rack cocaine was perceived as a drug of the Black inner-city urban poor, while powder cocaine, with its higher costs, was a drug of wealthy whites.... This framing of the drug in class and race-based terms provides important context when evaluating the legislative response.

(Sentencing Project and National Association of
Criminal Defense Lawyers 2007, p. 20)

Crack no longer dominates legislative and policy crime debates, and most drug arrests today are for marijuana, not "hard" drugs. Even so, the racial underpinnings of the war on drugs have changed little (Loury 2008). As Loury observed, "the racial subtext of our law and order political discourse over the last three decades has been palpable" (Loury 2007, p. 2). When Americans are asked to envision a drug offender, they see black men in urban alleyways, not white college kids in their dorms (Tonry 2011). Heightened media and political attention to substance abuse and the drug trade in urban minority neighborhoods has promoted the erroneous public perception that illegal drugs are more prevalent there than in more affluent white neighborhoods. Katherine Beckett's Seattle research suggests that current racial disparities in drug arrests and case outcomes reflect images and concerns embedded in the national psyche during the "crack epidemic" in the 1980s (Beckett et al. 2005; Beckett, Nyrop, and Pflugst 2006). Michelle Alexander insists the conflation of blackness with drug crime continues to provide "a legitimate outlet to the expression of antiblack resentment and animus—a convenient release valve now that explicit forms of racial bias are strictly condemned" (Alexander 2010, pp. 193–94).

A. Arrests and Imprisonment

The modern war on drugs has resulted in a steep rise in the number of Americans arrested and locked up on drug charges. Although the total number of arrests nationwide increased by only 31 percent from 1980 to 2009, the number of drug arrests grew by 186 percent and the drug arrest rate increased from 256 per 100,000 persons to 542 (Snyder and Mulako-Wangota 2012b). In every year since 1995, more than 1.5 million people have been arrested for drug law violations, as shown in Table 7.1. The prison population serving time for drug offenses has also soared. Between 1980 and 2003, the number of drug offenders in state prisons grew twelvefold. In 2009, nearly one-quarter of a million persons (242,200) were serving time under state jurisdiction for drug offenses, making up 17.8 percent of all state prisoners (Guerino, Harrison, and Sabol 2011).

B. Arrests

In 2010, the most recent year for which national drug arrest data are available, almost one in three drug arrestees was black (Federal Bureau of Investigation 2010). At no point since 1985 have blacks accounted for less than 30 percent of all drug arrests.

African Americans are arrested for drug offenses at much higher rates than whites, as Figure 7.1 shows. As of 2009, the ratio of black to white drug arrest rates was three to one (see Table 7.2). Between 1980 and 2009, the arrest rate for black Americans for drug law violations increased from 505 per 100,000 black population to 1,351.5. The white rate increased from 225.8 to 439.7 per 100,000 white residents, ending at a level below the black starting point.

The preponderance of annual drug arrests since 1980 have been for drug possession, not sales (Human Rights Watch 2009).³ Blacks are arrested at higher rates for both types of drug offense. Black arrest rates for possession began at twice the white rate in 1980, and after rising and falling, were three times the white rate in 2009 (Snyder 2011). In 2009, blacks constituted almost one-third (31.5 percent) of all arrests for drug possession. Blacks constituted 41.1 percent of sales arrests in 2009 (Snyder and Mulako-Wangota 2012b). In 2009, the black arrest rate for sales was four times greater than the white rate (Snyder 2011).

Racial disparities in drug arrests are also evident at state and local levels. According to Human Rights Watch (2009), there was not a single state in the country in 2006 in which white arrest rates for drug charges equaled those for blacks. The black-to-white ratio ranged from a low of 2 in Hawaii to a high of 11.3 in Minnesota and Iowa. In nine states, blacks were arrested on drug charges at rates more than seven times white rates.

Stark disparities in drug arrests can also be observed at the city level. In each of 43 cities examined by the Sentencing Project, blacks in 2003 were arrested at higher rates than whites, ranging from a high of 8.66 in Columbus Ohio to 1.76 in El Paso. Between 1980 and 2003, the black-to-white ratio of drug arrests increased in all but five of the cities,

Table 7.1 Black arrests for drug abuse violations, 1980–2009

	Total Arrests	White Arrests	Black Arrests	Other* Arrests	Percent White	Percent Black	Percent Other*
1980	580,900	440,692	135,157	5051	76	23	1
1981	559,900	414,158	140,416	5326	74	25	1
1982	676,000	492,614	176,959	6427	73	26	1
1983	661,400	464,296	190,336	6768	70	29	1
1984	708,400	491,971	209,725	6704	69	30	1
1985	811,400	557,696	245,149	8555	69	30	1
1986	824,100	543,521	273,377	7203	66	33	1
1987	937,400	604,032	325,381	7988	64	35	1
1988	1,155,200	696,399	448,623	10,178	60	39	1
1989	1,361,700	797,072	556,579	8049	59	41	1
1990	1,089,500	641,096	439,981	8423	59	40	1
1991	1,010,000	582,731	418,598	8670	58	41	1
1992	1,066,400	625,326	431,249	9825	59	40	1
1993	1,126,300	674,756	440,899	10,644	60	39	1
1994	1,351,400	834,472	503,576	13,352	62	37	1
1995	1,476,100	910,293	550,247	15,559	62	37	1
1996	1,506,200	933,390	555,580	17,230	62	37	1
1997	1,583,600	988,840	575,274	19,485	62	36	1
1998	1,559,100	965,556	575,331	18,213	62	37	1
1999	1,557,100	982,494	555,636	18,971	63	36	1
2000	1,579,566	1,005,853	553,905	19,808	64	35	1
2001	1,586,902	1,014,107	552,382	20,413	64	35	1
2002	1,538,813	997,637	519,875	21,301	65	34	1
2003	1,678,192	1,097,610	557,171	23,411	65	33	1
2004	1,746,570	1,141,852	581,464	23,254	65	33	1
2005	1,846,351	1,202,924	617,744	25,683	65	33	1
2006	1,889,810	1,208,364	656,229	25,217	64	35	1
2007	1,841,182	1,179,813	636,337	25,032	64	35	1
2008	1,702,537	1,093,965	585,118	23,454	64	34	1
2009	1,663,582	1,086,003	554,105	23,475	65	33	1

Includes juvenile and adult arrestees.

Source: Snyder and Mulako-Wangota 2012a.

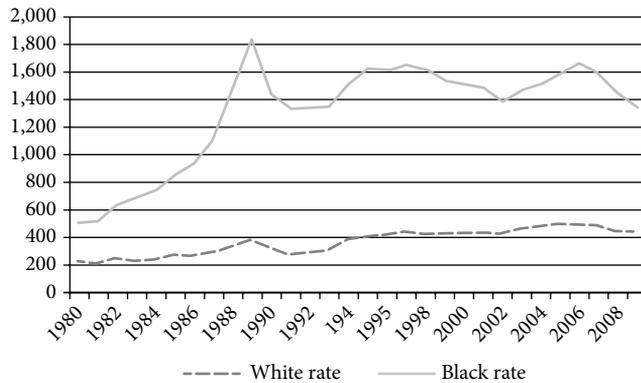


FIGURE 7.1 Rates of drug arrests, by race, 1980 to 2009

Note: National Estimated
Source: Snyder and Mulako-Wangota 2012b.

and it doubled in 21 cities (King 2008, pp. 13–15). Beckett, Nyrop, and Pflingst (2006) calculated black and white drug arrest rates and ratios in 18 mid-sized cities in 2000 and found ratios ranging from 1.2 to 10.7. In the 75 largest counties, 49 percent of felony drug defendants are non-Hispanic blacks and 26 percent are non-Hispanic whites (Cohen and Kyckelhahn 2010).

C. Incarceration

The racial disparity evident in drug arrests increases as cases wend their way through the criminal justice system. Black defendants constitute 44 percent and white defendants 55 percent of persons convicted of drug felonies in state courts. Among defendants convicted of drug felonies, 61 percent of whites and 70 percent of blacks are sentenced to incarceration. Whites sentenced to incarceration for drug felonies received a mean maximum sentence length of 29 months, compared with 34 months for blacks (Durose, Farole, and Rosenmerkel 2009). In 2009, blacks were 46.2 percent and whites 35.6 percent of persons admitted to state prison with new convictions for drug offenses (Bonczar 2011). As Table 7.3 shows, the number of African Americans admitted to state prison as new court commitments on drug charges has consistently exceeded the number of whites during the past 10 years. In 2009, blacks accounted for 35.2 percent and whites 61.5 percent of commitments to federal prison for federal drug offenses (Bureau of Justice Statistics 2009). Human Rights Watch calculated that the black rate of new court prison commitments on drug charges in 2003 was 10 times greater than the white rate. Black men were sent to prison on drug charges at 11.8 times the rate of white men, and black women at 4.8 times the rate of white women (Human Rights Watch 2008).

In 2009, the most recent year for which data are available, 50.5 percent of state prisoners serving time for drug offenses (122,300) were non-Hispanic blacks, 17 percent

Table 7.2 U.S. drug arrests by race, 1980–2009 (rates calculated per 100,000 residents of each race)

	Black rate	White Rate	Ratio of Black to White
1980	505	226	2.24
1981	518	211	2.46
1982	643	249	2.59
1983	683	233	2.93
1984	743	245	3.03
1985	858	276	3.11
1986	945	267	3.54
1987	1,110	295	3.76
1988	1,509	338	4.47
1989	1,846	384	4.81
1990	1,436	306	4.69
1991	1,338	275	4.86
1992	1,349	292	4.61
1993	1,351	312	4.33
1994	1,514	382	3.96
1995	1,626	413	3.94
1996	1,614	420	3.85
1997	1,643	440	3.73
1998	1,616	426	3.79
1999	1,536	430	3.58
2000	1,509	436	3.46
2001	1,485	436	3.41
2002	1,382	426	3.25
2003	1,465	465	3.15
2004	1,511	480	3.15
2005	1,586	502	3.16
2006	1,663	500	3.32
2007	1,591	485	3.28
2008	1,444	446	3.24
2009	1,352	440	3.07

Includes juvenile and adult arrestees.

Source: Snyder and Mulako-Wangota 2012b.

Table 7.3 State prison admissions for drug offenses by race, 2000–2009

	White*	Black*	Other**
2000	28,784	49,714	723
2001	29,704	49,798	797
2002	33,777	52,275	869
2003	34,958	49,285	876
2004	34,377	42,859	879
2005	40,707	43,251	1,024
2006	40,519	45,217	1,079
2007	35,364	45,174	1,084
2008	32,459	43,259	1,036
2009	31,380	40,790	828

* Includes some persons of Hispanic origin; however, there are additional persons of Hispanic origin who are new court commitments who were not categorized as to race and who are not included in these figures.

** Includes American Indians/Alaskan Natives, Asians, Native Hawaiians, or other Pacific Islanders.

Source: Bonczar 2011. Admissions limited to new court commitments.

(41,400) were Hispanic, and 30.1 percent (73,300) were non-Hispanic whites (Guerino, Harrison, and Sabol 2011). Drug convictions are responsible for a greater percentage of black (21.1 percent) and Hispanic (19.5 percent) state incarcerations than white (13.9 percent) (Guerino, Harrison, and Sabol 2011). Among the 97,239 federal prisoners serving time for drug offenses at the end of 2009, 43.7 percent were black and 53.9 percent were white (Bureau of Justice Statistics 2009).

II. WHO ENGAGES IN DRUG OFFENSES?

For most serious crimes, arrest and victimization survey data provide useful—although incomplete—information on the demographics of criminal offending (Like-Haislip, in this volume). Determining the demographics of drug offenders is more complicated. Arrests primarily reflect geographic deployment of police personnel and law enforcement priorities. There are no victims in the traditional sense, and no victimization studies. The principal source of national data on drug offenders comes from national surveys and self-report studies. Research on drug transactions in particular localities sheds additional light.

The federal Substance Abuse and Mental Health Services Administration (SAMHSA) conducts national surveys of drug use using a sophisticated sampling methodology and

extrapolation of national estimates. The surveys do not include people who are homeless or institutionalized (e.g., in jail or prison) and thus may somewhat undercount minorities who are disproportionately represented in those populations, but experts nonetheless consider the SAMHSA surveys to provide reliable current and longitudinal data on drug use. National youth surveys have also included questions on drug offending that yield useful information. The available data leave little doubt that racial differences in drug offending do not account for the stark racial disparities in arrests and incarceration.

A. Drug Use

Use of illegal drugs is widespread. For 2010, SAMHSA estimates that 119,508,000 persons aged 12 and older had used illicit drugs in their lives, and 38,806,000 had used them in the past year (Substance Abuse and Mental Health Services Administration [SAMHSA] 2011). Decades of arrest and incarceration have apparently had little impact on the use of illicit drugs. In 1991–93, an average of 5.8 percent of persons aged 12 and older reported using an illicit drug during the previous month. In 2010, 8.9 percent did (SAMHSA 1996, 2011). Anyone who uses drugs, by definition, violates laws against simple possession. Drug use data thus provide a valid surrogate for possession offenses, and those data suggest that far more whites than blacks illegally possess drugs.

The percentages of blacks, whites, and Hispanics who report using illicit drugs in SAMHSA's surveys are roughly similar, as is shown in Figure 7.2. But because the white population in the United States is substantially greater than the black,⁴ comparable rates of drug use result in far greater numbers of white users. As Figure 7.3 shows, for example, slightly more than six times as many whites (86,537,000) report having used drugs in their lives as blacks (13,629,000). Among those who report using drugs in the past month, whites outnumber blacks almost five to one (SAMHSA 2011).

Even assuming some undercounting of black drug use because the SAMHSA surveys do not include people who are transient, homeless, or institutionalized, there is little doubt that whites constitute a substantial preponderance of drug users. African Americans constitute 11.4 percent of all persons aged 12 and older who report they had ever used drugs in their lifetime; 13 percent of those said they used drugs in the past year, and 14.3 percent of those said they had used drugs in the preceding month (SAMHSA 2011).

Figure 7.4 shows that rates of drug use by type of drug do not substantially differ for whites, blacks, and Hispanics. African Americans rates are somewhat higher than whites' for the listed drugs except prescription drugs, but because of the different sizes of the black and white populations, the numbers of white users for every drug greatly exceed those for black users, as Figure 7.5 shows. The most heavily used drug is marijuana; the number of white marijuana users was more than four times the number

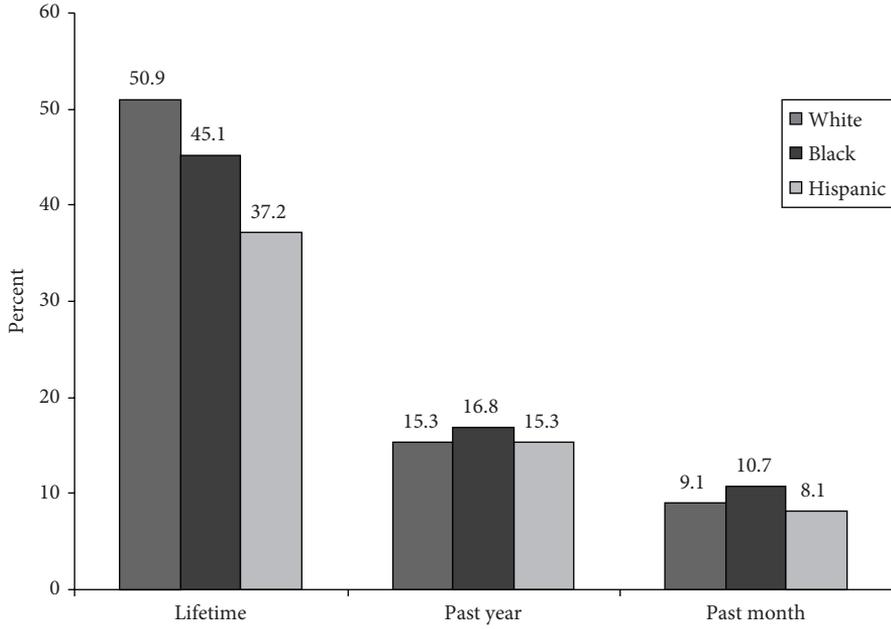


FIGURE 7.2 Percentage by race of illicit drug use in lifetime, past year, and past month among persons aged 12 and over.

Note: Total includes all users regardless of race or ethnicity. “white” and “black” categories do not include people of Hispanic ethnicity.

Source: Substance Abuse and Mental Health Services Administration (SAMHSA) 2011.

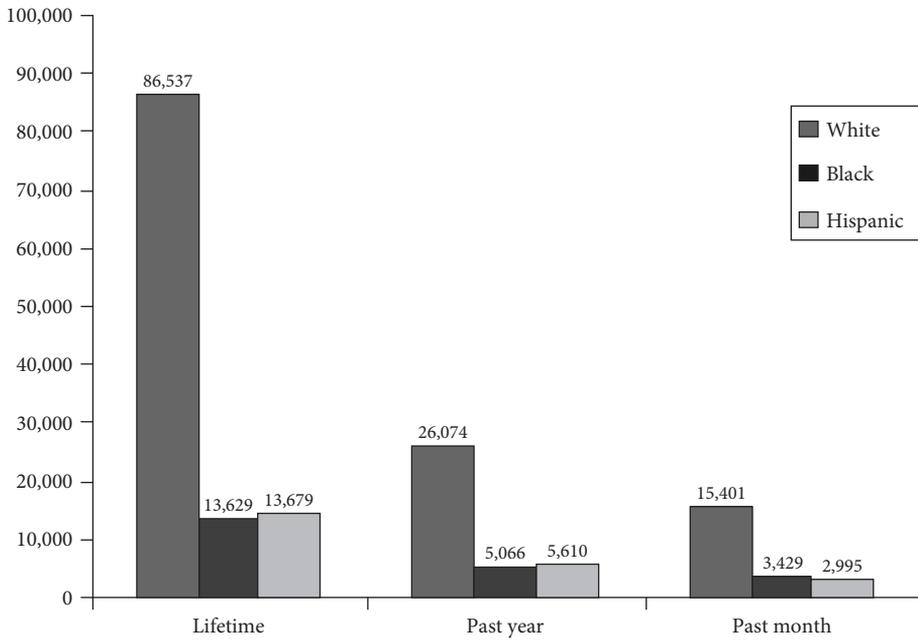


FIGURE 7.3 Illicit drug use in lifetime, past year, and past month among persons aged 12 and over by race, numbers in thousands.

Source: Substance Abuse and Mental Health Services Administration (SAMHSA) 2011.

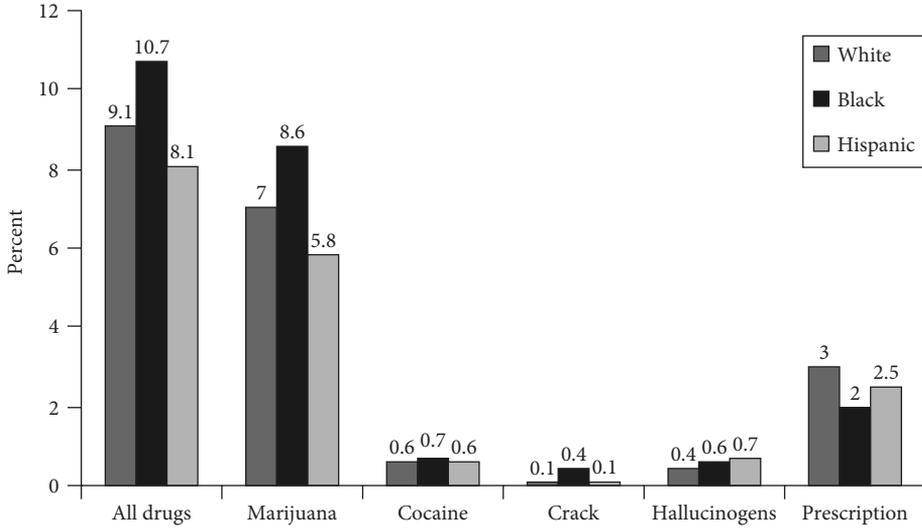


FIGURE 7.4 Percentage by race of illicit drug use among persons aged 12 and over in the past month, by type of drug.

Note: “white” and “black” categories do not include people of Hispanic ethnicity.
 Source: Substance Abuse and Mental Health Services Administration (SAMHSA) 2011.

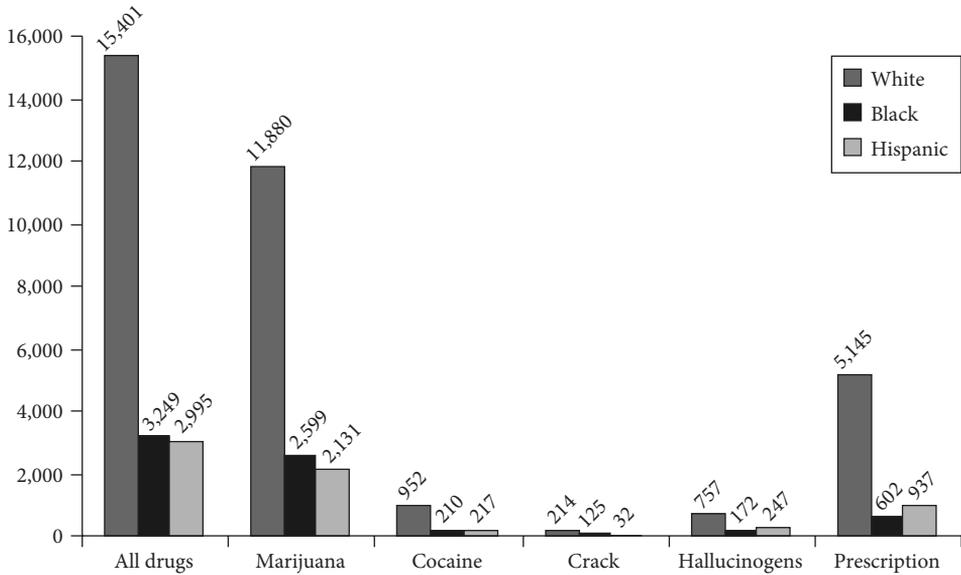


FIGURE 7.5 Illicit drug use by persons aged 12 and over in past month by race and drug type, numbers in thousands.

Note: “white” and “black” categories do not include people of Hispanic ethnicity.
 Source: Substance Abuse and Mental Health Services Administration (SAMHSA) 2011.

of black users. Prescription drugs are the second most prevalent type of illicit drug use: among persons reporting using them in the preceding month, 5,145,000 were white and 602,000 were black.

SAMHSA's data on crack use may be surprising in light of widespread stereotypes that crack is primarily used by blacks. As Figures 7.6 and 7.7 show, crack has been used by relatively few persons of either race relative to other drugs. The percentages of blacks who report crack use in their lifetime is low, particularly when compared with other drugs. If Figure 7.1 is compared with Figure 7.6, 45.1 percent of blacks report using drugs in their lifetimes, but only 5.3 percent report ever having used crack. Although 10.7 percent report using illegal drugs in the preceding month, only 0.4 percent report using crack.

The percentages of blacks reporting crack use exceeds those for whites in each reference period, but the much larger size of the white population means that a far greater number of whites than blacks have used crack. For example, as shown in Figure 7.7, in 2010, 6,324,000 whites report having used crack at least once in their life time, compared to 1,589,000 blacks. Even in 1991, just a few years after crack use in black communities became a focus of national concern, 65 percent of those who reported ever having used crack were white, 26 percent were black, and 9 percent were Hispanic (U.S. Sentencing Commission 1995). Other research in addition to SAMHSA's surveys has long contradicted the public belief that crack is a "black" drug. For example, research in Miami found few differences in levels of crack use based on race in a street-based sample of cocaine users (Lockwood, Pottieger, and Inciardi 1994). Others have concluded that if drug availability and social conditions were held constant, crack cocaine use does not differ significantly by race or ethnicity (U.S. Sentencing Commission 1995).

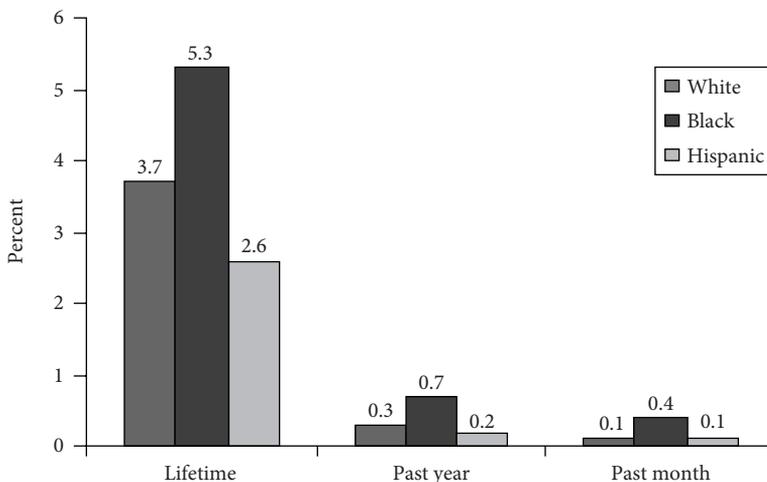


FIGURE 7.6 Percentage by race of users of crack cocaine among persons aged 12 and over, numbers in thousands.

Note: "white" and "black" categories do not include people of Hispanic ethnicity.
Source: Substance Abuse and Mental Health Services Administration (SAMHSA) 2011

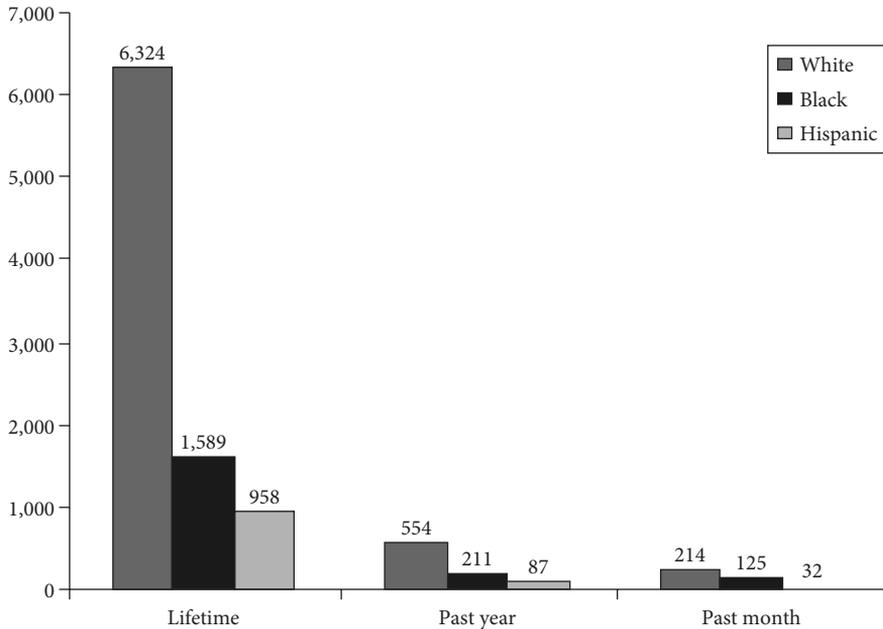


FIGURE 7.7 Use of crack cocaine by persons aged 12 and over, by race, numbers in thousands.

Note: “white” and “black” categories do not include people of Hispanic ethnicity.
Source: Substance Abuse and Mental Health Services Administration (SAMHSA) 2011.

B. Drug Sales

There are relatively little independent data on the number or race of persons who violate laws against drug manufacturing and distribution. Those that exist, however, indicate that there are many more white than black drug sellers.

SAMHSA’s annual national surveys have occasionally included questions on drug selling. In 1991, 0.7 percent of adult whites and 1.4 percent of adult blacks reported selling drugs in the past 12 months. In absolute numbers, far more whites (939,345) than blacks (268,170) reported drug selling (Fellner 2009). Fifteen years later, in 2006, 1.6 percent of whites and 2.8 percent of blacks reported to SAMHSA that they had sold drugs in the past 12 months, percentages that translate into an estimated 2,461,797 whites and 712,044 blacks—that is, three and a half times as many white as black drug sellers. Data collection between 1997 and 2001 as part of the National Longitudinal Survey of Youth, a long-term survey of a representative sample of young Americans, found that 13 percent of black youth reported ever selling drugs compared with 17 percent of white youth (Fellner 2009). SAMSHA surveys reported slightly higher drug selling rates by 12- to 17-year-old blacks than whites between 2001 and 2008 (Tonry 2011, p. 61).

Other research suggests that drug sellers are likely to have a racial profile similar to that of drug users—which translates into more white than black sellers (Fellner 2009).

Drug dealing activities that violate laws against sales and delivery may be commonplace among frequent users (Hunt 1990; Beckett 2008; Oliver 2008). Frequent users transfer drugs to others, selling small quantities to finance their own habits or to generate income. They may provide other services in drug distribution networks, such as acting as a lookout or courier. That being the case, drug sellers should have a racial profile similar to that of drug users—far more whites than blacks (Oliver 2008, p. 2; Fellner 2009, pp. 267–68). Other research indicates that drug users tend to obtain their drugs from people of the same race as themselves (Riley 1997). One researcher addressing racial congruity in drug activities observed, “dealers with direct contact with their customers . . . are likely to look like the customers” (Hunt 1990, p. 172).

The race of drug sellers may vary by type of drug. In Seattle, Beckett, Nyrop, and Pflingst (2006) found that whites were the largest group of sellers of heroin, cocaine, methamphetamine, and ecstasy; a majority of crack cocaine sellers were black. Crack, however, accounted for a relatively small proportion of total drug transactions during the research period (Beckett, Nyrop, and Pflingst 2006). Given that the national market for crack is so small (as shown by crack drug use), the number of crack dealers is presumably quite small as well. Even if all crack dealers were black, they would account for only a relatively small number of all drug dealers.

The research on drug offending suggests a stark discrepancy between the racial characteristics of drug offenders and of those arrested for drug offenses. If there are five times as many white drug users and possessors as black, and an unknown but considerably greater number of white sellers than black, why do blacks account for over one-third of drug arrests? Why are more blacks in prison on drug charges than whites? Or, stated differently, why are whites disproportionately less likely to be arrested and incarcerated for their drug offenses?

III. WHY SUCH LARGE DISPARITIES IN ARRESTS?

The answer is fairly straightforward. Drug offending cuts across all racial, socioeconomic, and geographic boundaries, but police do not enforce drug laws equally across those boundaries.

Most (61.7 percent) drug arrests occur in metropolitan areas. That is not surprising, given that people, crime, and law enforcement resources are concentrated there, and drug offending rates are higher in metropolitan than nonmetropolitan areas. But these factors do not explain why within urban areas African Americans are arrested in numbers far out of line with their proportion in the urban population or the urban drug using or selling population. In the 75 largest counties in the United States, in 2006, non-Hispanic blacks accounted for 49 percent of drug offense arrests, even though they represented only 16.3 percent of the population (Cohen and Kyckelhahn 2010). In

New York City, between 1997 and 2006, blacks were arrested for misdemeanor marijuana possession at five times the rate for whites. Even though whites constituted a greater percentage of the population (35 percent) than blacks (27 percent), three and a half times as many blacks (185,000) as whites (53,000) were arrested for possessing small quantities of marijuana (Levine and Small 2008).

Because drug purchase and use are consensual, drug arrests are not a response to victim complaints but result from police decisions about resource allocation. In practice, police have focused on low-income, predominantly minority neighborhoods and have ignored other more upscale and white areas even though there is no evidence that drug use is less prevalent there. Police and prosecutors say increased attention to the poor minority neighborhoods is necessary to combat higher rates of violent crime and disorder in those communities and to respond to community complaints about drug trafficking. Some see low-level drug arrests, including arrests for marijuana possession for personal use, as justified by the “broken windows” theory of law enforcement.

The circumstances of life and the public nature of drug dealing in poor minority neighborhoods make drug arrests there less difficult and less time-consuming than in middle- or upper-class neighborhoods. In the former, drug transactions are more likely to take place on the streets, in public spaces, and among strangers (Beckett et al. 2005; Beckett, Nyrop, and Pfingst 2006; Tonry 2011). In white neighborhoods, drug transactions are more likely to occur indoors, in bars and clubs, private homes, and offices, and between people who already know each other. Here is how former New York City Police Commissioner Lee Brown explained the police concentration in minority neighborhoods and the consequent racial impact:

In most large cities, the police focus their attention on where they see conspicuous drug use—street-corner drug sales—and where they get the most complaints. Conspicuous drug use is generally in your low-income neighborhoods that generally turn out to be your minority neighborhoods. . . . It’s easier for police to make an arrest when you have people selling drugs on the street corner than those who are [selling or buying drugs] in the suburbs or in office buildings. The end result is that more blacks are arrested than whites because of the relative ease in making those arrests.

(Bertram et al. 1996, p. 41)

But even in mixed-race outdoor venues, blacks are at disproportionate risk of drug arrests. In a mixed-race drug market in Seattle, Beckett and her colleagues found that 4 percent of drug deliveries involved a black seller, but 32 percent of drug delivery arrestees were black (Beckett, Nyrop, and Pfingst 2006).

Disproportionate drug arrests of minority suspects also reflect political and legal considerations. Street arrests are less complicated legally. William Stuntz observed, “the law of search and seizure disfavors drug law enforcement operations in upscale (and hence predominantly white) neighborhoods: serious cause is required to get a warrant to search a house, whereas it takes very little for police to initiate street encounters” (Stuntz 1998, p. 1823). Residents of middle- and upper-class white neighborhoods would

also most likely object vigorously if they were subjected to aggressive drug law enforcement and, unlike low-income minority residents, they possess the economic resources and political clout to force politicians and the police to pay attention to their concerns. The bottom line is that it is “much more difficult, expensive, and politically sensitive to attempt serious drug enforcement in predominantly white and middle-class communities” (Frase 2009, p. 243).

A self-fulfilling prophecy may be at work. If police target minority neighborhoods for drug arrests, the drug offenders they encounter will be primarily black or Hispanic. Darker faces become the faces of drug offenders, which may also contribute to racial profiling. Extensive research shows that police are more likely to stop black drivers than whites, and they search more stopped blacks than whites, even though they do not have a valid basis for doing so. Similarly, blacks have been disproportionately targeted in “stop and frisk” operations in which police searching for drugs or guns temporarily detain, question, and pat down pedestrians (Fellner 2009). Although police generally find drugs, guns, or other illegal contraband at lower rates among the blacks they stop than the whites, the higher rates at which blacks are stopped result in greater absolute numbers of arrests (Tonry 2011). According to Stuntz, “racial profiling is almost inevitable. Race becomes one of the readily observable visual clues to help identify drug suspects, along with age, gender, and location. There is a certain rationality to this—if you are in poor black neighborhoods, drug dealers are more likely to be black” (1998, p. 1829).

Katherine Beckett and her colleagues showed that drug arrests in Seattle reflected racialized perceptions of drugs and their users (Beckett et al. 2005; Beckett, Nyrop, and Pflingst 2006). Although the majority of those who shared, sold, or transferred serious drugs were white, almost two-thirds (64.2 percent) of drug arrestees were black. Black drug sellers were overrepresented among those arrested in predominantly white outdoor settings, in racially mixed outdoor settings, and even among those who were arrested indoors. Three-quarters of outdoor drug possession arrests involving powder cocaine, heroin, crack cocaine, and methamphetamines were crack-related even though only one-third of the transactions involved that drug. Among indoor drug possession arrests, 69.6 percent involved crack even though only 25 percent of the transactions involved crack. The disproportionate pattern of arrests resulted from the police department’s emphasis on the outdoor drug market in the racially diverse downtown area of the city, its lack of emphasis on outdoor markets that were predominantly white, and, most important, its emphasis on crack. Crack was involved in one-third of drug transactions but three-quarters of drug delivery arrests; blacks constituted 79 percent of crack arrests.

The researchers could not find racially neutral explanations for the police emphasis on crack in arrests for drug possession or sale, or for the concentration of enforcement activity in the racially diverse downtown area rather than predominantly white outdoor areas or indoor markets. These emphases did not appear to be products of the frequency of crack transactions compared to other drugs, public safety or public health concerns, crime rates, or citizen complaints. The researchers concluded that the choices reflected ways in which race shapes police perceptions of who and what constitutes the most

pressing drug problems. Blacks are disproportionately arrested in Seattle because of “the assumption that the drug problem is, in fact, a black and Latino one, and that crack, the drug most strongly associated with urban blacks, is ‘the worst’” (Beckett et al. 2005, p. 436; Beckett, Nyrop, and Pfingst 2006).

In 2010, as Table 7.4 shows, cocaine (including crack) and heroin arrests accounted for 22.5 percent of drug arrests nationwide even though, as Figure 7.3 shows, only a very small percentage of drug users (white or black) report using cocaine in any form. In a recent survey of the prevalence and frequency of heroin use, SAMHSA (1999) found that 1.1 percent of persons aged 12 and older reported using heroin in their lifetime, and 0.1 reported using it in the preceding year. Blacks were more likely than whites to report using heroin, but the percentages are quite low: 1.9 of non-Hispanic blacks reported ever using heroin and 0.2 reported using it in the past year. The proportion of drug arrests for cocaine and heroin thus seem to bear only a slight relationship to the prevalence of their use. In 2010, of all black drug arrests, 30.7 percent were for cocaine and heroin;

Table 7.4 Arrests by type of offense, drug, and race, 2010

		White	Black	Native American	Asian	Total
Sales	Cocaine/Heroin	34,787 42.9%	45,635 56.3%	346 0.4%	351 0.4%	81,119 100%
	Marijuana	50,196 61.3%	30,210 36.9%	582 0.7%	838 1.0%	81,826 100%
	Other*	60,015 82.7%	11,369 15.7%	480 0.7%	703 1.0%	72,567 100%
	Total	144,998 61.6%	87,214 37.0%	1,408 0.6%	1,892 0.8%	235,512 100%
Possession	Cocaine/Heroin	132,466 63.5%	74,107 35.5%	772 0.4%	1,410 0.7%	208,755 100%
	Marijuana	392,127 66.5%	187,577 31.8%	4,806 0.8%	4,906 0.8%	589,416 100%
	Other*	207,809 82.0%	41,004 16.2%	2,009 0.8%	2,718 1.1%	253,540 100%
	Total	732,402 69.6%	302,688 28.8%	7,587 0.9%	9,034 0.9%	1,051,711 100%
Total	877,400 68.2%	389,902 30.3%	8,996 0.7%	10,926 0.8%	1,287,223 100%	

*Includes manufactured narcotics that can cause true drug addiction (Demerol and Methadone) and other dangerous non-narcotic drugs (barbiturates and Benzedrine).

Source: Data provided by Federal Bureau of Investigation to author.

19 percent of white drug arrests were for these drugs. Boyum, Caulkins, and Kleiman (2011) observe that the enforcement of laws criminalizing cocaine accounts for “about 20 percent of the nation’s law enforcement, prosecution, and corrections” (p. 377).

IV. WHY ARE PRISON DISPARITIES SO LARGE?

All other things being equal, one would expect the racial distribution of prisoners sentenced for particular crimes to reflect the racial distribution of arrests for those crimes. Blumstein showed in 1982 that about 80 percent of racial differences in incarceration in 1979 could be accounted for by differences in arrest (Blumstein 1982). In the case of drug offenses, there was a significant difference between the racial breakdowns of arrests and incarceration. Racial disparities in imprisonment for drug crimes are even greater than disparities in arrest.

There are significant racial differences at different decision points in criminal justice processing of cases following arrest. Those differences compound, ultimately producing stark differences in outcomes (Kochel, Wilson, and Mastrofski 2011; Spohn 2011). In Illinois, for example, even after accounting for possible selection bias at each stage of the criminal justice system, nonwhite arrestees were more likely than whites to have their cases proceed to felony court, to be convicted, and to be sent to prison (Illinois Disproportionate Impact Study Commission 2010). After controlling for other variables, including criminal history, African Americans in Cook County, Illinois were approximately 1.8 times more likely than whites to be prosecuted rather than have their charges dropped or dismissed (Illinois Disproportionate Impact Study Commission 2010, p. 35).

Racial disparities exist at every stage. Black defendants are disadvantaged relative to white defendants in bail decisions (Brennan and Spohn 2011). Young African-American men in Ohio had lower odds of pretrial release on their own recognizance, had higher bond amounts, and higher odds of incarceration relative to other demographic subgroups (Wooldredge 2012). The exercise of federal prosecutorial discretion with respect to charging decisions, motions for mitigated sentences based on substantial assistance by the defendant in the prosecution of others, and plea bargaining has led to racial disparities that affect sentences (Baron-Evans and Stith 2012, pp. 1635–36). Rehavi and Starr (2012) found that federal prosecutors were more likely to charge more serious offenses against black than white arrestees, including for offenses carrying mandatory minimum penalties. Ulmer and his colleagues found racial differences in downward departures under the federal guidelines, whether initiated by prosecutors or judges (Ulmer, Light, and Kramer 2011).

Researchers concluded that the defendant’s race influenced the likelihood of incarceration in 15 studies of drug offender sentencing. All else considered, white felony drug

offenders in North Carolina received less severe punishment than blacks or Hispanics (Brennan and Spohn 2011).

The effects of race on sentencing decisions is particularly notable when the studies take account of age, gender, or socioeconomic status (Spohn and Hollerman 2000; Doerner and Demuth 2010; Spohn 2011). Doerner and Demuth's study of sentencing decisions in federal courts found that young black and Hispanic males receive the harshest sentences of all racial/ethnic/gender-age subgroups and that the effects of race and ethnicity were larger in drug than in nondrug cases (Doerner and Demuth 2010, p. 14).

In 2003, the United States Sentencing Commission reported that black drug defendants were 20 percent more likely to be sentenced to prison than white drug defendants (U.S. Sentencing Commission 2003, p. 122). In its annual report for 2010, the United States Sentencing Commission reported that black (30.3 percent) and Hispanic (44 percent) federal drug offenders are significantly more likely than whites (23.1 percent) to be convicted of an offense carrying a mandatory minimum penalty. Blacks had higher average sentences than whites or Hispanics for powder and crack offenses, regardless of whether they were sentenced under the mandatory minimum provisions (U.S. Sentencing Commission 2011, pp. 181, 197).

Much of the research on racial disparities in case outcomes has sought to tease out the extent to which racial differences reflect the influence of legally irrelevant factors such as race, gender, and age. Yet research also shows that ostensibly race-neutral, legally relevant factors such as prior criminal records yield racial disparities.

Sentencing enhancements for repeat offenders are ubiquitous, both formally in sentencing laws and informally in sentencing practices. They may play a particularly significant role in drug cases because many drug defendants have significant histories of prior offending. According to the Bureau of Justice Statistics, for example, 66 percent of felony defendants arrested on drug offenses have prior convictions; 14 percent have 10 or more prior convictions (Cohen and Kyckelhahn 2010). Although there are no national data providing a breakdown of prior criminal records for drug offenders by race, the higher drug arrest rates for African Americans suggest they are more likely to have prior convictions. Frase (2009) found that criminal history was the single most important factor contributing to racial disparities in Minnesota—disparities that were substantially greater than at arrest and conviction. Black criminal history scores were higher than white within all major offense categories and were especially higher for drug offenders.

Criminal history influences the exercise of prosecutorial and judicial discretion in ways that disproportionately burden blacks. Spohn and Spears (2001) found that black drug offenders with prior felony convictions in Miami had higher odds of incarceration than white drug offenders with the same criminal record. Crawford, Chirico, and Kleck (1998) found that “the combination of being Black and being charged with a drug offense substantially increases the odds of being sentenced as habitual” (p. 496). Revisiting Crawford's study a decade later, Crow and Johnson (2008) found that “race (and ethnicity) still matter for habitual-offender designations” (p. 79). Black and Hispanic defendants are significantly more likely to be prosecuted as habitual offenders than white

defendants, and the odds were greatest for black and Hispanic drug defendants (Crow and Johnson 2008, p. 77).

More research is needed to understand the effects of prior criminal records on drug offender sentencing. In New York, 77.9 percent of black drug offenders in custody at the end of 2011 had been sentenced as second felony offenders, compared with only 48.2 percent of white drug offenders (date provided to author by the New York State Division of Criminal Justice Services). Black drug arrestees in New York are more likely than whites to have prior convictions, given that blacks are far more likely to be arrested on drug charges.

Frase (2009) points out that the emphasis given to prior criminal records in sentencing is a policy choice and one that appears due for reconsideration. Although there is widespread support for imposing longer sentences on repeat offenders (Roberts 1997), there is scant evidence that habitual offender sentencing enhances public safety or reduces crime. Crow and Johnson (2008) conclude, “given the findings of over a decade of habitual-offender research that demonstrates racial and ethnic discrimination (unwarranted disparity), it may be time to reconsider the utility of habitual-offender statutes” (p. 80). Rehavi and Starr (2012), make the same point, “the heavy weight placed on criminal history in [federal] sentencing law is also a subjective policy choice with racially disparate consequences. Legislators and the Sentencing Commission members who are concerned about incarceration rates among black men may wish to consider these distributional consequences when assessing the costs and benefits of these aspects of the sentencing scheme” (p. 47).

The type of drug offense—possession or sales—influences drug sentences. Drug laws typically prescribe higher sentences for sales and manufacturing than for possession. Defendants convicted of sale are more likely to go to prison than are those convicted of possession, and the sentences are typically longer (Cohen and Kyckelhahn 2010). Blacks are disproportionately likely to be arrested for sales offenses, so it is likely that harsher sentencing for sales contributes to the disparities in sentencing outcomes.

Racial disparities in the incarceration of drug offenders also reflect legislative priorities. Federal sentencing laws treat crack cocaine offenses more harshly than powder. Because black Americans are more likely to be sentenced for federal crack offenses, they are disproportionately burdened by the higher crack sentences. In one recent year, 78.5 percent of federal crack offenders were black (U.S. Sentencing Commission 2011, p. 35).

V. RACE, CRIME, AND PUNISHMENT

There are racial disparities at every stage of drug case processing in state and federal criminal justice systems. As the Seattle research illustrates, race influences perceptions of the danger posed by the different people who use and sell illicit drugs, the choice of drugs that warrant the most public concern, and the choice of neighborhoods in which to concentrate drug law enforcement resources.

No public official admits to being influenced by race. Yet race is a powerful lens that colors what we see and what we think about what we see. In the United States, images of crime, danger, drug offenders, and criminals are deeply racialized. Criminal justice decision makers are not immune. Tonry (2011) and Provine (2007) summarize studies on the effects of racial attributions and stereotypes on people's perceptions, attitudes, and beliefs and the ways race correlates with policy choices. Whites may no longer consciously believe in the inherent racial inferiority of blacks, but they nonetheless harbor unconscious racial biases (Rachlinski et al. 2009). In one typical study, police officers shown black and white photographs of male university students and employees thought more of the black than white faces looked criminal; the more stereotypically black the face was, the more likely the officers thought the person looked criminal (Eberhardt et al. 2004).

Unconscious notions and attitudes are most likely to influence criminal justice decisions that have to be made in the face of uncertainty and inadequate information or in ambiguous or borderline cases. To recognize the influence of race on social psychology, unconscious cognitive habits, and "perceptual shorthand" (Hawkins 1981, p. 280) is not to accuse criminal justice professionals of being racist. The former can and does exist without the latter.

Race helps explain the development and persistence of harsh drug laws and policies. White Americans tend to support harsher punishments more than do blacks, a predilection that has strong roots in racial hostilities, tensions, and resentments (Tonry 2011, p. 91). Researchers have found that whites with racial resentments toward blacks are far more likely to support punitive anticrime policies and that whites are twice as likely as blacks to prefer punishment over social welfare programs to reduce crime (Unnever, Cullen, and Johnson 2008).

Even assuming public officials who championed the war on drugs decades ago operated from the best of motives or were simply remarkably ignorant about the likely effects of their decisions, good intentions or ignorance can be no excuse today. No reasonable public official can believe it is a good thing for black America to have in its midst a large caste of second-class citizens—banished into prisons and then branded for life with a criminal record.

The persistence of drug policies that disproportionately burden black Americans reflects factors similar to those that led to the adoption of harsh penal policies initially: punitive attitudes toward crime, fear of "the other," misinformation about drugs and their effects, the belief that using drugs is immoral and wrong, and the lack of instinctive sympathy for members of poor minority communities. At a structural level, the drug war—as part of the criminal justice system—retains its historic function of perpetuating and reinforcing racial inequalities in the distribution of political, social, and economic power and privileges in the United States. White Americans have long used the criminal justice system to advance their interests over those of blacks; the difference today is that they may no longer be doing so consciously.

Over a decade ago, observers of drug criminalization in the United States began labeling its impact on black Americans as the "new Jim Crow," recognizing that drug law

enforcement has the effect of maintaining racial hierarchies that benefit whites and disadvantage blacks. In her best-selling book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Alexander (2010) contends that criminal justice policies and the collateral consequences to a criminal conviction today are—like slavery and Jim Crow in earlier times—a system of legalized discrimination that maintains a racial caste system in America: “today it is perfectly legal to discriminate against criminals in nearly all the ways that it was once legal to discriminate against African Americans. . . . As a criminal, you have scarcely more rights and arguably less respect, than a black man living in Alabama at the height of Jim Crow. We have not ended racial caste in America; we have merely redesigned it” (p. 2). She argues convincingly that drug policies have been and remain inextricably connected to white efforts to maintain their dominant position in the country’s social hierarchy. As Tonry says, “the argument is not that a self-perpetuating cabal of racist whites consciously acts to favor white interests, but that deeper social forces collude, almost as if directed by an invisible hand, to formulate laws, politics, and social practices that serve the interests of white Americans” (Tonry 2011, p. 101).

According to Haney Lopez (2010, p. 4), the United States is in an era of “post-racial racism” in which “the various practices that collectively operate to maintain racial hierarchy [continue to exist] even in the face of broad social repudiation of purposeful racial mistreatment.” He points out the dangerous trap of “colorblindness,” in which we fail to recognize the role of race in interactions “not expressly predicated on race, no matter how closely correlated with racial hierarchy.” The widespread belief—or hope—that race “no longer matters” has kept Americans from recognizing the ongoing salience of race in the criminal justice system in general and in the drug war in particular.

What will it take to change a quarter of a century of drug policies and practices that disproportionately and unjustifiably harm blacks? What will it take for Americans to condemn racial disparities in the war on drugs with the same fervor and moral outrage that they came to condemn the “old” Jim Crow?

One part of the answer has to be public recognition that racial discrimination can exist absent from “racist” actors. As Mendelberg (2001, pp. 18–19) pointed out, “in the age of equality, neither citizens nor politicians want to be perceived or to perceive themselves as racist. The norm of racial equality has become descriptive and injunctive, endorsed by nearly every American.” White Americans, however, are loathe to recognize or acknowledge structural racism because that would raise questions about their commitment to racial equality—and their willingness to give up the privileges of being white. White discomfort with even the very notion of structural inequality no doubt also is strengthened by conservative American political and moral cultures that stress individual responsibility. Implicit racial bias, racial self-interest, and conservative values combine to make it easy for whites to believe that black incarceration is a reflection of choices blacks have made and penal consequences they have merited. Whites rationalize or avoid seeing the inequities inherent in the war on drugs, assuming or persuading themselves “that the problem is not in the policies they and people like them set and enforce, but in social forces over which they have no control or in the irresponsibility of individual offenders” (Tonry 2011, p. 105).

The “myth of a colorblind criminal justice system” is widely influential in the United States because the language of police, judges, prosecutors, and public officials has been wiped clean of explicit racial bias (Roberts 1997, p. 263). United States courts, unfortunately, have made it easier for white Americans to ignore racial disparities in twenty-first century America. Under current constitutional jurisprudence, facially race-neutral governmental policies do not violate the constitutional guarantee of equal protection unless there is both discriminatory impact and discriminatory intent. As Laurence Tribe has noted, the U.S. Supreme Court has decided that

every lawsuit involving claims of racial discrimination directed at facially race-neutral rules would be conducted as a search for a “bigoted decision-maker”... If such actors cannot be found—and the standards for finding them are tough indeed—then there has been no violation of the equal protection clause.
(Tribe 1999, p. 1509)

The courts offer no relief for racial inequalities “built into the very structure and doctrine of the criminal justice system” (Cole 1999, p. 9).

In contrast, international human rights law prohibits racial discrimination unaccompanied by racist intent (Fellner 2009). Under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),⁵ policies or practices that have “the purpose *or effect*” (emphasis added) of restricting rights on the basis of race are discriminatory. Obviously, laws that make explicit distinctions on the basis of race (other than affirmative action policies)⁶ constitute prohibited discrimination. But so do race-neutral laws or law enforcement practices that create unwarranted racial disparities, even if they were not enacted or implemented by culpable actors who intentionally sought to harm members of a particular race (United Nations Committee on the Elimination of Racial Discrimination 2005; Zerrougui 2005).

As a party to ICERD, the United States has undertaken to condemn and take steps to end racial discrimination within the war on drugs (ICERD Art 2[c]). The Committee on the Elimination of Racial Discrimination, which monitors compliance with ICERD, has pointedly reminded the United States that the stark racial disparities in the administration and functioning of its criminal justice system “may be regarded as factual indicators of racial discrimination” (United Nations Committee on Elimination of Racial Discrimination 2008, paragraph 20). It has recommended that the United States “take all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs administering justice, including further studies to determine the nature and scope of the problem, and the implementation of national strategies or plans of action aimed at the elimination of structural racial discrimination” (United Nations Committee on Elimination of Racial Discrimination 2008, paragraph 20).

Laws or practices that harm particular racial groups must be eliminated unless they “are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary” (United Nations Committee on the Elimination of Racial

Discrimination 2008, paragraph 10). Are racial disparities in U.S. drug law arrests, convictions, and incarcerations justifiable? Are they the result of measures narrowly tailored to pursue a legitimate aim? The rates seem to bear little relationship to rates of offending. The operational and political convenience of making arrests in low-income minority neighborhoods rather than white middle-class ones may be an explanation but certainly not a justification. Even assuming the legitimacy of the goal of protecting minority neighborhoods from addiction and drug gang violence, the means chosen to achieve that goal—massive arrests of low-level offenders and high rates of incarceration—are hardly a proportionate or necessary response.

No independent and objective observer believes the United States can arrest and incarcerate its way out of its “drug problem.” Less harmful and perhaps even more effective alternatives to the “punitive paradigm” are available, such as increased substance abuse and mental health treatment, drug education, positive social and economic investments in low-income neighborhoods, and the substitution of drug regulation for criminalization.

NOTES

1. Most of the literature on the discriminatory impact of drug law enforcement has focused on black Americans. Capacity to other ethnic disparities is limited by national arrest and imprisonment data, which either do not or only inadequately indicate the ethnicity of those arrested, sentenced, held in prison, and released from prison.
2. In the past decade, however, newer drugs (e.g., methamphetamine, ecstasy) and nonprescription use of pain killers are more associated with whites than with racial minorities and have garnered law enforcement attention. They account for a small proportion of arrests.
3. The Uniform Crime Reports program receives arrest information from participating law enforcement agencies. Although possession of drugs with intent to sell is usually considered a trafficking or sales offense, according to conversations the author had with the FBI, there is no way to know whether some reporting agencies count arrests for possession with intent to sell as possession arrests.
4. According to the U.S. Census Bureau (2010), in 2010, whites constituted 72.4 percent of the U.S. population and blacks 12.6 percent. Persons of Hispanic or Latino origin, who can be of any race, accounted for 16.3 percent.
5. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), G.A. Res. 20/2106 Annex, U.N. GAOR Supp. No. 14, at 47, U.N. Doc A/6014 (Dec. 21, 1965), 660 U.N.T.S. 195, *ratified by the United States* November 20, 1994 [hereinafter ICERD]. Human rights treaties are binding both on the federal and state governments (Human Rights Watch and Amnesty International 2005, p. 103).
6. Under ICERD “special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination” ICERD, Article 1(4).

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CHAPTER 8

CASE STUDY

Living the Drama—Community, Conflict, and Culture among Inner-City Boys

DAVID J. HARDING

DISADVANTAGED neighborhoods can affect criminal behavior, increasing the risk of late-onset juvenile delinquency even for young people not otherwise at risk of delinquent behavior due to their individual characteristics and family circumstances (Wikström and Loeber 2000). Growing up in a disadvantaged neighborhood has been linked to other negative adolescent outcomes as well, such as dropping out of high school and early childbearing (e.g., Harding 2003). The mechanisms by which neighborhood disadvantage affects individual outcomes are less well understood (Wikström and Sampson 2003). The study presented in this essay focuses on the role of neighborhood-based violence in mediating such neighborhood effects, examining the consequences of growing up in a violent neighborhood for adolescent boys. Violence is a highly spatially patterned social phenomenon, concentrated in the nation's poorest urban neighborhoods, which are disproportionately occupied by racial and ethnic minorities (American Academy of Pediatrics 2000; Morenoff, Sampson, and Raudenbush 2001). This study seeks to understand how neighborhood-based violence affects the social and cultural context of a boy's neighborhood and how this context in turn affects his decision making and outcomes in other domains, such as romantic relationships and schooling.

Although sociologists have been concerned with urban residents and their neighborhoods since the birth of the discipline (e.g., Park and Burgess 1925; Shaw 1929; Du Bois 1996), scholarship on the effect of neighborhood context on individuals was reignited by William Julius Wilson's (1987) *The Truly Disadvantaged*. With this work, Wilson directly linked urban sociology to socioeconomic stratification, residential mobility, and race. In theoretical terms, neighborhoods became an important context in which the social processes driving stratification and racial inequality played out, and neighborhood context became a causal force in the lives of youth and adults. Wilson argued that the decline of manufacturing employment and the movement of middle-class blacks out of the central city led to a concentration of poverty and social isolation among those

inner-city minorities left behind. These changes exacerbated social problems in these communities, including single-parent families, male joblessness, crime, the underground economy, and weakened support structures and institutions—all of which negatively affected the life chances of individuals living in poor urban communities.

This focus on urban neighborhoods and spatial segregation set off a sustained effort to understand the effects of neighborhood context on fertility, health, education, labor market, and delinquency outcomes, particularly for children and adolescents. Yet social scientists have only begun to uncover the mechanisms or social processes that translate neighborhood characteristics into long-term outcomes for individuals. The task at hand is to understand how structural conditions, such as concentrated poverty, joblessness, and residential instability, lead to social processes that are harmful or helpful to young people growing up in poor neighborhoods. What features of disadvantaged neighborhoods have important consequences for adolescent boys? How do the social and cultural characteristics of disadvantaged neighborhoods influence outcomes such as teenage pregnancy and education? What are the social processes in disadvantaged neighborhoods that create neighborhood effects?

Drawing on in-depth, unstructured interviews with 60 adolescent boys in three Boston neighborhoods, this essay argues that two interrelated features of poor urban neighborhoods are critical mechanisms underlying neighborhood effects on adolescent boys: *neighborhood violence* and *cultural heterogeneity*. These characteristics both distinguish poor neighborhoods from other neighborhoods and have pronounced effects on the decision making and behavior of adolescent boys. Omnipresent in the daily lives of boys growing up in poor neighborhoods, violence plays a powerful role in structuring social relations, identity and hierarchy, use of space, perceptions, and cultural frameworks. Although much social science research has focused on neighborhood differences in rates of violence and other crimes, scholars have paid less attention to the social and cultural implications of living in an environment where the threat of violent victimization is significant and omnipresent (see also Harding 2008, 2009a). The main findings of this study can be summarized as follows:

- Examining the ways in which violence is socially organized is critical to understanding the effect of violence in other domains. In Boston's poor neighborhoods, much of the most serious violence experienced and perpetrated by youth is organized by cross-neighborhood rivalries. These rivalries, which both fuel and are fueled by neighborhood identities, mean that even those youth who do not participate in violence are subject to victimization through revenge and recrimination. Local neighborhoods, very small in geographic size, become safe spaces for residents—and those venturing into other neighborhoods or neutral territories risk confrontation.
- The strategies that adolescent boys use to adapt to these realities have implications for the structure and strength of peer networks. For protection and status, younger adolescents seek out the older adolescents and young men who sit atop neighborhood status hierarchies that prize the ability to navigate dangerous streets. The result is greater cross-age social interaction in poor neighborhoods,

facilitating cross-cohort socialization. In addition, boys form strong bonds of mutual protection with friends, heightening the importance and strength of same-sex friendships.

- These cross-age interactions and strong peer ties provide conduits for local socialization, imparting alternative scripts (ways of achieving goals) and frames (interpretive lenses) in domains such as romantic relationships and schooling.
- Neighborhood violence and crime also have direct cultural consequences. In such an environment, those who perpetrate or are the victims of violence and crime become negative role models. Comparisons to such individuals serve to level expectations among both parents and youth, and they focus attention on keeping boys physically safe, away from dangerous peers, and off the streets, often at the expense of attention to other domains, such as school or teenage pregnancy.
- Youth who live in violent or crime-prone neighborhoods also have greater contact with the criminal justice system, particularly police, even if they themselves are not involved in violence or crime. These contacts, often their first sustained interaction with a major social institution, are overwhelmingly negative, leaving youth feeling disrespected and mistreated. Coupled with the failure of police and other institutions to safeguard their neighborhoods, these negative personal contacts lead youth to develop a broader institutional distrust that can spill over into their interactions with other institutions, such as schools.
- Violence in poor communities also contributes to neighborhood cultural heterogeneity, the presence of a wide array of socially supported yet competing and conflicting cultural models (see also Harding 2007, 2011). Cross-age interactions on the street provide conduits for the transmission of alternative cultural models across cohorts, and strong friendship ties among neighborhood youth further transmit these ideas among adolescents of the same age. Because the older adolescents and young men who are available in this capacity often are not engaged in mainstream pursuits such as work, school, and long-term relationships, they often represent and may espouse cultural models at odds with mainstream or middle-class models, or with other cultural models in disadvantaged neighborhoods.
- Given strong support for conventional or mainstream cultural models among most residents of poor neighborhoods (Duneier 1992; Newman 1999; Waller 2002; Young 2004; Carter 2005; Edin and Kefalas 2005), the social ties and cultural frameworks engendered by neighborhood-based violence in poor communities are an important source of alternative, local, or “ghetto-specific” cultural models. As a result, adolescents in poor neighborhoods must navigate a cultural environment in which both mainstream and alternative cultural models are present and socially supported.
- Cultural heterogeneity has consequences for how they understand and make decisions about schooling, work, and romantic relationships, making it more difficult for them to construct effective pathways toward their goals.
- These findings have four main policy implications. First, successful efforts to permanently reduce violence in disadvantaged neighborhoods will produce benefits not just for safety, emotional well-being, and health, but also likely for

other domains such as schooling and early childbearing. In evaluating the costs and benefits of violence-reduction programs, the collateral consequences of violence on school dropout and teenage pregnancy should be taken into account.

- Second, efforts to reduce violence in poor neighborhoods must take into account the ways in which violence is organized, particularly the role of neighborhood rivalries and the relatively small numbers of individuals who are responsible for keeping them going.
- Third, increased penalties for violent behavior are unlikely to make the marginal adolescent significantly less likely to engage in violence because he must consider many other factors, not the least of which is his own physical safety should he fail to maintain loyalty to his peer group or fail to stand up for himself when tested.
- Fourth, the challenge for effective policy making that attempts to address the problems of poor neighborhoods is not a lack of mainstream values and goals; it is a lack of access to the tools and resources needed to realize them, as well as lack of the knowledge and information necessary to take advantage of such tools and resources. Efforts to change norms and values waste resources and alienate those they are intended to benefit.

Section I explains the methodology of this study. Section II describes the social organization of violence in Boston's poor communities, particularly the role of neighborhood-based conflicts or "beefs" in structuring much of the most serious violence, and then section III explains the consequences of neighborhood beefs to adolescent boys who must navigate dangerous streets, whether or not they themselves are engaged in violence. Section IV describes the role of violence and negative role models in the leveling of expectations for neighborhood youth. The essay turns next to the unintended consequences of the strategies that boys use to avoid violent victimization, including forming bonds of mutual protection (section V) and relying on older peers for protection and status (section VI), both of which magnify peer effects and the transmission of unconventional cultural models through cross-cohort socialization (section VII). Section VIII argues that neighborhood violence increases institutional distrust and the cultural resonance of the messages boys receive from their older peers. The cultural context of poor neighborhoods is analyzed in section IX, which contends that poor neighborhoods, rather than being characterized by a deviant subculture, are more culturally heterogeneous than more advantaged neighborhoods. Section X explains the effects of cultural heterogeneity on the decision making of adolescent boys. Section XI concludes with implications for theory, future research, and policy and practice.

I. METHODOLOGY

This study is based primarily on in-depth, unstructured interviews with 60 adolescent boys, aged 13–18, living in three predominantly black areas in Boston, with 20 boys per

area.¹ The three geographic areas I selected allow for explicit comparisons among similar youth in areas that vary on a key structural characteristic: the family poverty rate. Two of the areas (Roxbury Crossing and Franklin) have high rates of family poverty (between 35 and 40 percent in the 2000 census). The third (Lower Mills) has a low poverty rate (less than 10 percent) and serves as a comparison for the high-poverty neighborhoods. Each area consists of two contiguous census tracts and encompasses multiple locales that more closely approximate neighborhoods, as recognized by local residents.²

The most striking difference during the fieldwork (2003 and 2004) between Lower Mills and the two poor areas, Roxbury Crossing and Franklin, is the sheer frequency of violence. Rates of robbery and aggravated assault illustrate the distinction. As recorded by the police, Franklin experienced approximately six robberies per year per 1,000 residents and Roxbury Crossing experienced approximately seven, whereas Lower Mills experienced approximately two robberies per 1,000 residents. Although Franklin and Roxbury Crossing both experienced approximately 14 aggravated assaults per 1,000 residents, Lower Mills experienced approximately five aggravated assaults per 1,000 residents.³

The teenage boys in this study were African American, Latino, or of mixed race, with Latinos being primarily of Puerto Rican or Dominican descent. Each boy was interviewed multiple times, with at least two and as many as four sessions per subject. Multiple interview sessions were required to cover all the material in detail, and they also provided the benefit of repeated interactions with the boys, which can serve to build trust and rapport (Eder and Fingerson 2003). Interview topics included but were not limited to daily life in the neighborhood, social networks, school and work experiences and aspirations, and romantic relationships and expectations regarding fatherhood and marriage. These interviews were supplemented by interviews with the boys' parents and with other neighborhood adults, community leaders, local officials, and social service workers.⁴ Further methodological detail can be found in Harding (2010).

II. "THE DRAMA": THE SOCIAL ORGANIZATION OF VIOLENCE IN BOSTON NEIGHBORHOODS

Chris sits on the steel railing outside his Franklin Hill apartment, only a few hundred yards from where an 18-year-old neighbor, Mikeal Harris, was killed 3 months earlier with three gunshots to the head at close range. Chris, like many of his neighbors, attended Mikeal's funeral. When teens from a nearby street started "talking trash" about Mikeal and about Franklin Hill outside the funeral home, Chris and his friends got into a fight, and one of his friends suffered a superficial knife wound.

Violence ebbs and flows in poor neighborhoods in Boston as young men "rep" (represent) their neighborhoods, defending their reputations and exacting retribution for previous losses and signs of disrespect. Chris's experiences offer a window into the "the

drama,” the system of ongoing neighborhood-based rivalries and conflicts that structures central aspects of youth violence in Boston. He is surrounded by three friends who eye me warily as I greet him for our second interview. Barely 14, Chris’s height and cold street stare make him look 17 or 18. He describes an incident that occurred over the weekend at *Chez Vous*, a roller rink and teen dance club about a mile or two down Blue Hill Avenue. Chris and his friends go there frequently on the weekends to dance and meet girls. “The *Vous*,” as Chris calls it, is a weekend gathering place for teenagers from Dorchester, Roxbury, Mattapan, and other sections of Boston, so there is always potential for neighborhood rivalries to erupt. Soon after Chris and “his boys” arrived, they had an encounter with a group of young men from a nearby street who insulted a girl from Franklin Hill.

CHRIS: We almost got into a fight. Some Lucerne kids was there. . . . They were just making mad noise. Cause in the *Vous* they’re like, “Lucerne, Lucerne.” I know the name is Lucerne. I don’t know where it’s at though. There was all kinds of kids there though. The Point was there and the Head was there. D Block was there. They had a dance contest and the girl that was from [our neighborhood], she was dancing. And they was talking mad trash [about her] so we almost got in a fight with them. They was scared. They left. . . . We was there like 20 deep.

INTERVIEWER: If those guys had stayed, would you guys have fought them?

CHRIS: Probably. But they were scared, they left. They want to collaborate with us, but they punks so we won’t collaborate with them.

INTERVIEWER: Why do you say they’re punks?

CHRIS: Cause they scared. They be scared every time something happen.

Standing and fighting when challenged is the essence of manly behavior in Chris’s circle. Displaying very openly one’s reputation for toughness is a critical part of the street repertoire (Anderson 1999), and it is expected behavior from “his boys.” Chris looks down on the boys from Lucerne Street for leaving rather than fighting, even though they were hopelessly outnumbered. They are “punks,” people who will not defend themselves or their neighborhood, especially since the Lucerne boys initiated the encounter.

As this account illustrates, neighborhood is a central organizing category in Chris’s social life. “The Point,” “the Head,” and “D Block” are terms he uses to describe other boys, using local slang for the neighborhoods where they live. Chris and the 20 other adolescents from his neighborhood are not being chivalrous in defending “their” girl. Rather, they are defending their own neighborhood from insult by outsiders. The youth from Lucerne Street announce their presence by chanting the name of their street. Then one of them challenges Chris’s neighborhood by insulting the girl.

There is nothing particularly inevitable or natural about the centrality of neighborhood in this conflict. We might have expected a brother or boyfriend to challenge the individual who insulted the girl, but the conflict quickly became a conflict between neighborhoods rather than individuals. Chris mentions that Lucerne Street youth would like to “collaborate” with the youth from his neighborhood, meaning that they would like to form an alliance of mutual support and protection. “D Block” is one such alliance between two housing developments in another part of the city.

Beefs between neighborhoods, ongoing disputes with escalating confrontations, have many characteristics similar to the beefs between individuals described in the literature (e.g., Anderson 1999; Dance 2002). Beefs between neighborhoods are to some extent about a neighborhood's reputation and the relative safety that comes from being known as a rough neighborhood. A youth who lives in a neighborhood that does not have a reputation for being tough is at greater risk of victimization when he ventures beyond its borders. When young men know that neighborhood-based retribution will be forthcoming if they attack or rob an individual, they are likely to leave him alone. On the other hand, zones that are not well defended are understood to be targets for street crime. Young men in Franklin and Roxbury Crossing frequently assured me that failing to stand up for their neighborhoods and to control who could enter them or the activities within them would lead to criminal activity in the neighborhood such as drug dealing, car theft, and vandalism. This, in turn, would attract undue law enforcement attention.

Beefs between neighborhoods are also about status. Young men in high-poverty neighborhoods like Franklin and Roxbury Crossing know that American culture measures status according to residential location and that their neighborhoods, with dirty, unsafe streets and high poverty rates, are at the bottom. Yet, among themselves, an even more fine-grained status system has emerged. Neighborhoods filled with punks, unwilling or unable to mount a defense, lose face. Defending one's turf is an important end of its own—and not usually for the reasons typically assumed, such as the need to defend particular drug markets.

Neighborhood rivalries are the basis for much of the more serious violence that occurs in Boston. Beefs between neighborhoods often go back years, before today's teens were even born, and their exact origins are almost always unknown by the current participants. In Franklin, an ongoing feud simmers below the surface between the Franklin Hill and Franklin Field public housing developments, located within sight of one another on opposite sides of Blue Hill Avenue. In the early 1990s, this conflict peaked with a rash of drive-by shootings, knife fights, shoot-outs, and murders. Efforts by community activists and police, in cooperation with the young men involved, managed to end the conflict. When I spoke with Chris in the fall of 2003, calm prevailed, but when I revisited him in the spring of 2004, "the drama" was ready to explode again. As Chris remembers it, it was at a party in February 2004 that the conflict surfaced again:

It was over some girls at this party. Me and my boys bagged these Franklin Field girls, and the guys from Franklin Field got mad. So they brought [the fight] to us. We beat them up a little bit. Then the older mens came, then we got our older mens, so that it looked like a go. But then the girls called us like, "We don't want drama." So I was like, "All right, forget it."

As Chris made his way home from the party, he was jumped by young men from Franklin Field riding in a car driven by one of the "older mens." They were looking to settle the score and win back some pride for their neighborhood. As his mother confirmed, Chris was beaten fairly badly but suffered no serious injuries. At this point,

there was considerable potential for the conflict to escalate into serious violence because Chris would be expected to rally his boys from Franklin Hill and attempt to exact retribution. As it turned out, though, the cooler heads among the “older mens” prevailed, and the beef was “squashed,” at least for the time being. The young men from Franklin Field made a strategic decision: they brought the conflict to a halt, fearing that if it escalated, the Franklin Hill youth would call in more support from the older men in their neighborhood and easily gain the upper hand in any fight. Franklin Field youth would undoubtedly give a different version of this conflict, but Chris’s account illustrates another aspect of the social organization of neighborhood conflicts. Age-segmented groups have merged for the purposes of a cross-neighborhood conflict.

Three sets of neighborhood actors who differ in age and experience are involved in this story. “Little mens” (or “little niggas”) are teenagers growing up in the neighborhood. “Older mens” are in their late teens or twenties and, as veterans of previous beefs, have honed their reputations based on past deeds. They may be hustling or dealing drugs, or they may be working legitimate jobs these days, but they are a continuous presence on the streets. “OGs,” or “original gangsters,” are in their thirties and forties, survivors of the worst days of violence in Boston. OGs grew up in the neighborhood and were leaders in their day. Their place at the top of the social hierarchy is cemented by their legendary reputations, but their daily connections to the neighborhood are often less strong now, as many have moved away from the street life. Still, they are reliable in times of trouble.

Public street life unfolds differently in Lower Mills, a low-poverty neighborhood less than a mile away from Chris’s Franklin neighborhood. Darnell is Chris’s 13-year-old half-brother. Neither Darnell nor Chris knew of one another’s existence until a week before I first interviewed Darnell, when a chance meeting of long-lost relatives brought the two together. Their mothers both dated their father during high school. Darnell lived in a suburban town before moving back into Boston, although he continues to attend school in the suburbs. Their father plays little role in either young man’s life, and their mothers both finished high school, did some postsecondary schooling, and worked until recently.

Like most of the other adolescents whom I interviewed in Lower Mills, Darnell is familiar with the system of neighborhood rivalries. He recounts how youth from certain neighborhoods have beefs with other neighborhoods and how those entering the wrong neighborhood risk a confrontation. Like other adolescents from Lower Mills, Darnell is subject to the “code of the streets” (Anderson 1999) when he ventures out of his own neighborhood, either into poorer neighborhoods or into neutral territories. However, the similarities end there. Whereas Chris has to contend with a nearly constant threat of violence, Darnell could recall only one fight in the 3 years he had lived in Lower Mills. Darnell and his friends see no need to defend their neighborhood from outsiders, mainly because Lower Mills stands outside the system of neighborhood rivalries. Youth from elsewhere do not recognize Lower Mills as a potential rival or as an area with a reputation and have little reason to visit or pass through.

A direct consequence of the neighborhood-based system of violence is that neighborhood is a powerful form of identity for many of Boston’s adolescent boys, a dividing

line between insiders and outsiders, and a potent social marker. As Chris's account illustrates, neighborhood rivalries are intergenerational, passed from cohort to cohort on the streets. In Roxbury Crossing and Franklin, violence, neighborhood identity, and community membership are closely linked. Violence generates mutual obligations, as Tyree, a 17-year-old African-American youth from Roxbury Crossing, explains:

If you're not willing to help in the neighborhood, when someone is in need then you really can't be here. We had a circle of people. If you wasn't in that circle, you was outside that circle, that's where you had to be. . . . There's people in the neighborhood that live on the same street and could see you getting jumped that wouldn't care. They put it as, "Oh it's not my problem." But if you was really tight, grew up together, been through ups and downs, know family members, then there's always a chance of help. But I put it as, "I always got to help the people in my neighborhood because you never know when it's going to come back to you." I could be outside the neighborhood getting ready to get jumped, and he could walk by and [help me].

Although not all boys see things this way, for adolescents like Tyree, participating in this system of obligations defines membership in the community, including access to such benefits as mutual protection. In contrast, the adolescents of Lower Mills, the more advantaged area, do not link identity and community membership to mutual obligations of protection.

III. CONSEQUENCES OF BEEF BETWEEN NEIGHBORHOODS

Only a small proportion of youth actively police neighborhood boundaries, defend territory from intrusion, confront youth from other neighborhoods in neutral territories, and carry out the retribution and revenge that keeps beefs going. Indeed, the community and policing strategies dubbed "Operation Ceasefire" that were at the core of the "Boston Miracle," the amazing decline in youth violence and youth homicide in the 1990s, succeeded because of the relatively small number of central actors in the conflicts. By targeting "impact players" with both social services and law enforcement sanctions and by intervening with less dangerous youth linked to impact players before they engaged in serious violence, police, community leaders, and religious leaders stemmed the tide of violence by squashing the beefs (Berrien and Winship 2002; Braga and Kennedy 2002).

Nonetheless, beefs affect all the young people in afflicted neighborhoods. Venturing outside one's own neighborhood means risking confrontation with youth from other neighborhoods just by passing rival enclaves or neutral territories. Neutral spaces, such as schools, public transportation, and downtown or commercial areas, become sites of contestation and conflict. Confrontation between youth from

different neighborhoods is always a possibility, and often youth will ask each other where they are from as a challenge or physical threat. Most young men prefer to travel in a group to avoid being jumped or harassed when going outside their immediate neighborhood.

Even those who never start fights with youth from other neighborhoods are enveloped in the system of place-based antagonisms. Terrell, a 16-year-old African American from Franklin, described an incident that occurred when he went to visit a friend who lived near the Bromley Heath public housing development in Jamaica Plain. His development and Bromley Heath had a beef at the time, but Terrell was never involved in any of the fights or other confrontations. This does not, however, provide him with much insulation from the conflict:

Just from us living around here, sometimes it's a safety issue, because, we gotta watch our backs. [People from our development] step on a lot of people's toes, and get a lot of people riled up against them. So they want revenge in any way. And they don't care if you hang with them or you don't hang with them, as long as you live around here, you're a target to certain people.

I was actually with one of my friends, that doesn't live around here, and we were going to [a grocery store] in Jamaica Plain. And some people asked me where I was from, so I told them. And then they pulled out a handgun on us. They was just trying to seem tough, so I didn't like panic and overreact. I just walked away from it. It was broad daylight too.

And it's more than just trying to ignore it, you gotta watch your back too. You can't just say, "Well yeah, I'm from around here, but I don't mess with those guys [who are involved in neighborhood beefs]." [The kids from other neighborhoods], they're gonna say, "So what!"

Terrell's experience illustrates how simply being associated with a particular neighborhood known for violence and enmeshed in ongoing neighborhood beefs can limit one's freedom of movement. Many adolescents in Franklin and Roxbury Crossing adopt a survival strategy of remaining in their home neighborhood as much as possible, geographically constricted as it may be, and avoiding interaction with males from other neighborhoods, even at school.

IV. VIOLENCE, NEGATIVE ROLE MODELS, AND THE LEVELING OF EXPECTATIONS

What are the consequences of neighborhood violence and its social organization for the boys who live in the neighborhoods of Franklin and Roxbury Crossing? A long-time resident of his Franklin public housing development, 15-year-old Dalton spends almost every day after school hanging out in and around the development. When we talked the

summer before he was to start high school, he explained that “staying out of trouble and staying off the streets,” was the most important life decision he had made so far:

Like I'd be out on the corner, and there'd be a lot of people doing one thing, and some people doing another thing, and like I don't know which one to pick. Should I stay with this group or this group? ... They'd be smoking and stuff. They'd be doing all types of things. Because I seen some of them—they be having a lot of money so, I just was like I could make money working. So, instead of trying to get in trouble trying to do drugs and stuff, I do the right thing instead of the bad. ... So, I decided to stay playing basketball and get off the streets and all that other stuff.

“The streets” serve as an important reference point for the boys of Franklin and Roxbury Crossing as they struggle to understand their actions and identities. Violence, drugs, and crime characterize “the streets,” and the individuals who Dalton associates with “the streets” are salient on his block. Dalton compares himself to “bad kids,” those involved in violence and other criminal behaviors who are a fixture of public life in Franklin and Roxbury Crossing.

The young men who populate the streets stand as stark reminders of the potential pitfalls that boys in the neighborhood face and of how easy it is to fall off track. The dangers of engaging in street behavior—incarceration, injury, or even death—are given concrete meaning by example. They are, in this sense, a source of motivation, a daily reminder of the costs of failure. Gangbangers and drug dealers serve as negative role models, examples of what not to do with one's life. These negative role models have particular salience because of their public visibility. Tyree, quoted earlier, is a former drug dealer himself. The near death and permanent injury of a family member was a rude shock and powerful motivator:

If I put myself in that situation, I could be dead or in jail, and I don't want to be dead or in jail 10 years from now. I want to be in school, something positive, so I just really use it as a motivational tool, as I really have to do something better than what they're doing.

What really got me was my uncle. He got shot up by some people over some drugs. He's still in a wheelchair now, and he still wants to be outside in the street with all his friends and running the streets, selling drugs, and being the top guy. And I tell him like, “See what doin' all that got you? It got you in a wheelchair. I mean, I'm not saying you was a bad person, I'm not saying you was a good person; I mean, you did what you had to do and now look where it got you?” When I first heard that he got shot, I was only like 11, and it really hurt me, because where he got shot at was outside of a school, there was kids and after-school programs. ... It really hurt me because I really didn't want to see him laid up in the hospital. He was in a coma for about 3 months.

Moreover, negative role models do more than make the costs of failure clear. They also redefine what success and failure mean. When one's neighborhood peers are frequently involved in violence and crime, when they suffer the consequences, including arrest, incarceration, injury, and death, merely avoiding those activities and consequences becomes

an achievement. A new calibration emerges based on neighborhood standards, leveling expectations to the local comparison group and thereby heavily influencing the frames that boys use to understand and evaluate their own actions. In Roxbury Crossing and Franklin, success is partly—although by no means only—avoiding the troubles of the street.

V. NEIGHBORHOOD VIOLENCE AND BONDS OF MUTUAL PROTECTION

For youth in Franklin and Roxbury Crossing, the neighborhood is a much more important context for the development of friendships than it is for youth in Lower Mills. This difference is linked to the disproportionate neighborhood violence that youth in poor neighborhoods face. Although violence can lead to the breakdown of social networks among adults, as individuals retreat into their homes to avoid victimization, for adolescents, the opposite often occurs. Neighborhood violence reinforces strong loyalties among neighborhood-based friendship groups (see also Harding 2008). As discussed earlier, the social organization of violence magnifies the salience of neighborhood identities. In addition, trust can come not just from repeated and ongoing interactions but from shared experiences. Although adolescents spend long periods of time at school with classmates, their bonds with them are considerably less strong, and, at times, nonexistent. Particularly in poor neighborhoods, adolescents perceive their neighborhood peers to have a common set of shared experiences and to face the same daily challenges. These shared experiences and daily challenges often involve navigating the perils of street violence.

Many adolescents rely on neighborhood friends and associates to help them defend themselves and to feel safe. When youth from the same neighborhood are called on to defend one another and to defend the neighborhood, bonds form quickly. Trust in friends is essential if you must rely on them for your physical safety. Loyalty is not merely prized, it is a prerequisite for membership in peer groups. In extreme cases, commitment to neighborhood friends is akin to the closeness of soldiers who face combat together. As one mother put it, when describing her son's group of friends, "these kids, it's like they were in Vietnam. And nobody understands that. These kids are not bad kids, none of them. They are scared."

VI. NEIGHBORHOOD VIOLENCE AND THE AGE STRUCTURE OF PEER GROUPS

The social organization of violence in poor neighborhoods also affects the age composition of the peer networks of the young men of Franklin and Roxbury Crossing. Compared

to their counterparts in Lower Mills, the youth in these two neighborhoods interact more often with both older adolescents and young adults from their own neighborhoods (see also Harding 2009b). The peer networks of Roxbury Crossing and Franklin boys include individuals considerably older than them, sometimes as close friends but more often as acquaintances. Seventy-five percent of boys interviewed in Franklin and Roxbury Crossing reported older males from outside their families as part of their peer networks. These older males were typically at least 2 years older and sometimes as old as their mid-twenties.

In contrast, the youth in Lower Mills were much less likely to interact with older adolescents and young adults outside their families; only 15 percent reporting doing so. Outside of family members or friends of family members, they usually could not even name older adolescents or young adults, let alone describe meaningful interactions with them. When they could, these interactions often did not occur within their own neighborhoods. Similar patterns are evident in nationally representative data (Harding 2009b). When the youth of Lower Mills do associate with older peers, their interactions are more often family-based and take on a qualitatively different character. When age-inappropriate discussions or activities arise—for example, those about romantic relationships, sex, and drug or alcohol use—younger adolescents are pushed away.

Because their neighborhoods are part of a larger system of place-based violence, the boys in the poor neighborhoods face real constraints in choosing friends. Although some are more mobile, most tend to stay inside their own neighborhoods to avoid confrontation or victimization. Youth outside the neighborhood are more often potential enemies than potential friends. This leaves as potential friends only those who live in the same neighborhood. Since the social space in question is quite small, same-age peers are not always in abundance, and older peers often fill the gap. Marcus, a 16-year-old from Roxbury Crossing, described how the lack of same-age peers in his housing development led him to socialize with the “older guys” who are a fixture of the sidewalks and streets. These older guys dispense advice to Marcus and his friends and try to keep them out of trouble with the police or with youth from other neighborhoods:

[My two friends and I are] the three younger individuals that live around here, so we’re forced to be around nothing but older guys. . . . We’re put around older guys that done been through it, that tell you—that tell you what to do, and what not to do, and when it’s appropriate to confront somebody, or that you’ve got a problem with, and stuff like that. . . .

All the older guys around here, they said don’t stand in one place for too long, because that’s how you end up getting harassed [by the police], so I don’t stand in too many places for too long.

We just hang out, talk about the past, things that done happened—laugh, joke with each other. One person might be fixing on their car; one person might be fixing on their bike, listening to music, and we all just go gather around there, and just talk.

The scene Marcus describes is frequently visible to any observer who spends much time in the neighborhoods of Franklin and Roxbury Crossing. Hanging out in a mixed-age group (with older individuals at the center and younger at the periphery), usually on the

basketball court, a stoop, or the corner, older adolescents and young adults recount their experiences and dispense general advice.

Older peers are also valuable for the protection they provide. We have already seen, in Chris's account of the conflict between Franklin Hill and Franklin Field, how the "little mens" called on the "big mens" when the conflict became heated. Older youth or young adults can be protectors or intervene in conflicts before they become fights. More frequently, association with older friends provides status and respect. This, of course, is an end in itself, but the respect that older friends provide translates into a measure of protection. As Miguel, a 16-year-old Latino who grew up in a housing development in Roxbury Crossing, explained, "a lot more people will respect the younger person. They wouldn't mess with him because he has a lot of older friends."

VII. OLDER PEERS AND CROSS-COHORT SOCIALIZATION

The consequences of relationships with older peers depend on who these older peers are. Higher than average rates of male unemployment in Franklin and Roxbury Crossing mean that the older youth and young adults who are both available and visible in high-poverty, high-violence neighborhoods are not always the most positive influences, although not for lack of good intentions.⁵ For example, Marcus, who tries to be an older-brother figure to the boys in his neighborhood, is an occasional drug dealer, and, at 16, already has two young women claiming they are pregnant by him. He says he tries to hide these activities from younger boys, but it is hard to see how that is really possible. Whereas previous research has noted the role of older adolescents and young adults in teaching younger boys how to commit crime and in bringing them into criminal apprenticeships (e.g., Thrasher 1927; Cloward and Ohlin 1960), my focus here is on the influence of older peers on how adolescents make decisions about other matters, particularly school and sexual relationships.

Not every older adolescent and young adult male in the neighborhood sells drugs, impregnates multiple partners, or has dropped out of high school and stands on the corner. Indeed, the majority do not. However, those neighbors who might serve as more positive role models are often not available to youth because they are working or in school. Older peers who might provide protection or status are likely to be those who are present on the streets on a regular basis, not those in school or working. Eduardo, now 17, recalled how, at age 12, older friends in the neighborhood introduced him to drinking, smoking marijuana, and stealing cars. At about the same time, he became considerably less interested in education and stopped going to school for a time in the eighth grade.

EDUARDO: I turned 13 in fall of '99. That summer of 2000—that's when everything went downhill. By the time eighth grade came around, I went to school for maybe about a week.

INTERVIEWER: If you could think back to that time, when you first started to lose interest in school, why do you think you weren't interested?

EDUARDO: The peers around me. [We were] smoking [marijuana], drinking. We were always around girls. Those type of things. Stealing cars. Selling car parts.

INTERVIEWER: How did you get into doing those kinds of things?

EDUARDO: The so-called friends around me, they knew how to steal cars. I just got into it. At first, I just started breaking car windows cause I didn't know how to steal a car; then, slowly, I learned.

INTERVIEWER: Were they your age or were they older?

EDUARDO: Maybe a little older, but I considered them my age. Now that I look back at it, though, they weren't my age, but when I thought about it [at the time], they were my age. It's confusing.

INTERVIEWER: You thought of them as, kind of, being in the same spot as you?

EDUARDO: Same age. Exactly. The other guys that were 14 or 15 were still acting younger. At 12, I was into girls. I was into going out, partying, taking a girl out to a restaurant. I grew up too fast because I was around older people, older guys, my whole life. . . . I just ended up acting mature. The other 12-year-olds, they were thinking about, Mommy, buy me some sneakers. At 12 years old, I was thinking [about] how to get 'em myself.

Older friends and acquaintances can also have more subtle influences because of their cultural power to frame or contextualize daily life, a process I call cross-cohort socialization. Through both their words and their deeds, they expose younger adolescents to cultural models that often differ from those privileged in mainstream or middle-class culture. The older adolescents and young adults who are respected in the neighborhood because of their mastery of the streets regularly dispense advice about girls, school, and staying out of trouble. Often this advice is in keeping with mainstream cultural models, but at times it is not.

As Marcus just described, while hanging out in a mixed-age group (with older individuals at the center and younger at the periphery), older peers recount their experiences and dispense general advice, such as the wisdom of not standing in one place for too long lest the police think you are a drug dealer and the need to watch out for girls who are simply after money and gifts rather than a relationship. General admonitions have little traction when they come from teachers or parents. But older males, especially those with status earned on the streets, command attention because they are seen as role models who have been through experiences similar to those their younger counterparts will soon face. By virtue of their reputations for toughness, their exploits in previous conflicts, and often their resources from dealings in the underground economy, these young adults sit atop a street status system that confers on them cultural power, particularly in the eyes of adolescent boys (see also Anderson 1999).

Through these discussions with older peers, younger adolescents are exposed to ways of thinking about problems, solutions, and decisions that are sometimes at odds with mainstream or middle-class convention. Fernando, 15, and a resident of a public housing development in Franklin, became friends with his 17-year-old neighbor, Ben, who lives across the hall. Fernando sees Ben as someone who will have his back if there is a

conflict. Ben then introduced Fernando to his group of friends, who are mostly 21- and 22-year-olds, and Fernando began hanging out with this group on a regular basis. The most frequent topic of conversation, according to Fernando, is girls. Ben and his group of older friends are a frequent source of information and advice about romantic and sexual relationships for Fernando.

Interactions with young adults also influence the frames that adolescents bring to their school experiences. One such frame that adolescent boys from Franklin and Roxbury Crossing hear a lot about is that it is the rare teacher who actually cares about students. The vast majority of teachers are merely there for the money—to “collect that check”—or because of the pleasure they get from the power and authority that they wield in the classroom. Simon, growing up in Franklin, was 16 and about to start his sophomore year when we discussed his experiences during the previous academic year (he would later drop out of high school). Simon had struggled in middle school, and he and his mother had hoped that high school would mean a new beginning. Simon explained his view of the typical teacher in his high school:

You can tell they are just there for the check. They are like, “I don’t give a hell, I got my high school diploma.” That’s all they care about. They’re getting their check at the end of the day, they got their high school diploma already. But these kids don’t. When they get sent home, that’s a day less of education they just lost right there. I know that’s what the teachers think like.

When Simon observed students being suspended from school, and when he himself was suspended for fighting and missed several days, this frame informed his interpretation of these events. From this perspective, teachers and staff do not care enough to create a school environment in which students feel safe, so fights break out as students jockey for status. Teachers are eager to remove students from the school because that makes their jobs easier; they have one less student to deal with. Notably absent here is the alternative notion, held by most teachers, administrators, and many parents, that students who use violence in school are a threat to other students and disrupt the learning environment for others.

Simon’s frame does not come from his mother, who expressed considerable satisfaction with the school and its staff, nor does it derive from the church-run summer programs and community center in which Simon occasionally participates. When not at school or in the church programs, Simon spends most of his time in the local neighborhood park, where boys his age play basketball, where the neighborhood’s unemployed young adults hang out to pass the time, and where, according to both Simon and his mother, some sell and use drugs. Although Simon’s own experiences have certainly informed and reinforced the frame through which he views his teachers, the amount of time that Simon spends in the park with these young adults, most of whom themselves dropped out of high school, suggests that their views and experiences in the Boston public schools are playing an important role as well. Simon himself implicitly recognizes the influence of older peers: “There’s generations at that park. I can’t help that I’m in it, but I’m also trying to go above it.”

VIII. NEIGHBORHOOD VIOLENCE, INSTITUTIONAL DISTRUST, AND CULTURAL RESONANCE

The cultural power of the older males who display mastery of the street life is not the only reason that younger boys take their cultural messages seriously. Another reason is that these messages often resonate with the daily experiences of boys from Roxbury Crossing and Franklin. Schudson (1989) defines “resonance” as the extent to which a script or frame is compatible with others already in play. Because older boys can help younger boys make sense of their own daily experiences in the neighborhood, their messages carry greater weight.

As residents of violent neighborhoods, one particularly salient neighborhood experience for boys in Roxbury Crossing and Franklin is dealing with the police. Boys from Roxbury Crossing and Franklin see the police in their neighborhoods on a daily basis. Boys in Franklin and Roxbury Crossing are often frustrated that the police, with their considerable power, do not do more to keep their streets safe and their neighborhoods free of drug dealers and drug addicts. For many, the police are too scarce. Yet there is also anger over harsh police tactics and lack of respect from some officers. Experiences with police and advice on how to deal with them are frequent topics of conversation. Recall for example, Marcus’s earlier description of the lessons he got from older peers on the street about avoiding police harassment and how he, in turn, passed that advice on to younger adolescents.

Officers stop youth on the street and “profile” them by asking a series of questions about where they live and what they are doing. If they suspect that the boys might be carrying weapons, drugs, or other contraband, the officers will also search them. Being searched is a particularly humiliating and frightening experience, especially for the younger boys. Because most youth crime and violence takes place in groups, small crowds of young minority males hanging out on the street are a frequent target for police observation, questioning, and searching. In contrast, Lower Mills youth had much less to say about the cops. For them, police presence was adequate given the rarity of public violence and crime, and their interactions with police officers were minimal.

In Franklin and Roxbury Crossing, police come to symbolize the dual failure of institutions in mainstream society. They fail to protect young people from violence and crime, and they compound the problem by failing to treat neighborhood residents, particularly young minority males, with dignity. The natural conclusion for the boys of Roxbury Crossing and Franklin is that an important subset of police officers do not actually care about their safety or general well-being and abuse their power rather than use it to advance the public good. A cynicism about motives grows: police officers take their jobs only for the salary or for the power that they wield. The rest of law enforcement and other government officials allow this to happen and are therefore implicated as well.

That these experiences—often the first the boys have with the institutional mainstream outside of school—are overwhelmingly negative serves to reinforce the notion that the larger society does not care about them; it does not take their interests into account and does not care what happens to them. The result is a frame of institutional distrust, a lens that negatively colors future interactions, not just with the police but also with other important social institutions and actors, like a veil of suspicion and doubt. The institutional distrust frame refers to a lack of confidence in the capacity of mainstream institutions—and the individuals who run them—to aid boys from places like Roxbury Crossing and Franklin in realizing mainstream values. Boys with this frame are then much more willing to listen to the words of older peers on the street who “tell it like it really is” and who offer other unconventional or alternative cultural frames and scripts.

The institutional distrust frame influences boys’ interpretations of their experiences in other contexts, such as school. The idea that teachers and other school staff are not interested in the well-being of their students but rather in getting paid and in wielding power—described above by Simon—colored their interpretations of school experiences. Junior, age 15 and from Franklin, made the link between teachers and police officers explicit as he described an incident in school in which he felt disrespected by the authorities:

Teachers, they’re just like cops, the way they talk to you. They talk to me like I’m a nobody. Like I was in class talking to my friend. I started laughing. My teacher doesn’t like it when I smile. So she sends me out of class, goes to [the administrator] and he’s like, “You have to go home.” While I’m walking out and he’s still talking, he’s like, “Oh, you think you’re a tough guy? You think you’re a tough guy?” I just felt like punching and hitting.

Despite my emphasis on the cultural power of older adolescents and young adults on the streets, I do not wish to argue that adolescents in disadvantaged communities are only exposed to the cultural models presented by older friends and acquaintances or that the models that older adolescents provide are always deviant. Instead, the social processes I have described here explain how adolescents encounter—and why they take seriously—local cultural models that can be at odds with more mainstream models held by others in their communities and elsewhere. As discussed later, adolescents in such neighborhoods must contend with an environment containing a wide range of cultural models. Cross-cohort socialization is an important source of such models, but it is not the only one.

IX. CULTURAL HETEROGENEITY IN POOR COMMUNITIES

What are the broader cultural consequences of cross-cohort socialization, institutional distrust, negative role models, leveling of expectations, and cultural resonance that

result from the frequency and structure of neighborhood violence in Boston's poor communities? Compared to their counterparts in Lower Mills, the young men of Franklin and Roxbury Crossing are exposed to and employ a wider array of frames, scripts, and goals. They must navigate a far more complicated and diverse cultural environment, one that is heterogeneous in the cultural models available to adolescents.

Teenage pregnancy provides one example. Multiple frames inform adolescents about the consequences of becoming a father or mother at a young age. According to one frame, early parenthood is a hindrance to schooling and future success. The responsibilities of providing for and caring for a child may make it impossible to continue high school and preclude attending college. Another frame highlights the possibility that having a child at a young age will be bad for the child because a young parent is unable to be a good parent. Yet an opposing frame was also often invoked by boys in Franklin and Roxbury Crossing. Some of the boys felt that a parent who is too old will have trouble relating to his child and understanding the child's experiences. An older parent will not have the physical energy to play with the child, particularly in sports such as basketball and football that are popular among these boys. Opportunities to bond over shared activities will be lost, and the parent-child relationship will suffer, reducing the parent's influence over the child. In addition, an older parent will not be able to understand and relate to the experiences of the child. This also means that the parent will be less able to help the child through the trials of childhood and adolescence, including the violent neighborhoods boys in Franklin and Roxbury Crossing must navigate every day.

Another frame highlights the status that comes from fatherhood. A child has the power to boost a young man's masculinity and to instantly grant adult status to a new parent. A father has new, adult responsibilities to care for and protect another human being. It means that it is time to "get serious" and "stop playing around." The responsibilities that come with fatherhood are perhaps the only legitimate excuse to abandon one's close-knit peer group and stop running the streets.

There is also considerable cultural heterogeneity in the education scripts to which the boys of Franklin and Roxbury Crossing were exposed and drew on to understand their own educational trajectories. Most boys knew of individuals who had achieved economic success through a variety of means. Even the conventional path to success, attending a 4-year college, has multiple variants. One can study hard in school and receive a scholarship or financial aid. One can be a star athlete and be recruited to play for the college team. One can take remedial courses at a community college, earn an associate's degree, and then decide whether to go on for a bachelor's degree. Alternative educational models are also available, however. If one is frustrated or bored by high school, one can drop out, get a GED, and attend community college. Advertisements for technical trade schools in computer repair, automobile technology, medical record keeping, and heating and cooling systems maintenance are ubiquitous on public transportation and in the media. There is Job Corps, a residential education program that emphasizes GED prep, literacy, and learning a trade or craft. Finally, although none of the boys planned to turn to the streets, there is always the possibility of dealing drugs, at least temporarily until some other opportunity comes along.

Such unconventional or alternative pregnancy frames and educational scripts are rooted in mainstream or middle-class cultural ideas and values. The notion that younger fathers can make better fathers is at its core based on the importance of fatherly responsibilities and the expansion of the father's role from merely providing material support for his family to being a nurturer. Similarly, an emphasis on masculinity is rooted in very conventional ideas of manhood that involve supporting and heading a family. The value of learning a trade or a skilled craft, becoming an entrepreneur, or pulling oneself up by one's bootstraps by any means necessary are all based on widely available rhetoric in American culture. Moreover, conventionalizing influences, such as parents, religious institutions, schools, and the media, present youth with middle-class or mainstream cultural ideals that compete with the alternatives that are developed locally. Mainstream values continue to have strength, even as young people are presented with a heterogeneous array of frames, scripts, and other cultural models.

X. CONSEQUENCES OF CULTURAL HETEROGENEITY

What are the consequences for adolescents who face a wide array of cultural models in their social environment? If an individual's cultural repertoire is constructed from what he observes among the people with whom he interacts and from the broader cultural ideas to which he is exposed through media and institutions, then the average adolescent in a disadvantaged neighborhood will have a wider repertoire of possibilities. Even more critical, the social environment contains less information about choosing among these cultural models. When it comes to choosing a course of action from among available scripts, prioritizing various goals, or considering the various frames that define the pros and cons of particular life events, adolescents in disadvantaged neighborhoods have much more to grapple with than those in more affluent areas. This can have consequences not just for how they talk about their plans and options but also for their decision making and behavior.

It is hard to make sense of multiple competing and conflicting cultural models, particularly for adolescents, who struggle to develop their own identities. In the presence of cultural heterogeneity, the advantages and disadvantages of various options are more poorly defined than in a more homogenous cultural environment. The social environment provides a weaker signal about what option is best because there is social support for many different options. Because there is less consensus or agreement where there is greater heterogeneity, it will be harder for the adolescent to choose between competing options. The result may be weaker commitment to the chosen option and a lower likelihood of follow-through. With a weaker commitment, it is easier to change one's mind when a particular option does not seem to be working out. Another option is available with local approval. There are always others one can look to who appear to be surviving

(or even thriving) while engaging in behavior consistent with various competing cultural models. Furthermore, those individuals will tend to defend the decisions they have made. In a culturally heterogeneous environment where there is considerably less than unanimous social and cultural support for particular frames and scripts, individuals will also face frequent challenges to their chosen cultural models. Obstacles or setbacks may be more likely to push the adolescent off track. In other words, cultural heterogeneity can result in a lack of anchoring to a particular frame, script, or goal. I use the term “model shifting” to refer to problems of weak commitment to cultural models due to cultural heterogeneity.

In the short term, model shifting can facilitate necessary adaptations to difficult circumstances, but it can have negative long-term consequences. For example, when a romantic partner is not serious about contraception, one can downplay the “pregnancy as roadblock” frame and adopt the “parenthood as status” frame to evaluate and understand one’s options. Similarly, when high school becomes unpleasant, the GED route to college is also available. When some boys in Roxbury Crossing and Franklin begin to struggle in high school, they quickly abandon that route to college and attempt to gain access by earning a GED and then attending a community college. Yet this route can easily backfire if the GED exam is too challenging or the adolescent fails to enroll in community college and is left with only second-rate educational credentials. Although adolescents in more culturally homogeneous neighborhoods like Lower Mills may also know in the abstract that a GED plus community college is an option, such a path would be a major deviation from what is conventional among their peers, making it seem less viable in practice.

A second type of problem is that, for any particular cultural model, there will be less information about how to carry it through. In a social environment in which many options are present and visible, there will be fewer who have taken a particular path. Because fewer individuals have followed a particular script, there will be fewer examples of how to do so. In other words, the details of the available scripts will be less clearly developed, which will make it more difficult to successfully carry out the script. For example, college enrollment requirements and admission and financial-aid procedures will be more difficult to figure out when fewer neighbors have previously successfully completed the process. Those who want to follow a script for college attendance and know the broad contours of that script will be less likely to know in detail the actions required to successfully realize the script. I use the term “dilution” for problems relating to knowledge of cultural models when there are many heterogeneous models.

Another example of dilution is the power of multiple competing frames for romantic relationships to dilute boys’ understandings of committed long-term relationships. Boys in Roxbury Crossing and Franklin categorize girls and relationships in multiple ways, and some of the most salient categories are those in which girls try to take advantage of a boy either sexually or financially. The prominence of this distrust dilutes the definition of a strong, committed relationship. Relationships that last and are characterized by some degree of trust look strong in comparison to the alternatives boys see around them, resulting in thin conceptions of committed relationships. David, 17, from

Franklin, expects the girls he meets to be after sex or money, rather than a real relationship, so when this did not prove to be the case with his current girlfriend of 18 months, he decided he trusted her enough to be less careful about using condoms. She is not going to give him a sexually transmitted infection, and, if she gets pregnant, he believes the two of them have a strong enough relationship that they can raise the child together.

Finally, cultural heterogeneity can result in adolescents concurrently employing multiple scripts, multiple frames, or multiple goals. In some cases, they are unaware of the contradictions and are combining different aspects of incompatible cultural models. The result is that none is enacted successfully. In other cases, they are fully aware of the contradictions but are unable to resolve them. They sometimes operate in accordance with one model and at other times in accordance with another, often based on the immediate situation or context. In addition, these contradictions can be paralyzing and confusing when it comes to taking action or making decisions, resulting in delay of action or decision making, which appears to outsiders to be a lack of initiative or drive. I use the term “simultaneity” to refer to problems caused by holding multiple cultural models at the same time.

An example of the simultaneity problem comes from Reed, 15, from Franklin. Boys like Reed in Roxbury Crossing and Franklin are exposed to a wide array of competing and conflicting scripts for educational attainment. As Reed begins high school and is thinking about his educational future, he mixes elements from various scripts. He believes that his participation in football will give him the “points” he needs to graduate from high school even if he does poorly in his classes and on standardized tests. Unbeknown to him, he is mixing a script for admission to elite colleges and universities, for which extracurricular activities can improve one’s application, with the graduation requirements of his public high school, where only passing grades in required courses and the state’s high-stakes proficiency tests in math and English determine whether he actually gets a high school diploma.

XI. CONCLUSION

The findings presented in this essay have implications for theory and research, as well as for policy and practice.

A. Implications for Theory and Future Research

Recent scholarship has coalesced around two separate but linked theoretical models of neighborhood effects on individuals: the social isolation theory and the social organization theory. Social isolation theory argues that residents of concentrated poverty neighborhoods live in isolation from middle-class or mainstream social groups, organizations, and institutions (Wilson 1987). The joblessness endemic to high-poverty areas

means many residents are not connected to the mainstream labor market, an important link to the culture of middle-class life (Wilson 1996). A general lack of resources also means that sustaining neighborhood institutions is more difficult, further isolating neighborhood residents from mainstream institutions and lessening the contexts available for creating strong social networks within the community. In neighborhoods with high rates of joblessness, many children do not experience life organized around work, and reliance on illegitimate sources of income reduces attachment to the labor market. In short, social interaction in isolated neighborhoods leads to the development of cultural repertoires that differ from the mainstream. In its most extreme form, this theory posits that ghetto neighborhoods have developed alternative and oppositional subcultures (Fordham and Ogbu 1986; Massey and Denton 1993). These cultural repertoires are thought to significantly affect adolescent outcomes, presumably through their influences on decision making.

My results call into question one of the fundamental ideas of social isolation theory—that disadvantaged neighborhoods are isolated from mainstream or middle-class culture. Instead, I posit that disadvantaged neighborhoods contain a mix of mainstream and alternative cultural models. Social isolation theory may apply in the poorest, most segregated neighborhoods of former industrial cities like Chicago, but its predictions do not seem to hold in Boston's poor neighborhoods or in the typical poor neighborhoods in U.S. urban areas (Harding 2007, 2011). This suggests that further research on the social networks and exposure to mainstream institutions among the urban poor is required to better assess social isolation and to understand sources of variation in social isolation across poor neighborhoods. In addition, the presumed link between social isolation and cultural isolation is worthy of further study.

Although social isolation theory emphasizes social and cultural disconnections between neighborhood residents and the outside world, social organization theory focuses primarily on internal neighborhood processes. Disadvantage is said to lead to difficulties in establishing and maintaining order. Lack of resources, ethnic heterogeneity, and population turnover lead to fewer social ties and therefore diminished social control—the capacity of a community to regulate the behavior of its members (Park and Burgess 1925; Shaw 1929; Shaw and McKay 1969; Sampson, Raudenbush, and Earls 1997). Communities with denser social networks are better able to articulate and enforce common norms and values. Neighborhoods with low levels of social organization may have difficulty regulating adolescent behavior other than crime and delinquency.

The findings in this study are generally supportive of neighborhood effects models based on social organization theory, and they move us toward understanding the mechanisms underlying these models. Social organization theory highlights the limited capacity of residents in disadvantaged communities to regulate the public behaviors of their neighbors, particularly young people. Heterogeneity in cultural lifestyles or orientations can be understood as the failure of more middle-class or mainstream-oriented residents of disadvantaged neighborhoods to control behavior in their communities. The result of this failure is that neither oppositional nor mainstream behavior is dominant in disadvantaged communities. The importance of violence in structuring social

relations and in contributing to the development of alternative cultural models also extends social organization theory by showing how a poor community's diminished capacity for regulation of behavior can have collateral consequences in other domains. Nevertheless, the many pathways through which violence may affect adolescent development and decision making have yet to be systematically identified and elaborated, particularly the interactions between social and cultural consequences of exposure to violence and psychological consequences such as posttraumatic stress disorder and slowed cognitive development.

Further research is also necessary to more completely understand the consequences of a culturally heterogeneous neighborhood environment for adolescent decision making and outcomes. First, survey-based measures of cultural repertoires, frames, narratives, and scripts need to be developed to allow quantitative research on the impact of neighborhood cultural context on individual outcomes. Second, longitudinal studies, both qualitative and quantitative, are needed to further examine the processes and mechanisms described in this study as they unfold over time and to test the link between cultural heterogeneity and long-term outcomes. Third, more needs to be learned about how some adolescents are able to successfully navigate culturally heterogeneous neighborhoods and the resources that allow them to do so.

B. Implications for Policy and Practice

The role that violence plays in structuring social networks and cultural frameworks means that successful efforts to permanently reduce violence in disadvantaged neighborhoods will produce benefits not just for safety, emotional well-being, and health, but also likely for other domains, such as schooling and early childbearing. In evaluating the costs and benefits of violence-reduction programs, the collateral consequences of violence on school dropout and teenage pregnancy should be taken into account, which may make antiviolence programs even more cost effective.

Efforts to reduce violence in poor neighborhoods must take into account the ways in which violence is organized. Boston's inner-city violence is not simply the product of interpersonal disputes or large, highly organized gangs. It is also driven by neighborhood rivalries, often sustained by small numbers of individuals. The "Boston Miracle," a large drop in youth homicides during the late 1990s, was engineered by religious leaders, law enforcement, street workers, and social service providers who recognized the way that youth violence is organized in Boston and targeted (with both sanctions and services) the impact players who maintained the rivalries, intervening when these rivalries appeared ready to turn bloody.

A key finding of this research is that violence is embedded in a system of social relations and is not simply the result of individual decision making. As such, it is not necessarily easily manipulated by changing costs and benefits for individuals, such as get-tough policies that increase prison time. It is not at all clear that increased penalties for violent behavior make the marginal adolescent significantly less likely to engage in

violence because he must consider many other factors, not the least of which is his own physical safety should he fail to maintain loyalty to his peer group or fail to stand up for himself when tested. Moreover, for those “hard core” youth who drive neighborhood rivalries and ignore the long-term consequences of violent behavior, more severe sanctions may simply serve to disadvantage them further, as extended incarceration exacerbates their already tenuous connection to the labor market and produces a stigma that will disadvantage them for years to come (Pager 2003; Western 2006). Instead, we need more creative approaches to violence reduction that draw on an understanding of the social organization of youth violence to intervene in conflicts at key points, with key individuals, and with an appropriate combination of sanctions and services.

Finally and most generally, we need to reorient how we think about the cultural context of poor urban neighborhoods and, by extension, of urban poverty. I have argued that, rather than being characterized by a subculture distinct from mainstream society, poor neighborhoods are more accurately described as culturally heterogeneous. In particular, the goals and values that most Americans subscribe to—education, hard work, marriage, and family—are also dominant in poor neighborhoods. Poor neighborhoods are distinguished by the presence of competing cultural models that vie for the loyalties of youth. Yet many of our social policies seem to assume that the poor have different values and that strong incentives are needed to encourage behavior that accords with mainstream values of work, schooling, and marriage. Although not denying the conflicting incentives sometimes created by social policies, I argue that the challenge in poor neighborhoods is not a lack of mainstream values and goals; it is a lack of access to the tools and resources needed to realize them, as well as a lack of the knowledge and information necessary to take advantage of such tools and resources.

NOTES

1. According to the 2000 Census, Franklin is 75 percent black and 25 percent Latino, Roxbury Crossing is 56 percent black and 33 percent Latino, and Lower Mills is 64 percent black and 6 percent Latino.
2. The names I have selected for the three fieldwork neighborhoods are not official city designations nor are they names that denote areas with clear or consistent boundaries in the eyes of local residents. However, these names are recognizable to local residents as referring to the general areas of the city where the fieldwork neighborhoods are located. Although the neighborhoods within each area share broadly parallel histories, demographic and structural characteristics, and relations to the larger Boston metropolitan area, when the boys and their parents describe their neighborhoods, they are referring to much smaller spaces, often only a few blocks in any direction. The terms “Roxbury Crossing,” “Franklin,” and “Lower Mills” serve as shorthand to delineate the three comparison study areas and to provide anonymity for the research subjects by broadening the geographic scope of reference.
3. Author’s calculations are from incident data provided by the Boston Police Department.
4. Interview protocols provided general, open-ended questions and probes for follow-up questions. All interviews were recorded and transcribed, then coded in Atlas TI. The parent

interviews, conducted with a parent for 80 percent of the boys, provided a caretaker's perspective on a boy's experiences and a check on the accounts offered by the adolescent boys. Each interview session lasted 60–90 minutes. Prior to the interviews with the boys and their caretakers, I interviewed 50 community leaders, ministers, youth workers, social workers, and school officials who were knowledgeable about the study neighborhoods or about youth issues in the Boston area. These “neighborhood informant” interviews provided background information on and entrée into the fieldwork neighborhoods, as well as an additional check on the boys' accounts and descriptions of their neighborhoods. In addition, many neighborhood informants assisted with recruiting the participating boys and their parents.

5. Due to high rates of incarceration in the 1990s, Boston's poor communities experienced an influx of former prisoners (Winship 2004), making the available older role models an even more disadvantaged group.

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CHAPTER 9

CASE STUDY

African-American Girls, Urban Inequality, and Gendered Violence

JODY MILLER

In his bestselling autobiography *Makes Me Wanna Holler: A Young Black Man in America*, Nathan McCall (1994, pp. 44, 50) describes the routine adolescent practice in his neighborhood of running “trains” on girls:

Although everybody knew it could lead to trouble with the law, I think few guys thought of it as rape. It was viewed as a social thing among hanging partners, like passing a joint. The dude who set up the train got pats on the back. He was considered a real player whose rap game was strong.... Even though it involved sex, it didn't seem to be about sex at all. Like almost everything we did, it was a macho thing. Using a member of one of the most vulnerable groups of human beings on the face of the earth—black females—it was another way for a guy to show the other fellas how cold and hard he was.

McCall provides a searing analysis of racial and class inequalities, urban violence, and their devastating effects on the psyches and behaviors of young men of color. But, as the above passage illustrates, he also describes violence against young women as routine. Although many scholars recognize the connections between racial inequality, neighborhood disadvantage, and violence, the gender-based violence so readily recounted by McCall and others is largely absent from scholarly discussions of urban crime. Violence against young women is a ubiquitous but too often invisible feature of the urban landscape, leaving it underexamined and thus undertheorized.¹ And this remains the case despite a small but growing body of evidence that suggests strong patterns linking neighborhood disadvantage, racial segregation, inequality, and gendered violence (Lauritsen and White 2001; Benson et al. 2003, 2004; Dugan and Apel 2003; Lauritsen and Schaum 2004; Dugan and Castro 2006; Lauritsen and Rennison 2006).

To investigate this important social problem further, in this essay I discuss findings from my qualitative investigation of violence against African-American girls in disadvantaged neighborhoods in St. Louis, Missouri, drawing from in-depth interviews with 75 youth (both female and male) living in such communities. Given that recent quantitative investigations had demonstrated the strength of the relationships between urban inequality and violence against women, my goals were to delve deeper into this social problem to gain a better contextual understanding of gendered violence in disadvantaged communities and its consequences for young women. My specific interest was to investigate the social contexts in which violence against young women emerges, with an emphasis on the situations that produce and shape such events. Specifically, I focused on neighborhood, school, and peer dynamics that structure girls' victimization risks, as well as on the gender ideologies youths draw from in order to account for and interpret such violence.

Qualitative research of this nature utilizes an inductive theoretical orientation. Stated simply, this means that the data collected are what form the foundation of the analysis, rather than the application of preexisting concepts. Insights emerge from careful examination of the stories youth tell about their experiences and the ways in which they tell them (see Miller 2011; Miller and Glassner 2011). My analysis is thus grounded thoroughly in the rich narratives produced through the in-depth interviews completed for the research. Yet it also draws influence from significant strands of sociological, criminological, and feminist theory, both to orient the questions under investigation and to situate my microlevel findings within more macrolevel contexts. The research was thus inspired by neighborhood-level investigations in the contemporary tradition of social disorganization theory (see Bursik and Grasmick 1993; Sampson, Morenoff, and Gannon-Rowley 2002) and theoretical accounts of street culture in disadvantaged communities (see Anderson 1999), as well as in sociological feminist theory on gender as a multilevel organizational, interactional, and ideological property of social life (see Connell 2002).

As I present the findings from my qualitative research, several important themes will be clear:

- There are compelling sociological explanations for why distressed minority communities in urban settings would have disproportionate rates of violence against women. Research suggests that male-dominated social organization, coupled with limited external oversight and generally high rates of (and support for) violence, facilitate social norms and cultural values supportive of violence against women.
- These are in keeping with patterns that have been identified in other high-risk settings, such as college fraternities, sports teams, and the military, where parallel social organizational features and cultural processes are at play and expectations for exaggerated masculine performances are thus also heightened.

- Recent empirical research bears out these expectations: risks for violence against women are significantly higher in disadvantaged urban communities than in many other settings.
- My qualitative investigation—the case study discussed in this article—reveals that gendered violence is particularly acute for adolescent girls in neighborhoods characterized by intense disadvantage: they routinely witness violence against women in public spaces, face widespread sexual harassment, and are at heightened risk for a continuum of sexual violence, including sexual coercion and assault, as well as gang rape. These heightened risks are associated with high rates of other crime and male domination of public community spaces; environmental features of neighborhoods; the reluctance of community members to intervene on violence, including the mistreatment of women and girls; and acute distrust of the police, as well as the dominance of cultural norms that support gender inequality and the sexual objectification of young women. Young women do their best to navigate these dangerous terrains but encounter vastly inadequate social and institutional supports.
- Such violence is a critical social problem in need of careful theoretical and policy attention. This requires that we expand our investigations to pay close attention not only to young women's experiences, but also to young men's accounts and interpretations of violence against women. This is the only way to garner insights from the very people whose behaviors we hope to intervene on. Alternatively, when we focus most of our energy on studying the victims of such violence, we inadvertently perpetuate the idea that violence against women is a *women's* problem.
- Moreover, these are structural and ecological problems. They require policy solutions that simultaneously address the nature, function, and meanings of gender inequality and offer productive strategies for ameliorating the multifaceted and interconnected problems created by the structural inequalities faced by the urban poor.

To illustrate, the essay begins in Section I with an overview of the extant literature on the relationship between gender inequality and violence against women, explaining why we should expect that urban communities characterized by race and class inequalities would also have disparate levels of violence against women. I do so by examining structural, situational, and cultural properties associated with violence against women. Section II then describes the neighborhood contexts of the young women and young men in my study, including their descriptions of crime and disorder, their accounts of the gendered organization of neighborhood life for adolescents, and their perceptions of risks for violence across gender. I expand on this discussion in Section III, examining the three prominent features of violence against women and girls described by the youths in the study: the public visibility of acts of physical violence in their communities; the extensive sexual harassment of adolescent girls by their male peers and adult men; and the pervasive nature of sexual violence, including sexual coercion, sexual assault,

repeat victimization, and gang rape. I focus specifically on the situational contexts of such violence, linking my findings back to the social properties researchers have found to be associated with gender inequality and gendered violence. The article concludes with a summary of the key findings, along with a discussion of the policy implications that emerge from the research and the priorities for future research on this significant social problem.

I. GENDER INEQUALITY AND VIOLENCE AGAINST WOMEN: WHY RACE AND PLACE MATTER

There are, in fact, compelling sociological reasons to expect violence against young women to be particularly acute in racially segregated, disadvantaged urban neighborhoods. More than 30 years ago, anthropologist Peggy Reeves Sanday (1981) found that sexual violence is patterned by structural and cultural features of communities. Using a sample of 156 societies, she examined what factors distinguished those that were “rape prone” versus “rape free”—that is, those societies in which rape was both widespread and allowable versus those in which rape was both uncommon and penalized. Across disparate societies meeting the designation “rape prone,” Sanday found consistent organizational properties that distinguished them from societies with minimal sexual violence. These included the institutionalization of male dominance (including, for example, women’s treatment as property and their exclusion from decision-making roles), hierarchical gender separation (men as a social group being defined as both distinct from and superior to women), and high rates of interpersonal violence. In contrast, rape-free societies were characterized by greater gender equality or complementarity, prestige and respect associated with women’s productive and reproductive roles, and consistently low rates of interpersonal violence (see also Helliwell 2000).

Since Sanday’s path-breaking investigation, numerous scholars have examined the linkages between rape culture, structural gender inequality, and violence against women. Rape culture, typically conceptualized as “a set of values and beliefs [about men, women, gender, and sexuality] that promote an environment conducive to rape” has been linked, at the individual and group levels, to both rape and the treatment of rape victims (Boswell and Spade 1996, p. 133; see also Scully 1990; Truman, Tokar, and Fischer 1996; Calhoun et al. 1997; Willan and Pollard 2003). In addition, researchers have found that structural gender inequalities—including disparities in income and education, rates of labor force participation, and voter participation—are correlated with rates of violence against women (Peterson and Bailey 1992; Whaley 2001; Xie, Heimer, and Lauritsen 2012).

Moreover, researchers have begun to specify the characteristics of particular social contexts in which the risk for sexual violence is especially heightened. Much of this

work has focused on college populations generally and fraternities specifically (Sanday 1990; Schwartz and DeKeseredy 1997). Sociologists Martin and Hummer (1989), for example, highlight three overriding features that make college fraternities particularly high risk: organizational characteristics, the types of behaviors that bring status and social reward to members, and “a virtual absence of university or community oversight” (p. 459). They conclude that the roots of sexual aggression in fraternities lie in their organization as male-dominated settings, in which narrow conceptualizations of masculinity that reward aggression, competition, and the devaluation and mistreatment of women are valorized.² Group loyalty, distrust of outsiders, and limited community scrutiny or intervention create conditions that both foster sexual coercive behaviors and reduce the likelihood that such events will come to public light or be penalized. Moreover, research on other male-dominated organizational settings—for instance, sports teams and military groups—has also found similar normative constructions of masculinity, as well as heightened male peer support for sexual coercion, limited oversight or accountability, and higher risks for sexual violence (Lefkowitz 1997; Franklin 2004).

Although settings like college fraternities are privileged social locations, and there is thus much that distinguishes them from racially segregated, disadvantaged urban communities, there are important normative, status, and organizational parallels between them. First is what sociologist Elijah Anderson (1999) conceptualizes as the “code of the streets”: behavioral expectations for young men in disadvantaged communities that emphasize masculine reputation and respect, achieved through presentations of self that emphasize toughness and independence, a willingness to use violence, and heterosexual prowess demonstrated by means of sexual conquest. Anderson (1999) and others trace the dominance of this presentational and behavioral style to structural dislocation. Given “the unique history of racial oppression and persistent denial of access to legitimate avenues of mainstream masculinity construction . . . street reputation, pose, and associated violence become central to [some young] black men’s identities” (Mullins 2006, p. 25; see also Majors and Billson 1992; Messerschmidt 1993; Oliver 1994; Bourgois 1996; Harding 2010). It makes sense, then, that adherence to these facets of masculinity construction results in cultural support for violence against women and its ubiquitous presence in the lives of urban African-American young women.³

Second, neighborhoods where such “street codes” are prevalent typically fit the academic designation of “urban disadvantaged” or “highly distressed”: they are characterized by intense racial segregation and residential turnover; disproportionate rates of poverty, unemployment, and female-headed families; and high rates of crime, including violence (see Bursik and Grasmick 1993; Sampson and Wilson 1995; Sampson, Raudenbush, and Earls 1997). Generally high rates of violence, as noted, appear correlated with rates of violence against women. One additional result of such community conditions is limited collective efficacy—that is, the ability to generate social ties and protective mechanisms among community members in order to create processes conducive to the willingness to intervene on behavior of neighbors and monitor the behavior of young people (Sampson, Raudenbush, and Earls 1997; Sampson, Morenoff, and Earls 1999; McNulty and Bellair 2003). To develop “mutual trust and

shared expectations” among residents, neighborhoods must have institutional, political, and economic resources, which are limited in highly distressed urban communities (Sampson, Morenoff, and Gannon-Rowley 2002, p. 457).

Moreover, residents in highly distressed urban communities often experience a combination of over- and underpolicing that creates distrust of law enforcement and their behaviors toward neighborhood residents, with the result that they are seldom viewed as a positive resource for combating neighborhood problems (Klinger 1997; Sampson and Bartusch 1998; Brunson 2007; Gau and Brunson 2010). Again, such findings suggest important parallels with feminist research on the types of settings in which violence against women is most likely to thrive: those characterized by limited or ineffective oversight (both formal and informal) of community members’ behaviors.

Despite the compelling nature of these connections, few studies have systematically investigated the relationships among racial inequality, urban disadvantage, and violence against young women. This was the impetus for my 2008 book, *Getting Played: African American Girls, Urban Inequality, and Gendered Violence*, which investigates the nature and contexts of violence against adolescent girls in distressed urban neighborhoods. The research is based on qualitative in-depth interviews with 75 African-American young women and men, aged 12 to 19, living in the city of St. Louis, Missouri. Youths were asked to describe neighborhood, school, and peer dynamics that shape interactions within and across gender, to discuss the nature and contexts of girls’ victimization risks, and to talk about the gender ideologies they and other youths draw from in order to account for and interpret such violence.⁴

The vast majority of the youths interviewed for *Getting Played* resided in neighborhoods characterized by entrenched racial segregation and economic disadvantage. In many ways, St. Louis was an ideal site for conducting the research, as it typifies the highly distressed urban city, with large concentrations of extreme disadvantage that result in social isolation, limited resources, and high levels of violence among its African-American poor (Baybeck and Jones 2004; Hayward and Swanstrom 2011). My goal was to explicitly bring together theoretical insights on violence against women and racial disadvantage—coupled with youths’ rich accounts of their experiences of gender, sexuality, and violence—to investigate how the structural inequalities that create extreme racialized urban poverty facilitate both cultural adaptations and social contexts that heighten and shape the tremendous gender-based violence faced by urban African-American girls.

II. GENDER, RACE, AND NEIGHBORHOOD CONTEXT

St. Louis is one of the most racially segregated cities in the United States (Rusk 1995). Like many other rustbelt cities, it has experienced decades of disproportionately white

population decline (Baybeck and Jones 2004). Despite the city's nearly equal distribution of African Americans and whites, large parts of the city remain highly segregated. On average, the youths in my study were from neighborhoods that were more than 80 percent African American. Moreover, the disadvantage found in the poorest urban black neighborhoods in St. Louis is ecologically unmatched. As Sampson and Wilson (1995, p. 42) point out, "the *worst* urban contexts in which whites reside are considerably better than the *average* context of black communities." This is the case in St. Louis: youths interviewed for *Getting Played* resided in neighborhoods characterized by low median family incomes, high rates of poverty and unemployment, and very large proportions of female-headed families. In fact, not a single youth in the sample came from a neighborhood that was consistently comparable to the citywide averages.

Asked to describe her neighborhood, 16-year-old Kristy summed it up in one word: "slum." For 17-year-old Cleshay, that word was "ghetto." Cleshay's elaboration was bleak:

Terrible. Every man for theyself. Ghetto in the sense of raggedy, people uncool to people, just outside, street light never come on, police don't come in after four o'clock. . . . Heavy drug dealing. They loud, they don't care about, you know, the old people in the neighborhood or nuttin'. It's been like, females, it was a 10-year-old girl who got raped recently and kilt and didn't nobody—our walls in our neighborhood thin, so I know somebody hear her screaming—[but] didn't nobody, you know, even try to help the girl or nuttin' like that.

Maurice, age 14, provided a comparable account:

A lot of gangs, lot of drugs, uh dirt. Dirty, like the streets are polluted. That's it. A lot of abandoned houses, lot of burned up houses. [That's] 'cause of the drugs and the gangs I guess. . . . Vandalism, they get into a lot of fights, bring property value down, you know, people don't take care of they houses. And you know, don't nobody really wanna live there no more so everybody starts to move. That's why a lot of abandoned houses. Then, when it's a lot of abandoned houses that means the block cold, that mean not that many police around. So that's when dope people move in on that block, you know what I'm saying, go open they shop there. And whenever they go do that, then, you know what I'm saying, lots of crackheads start moving in, lot of gangs, you know what I'm saying, lot of shoot-outs because people, you know, taking other people's things.

Several important themes are present in these descriptions. Each makes note of physical deterioration in the neighborhoods. Complaints against the police include both widespread harassment and underpolicing (see Brunson and Miller 2006a, 2006b). Residents are described as too often unconcerned with their neighbors' well-being and as unwilling to intervene when someone is in danger. In addition, their descriptions suggest that their neighborhoods appear dominated by criminal networks that hinder the daily lives of residents, with crime—including gender-specific violence—seemingly ubiquitous. As Maurice deftly points out,

these facets of the neighborhood are interconnected. Although scholars have only recently linked such neighborhood conditions to violence against women, a substantial body of research documents how community processes like those described by Maurice and Cleshay evolve from structural inequalities and translate into high rates of community violence (Sampson, Raudenbush, and Earls 1997; Sampson, Morenoff, and Earls 1999; Sampson, Morenoff, and Gannon-Rowley 2002; McNulty and Bellair 2003).

When youths were asked to describe their neighborhood or elaborate on its problems, three interrelated themes came up repeatedly: drug dealing, street gangs, and associated gun violence. Sixteen-year-old Kenisha explained, "it's shooting every other night, gangs, people selling drugs over there, it's real bad." LaSondra, age 17, concurred, "I don't like that neighborhood, it's just too much happening. Crackheads roaming around, drug dealers, everything... They shoot, rob, kill." However, a striking feature of youths' neighborhood descriptions was a subtle variation that emerged across gender: young men were more likely to indicate their active engagement in neighborhood life (using first-person pronouns in their descriptions, for example), whereas nearly all of the young women described what "*they*" do in the neighborhood.⁵ Young men clearly appeared more embedded in their neighborhood street networks than the vast majority of young women, making these male-dominated action spaces with important consequences for young women's gendered risks.

To investigate these questions, youths were first asked whether and how they perceived neighborhood risks to be shaped by gender. Regardless of whether they believed males or females were safer, or, conversely, faced greater neighborhood dangers, the majority of their responses drew from gender-specific meanings about the nature of neighborhood risks (see Cobbina, Miller, and Brunson 2008). Those who believed that young men faced greater dangers focused on how their neighborhood activities structured risks against them. Specifically, they noted young men's participation in gangs and drug selling, and the much greater likelihood for male violence to involve firearms. Some also noted that males faced more dangers at the hands of the police (see Brunson and Miller 2006*b*). Young women, they believed, were insulated from such dangers because they were less involved in street action, rarely used guns, and because they believed street conflicts over gangs and commodities from the drug trade tended to be the purview of young men.

Likewise, youths who emphasized the dangers posed to girls in their neighborhoods also focused on gender-specific issues. Although risks for males were believed to be tied to gangs and offending, youths emphasized the dangers to girls caused by predatory male behavior. LaSondra described her neighborhood as safe "for nobody," explaining, "females get raped, males get killed." Likewise, 17-year-old Dwayne said "anybody can get hurt" in his neighborhood, "if [girls] look good, somebody might try to touch 'em or something. And they might not want them to touch them and they might say something to 'em. And the dudes in my neighborhood, they might try to beat them up 'cause the girl wouldn't let them touch 'em." As these comments suggest, the threat of sexual violence was a common theme among youth in the sample.

In fact, young women were particularly concerned by the presence of men and boys regularly congregated in public spaces in their neighborhoods. Britney, age 14, believed that girls “face a lot of stuff” and felt particularly unsafe walking through the parking lot near her housing project, specifically because “it be all grown men standing out there...drinking and smoking weed, selling drugs and everything... You know, and when you walk past trying to go to the [gas] station, you don’t know what they can do, what could happen. They can grab you in the car and rape you and whatever.” Young men also emphasized sexual dangers in their discussions of girls’ neighborhood risks. Thirteen-year-old Antwoin said it was safer for males “‘cause like the females, all the dudes be wanting to try to freak, you know, have sex with ‘em, all that kinda stuff.” Darnell, age 17, explained, “you don’t catch no girl walking, you know what I’m saying, on the northside.⁶ Not in no nighttime...’ Cause things happen, things happen.”

In addition, youths reported that young women’s vulnerabilities emerged from perceptions of them as “weak.” Britney believed males were less likely to be “messed with” because they were more likely to “carry a gun.” In contrast, she said “dudes” believe females are “weak—won’t do nuttin’, won’t say nuttin’.” As a consequence, she felt young women were at greater risk for predatory behavior, including sexual assault, because they were deemed easy targets. A number of young men echoed these themes. Curtis, age 14, explained that “males more, I guess, rugged. Males more harder.” Likewise, 16-year-old Kevin said, “women seem more vulnerable.” James, age 17, explained, “dudes, I mean they can pretty much handle theyselves and they ain’t gotta worry about nuttin’, they’re safe. Females, somebody [can] overpower them.”

These exaggerated notions of gender affected not just youths’ perceptions of gender and risk, but contributed more broadly to a hierarchy on the streets in which females were situationally disadvantaged vis-à-vis males and often viewed by males simply in terms of their sexual availability. As Kenisha complained, “dudes get more respect than females... It’s just the way it is over there. The males, they have more authority than girls.” Such gendered status hierarchies affected how young women were treated in public places and how others responded to incidents in which females were mistreated. Moreover, these inequalities limited the recourse available to young women for challenging gender-based violence: they were often held accountable for their victimization as a result of these gendered status hierarchies.

III. NEIGHBORHOOD DISADVANTAGE AND VIOLENCE AGAINST YOUNG WOMEN

Although studies of community violence rarely make distinctions between violence against women and other violent events, youths’ discussions of neighborhood risks clearly emphasized its gendered dimensions. In fact, as noted earlier, recent research has found that—in addition to other forms of violence—violence against women is also

heightened in disadvantaged communities (Miles-Doan 1998; Lauritsen and Schaum 2004). This research suggests that the higher prevalence of violence against women in disadvantaged communities is linked to both the social isolation present in such communities and the difficulties these neighborhoods have in developing collective efficacy (Benson et al. 2003, p. 227). In addition, research on offender networks suggests that public violence against females is quite common and highly visible (Bourgois 1996; Maher 1997; Miller 2001). Thus, not surprisingly, three facets of violence against women were present in youths' accounts of their neighborhoods: exposure to public incidents of physical violence against women, including intimate partner abuse; young women's complaints of widespread sexual harassment in neighborhoods, particularly at the hands of adult men; and incidents of sexual assault and coercion.

A. Witnessing Physical Violence Against Women

A growing body of research has examined the impact for youths of witnessing both family and community violence, indicating that such experiences are related to increases in aggressive behavior, emotional and psychological distress, a heightened sense of vigilance, and increased risk of personal victimization, as well as desensitization toward future violence (Richters and Martinez 1993; Durant et al. 1994; Farrell and Bruce 1996; Graham-Bermann and Edleson 2001). In most of this work, however, community violence is typically conceptualized in gender-neutral terms or measures violence that is most often male-on-male, such as gun violence. Moreover, research on exposure to violence against women most often focuses on family violence in private spaces and behind closed doors. As a consequence, we have little information about how young women are affected by repeated exposure to male violence against women in the community, including its psychological impact and its effects on girls' gender identities and their relationships with both males and other females.

This is a critical gap in our knowledge, made all the more significant by my findings in *Getting Played*, which suggest that not only do young women face gender-specific risks in public spaces, but also that violence against women often takes on features of public spectacle. Many of the youths in my investigation described witnessing such incidents in public view. Such incidents were quite meaningful, as they imparted essential messages about how violence against women is to be interpreted and responded to. This was reflected not only in the descriptions that youths provided, but also in the tone and implications of their accounts. These provide evidence of the interpretive lenses brought to bear on such events and, thus, how youths were taught to think about violence against women.

For example, asked whether she had ever seen a man hurt a woman in her neighborhood, 17-year-old Tisha responded:

Yeah, it's this girl next door. I don't know if she a crackhead or what, her boyfriend just always beatin' her up. She always comin' [over], like, "call the police for me." But then when the police get there she don't wanna press charges or nothin' like that. I don't know, I guess she stuck on stupid. She like getting beat up I guess.

Tisha said that the woman “done let him [back] in [her home] over and over, and she know what he gon’ do to her. So that’s on her. We don’t call the police for her no mo’. Just let her get beat up.” Because, in Tisha’s eyes, the woman had not taken sufficient action to extricate herself from the abusive relationship, she was seen as culpable and thus unworthy of assistance. In addition, Tisha’s speculation that the woman was a “crackhead” paralleled other youths’ accounts. Such labels functioned to distance the victims from the young women who witnessed the events and to suggest that the violence was deserved and the victim blameworthy because of her status.

Tami, age 15, described a recent incident she witnessed involving the man across the street, who was routinely abusive toward his girlfriend:

I don’t know what they was arguing about. When he came outside he was telling her to get her stuff, and she don’t run it, he run it. He be hittin’ her upside her head and she be, “why you hittin’ me? Stop hittin’ me!” and stuff. But she don’t be fightin’ him back or nothin’. He be hittin’ her . . . upside her head, she was just walkin’ down the steps.

Asked how she reacted upon seeing the man hitting his girlfriend, Tami explained:

We was laughin’. Then we was like, that’s a shame and they shouldn’t put up with that stuff. They should go on, leave, but I guess they ain’t got nowhere else to go so they just put up with the stuff. . . . But we figured it wasn’t none of our business. It came outside [so] we was just lookin’ to see what was goin’ on.

Tami’s comments suggest that her reaction to the event was complex. On the one hand, she and her friends found it an amusing public spectacle. On the other hand, she expressed some empathy for the woman, but ultimately concluded that it “wasn’t none of our business,” indicating the important norm of staying out of others’ affairs.

Likewise, of a particularly brutal incident she and her friends witnessed, 16-year-old Kristy described it as both “shocking” and “kind of funny.” She later felt ambivalent about the fact that she and her friends watched and “was laughing,” but ultimately surmised, “I ain’t feel like it was my place [to intervene], you know, ain’t have nuttin’ to do with me.” Others around her likewise reacted with what she called a “code of silence. They didn’t say nuttin’. They just watched.” Her description of the events offers evidence of the neighborhood rule of staying out of other people’s business—a lack of collective efficacy—but also the level of desensitization and callousness that develops toward violence against women in such settings.

Sixteen-year-old Shaun described participating in an altercation with a woman in his neighborhood that combined physical violence with sexual degradation:

It was me and my homies, we was walking down the street, gonna get on the bus. . . . And my homie . . . was talking to some lady, and she was real drunk and she was saying something. She was calling him a nigger or something like that. And he was like, he asked me if I wanted to see her strip, and I was like “yeah.” [So] we ripped her

dress off. She was like, “damn, you wanna see something?” She took her bra and her panties and her shoes off and she threw her shoes at him. And she was swinging on him and stuff. And he kicked her in her stomach and she fell and she got up and she was still swinging. And then his brother stole [punched] her in the face and she was knocked out, she was laying in the street.

Particularly when youths were in the company of peers, incidents of violence against women took on a carnivalesque flavor, with group dynamics that encouraged watching and taking pleasure from the spectacle rather than intervening. Even when youths felt a pang of responsibility to do something, strong norms toward nonintervention won out. Such incidents were significant because of the messages they taught youths about how violence against women is to be interpreted and responded to. Central among these—which even young women learned and often internalized—was that women were to blame for their victimization. Moreover, they saw for themselves that intervention on behalf of female victims was rarely forthcoming. Such responses taught young women the profound lesson that they were likely to be on their own when it came to dealing with gender-based violence.

Norms that discourage residents from getting involved in neighborhood crime are not reserved for female victims. Scholars have tied this pattern to the broader problem of limited collective efficacy and even the reasonable fear of retaliation in high-crime urban communities. However, two features of violence against women are distinctive. First is that norms toward nonintervention were deepened further by the definition of intimate partner violence as a *private* problem, even when it occurred in public. This made such violence an even more isolating experience for its victims. Second is the fact that most youths’ accounts of violence against women included reports of spontaneous laughter. What is especially striking about this is that youths’ accounts of male-on-male violence did *not* include descriptions of laughter or other evidence that these events were looked on with such amusement. Perhaps this stemmed from greater concern that such conflicts could escalate to gun violence. Whatever the reason, it was violence against *women* that youths “got a kick out of” seeing, thus demarcating such violence as unimportant.

B. Neighborhood Sexual Harassment

In addition to witnessing physical violence against women in their neighborhoods, a common problem described by young women and corroborated by young men was the routine sexual harassment of girls. Although the issue of sexual harassment has received a great deal of scholarly attention in the institutions of school and the workplace, limited attention has been paid to harassment in public spaces, such as neighborhoods (but see Gardner 1995; MacMillan, Nierobisz, and Welsh 2000). In all, 89 percent of the 35 girls interviewed for *Getting Played* reported experiencing some form of sexual or gender harassment. Although they were more likely to report having experienced harassment in school, more than half described incidents that occurred in their neighborhoods.

Two kinds of neighborhood sexual harassment emerged in youths' accounts: sexual comments and advances by adolescent male peers in the neighborhood, which often paralleled young women's experiences in school,⁷ and harassment by adult men.

Young women expressed a great deal of apprehension about sexual harassment by adult men in the community. These incidents, more so than incidents involving peers, heightened girls' sense of vulnerability and made them fear for their safety. Fifteen-year-old Nykeshia explained:

The one person I feel uncomfortable around in my neighborhood [is a man who] always askin' me to do something [sexual] with him. And I told my momma about it and she told me "just stay away from him, as far as you can, and I hope he stay away from you." She called the police about it 'cause he had asked me in front of my momma. ... He just denied everything and they was like, "we don't have proof that he asked you that ... we [can't] do nothin' about that."

Nykeshia said this man had been harassing her "since I was about 13," and behaved this way toward other girls in the neighborhood as well. The police were less than helpful, and, to make matters worse, the officer who responded to the call was one who Nykeshia's friend said had sexually assaulted her. Nykeshia noticed that her friend, who "was over there" at the time, quickly "went back in the house" when the officer arrived. "I went in the house too, 'cause I was wondering what she was backing back for, she was just backing back." Thus, not only was the officer's response to the man's behavior ineffectual, but Nykeshia had evidence that the man called to protect her had sexually assaulted her friend. Since the police failed to intervene, she had little recourse but to try and avoid the man and hope he never hurt her.

Britney, age 14, was able to call on her uncle to sanction a man who was menacing her in one instance, but saw his behavior as part of a larger pattern in which adult men targeted adolescent girls:

Older [women], they'll walk past, [and neighborhood men will] be like "how you doing?" But like me, if I walk past, grown man say like "hey baby what's your name?" and I'm 14 years old, they can be 25. I be like, "I'm only 14 years old sir." And they'll be like, "ain't no problem," you know what I'm saying. And that's not right. So one man approached me and he said "hey baby what's your name?" I say, "I'm 14 years old," and he said, "I ain't ask you [your age], I said what's your name." I keep on saying I'm 14. He said "I'm 25 and I don't care." I said "well I'm 14." Then he kept on saying it. So then my uncle had rolled up, [and] he didn't know that was my uncle. So my uncle got out the car and was like "what you saying to my niece?" He like, "I was asking her do she know where somebody stay at." I said "no you didn't, you asked me what's my name and I kept telling you I'm 14, you a grown man." My uncle had said, "if you ever talk to my niece like that again [you will deal with me. So] he walked off.

As Britney's account suggests, girls felt that they were a particular target for adult men in the neighborhood. They expressed great discomfort about being sexualized by adults, and consequently, tended to be especially leery of groups of men.

Young men also described the widespread nature of adult male harassment of adolescent girls. Seventeen-year-old Andrew said of his neighborhood, “females get harassed so much.” He believed it posed a real danger for young women:

Like an older person come through and they’ll see a young girl walking through. She can have a pretty shape, pretty face or whatever, and they’ll see her and they’ll try to dog [her]. They try to talk to her or whatever, and the female will tell them no, or that they’re too young or they too old for them, or they not interested. They get mad and get to calling them bitches and ho’s, disrespecting them. [Then the girls] get mad, they get to cussing them back out. Sometimes the dudes get mad and threaten ‘em, saying, “I’ll do this to you,” or “I’ll do that.”... And a woman know they can’t whoop a dude, so.

Andrew surmised that “older guys” targeted teenage girls because “I guess they feel like with a younger girl they can take advantage of them.” Likewise, asked whether there were men in the neighborhood girls felt uncomfortable around, 17-year-old Ricky said yes, explaining:

I don’t mean to say it like this, but they act like typical niggas, you know what I’m sayin’. I mean you got them—the girls fear the guys that be out there constantly using the B-word [bitch] and constantly talkin’ about sex and always wanting to sell drugs and smoke weed and drink. It’s mainly those guys they fear.

Ricky said such incidents occurred “on a everyday basis with the particular guys I’m talking about. I mean, they just love disrespecting women.”

The neighborhood-based harassment of young women, then, was particularly widespread and amplified by the fact that groups of men—young and old—often congregated in these spaces. Whether older men, perhaps unemployed and with time on their hands, sometimes drug-addicted, or young men actively involved in drug sales and gangs, these groups often looked on young women primarily as potential sexual conquests. Young women were routinely frustrated by the disrespectful sexual come-ons they received by young men, but were often downright threatened by the behavior of adults. Although not all men or boys in their neighborhoods behaved in this way, it was a common enough problem to be a regular cause for concern and was tied directly to the structural inequalities that shaped their communities.

In fact, these findings from *Getting Played* are buttressed further by the recent evaluation of the Moving to Opportunity for Fair Housing Demonstration (MTO). This evaluation revealed that residential moves from urban disadvantaged community contexts to neighborhoods with improved socioeconomic conditions and lower crime were directly beneficial for girls but not boys. Girls who moved as part of the initiative were significantly more likely than those who did not move to report “less psychological distress, anxiety, and substance use and they were less likely to be arrested” (Popkin, Leventhal, and Weissman 2008, p. 2). The primary factors the evaluators point to in explaining these changes were decreases in young women’s experiences of sexual harassment

and coercive sexual practices, and concomitant feelings of increased safety (Popkin, Leventhal, and Weissman 2008, 2010). These findings confirm the significant harms for young women that result from these widespread problems.

C. Sexual Coercion and Sexual Assault

Sexual assault was also an ongoing neighborhood danger for young women. A striking finding in *Getting Played* was the high rate of sexual violence experienced by young women in the sample. More than half (54 percent) reported experiencing some form of sexual coercion or assault. In fact, nearly one in three young women reported multiple experiences with sexual victimization. This is an alarming amount of sexual violence, particularly given that the average age of the young women interviewed was just 16.⁸ Most incidents of sexual coercion and assault took place in and around the neighborhoods where youths lived or spent time. Although rarely occurring in public settings within the neighborhood, young women were often targeted through their neighborhood and other peer connections and were made vulnerable by the routine presence of men in public spaces.

Sexual assaults and sexually coercive behaviors in youths' neighborhoods were often an extension of the broader sexualized treatment young women experienced. This is largely why young women were so leery of groups of men. As with sexual harassment, young women's risks for sexual assault and coercion were varied. Among peers, alcohol and drugs were often used to lower a young woman's level of awareness or incapacitate her. Rapes involving physical force more frequently involved adult men, although they happened with peers as well.

Recall Antwain's earlier comment that the neighborhood was less safe for girls than boys because "like the females, all the dudes be wanting to try to freak, you know, have sex with 'em, all that kinda stuff." He continued, "females, they be having trouble [in the neighborhood], like boys be wanting to run a train on 'em or something, like two boys on one girl in a sandwich or something. One boy be hittin' her from the front, one boy be hittin' her from behind." Antwain described such activities taking place fairly often around the neighborhood, and it appeared that young men preyed on particularly vulnerable young women. Twelve-year-old Shauntell described similar events in her neighborhood involving her male relatives and their friends: "I done known girls that done just walked down the block, and I ain't gon' even lie, my cousins, my brothers, snatch 'em up, take 'em around the corner and watch 'em and do some of I don't know what to 'em." She recounted a recent incident:

The other day, two girls over there that just ran away from home, they came over here 'cause one of 'em use to go with my cousin. And they was all just over here doggin' 'em. All them boys took 'em around... the corner [to one of the boy's houses], he got his own house... My cousin not givin' a care about the one girl [he used to go with]. He not carin'. They take her, take her sister, and do some of, I don't even wanna

name it all. Then [the girls] come out cryin', sayin' I'm fina go home. ... [They were doing] some of everything. Get 'em drunk, high, beat 'em, raped 'em, tortured 'em, everything.

Shauntell said that because one of the young men lived on his own, thus providing the boys with an unsupervised locale for their activities, "they do it all the time."

Sexually coercive behavior often appeared targeted toward young women who seemed easy to take advantage of. A common strategy, as 14-year-old Curtis described, was to "like get them drunk." Likewise, Kristy said some of the gang members she knew would "give 'em some GH, you know, B [gamma hydroxy butyrate, a common "date" rape drug], you know, like at a party." Ricky said young women in the neighborhood were particularly at risk in the context of parties, "they have to be extra careful about leaving. And they have to watch what they do. [Watch their drinking] and getting high. I mean, you got some smooth talkers in our neighborhood, so." Asked why he thought the guys in his neighborhood did that to girls, he explained:

I think it's just to get a image, a name. To make theyselves look big. ... I can't really explain it. A lot of guys do it just so other guys can be like, "aw, man, he'll do this" or "he'll do that." Like for example, "we did this and we did that, and it was [so-and-so's] gal." Most of 'em just do it for a name, man, just for a image. Try to look like something they not.

Thus, an important feature of girls' sexual abuse was the status rewards such behavior provided within male peer groups. In addition to Ricky's emphasis on young men's attempts to build a name for themselves through their coercive sexual conquests, Lamont suggested that disadvantaged neighborhoods gave rise to young women he defined as "freaks": "In the ghetto, every ghetto I can tell you ... you see all these ... freaks ... It's babies, little bitty babies walking around with coochie cutters [tight-fitting shorts] on. You know that they gonna grow up to be freaks. Just 'cause you know what they been influenced by." In some cases, the early sexualization of girls likely made them vulnerable to sexual abuses in adolescence.⁹

In fact, the extent of girls' repeat sexual victimization was especially troubling. In all, 11 girls (31 percent) reported multiple victimization incidents. Take Alicia for example: 18 when interviewed, she was first pressured into unwanted sex by her boyfriend at age 14. Later, this same young man raped her and also arranged for his friends to "run a train" on her at his house. Then, when she was 16, a young man in the neighborhood had sex with her when she was drunk, high, and unable to fend off his advances. Seventeen-year-old Felicia was sexually abused by a family friend when she was 6 years old. She described being pressured into unwanted sex by young men in her neighborhood "a lot," and described two incidents, at ages 14 and 16, when she was drunk and high, and thus unable to consent. Felicia also described witnessing several rapes, including in her neighborhood and at a hotel party.

A great deal of research has examined young women's risks for sexual victimization and repeat victimization, and this work offers important insights for interpreting the

findings in *Getting Played*. First, race is not what contributed to such high rates of victimization; instead, it was youths' embeddedness in high-risk, high-crime communities (see Brewster 1994; Lauritsen and Schaum 2004; Lauritsen and Rennison 2006).¹⁰ For example, repeat victimization was particularly likely among young women in my sample because they were living in high-crime neighborhoods where groups of adolescent boys and adult men often congregated unsupervised in public spaces. Thus, part of the risk for repeat victimization resulted from heightened exposure to potential victimizers. Some researchers argue that a victim-labeling process is also at play, such that potential offenders can identify young women who may be particularly vulnerable to mistreatment, either from specific knowledge of past interactions or from cues such as social isolation, marginalization, and limited personal efficacy (Lauritsen and Quinet 1995; Mayall and Gold 1995; Grauerholz 2000). This is in keeping with the processes described by young women and young men in *Getting Played*.

Finally, recalling the excerpt by Nathan McCall that opened this article, a final form of sexual aggression all too common in my research was the phenomenon of "running trains" on girls. Youths used this phrase to refer to incidents that involved two or more young men engaging in penetrative sexual acts with a single young woman. Researchers typically classify such incidents as gang rape, because it is difficult to establish consent when an individual girl is outnumbered by multiple male participants (Ullman 1999). Nearly half (45 percent) of the 40 young men interviewed described having engaged in trains, and five reported participating in multiple incidents in the previous 6 months.

Numerous studies "locate group rape in the contexts of broader structural violence, including profound marginalization and diverse forms of deprivation" such as those found in study participants' communities (Wood 2005, p. 306; see also Bourgois 1996). Sociologist Karen Franklin (2004, p. 35) argues:

Although young men may experience temporary powerlessness due to their age, [and] more long-term powerlessness due to their economic class and/or race, they still maintain relative superiority due to their sex. Group rape... [is a method] of demonstrating this male power over individuals with less social power.

In addition, however, such events are also disproportionately found in more privileged settings, such as fraternities, athletic teams, and the military (Sanday 1990; Franklin 2004). What these disparate sites share in common, as described earlier, is that they are male-dominated contexts, each with preoccupations with exaggerated masculinity, including a strong sense of male superiority and sexual entitlement. What makes such settings ripe for group sexual misconduct, according to anthropologist Peggy Reeves Sanday (1990, p. 181), is the emphasis on "exaggerated male bonding, dominance behaviors, rejection of dependency, devaluation of things feminine, and repression of female input." These are very much in keeping with Anderson's (1999) characterization of the "code of the street" in disadvantaged African-American communities.

IV. CONCLUSION

There has been a dearth of scholarly attention paid to the problem of violence against African-American young women in distressed urban communities. For decades, researchers have examined the criminogenic effects of disadvantaged community contexts and have documented the vast and overwhelming harms to young people that result from growing up in such settings. However, most criminological research on neighborhoods has been gender blind or has focused specific attention on young men or adult offender networks. In addition, given the goals of feminist researchers—to problematize violence against women as a societal-wide phenomenon rooted in gender inequality—specific investigations of violence against urban African-American girls have also been limited. Although part of the reticence to address this problem is grounded in legitimate concerns about demonizing young black men who face harmful stereotypes that affect their treatment across numerous social institutions, ultimately scholarly inattention to such violence causes its greatest harm to young black women, who are left to fend for themselves in addressing these systematic dangers.

Because violence against women is an endemic problem in American society, it should not be surprising that such violence would be particularly acute in impoverished community contexts where other forms of violence are widespread, community and personal resources are limited, collective efficacy is difficult to achieve, and young men are faced with a masculine street code that emphasizes respect, interpersonal violence, and heterosexual prowess demonstrated via sexual conquest. Although caused by different structural conditions and institutional configurations, these patterns are in keeping with those that sociologists have identified in other settings known to have disproportionately high risks for violence against women, including college fraternities, sports teams, and the military. Most notable are pronounced male dominance, both in numbers and norms; limited external intervention, scrutiny, or accountability; and cultural rewards for exaggerated masculine performance that includes the sexual objectification and devaluation of women.

Just as scholars have documented the organizational characteristics, gender ideologies, and situational contexts associated sexual violence in these high-risk groups, comparable facets of disadvantaged settings encourage sexual aggression against young women. Several recent studies bear this out, and this was certainly the case in my research for *Getting Played*. The urban African-American young women in my study faced widespread gendered violence that was a systematic and overlapping feature of their neighborhoods, communities, and schools. In addition, although young women employed a variety of strategies to insulate themselves from such violence (see Miller 2008), they did so in a context in which ideologies about gender routinely worked against them. They had limited support and few avenues—institutional or otherwise—for remedying the systemic nature of the gendered dangers present in their daily lives. Prevalent gender ideologies often resulted in the development of victim-blaming

attitudes. When coupled with norms favoring nonintervention, there was little empathy for young women when they were harassed or faced more serious forms of violence. Institutional and community supports were simply not widely available.

Researchers have an important opportunity to contribute to the attenuation of these problems. To do so requires investment in new and additional research priorities. First, scholars of racial inequality, including its important community dimensions, need to develop a sustained commitment to consideration of gender—as an organizational, interactional, and ideological property of settings—in the development, execution, and analysis of research on these topics. Second, we need additional comparative qualitative investigations—across racial and ethnic groups and community settings—to better understand how violence against women is socially patterned, associated with particular situations and settings, and locally experienced. Finally, although *Getting Played* is a case study grounded in qualitative methodology, it is only through multimethod research that we can adequately capture the macro-, meso-, and microlevel processes that shape both violence against women and responses to it. Incorporating these priorities into future research will contribute to a more rigorous understanding of the problem and provide critical knowledge for developing transformative solutions.

Implications for Policy and Practice

So, what does *Getting Played*—and additional research on the challenges of violence against young women in disadvantaged communities—suggest for policy and practice? To begin with, it is clear that any hope we have for lasting solutions to the problem must address the structural inequalities at the root of urban disadvantage. Such inequalities are not simply based on the race and class inequalities that pattern ecological disadvantage. They are deeply gendered as well. Following Heise (1998), I suggest that systematic, ecologically embedded approaches are necessary. This means offering remedies that attend to the root causes of urban disadvantage, addressing the resultant costs and consequences, and also improving institutional support for challenging gender inequalities and strengthening young women's efficacy.

1. *Improving Neighborhoods*. Disinvestment in impoverished urban communities contributes to crime—including violence against women—through urban decay, neighborhood destabilization, residential instability, and the resulting deterioration of the community-based resources and social networks necessary for generating collective efficacy (Sampson, Morenoff, and Gannon-Rowley 2002). However, just as public policies have created concentrated disadvantage, new policies can also improve the situation by stabilizing communities. This can foster the collective efficacy of community members through the generation of social ties, which, in turn, increase protective mechanisms like the willingness to intervene on behalf of neighbors and monitor the behavior of young people (Sampson, Morenoff, and Gannon-Rowley 2002; McNulty and Bellair 2003). Although such changes are not sufficient to protect young women from gendered violence, they are a necessary part of any long-term strategies. Strengthened social ties

will increase the likelihood that neighbors will look out for one another, and this also means looking out for girls.

2. *Increasing Institutional Accountability.* A common theme throughout my investigation was that young women were often on their own in protecting themselves from and addressing gendered violence. Thus, it is vital to increase the accountability of those social institutions charged with these responsibilities. Of particular relevance are the police. Youths had two overarching complaints about police practices in their communities: underresponsiveness, including slow responses to calls for service, and aggressive strategies that included disrespectful treatment, intrusiveness, and police misconduct, including violence (see Brunson and Miller 2006a, 2006b).

The consequence of these patterns has direct bearing on the problem of violence against young women. Aggressive policing strategies and misconduct create a deep sense of legal cynicism among residents of disadvantaged communities (Sampson and Bartusch 1998) and thus exacerbate norms of nonintervention, including toward violence against women. Underpolicing results in additional gendered harms because it is often coupled with insufficient attention to violence against women specifically—including treating reports of sexual violence with skepticism and defining relationship violence as private and thus outside the purview of “real” police work. Although policing cannot end violence against women, policing strategies that treat community members with respect rather than suspicion, engage residents and work to identify and meet their needs, and are more sensitive to the dynamics and seriousness of violence against women would go far in making law enforcement more accountable. It is likely that such improvements would foster greater cooperation with the police and also increase the likelihood that young women could turn to them when they are victimized.

3. *Stabilizing Community Agencies and Facilitating Relationships with Caring Adults.* Providing stable programming and relationships is a particular challenge in disadvantaged urban neighborhoods (Freudenberg et al. 1999). Their import, however, is multifaceted. First, community programs that provide engaging, structured activities, jobs, and job training opportunities can offer opportunities that serve as alternatives to the streets. Much of the violence against young women in my study emerged when youths participated in both unsupervised parties and delinquency. Providing young people with alternative opportunities could avert them from those social contexts that heighten the risk for violence against young women. Moreover, providing young men in particular with these alternatives could result in changing norms of masculinity that would also be of benefit to young women.

In addition, the youths in my study often lacked stable relationships with caring adults they could turn to in times of need. However, they had a strong desire for stable adult role models and mentors who genuinely cared about their well-being, could be trusted to offer guidance and support without passing judgment, and truly understood the realities of their daily struggles in poor urban neighborhoods. At the same time, girls were suspicious of victim’s services, which they associated with social service agencies. They experienced these as intrusive and questioned whether professionals were authentically concerned with their well-being.¹¹

Thus, stable and trusted community agencies are an important avenue for providing young women with the support and resources they need when they are victimized. Given that young women were routinely blamed for their victimization, it is critical that they have strong individuals in their lives whose genuine concern can facilitate disclosure, challenge the insidious message that they are at fault, and guide them to available resources and programs for assistance. However, without additional remedies to ensure that caring adults themselves understand the nature and harms of violence against women, this is not guaranteed.¹² Thus, all of the recommendations I have made thus far must also integrate efforts to challenge gender inequality and change the community-based, peer, and internalized gender ideologies that harm young women and bolster support for violence against them.

4. *Changing Gender Ideologies and Challenging Gender Inequality.* One of the most disheartening facets of my analysis was the extent to which young women adhered to ideologies that held female victims accountable for male violence. Although problematic, their focus on the behavior of female victims made some sense, given the contexts they were faced with. Without broader social or institutional supports for addressing violence, they saw that the ultimate responsibility for protecting themselves fell on their own shoulders. The good news is that young women rarely applied such understandings to incidents involving their friends and loved ones. Instead, they described taking steps to intervene, protect, and support them. An important goal, then, is to find ways to generalize young women's sympathetic recognition of their friends' experiences to women in general. Education and prevention programs show promise (Breitenbecher and Scarce 1999), and thus bringing such programming to schools and community agencies may help young women recognize the commonalities of their experiences of gender inequalities. Such programs must incorporate an explicit understanding of the specific risks girls face within the ecological settings of their daily lives and provide them with necessary resources to "identify and question cultural assumptions that uphold and reproduce gender inequality" (Tolman, Hirschman, and Impett 2005, p. 15).

In addition, comprehensive strategies must address the attitudes and behaviors of young men. Structural dislocations associated with disadvantage play an important role in shaping dominant features of masculinity for young men in poor urban neighborhoods. Thus, a particular challenge lies in providing them with alternative forms of status and prestige. This requires the dedication of resources to make the changes I described earlier. But it also means educating young men about the harms of normative masculinity to themselves and to women, challenging their understandings of male superiority, and working to foster greater empathy and egalitarian connections with young women. As with young women, it is important that such interventions incorporate an explicit recognition of the realities of young men's lives in disadvantaged communities. Finally, it is critical that efforts do not simply target young women and young men separately. Providing youths with opportunities for cross-gender friendships, activities, and engagement has been shown to decrease coercive sexual behaviors among African-American young men and foster more egalitarian relationships (Kalof 1995). These offer "positive alternatives to the traditional masculinities that...[are]

detrimental to the lives and health of both [young] women and men” (Truman, Tokar, and Fischer 1996, p. 560).

Ultimately, *Getting Played* highlights why research on race, place, and violence must attend to their intersections with gender inequality, and, likewise, why it is imperative that policy efforts to ameliorate the conditions associated with urban inequality address its gendered consequences.

NOTES

1. There are likely a variety of reasons for this neglect. Mainstream criminology has long been criticized for its insufficient attention to both women and gender (see Smart 1976; Daly and Chesney-Lind 1988; Britton 2000), with androcentric perspectives continuing to guide much criminological research and theory. This leads not just to an exclusive or implicit focus on men and boys, but also to a failure to seek explanations for crime and victimization that takes gender seriously as a structural, interactional, and symbolic source of inequality (see Miller and Mullins 2006). On the other hand, whereas feminist scholars have long studied violence against women, feminist research has also long been critiqued for not sufficiently recognizing the interlocking nature of race, class, and gender oppression (see Davis 1981; hooks 1981; Spelman 1989; Collins 1990). Thus, although feminist criminologists have become increasingly interested in investigating how race and class inequalities, in conjunction with urban space, shape women’s and girls’ experiences of gender-based violence, few studies have systematically investigated these questions.
2. More recent research challenges Martin and Hummer’s relatively broad generalizations about college fraternities, but nonetheless suggests that it is those fraternities with the social and organizational characteristics they identify that are at heightened risk for the mistreatment of young women (Boswell and Spade 1996).
3. For instance, although not specific to this population, there is evidence that adherence to exaggerated masculinity is linked to the legitimization of violence against women and that participation in delinquency and interpersonal violence are correlated with the perpetration of such violence (see Truman, Tokar, and Fischer 1996; Calhoun et al. 1997; Marciniak 1998; Willan and Pollard 2003).
4. For details about the study methodology, see chapter 1 of *Getting Played* (Miller 2008).
5. This variation occurred despite the fact that both males and females were asked the same initial question: “Can you tell me what your neighborhood is like?” Part of what makes these differences so striking is that the study’s sampling strategy targeted high-risk and delinquent youths across gender. Youths’ self-reported delinquency suggested that equal numbers of young women and young men had engaged in both serious delinquency and drug sales. Despite this, they did not describe comparable levels of neighborhood engagement.
6. Racial segregation and economic disadvantage in St. Louis is most pronounced in a north/south division of the city, with the north side almost exclusively African American and economically depressed (see Baybeck and Jones 2004).
7. Chapter 3 of *Getting Played* deals with school-based sexual harassment and its important links to other sexually coercive and violent behaviors. My focus here deals primarily with young women’s experiences with adult men in their neighborhoods because these were described by young women as particularly dangerous for navigating community spaces.

8. Consider, for example, that Mary Koss and her colleagues' (1987) groundbreaking self-report studies of sexual assault among college students found that 12 percent of college women reported having been raped. The adolescent girls in my investigation reported a rate more than double this figure.
9. An important part of this early sexualization for some girls is childhood sexual abuse. For instance, 20 percent of the girls in our study reported being victims of child sexual abuse. One of the subsequent outcomes of this is increased vulnerability to additional sexual coercion (see Finkelhor and Browne 1985; Browning and Laumann 1997).
10. Age also has an important impact. The National Crime Victimization Survey (NCVS) consistently shows that adolescent girls and young women have the highest rates of rape victimization (Bureau of Justice Statistics 1992, 2005). For adolescents, two constellations of factors have been identified as increasing risk for sexual victimization: participation in delinquency and previous experiences with abuse or other family problems (Lauritsen, Laub, and Sampson 1992; Sanders and Moore 1999). These factors have also been identified as posing particular risks for revictimization (Collins 1998; Grauerholz 2000; West, Williams, and Siegel 2000).
11. In fact, there is evidence that victim's services are often inadequately prepared or unwilling to address the realities of African-American female victims' lives in disadvantaged communities. Such biases have been found to hinder resource utilization among black women when they are victimized (see Wyatt 1992).
12. For example, some research has found that African-American women report greater community censure and less social support when they disclose victimization experiences than do white female victims. As a result, they are less likely to seek out necessary assistance (see Wyatt 1992).

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PART II

RACE, ETHNICITY,
AND CRIME IN OTHER
DEVELOPED COUNTRIES

CHAPTER 10

RACE, CRIME, AND CRIMINAL JUSTICE IN CANADA

AKWASI OWUSU-BEMPAH AND
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CONNECTIONS among race, crime, and criminal justice are often portrayed in Canadian media images and are captured in the popular imagination. Yet, in comparison to the United States and Great Britain, these phenomena receive relatively little attention from Canadian academics and policy makers. A lack of readily available criminal justice data disaggregated by race makes it particularly difficult for researchers to examine the nature of these racial differences. Thus, we are unable to determine the extent to which higher rates of offending among certain racial groups and discrimination in the administration of criminal justice contribute to the apparent overrepresentation.

Unlike their American neighbors to the south, Canadians are uncomfortable discussing issues of race and racial difference, preferring instead to use the language of ethnicity and culture. Reluctance to discuss race is evident in the history of the Canadian census, which for decades utilized ethnic categorizations as a proxy for measuring race. The Canadian federal government has also coined the term “visible minority”¹ to refer to the country’s nonwhite, non-Aboriginal populations. This moniker masks immense differences in those subsumed under the category and also serves to erase the effects of racial discrimination in Canadian public institutions. Similarly, Canada’s de facto ban on the systematic collection and dissemination of racially disaggregated criminal justice statistics provides a convenient shield against allegations of racial bias for justice institutions and Canadian governments.

Nonetheless, available evidence indicates that a significant proportion of Canada’s racial minority populations and a sizable proportion of the white population perceive bias in the criminal justice system. These public perceptions are supported by data that show that certain racial minority groups, particularly Aboriginal and black Canadians, are grossly overrepresented in Canada’s correctional institutions. Further evidence indicates that racial bias does exist in the administration of Canadian criminal justice, and, at times, this discrimination has been supported by court decisions. We cannot

discount, however, the probability that increased rates of offending among certain racialized groups contributes to their overrepresentation in correctional statistics. As we show in this essay, research suggests that Aboriginal and black Canadians are overrepresented with respect to violent offending and victimization. The Canadian federal government itself has pointed out that the social conditions in which Aboriginals live is at least partially to blame for their rates of violent offending (Department of Justice 2009). We have previously made the same connection with respect to black Canadians (Wortley and Owusu-Bempah 2011a).

Unfortunately, there is an apparent lack of political will to address issues of racial minority overrepresentation in the Canadian criminal justice system. Ambivalence to address these issues relates both to the manifestations of racial discrimination in the system, as well as to the societal conditions that lead to criminal offending. Discrimination and disparity may be at times acknowledged, but they are seldom wholeheartedly addressed. When addressed, the means are seldom thoroughly evaluated for effectiveness, and, when evaluated, the results are rarely made public.

Issues of racial overrepresentation in the criminal justice system should be of particular concern to Canadians at present. Our conservative federal government has recently passed an omnibus crime bill that includes mandatory minimum sentences for certain drug crimes. As the American experience shows, this approach to crime reduction has had a disproportionate impact on African Americans and Latinos in that country. Canadian advocates are currently voicing their concern as to how the new pieces of legislation will affect Canada's racial minority groups.

The most important conclusions of this essay are summarized as follows:

- Aboriginal and black Canadians are significantly overrepresented in both federal and provincial correctional institutions. The extent to which blacks and Aboriginals are overrepresented in Canadian correctional institutions is similar to that of African Americans in the United States. However, this profound racial overrepresentation has received far less academic, public, and policy attention.
- Although race-based crime data are not usually collected in Canada, there is some evidence to suggest that both Aboriginal and black populations are overrepresented with respect to violent offending and victimization.
- A large proportion of Canadian minority populations perceive that there is bias within the Canadian criminal justice system. These perceptions are more pronounced for the policing sector, but possible bias in the criminal courts is also a concern for Canadians.
- The limited research that has been conducted suggests that these perceptions of racial bias may, in fact, be justified. A number of studies have indeed determined that discrimination exists with respect to the operation of the Canadian police, criminal courts, and correctional institutions.
- The suppression of disaggregated racial data from Canadian criminal justice institutions hinders criminological research on race, crime, and criminal justice. It is thus difficult for Canadian academics to study racial disparity and discrimination

within our system. This ban on data collection, however, serves to protect criminal justice agencies from allegations of racial bias.

- Evidence suggests that the Canadian government does not want to openly deal with issues of race, crime, and criminal justice. We contend that the Canadian government's reluctance to adequately address racial disparity and discrimination in crime and criminal justice fits well with the ideology of *democratic racism*—a system in which egalitarian values such as liberalism, justice, and fairness conflict but coexist with racialized beliefs and practices.

This essay presents an overview of research on race, crime, and criminal justice in Canada. Section I discusses the concept of race in Canada and contextualizes the racial classification schemes utilized in the country. Section II examines the ongoing debate over the collection and dissemination of racial data within the Canadian criminal justice system and provides an overview of currently available data. In Section III, data on the representation of racial minorities in Canadian correctional institutions are examined. The victimization and offending rates of racialized Canadians is also presented. Section IV examines racial bias in the Canadian criminal justice system, presenting data on citizen perceptions of criminal injustice, and documents research that has examined racial bias in the administration of justice. In Section V, the concept of democratic racism and its applicability to research in the field are discussed. An overview of important areas for future research and relevant policy suggestions are then outlined.

I. NO PLACE FOR RACE

Canada² is hailed as a diverse and tolerant nation that welcomes over 200,000 immigrants from across the globe each year. Recent immigration patterns can be credited with the emergence of one of the world's most heterogeneous populations. As Canadian Heritage, the federal ministry responsible for culture, language, and multiculturalism proudly states, Canada's "32 million inhabitants reflect a cultural, ethnic, and linguistic make-up found nowhere else on earth" (Canadian Heritage 2009). The latest figures from the 2006 Census put the "visible minority" population at slightly over 5 million people, or 16.2 percent of the overall population, having increased from 11.2 percent in 1996 and 4.7 percent in 1981. Data trends suggest that Canada's visible minority population is growing rapidly and will continue to do so. For example, between 2001 and 2006, Canada's visible minority population increased by 27.2 percent, a rate five times higher than the overall population growth rate of 5.4 percent (Chui, Tran, and Maheux 2008, p. 12). If immigration trends continue, Canada's visible minority population will continue to grow much more rapidly than the white population. Recent estimates project that Canada's "visible minority" groups could account for one-fifth of the Canadian population by 2017 and just under one-third by 2031 (Statistics Canada 2010, p. 23).

A number of measures have been put in place to promote diversity within Canada and protect the rights of its diverse peoples. The Canadian Charter of Rights and Freedoms, for example, guarantees individual's fundamental rights, such as freedom of religion and expression, and provides for equal treatment before and under the law. Section 27 of the Charter also requires that it be interpreted within a multicultural context. As state policy, multiculturalism has existed in Canada since 1971; it was entrenched in the Canadian Constitution in 1981, and the official Multiculturalism Act received royal assent in 1988. The intent of the Act was to facilitate the cultural development of ethnocultural groups and enable minorities to overcome barriers to full participation in Canadian society. The Act also sought to encourage creative interchanges among all ethnocultural groups and assist new Canadians in learning one of Canada's two official languages. Although Canadian multiculturalism has been tested in recent times, no politicians have come out to claim the state policy a failure, as have Prime Minister Cameron in Britain and President Sarkozy in France (BBC 2011; France24 2011).

Despite the racial heterogeneity that characterizes Canadian society, neither its government, nor its people are completely comfortable with the notion of race, preferring instead to use the language of ethnicity and culture (Thompson 2010, p. 33). By contrast, Canadian scholars have provided the following definition of race in the contemporary Canadian context:

A socially constructed category used to classify humankind according to common ancestry and reliant on differentiation by such physical characteristics as color of skin, hair texture, stature, and facial characteristics. The concept of race has no basis in biological reality and as such, has no meaning independent of its social definitions. But, as a social construction, race significantly affects the lives of people of color. (Henry and Tator 2005, p. 351)

Ethnicity, on the other hand, refers to the characteristics of a human group that shares a common heritage, culture, language, religion, and perhaps race (Henry and Tator 2005, pp. 41, 350). Although the definition of race just provided accurately captures the phenotypical and morphological differences that are commonly associated with different racial groups, this definition somewhat overlooks the importance that race plays as a signifier in a complex set of power relations within a given society (Thompson 2010, p. 1). Race is not simply a social construct but also a political one (Thompson 2010, p. 3). Ascription to one racial group or another has an immense impact on an individual's life chances and determines his or her positioning within the racial power structure. As Thompson found in her historical examination of racial classifications in the Canadian census, the language of ethnicity, rather than race, is used by elites, policy makers, and academics to disguise the racial power relations that structure Canadian society (Thompson 2010, p. 1).³

Canada's official reluctance to accept or even discuss race and racial differences is evident in the history of its national census—a primary tool used to demarcate the population. Unlike the United States, which always included a question on race in its national census, Canada has a rather inconsistent history of enumerating the racial origins of its

people (Thompson 2010, p. 168). Thompson's research shows that the language of race did exist in the earliest Canadian census, from the early 19th century up until the end of World War II. In 1951, the language of race, but not the actual question, was removed from the census. Thompson attributes this maneuver to the changing transnational climate in the postwar era and associated fear of the term "race" in light of the events that had recently taken place in Nazi Germany (D. Thompson 2011, personal communication, October 13, 2011). Instead, the following period saw the language of ethnicity being used as a proxy for racial origins. For example, the censuses of 1961 and 1971 "asked each person to report the ethnic or cultural group that he or his ancestor (on the male side) belonged to on coming to the North American continent" (Thompson 2010, p. 195). Instead of asking about race directly, people were asked where they or their forbears came from.

By the 1980s, however, concern about the participation of racial minorities in Canadian society, particularly in the employment sector, began to grow. A House of Commons Special Committee on the Participation of Visible Minorities in Canadian Society (1983) and the Royal Commission on Equality in Employment (Abella 1984) both called for official statistics on the "workforce profile" of racial minorities in order to determine the size of the pool of potential workers (Thompson 2010, pp. 202–3). The report of the Royal Commission that finally led to the implementation of the 1986 Employment Equity Act detailed the statistical data required to determine the situation of racial minorities, Aboriginals, women, and persons with disabilities in the working environment (Thompson 2010). The most appropriate way to gather this information was deemed to be through the census, but reluctance to include a direct race question remained because it was still viewed as "too controversial" (Thompson 2011, personal correspondence). Thus, proxies or indirect measures continued to be used until a direct question was finally reintroduced in the 1996 census. Reluctance to include the question is well captured in a quote from a civil servant taken from an interview conducted in the course of Thompson's doctoral research: "The upper echelons of Statistics Canada never wanted to have a question on race, and when the deed was finally cemented in 1995, they went kicking and screaming the entire way" (Thompson 2010, pp. 210–11).

As noted, the original intent of the Employment Equity Act was a positive one—to remove barriers to equality in the workplace. However, the Act wrote into law, and thus socially constructed, the problematic demographic category "visible minority." The Employment Equity Act defines visible minorities as "persons, other than aboriginal peoples, who are non-Caucasian in race or nonwhite in colour" (Department of Justice 2005). According to the Canadian government's operational definition, the following groups are classified as visible minorities: blacks, Asians (i.e., Chinese, Japanese, Koreans, Vietnamese, etc.), South Asians (i.e., people of Indian and Pakistani descent), West Asians (i.e., people of Middle Eastern descent), Latin Americans, and Pacific Islanders. Thus, Canada officially has three distinct racial groups: whites, Aboriginals, and visible minorities.

One criticism of the "visible minority" designation is that the category constructs whiteness as the national norm. The term "visible minority" recently came under fire

by the United Nations Committee on the Elimination of Racial Discrimination, which branded the term “racist.” According to the committee, the highlighting of a certain group is inconsistent with Article One of the International Convention on the Elimination of All Forms of Racial Discrimination, to which Canada is a signatory (Canwest March 8, 2007). Article One of the Convention states that racial discrimination occurs when equitable treatment is upset by any “distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin” (Canwest March 8, 2007). A similar critique has been made of Canadian multiculturalism more generally. It has been argued that the multiculturalism policy promotes the idea of a dominant Canadian culture based on the values of the original British settlers and their descendents, to which all other groups are multicultural in relation (Henry 2002). Although the “visible minority” designation was developed to help foster equality for racial minorities in employment, an argument can be made that it is white Canadians who benefit from the category. If Canada is to be truly multicultural, all racial groups must be recognized and accounted for.

A further criticism of the visible minority category is that it masks the immense differences of the individuals and groups subsumed under this broad category; for example, differences in terms of race, as well as ethnicity, religion, country of origin, immigration status, and language. The term “visible minority” serves to mask employment-related inequalities. For example, data show that black Canadians have a higher rate of unemployment than do whites. By contrast, Asian Canadians have a lower unemployment rate. Combining these two groups, we find that “visible minorities” have a similar rate of unemployment—thus eliminating evidence of racial inequality. The inherent problems posed by the heterogeneity of those categorized as visible minorities calls into question the utility of the category as a means of redressing discrimination, as has been noted in research into the earnings of visible minorities (Hum and Simpson 2000), their levels of residential segregation (Bauder 2001), and their educational outcomes (James 2012). We argue that, in fact, the category may not only lack utility, but may actually be counterproductive, at least for the most marginalized groups whose circumstances can never be fully recognized by using such a broad categorization. Furthermore, as will be evidenced in the next section, we believe that certain segments of the population may not see it in their own interest to collect, analyze, or publish adequate data on racial minorities in a variety of sectors because of what the data might uncover and due to the potential ramifications of their release (requiring redress and ultimately government action). What follows is an examination of the collection of race-based statistics within the Canadian criminal justice system.

II. RACE-BASED DATA IN THE CANADIAN CRIMINAL JUSTICE SYSTEM

In this section, we examine the lack of race-based criminal justice data available in the Canadian context. We first provide an overview of the long-running debate over the

collection and public release of race-relevant criminal justice statistics, including the arguments for and against the practice. This section also looks at current practices with regards to the collection and dissemination of race-based statistics within the policing, court, and correctional sectors.

A. Background

Canada's reluctance to acknowledge and document race is most evident in the operation of its criminal justice system and in its criminal justice policies. Unlike in the United States and the United Kingdom, where race-based criminal justice statistics are readily available to the public and researchers alike, the Canadian criminal justice system does not systematically collect or publish statistics on the race of individuals processed through the system. The debate over the collection of racial data from the criminal justice sector in Canada can be traced back as far as 1929 (Roberts 1992). Discussions about the collection, or more accurately, the public release of these data have emerged more recently in the context of broader debates about race, crime, and the administration of criminal justice—particularly related to the circumstances of Aboriginal and black Canadians (Hatt 1994; Johnston 1994; Gabor 1994; Roberts 1994; Wortley 1999; Owusu-Bempah and Millar 2010). On the one hand, allegations of racial discrimination have been leveled against the justice system to explain the overrepresentation of certain racial minority groups in the few available sources of police and correctional data. On the other hand, it has been suggested that racial minorities are disproportionately involved in criminal activity, which accounts for their disproportionate involvement with the criminal justice system as reflected in the data. Unfortunately, our ability to test either of these claims is limited by the absence of available data, despite numerous calls for its collection. Several major attempts have been made in Canada to collect racial and ethnic data, particularly in the policing sector (Fine 1990; Wortley and Marshall 2005; Leclair InfoCom 2009); these attempts, however, have not paved the way for systematic data collection.

Although the level of public, political, and academic attention paid to the debate has varied over the past two decades, several key issues have remained central to the debate since it arose again most recently in the early 1990s. There has, however, been one major shift. Whereas racial minority groups were initially opposed to the collection of race-based criminal justice statistics for fear that these data could be used to justify discriminatory policies, many minority groups now advocate for the collection and publication of these data as a means to redress racial discrimination in the administration of criminal justice (Owusu-Bempah and Millar 2010). It is now primarily Canadian police agencies that are openly expressing their opposition to the collection, analysis, and dissemination of race-based statistics, with many officially or unofficially refusing to send data to national reporting agencies (Millar and Owusu-Bempah 2011). Supporters of race-based data collection argue that political sensitivity should not suppress the collection of race-relevant criminal justice statistics and that such statistics

are necessary in order to (1) monitor the processing of racial minorities through the criminal justice system; (2) provide useful information that is necessary for the development of criminal justice and social policy; (3) determine, objectively, if there is a relationship between race and crime; (4) provide transparency within the criminal justice system; and (5) identify bias in the administration of criminal justice. Detractors, on the other hand, argue that collecting and disseminating such data are problematic because (1) there are questions about the accuracy of criminal justice data (particularly police statistics); (2) the data could be socially disruptive and contradict the principle of equality under the law; (3) the data could be used to support biological theories of crime; and (4) the data could be detrimental to the system and could ultimately jeopardize public safety (if, for example, depolicing were to occur) (Wortley 1999; Owusu-Bempah and Millar 2010).

Methodological issues inherent in attempting to document racial data, as well as legal and privacy issues related to the reporting of these data to national agencies, are also perceived as obstacles to the implementation of systematic data collection. In terms of methodological issues, it has been argued that great difficulties are associated with assigning people to specific racial categories and that these difficulties may impede the collection of racial data (Roberts 1994, p. 179). This issue has garnered a great deal of attention from academics and has been a concern in relation to Aboriginal identity data collection in the policing sector. A further obstacle to the collection of race-based criminal justice data is a concern held among some police agencies that the collection of these data and subsequent reporting of them to the national statistical agencies would violate federal, provincial, or territorial privacy legislation. In 2003, legal opinions were commissioned to determine whether the collection and reporting of racial or Aboriginal data did, in fact, violate privacy laws. Based on the consultations, the Canadian Department of Justice has confirmed that it would not. Although legal authority to collect Aboriginal identity data has been confirmed, some police agencies, such as the Royal Canadian Mounted Police (RCMP), maintain their position and refuse to collect or report such information (Owusu-Bempah 2011). Finally, we believe that criminal justice agencies may attempt to avoid allegations or studies of racial bias by refusing to collect race-based data (or, more accurately, release it to the public).

B. Current Practices

Notwithstanding the current debate, and despite the fact that very little race-relevant criminal justice data is made publicly available in Canada, information on alleged offenders and victims processed by the criminal justice system, including descriptions of Aboriginal status and racial background, is routinely collected in the records of criminal justice agencies. Police services, for example, have the ability to collect Aboriginal and/or racial data and many are, in fact, currently recording such data for intelligence purposes or when it is relevant to a criminal investigation (in Montreal,

Toronto, and Ottawa, for example). The internal data management systems utilized by police services collect detailed information on the racial background of accused persons and victims involved in crime incidents. Although some police forces currently report Aboriginal information to Statistics Canada, the majority refuse to do so (e.g., Montreal, Toronto, and Ottawa). In 2009, 20 percent of Canadian police forces had an official policy not to submit Aboriginal information in the Uniform Crime Reports (UCR) sent to Statistics Canada, and almost 60 percent were not doing so as a matter of practice. The suppression of racial data by Canadian police services is so widespread that racial information was missing for 80 percent of the UCR cases submitted to Statistics Canada in 2009, even though a race field exists on the forms (Millar and Owusu-Bempah 2011, p. 658).

The Integrated Criminal Court Survey⁴ and the Integrated Correctional Services Survey are also valuable sources of information on individuals processed through later stages of the criminal justice system. Aboriginal identity data are collected in the Integrated Criminal Court Survey, but racial information beyond Aboriginal designation is not; these data could be included in the survey if they were deemed important by stakeholders. The Integrated Correctional Services Survey⁵ currently collects self-reported racial information for individuals entering the correctional system. This information is used internally to inform program and policy needs. The most readily available criminal justice data that includes information on race is the Corrections and Conditional Release Statistical Overview, produced on an annual basis and released to the general public by Public Safety Canada. This document includes a “one-day snapshot” detailing the race of all offenders under federal supervision (Public Safety Canada 2009). This “snapshot” is limited, however, in that it does not provide any information about regional differences in the racial composition of the offender population (this must be obtained through special request), nor does it highlight racial differences in sentence length or other issues. The vast majority of data on the racial background of individuals processed through the Canadian criminal justice system is used for internal purposes and is not made publicly available in any systematic way. Furthermore, because this information is collected to meet the disparate operational needs of the agencies involved, the data often lack the consistency necessary for comparative purposes.

In sum, race-based data in Canada are collected by a variety of criminal justice institutions, yet national reporting of racial and Aboriginal data is sparse and inconsistent, especially when looking beyond the Aboriginal category. No data are systematically available for any stage of the prosecution process despite the introduction of an Aboriginal variable into the Integrated Criminal Court Survey. The correctional sector systematically collects racial and Aboriginal identity information upon prisoner intake; however, very little is made available to the general public. Access to Information legislation may be utilized in an attempt to gain access to racial data, but pursuing this avenue by no means guarantees that access will be granted. In the next section, we review available data on racial minority representation in correctional, offending, and victimization data.

III. RACIAL MINORITY REPRESENTATION IN CORRECTIONAL, VICTIMIZATION, AND OFFENDING DATA

In this section, we present research that examines the representation of racial minorities in Canadian provincial and federal correctional institutions. This section of the essay also presents data on the representation of racialized Canadians as victims of crime and as offenders.

A. Minority Overrepresentation in the Canadian Correctional System

Canada has a two-tiered correctional system. The federal system houses all offenders who have been given a sentence of 2 years or longer. The provincial system, by contrast, houses all offenders serving a sentence of less than 2 years, as well as those remanded to custody while awaiting trial. As discussed earlier, the federal correctional system is the only segment of the Canadian criminal justice system that regularly collects data on the racial background of offenders. These statistics are published annually in the Corrections and Conditional Release Statistical Overview (Public Safety Canada 2012).

In Table 10.1, we use 2011 federal correctional statistics and data from the 2006 Canadian Census to explore the over- and underrepresentation of specific ethnoracial groups within Canadian corrections. The data indicate that Aboriginals, African Canadians, and people from multiracial backgrounds are all significantly overrepresented in the federal corrections system. For example, although Aboriginals represent only 3.8 percent of the Canadian population, they constitute almost one-fifth (18.5 percent) of offenders under federal supervision. Similarly, blacks represent only 2.5 percent of the Canadian population, but almost one-tenth of all federally supervised offenders. Hispanic and West Asian representation in corrections, by contrast, is approximately equal to their representation in the Canadian population. Importantly, whites and the members of all other racial minority groups are significantly underrepresented in the federal corrections system. Overall, people of South Asian descent have the lowest rate of federal correctional supervision in Canada (18 per 100,000), followed by Asians (32 per 100,000), and whites (59 per 100,000). By contrast, Aboriginals have the highest rate of federal correctional supervision (361 per 100,000), followed by African Canadians (246 per 100,000), and people with multiracial backgrounds (318 per 100,000).

Interestingly, although a great deal of academic discussion has addressed the gross overrepresentation of blacks in the American correctional system, our data suggest that Aboriginal Canadians are just as overrepresented within the Canadian system

Table 10.1 The representation of ethnoracial groups in Canada's federal corrections system (2011)

Racial Background	National Population ¹	Percent of National Population	Federal Correctional Population ²	Percent Federal Correctional Population	Odds Ratio	Rate of Federal Correctional Supervision (per 100,000)
White	25,000,155	80.0	14,646	64.1	0.80	58.6
Aboriginal	1,172,785	3.8	4,236	18.5	4.87	361.2
Black	783,795	2.5	1,925	8.4	3.36	245.6
Asian ³	2,090,390	6.7	678	3.0	0.45	32.4
South Asian ⁴	1,262,865	4.0	226	1.0	0.25	17.9
Hispanic	304,245	1.0	234	1.0	1.00	76.9
West Asian ⁵	422,245	1.3	268	1.2	0.92	63.5
Other	204,550	0.7	650	2.8	4.00	317.8
TOTAL	31,241,030	100.0	22,863	100.0	1.00	73.2

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

² The 2011 federal correctional statistics provided in this table include inmates within federal prisons and those under federal community supervision (Public Safety Canada 2012).

³ The "Asian" category includes people of Chinese, Japanese, South-East Asian, Korean, or Filipino descent.

⁴ The "South Asian" category includes people of Indian, Pakistani, Sri Lankan, or Tamil descent.

⁵ The "West Asian" Category includes people of Arab or other Middle-Eastern descent.

⁵ The "Other" category includes people who report multiple racial backgrounds.

and that African Canadians are almost as overrepresented. Indeed, in 2010, the black rate of incarceration in the United States (3,074 per 100,000) was 6.7 times greater than the white rate (459 per 100,000) (see Guerino, Harrison, Sabol 2011). By comparison, within Canada's federal corrections system, the rate of Aboriginal correctional supervision is 6.2 times higher than the white rate, whereas the black rate is four times higher. Nonetheless, we cannot dismiss the reality that the incarceration rate for all racial groups is much higher in the United States than in Canada. Indeed, the white rate of incarceration in the United States (459 per 100,000) is almost twice the rate of blacks residing in Canada (245.6 per 100,000).

Further analysis reveals that the representation of Aboriginals and blacks is particularly high within federal correctional institutions. For example, in 2011, Aboriginals represented 21.5 percent of all offenders housed in federal prisons but only 13.6 percent of those under federal community supervision (parole). Similarly, blacks represented 9.1 percent of the federal prison population but only 7.2 percent of those under federal community supervision. The data also suggest that both Aboriginal and black representation within federal prisons increased significantly between 2001 and 2011. By contrast,

the representation of white inmates within federal prisons dropped from 71 percent to 61 percent during this period (see Figure 10.1). In other words, over the past decade, racial disparities within Canada's federal corrections system have become more pronounced (see Zinger 2011).

Unlike the federal system, provincial and territorial correctional systems do not normally release statistics on the racial composition of their correctional populations. However, it is common knowledge that such data are often collected for "programming purposes." With this in mind, we decided to make a series of freedom of information requests to the Ministries of Corrections for each Canadian province and territory. In each case, we explicitly requested any data that had been collected on the race or ethnicity of the provincial correctional population. Responses varied dramatically from province to province, territory to territory. Four provinces—Nova Scotia, New Brunswick, Ontario, and Alberta—were able to provide us with a detailed racial breakdown of their 2010–11 correctional population. Seven other provinces/territories—Newfoundland, Quebec, Manitoba, Saskatchewan, the Yukon, the North-West Territories, and Nunavut—were only able to give us details about the Aboriginal population within their correctional system.⁶ Each of these jurisdictions indicated that it did not collect information on any other ethnoracial group. Two provinces failed to provide us with racial data. Prince Edward Island claimed that it does not collect any racial data whatsoever on its correctional population. British Columbia, on the other hand, confirmed that it does collect race-based data. However, it refused to release these data to our research team.

Based on the limited data that we did receive from the provinces and territories, one thing is perfectly clear: both Aboriginals and African Canadians are significantly overrepresented within provincial as well as federal corrections. Whites and other racial minority groups, by contrast, are all underrepresented. Table 10.2 illustrates this fact by providing the proportion of the population from each province or territory that is

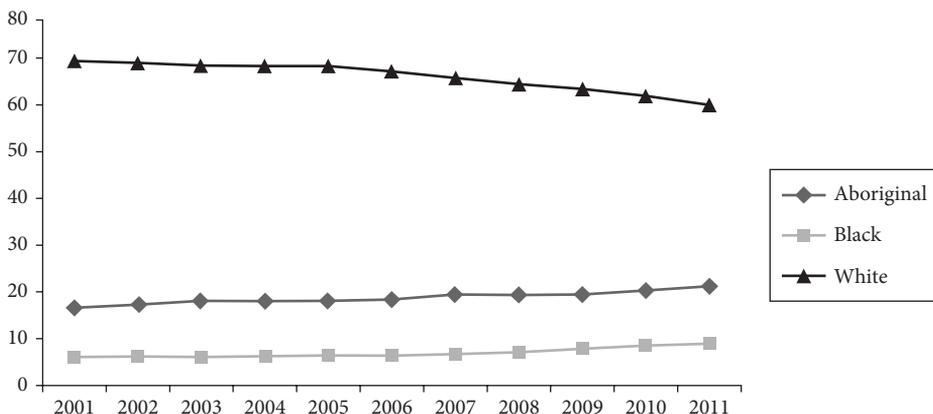


FIGURE 10.1 Percent of inmates within federal prisons in Canada from selected racial groups, 2001–2011.

Source: Zinger 2011

Table 10.2 Aboriginal and Black overrepresentation within provincial correctional institutions in Canada, 2010–2011, by province/territory

Province	Aboriginals		Blacks	
	Percent Provincial Population	Percent Admissions to Provincial Correctional Institutions	Percent Provincial Population	Percent Admissions to Provincial Correctional Institutions
Newfoundland	4.7	14.7	NA	NA
Nova Scotia	2.6	8.4	2.1	14.0
New Brunswick	2.4	8.8	0.6	2.4
Prince Edward Island	NA*	NA	NA	NA
Quebec	1.6	4.4	NA	NA
Ontario	2.0	11.8	3.9	17.7
Manitoba	15.5	69.0	NA	NA
Saskatchewan	14.8	63.0	NA	NA
Alberta	5.7	38.6	1.4	5.0
British Columbia	NA	NA	NA	NA
Yukon	25.1	75.7	NA	NA
North-West Territories	50.3	89.4	NA	NA
Nunavut	84.9	98.7	NA	NA

Source for population data: Chui and Maheux 2008.

Aboriginal and black and the proportion of provincial/territorial correctional admissions from these two racial groups. It should be noted that these provincial admissions numbers (flow) provide a somewhat different measure of the correctional population than the federal correctional (stock) data discussed earlier. They are not necessarily comparable. Provincial prison numbers, for example, include offenders who have been denied bail, as well as those serving time for minor offenses (i.e., the nonpayment of fines, public intoxication, etc.). It is for these types of offenses that Aboriginals may be particularly overrepresented.

In Manitoba, Aboriginals represent only 15.5 percent of the population, but 69 percent of admissions to provincial correctional facilities. Similarly, in Saskatchewan, Aboriginals represent only 14.8 percent of the population, but constituted 63 percent of all admissions to provincial prisons. This racial disparity also exists for blacks—at least for those provinces providing data on black inmates. For example, blacks are only 3.9 percent of Ontario's population, but constituted 17.7 percent of admissions to Ontario's correctional facilities in 2010–11. Similarly, blacks represent only

2.1 percent of Nova Scotia's population, but 14.0 percent of all provincial prison admissions.

In sum, the Canadian data suggest that both Aboriginals and African Canadians are significantly overrepresented within the justice system. What is the cause of this overrepresentation? Some argue that this is the result of higher rates of criminal offending among Aboriginal and black populations. Others argue that this overrepresentation is the result of racial biases within Canadian policing, criminal courts, and corrections. We suspect both explanations may have some validity. We address these issues in the following sections.

B. Minority Victimization and Offending in Canada

Due to the *de facto* ban on the release of race-crime statistics, it is extremely difficult to fully document minority offending and victimization in Canada. However, consistent with the correctional statistics just presented, the data that are available indicate that Aboriginal and black Canadians have relatively high rates of criminal involvement. 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 murders per 100,000). Further investigation reveals that young black males are particularly vulnerable to violent death. For example, whereas 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 have been released from the federal government suggest that Aboriginals typically have an annual homicide victimization rate that is seven to eight times higher than non-Aboriginals (Brzozowski, Taylor-Butts, and Johnson 2006).

Canadian surveys have produced mixed results with respect to minority victimization. The 2004 General Social Survey (GSS), for example, contacted a random sample of more than 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 (i.e., 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 more than 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 life, 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 suggest 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 his or her 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 blacks 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 that included both police statistics and information from the 2004 GSS. Racial animosity is the most common motivation for hate crime. Indeed, race was the motivating factor in more than 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 period involved black victims. By contrast, only 13 percent of race-based hate crimes involved South Asians, 12 percent involved West Asians (people of Arab descent), 3 percent involved Aboriginal peoples, and 2 percent involved people of East Asian background (people of Chinese, Japanese, Vietnamese, or Korean descent). In other words, although they represent only 2.5 percent of the total Canadian population, blacks represented half of those victimized by race-related hate crime during the study period (Dauvergne, Scrim, and Brenna 2008; Walsh and Dauvergne 2009).

As with criminal victimization, some Canadian data *suggest* that Aboriginals and African Canadians may also be more involved in some types of crime than are members of other racial groups. We might infer, for example, that blacks and Aboriginals are significantly overrepresented among homicide offenders—at least in some jurisdictions. As discussed earlier, black and Aboriginal homicide victimization rates are significantly higher than the national average. Since the vast majority of all homicides are intraracial (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 overrepresentation 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). More than 264 police agencies from across the nation participated in this study, and among them they identified 484 different youth gangs operating within Canada and an estimated 6,760 individual gang members. Interestingly, the majority of police agencies participating in the survey maintained that racial minority youth are grossly overrepresented 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, pp. 18–20). The Toronto Youth Crime Victimization Survey (see Wortley and Tanner 2006) also found that self-reported gang membership was twice as high among black (13 percent) and Hispanic youth (12 percent) 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 are the members of other racial groups (see Table 10.3). For example, according to the results of the 2000 Toronto Youth Crime Victimization Survey (TYCVS),

Table 10.3 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; Tanner and Wortley [2002])

	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
Forced someone to have sex	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

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” (in which 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 life (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 only 15 percent of black students. This last finding is particularly noteworthy in light of other research that suggests that blacks are dramatically overrepresented 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 blacks and Aboriginals in Canada may be more involved in some types of crime than are those from other racial backgrounds, the same studies also 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, although blacks and Aboriginals may be somewhat overrepresented in certain street-level crimes, it is quite possible that they are grossly underrepresented with respect to white-collar and corporate crime. Finally, it must be stressed that any overrepresentation of blacks and Aboriginals 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 are 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 are people from other racial groups. A possible source of racism against minority communities lies within the criminal justice system, and we turn to an examination of this issue in the following sections.

IV. RACIAL BIAS IN THE CANADIAN CRIMINAL JUSTICE SYSTEM

In this section, we present available data on the nature and extent of racial bias in the administration of criminal justice in Canada. We first look at citizen perceptions of bias in the criminal justice system. Second, we look at evidence of bias in policing, specifically, racial profiling, police use of force, and the arrest situation. We also examine evidence of racial bias in pretrial decision making, in sentencing, and within Canadian correctional institutions.

A. Citizen Perceptions of Criminal Injustice

Without adequate criminal justice data disaggregated by race, it is difficult to determine the extent to which bias exists within the Canadian criminal justice system. Nevertheless, available research suggests that a significant proportion of the Canadian population believes the system is biased against certain racial minority groups. Furthermore, research also indicates that racialized Canadians are less likely to have confidence and trust in the system and in the police in particular.

How the public perceives the criminal justice system is an important social issue. Citizen perceptions and attitudes can be used to evaluate the performance of the police, courts, and correctional system and help to determine whether these institutions provide equitable service to the public. Moreover, a growing body of research suggests that perceived legitimacy of the system is a predictor of criminal behavior; those who perceive the system as fair are less likely to engage in lawbreaking behavior than are those who do not (see Tyler 1990; Wortley and Tanner 2008). The perceptions of racial minorities toward the criminal justice system may be of particular concern; there exists a long history of strained tensions between certain minority groups and the police in many Western nations. These poor relations have been credited, at least in part, with sparking large-scale civil unrest, including riots in France, Australia, Great Britain, and the United States (see Bowling and Phillips 2002; Collins 2007). Although criminal justice representatives from Western nations have become increasingly concerned with fostering strong relationships with racial minority communities, relatively little research has documented these communities' attitudes and perceptions toward the system; this is particularly true for Canada. Here, we review empirical research from Canada documenting racial minority perceptions of the criminal justice system.

Henry (1994) conducted participant observation and in-depth interviews to collect anecdotal and quantitative data on the experiences of black Caribbean immigrants in Toronto. Using a class-based analysis, Henry found that a central concern of the Caribbean community in Toronto was its relationship with the police (Henry 1994, p. 201). Working-class respondents, particularly males, were most concerned about

police harassment and police racism. This was less of a concern for working-class women. The respondents from the under-class or “street” category were also concerned about the issue of police–black community relations, but more specifically about how to avoid the police in the course of the illegal activities they engaged in (p. 202). Among the “street” and working classes were feelings of fear, hatred, and hostility toward the police (p. 208). The middle-class male respondents of the group agreed with the general concerns of the Caribbean immigrants and were also disturbed by their own experiences with police harassment. Student respondents, both high school and university, provided useful insight into attitudes toward the police. Regardless of class, students overwhelmingly viewed the police as the “ultimate oppressor” (p. 202). Those respondents who had experience with the court system commented on the lack of black representation, on both the bar and the bench. Their responses showed a stark difference between a white legal establishment and black defendants (p. 233). In line with these findings, further research suggests that a high proportion of black youth perceive the criminal justice system to be biased. A 1995 survey of 1,870 Toronto high school students found that more than half of the black respondents believed that the police treated members of their racial group “much worse” than they do 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 at the hands of the police (Ruck and Wortley 2002).

Chu and Song (2008) examined attitudes toward the police among a nonrandom sample of 293 Chinese immigrants drawn from various community service organizations in Toronto. In general, the findings indicate that Chinese immigrants have relatively positive attitudes toward the police. Respondents who had previous contact with the police, however, rated the police less favorably than did those who had not. Respondents who did not speak English also expressed more negative views about the police, believing that more bilingual police officers were necessary. Although insightful, the research by Henry (1994) and Chu and Song (2008) has several limitations. First, their small, nonrandom samples make it difficult to generalize the findings to the broader Caribbean and Chinese communities. Furthermore, because they focus on Caribbean and Chinese immigrants in isolation, it is impossible to determine whether the attitudes of groups of immigrants are significantly different than the attitudes of other Canadian residents.

Based on data from the 2004 Canadian GSS—Cycle 18 Victimization, Cao (2011) examined visible minority citizens’ levels of confidence in the police, using a variety of measures. Consistent with his hypothesis, multivariate analyses indicate that visible minorities had lower levels of confidence in the police, even after controlling for relevant factors such as community context and crime-related variables. Respondents were asked whether they felt their local police force does a “good,” “average,” or “poor” job of enforcing the laws, promptly responding to calls, being approachable and easy to talk to, supplying information to reduce crime, ensuring the safety of the citizens, and treating people fairly. On all but one of the measures (promptly responding to calls), visible minorities were less likely than nonvisible minorities⁷ to report the police were doing a “good” job; visible minorities were more likely to rate police performance as

“poor” on each of the items. Interestingly, the measure that garnered the largest difference between visible and nonvisible minority respondents was the question on police fairness. Two-thirds (66.6 percent) of nonvisible minorities felt their local police did a “good” job treating people fairly compared with 58.1 percent of visible minorities. Conversely, 6 percent of nonvisible minorities felt the police did a “poor” job in this area compared with 11.1 percent of visible minorities (Cao 2011, p. 11).

A similar study was conducted by O’Conner (2008) using data from the 1999 GSS. O’Conner also found that visible minorities evaluated police performance more negatively than did nonvisible minorities. O’Conner’s findings also indicate that younger people, males, crime victims, and those who live in high-crime neighborhoods were also more likely to express dissatisfaction with the police. Unfortunately, both of these studies utilize the “visible minority” category, combining all nonwhite racial groups into one, further masking racial differences. The studies are, therefore, unable to determine whether some racial groups hold more positive or negative views of the police than do others. This is particularly important given that other Canadian research has documented considerable racial difference in attitudes toward the police and criminal courts.

One of the largest studies to examine perceptions of police discrimination in Canada included a survey of more than 1,200 black, Chinese, and white adult Torontonians, conducted as part of the Commission on Systemic Racism in the Ontario Criminal Justice System in the early 1990s. This study was replicated in 2007 to determine the extent to which citizens’ perceptions of bias had changed over the intervening 14-year period. The results indicate that perceptions of bias had increased among certain groups. For example, in 1994, three-quarters (76 percent) of black respondents felt that the police treat blacks worse than they do whites. By 2007, this figure had increased to 81 percent. Similarly, in 1994, 46 percent of Chinese respondents felt that the police treat Chinese worse than whites; by 2007, this figure had increased to 50 percent. Interestingly, white respondents’ perceptions of bias against both black and Chinese Torontonians also increased over this period. In 1994, 51 percent of white respondents believed the police treat blacks worse than whites. By 2007, this figure had increased to 59 percent. Furthermore, in 1994, 26 percent of white respondents said they believed the police treat Chinese worse than whites. This figure increased very slightly to 27 percent in 2007 (Wortley 1996; Wortley and Owusu-Bempah 2009, pp. 465–66). Wortley and Owusu-Bempah also asked respondents about their perceptions of racial bias within the Ontario criminal courts. Respondents were asked, “if a black person and a white person committed the same crime, who would get the longer sentence?” (the same question was repeated substituting “black” with “Chinese”). Interestingly, perceptions of bias within the Ontario criminal courts had increased among respondents from all racial groups between 1994 and 2007. Respondents from all racial groups believed that blacks were most likely to be affected by bias in the Ontario criminal courts (see Wortley and Owusu-Bempah 2009, pp. 466–67).

No matter what the cause, negative attitudes toward the police and the remainder of the criminal justice system, including perceptions of criminal injustice, are cause for concern. As alluded to previously, public cooperation with the justice system depends

on the system being viewed in a positive light (Brown and Benidict 2002). Furthermore, perceptions of bias or unfairness may justify criminal offending (Tyler 1990; Sherman 1993; Tyler 2005; Wortley and Tanner 2008). And, although Canadian criminal justice agencies are implementing numerous strategies to develop community relations and provide equitable service, these initiatives have not been subject to evaluation. Thus, it is difficult to discern their impact. The research findings presented here indicate that there is still much room for improvement and signal the need for further research of this nature; perceptions of bias in the criminal justice system remain a major issue in Canadian society. Unfortunately, very little research attention has been paid to discrimination in Canadian police, courts, and correctional institutions. In the next section, we review the available literature on racial bias in the administration of criminal justice in Canada.

B. Racial Profiling

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 blacks are more likely to be stopped, questioned, and searched by the police than whites (see reviews in Bowling and Phillips 2002; Tanovich 2006; Tator and Henry 2006). A similar picture is emerging in Canada. For example, James (1998) conducted intensive interviews with more than 50 black youth from six different cities in Ontario. Many of these youths 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, p. 173) concludes that the adversarial nature of these police stops contributes strongly to black youths' hostility toward the police (also see Neugebauer 2000). More recently, the Ontario Human Rights Commission (2003) gathered detailed testimonials from more than 800 people in Ontario—most of them black—who felt that they had been the victim of racial profiling.

The issue of profiling has also been explored through survey research. For example, a 1994 survey of Toronto residents found that one-third (30 percent) of black males had been stopped and questioned by the police on two or more occasions in the past 2 years. By contrast, only 12 percent of white males and 7 percent of Asian males reported multiple police stops. Multivariate analyses reveal that these racial differences in police contact cannot be explained by racial 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, more than 50 percent of the black students report that they have been stopped and questioned by the police on two or more occasions in the past 2 years, compared to only 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 2 years, compared to only 17 percent of their white and 11 percent of their Asian counterparts. Further analysis of this data suggests that racial differences in 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).

Fitzgerald and Carrington (2011), using data from the National Longitudinal Study of Children and Youth, also found that self-reported deviant behavior could not explain disproportionate minority contact with the police. Finally, a 2007 survey of Toronto adults found that black residents were three times more likely to be stopped and searched by the police in the past 2 years and that this racial disparity could not be explained by racial differences in criminality, drug and alcohol use, driving habits, use of public spaces, poverty, or residence within a high-crime community (see Wortley and Owusu-Bempah 2011b).

A second quantitative strategy for examining racial profiling involves the collection of data by the police themselves. In such cases, police officers are mandated to record the racial background of all people they decide to stop and search. 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 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 more than 16,500 police stops conducted over a 1-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 1,000, compared to only 51 per 1,000 for whites.⁸ The results further indicate the individual stop rate is highest for the black male residents of Kingston (213 per 1,000), followed by black females (75 per 1,000), white males (74 per 1,000), and white females (29 per 1,000). An additional advantage of the Kingston study is that it gathered information on both traffic and pedestrian stops. Indeed, more than 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 overrepresented 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. Although black people are still greatly overrepresented in traffic stops (2.7 times), they are even more overrepresented 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 background 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 more than 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 civilian. Contact cards contain various pieces of information including the civilian’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 civilians that come under enhanced police scrutiny. Interestingly, as with the Kingston data on police stops, blacks are grossly overrepresented in the Toronto police service’s contact card database. Although they represent only 8 percent of the Toronto population, blacks were the target of almost 25 percent of all contact cards filled out during the study period. Furthermore, the data indicate that blacks were issued a disproportionate number of contact cards in all Toronto neighborhoods—regardless of the local crime rate or racial composition (Rankin 2010a, 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, members of this community are also much more likely to be caught when they break the law than are whites who engage in exactly the same forms of criminal activity. For example, in the Toronto high school survey discussed earlier, 65 percent of the black drug dealers (defined as those who sold drugs 10 or more times in the past 12 months) report that they have been arrested at some time in their life, compared to only 35 percent of the white drug dealers. In other words, racial profiling may help explain why blacks 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 blacks from mainstream Canadian society and reinforces perceptions of discrimination and racial injustice. Indeed, research strongly suggests that blacks 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 blacks 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.”

C. Police Use of Force

Highly publicized American cases of police violence against blacks (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, Albert Johnson, Lester Donaldson, Wade Lawson, Marcellus Francois, and Sophia Cook are frequently used to illustrate that police use of force is a problem faced by 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 study of Ontario's Special Investigations Unit (SIU) is one exception. This study reveals that both blacks and Aboriginals are highly overrepresented in police use of force cases (Wortley 2006). Whites and members of other racial groups—including South Asians and Asians—are significantly underrepresented 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. Although blacks 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 in which the death of a civilian was caused by police use of force, the overrepresentation of blacks becomes even more pronounced. Blacks represent 27 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 whites (0.12). The results for Aboriginals are strikingly similar.

These findings, although suggestive, do not constitute proof that the Canadian police are racially biased with respect 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 these shootings were justified. This interpretation is consistent with American research (see Fyfe 1988), 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. Nonetheless, until such detailed research is conducted within Canada, questions about the possible relationship between race and police violence will remain.

D. The Arrest Situation

Early American studies of police arrest practices suggested that the racial minorities were much more likely to be arrested for minor crimes (drug use, minor assault, vagrancy, etc.) than were whites (see extensive reviews in Bowling and Phillips 2002; Walker, Spohn, and Delone 2004; Gabbidon and Greene 2005). However, recent evidence suggests that racial bias in police arrest decisions may be declining. For example, contemporary observational studies of police–citizen encounters conducted in the United States suggest that, controlling for the seriousness of criminal conduct, race is unrelated to the police decision to arrest (see Klinger 1997; Delisi and Regoli 1999). 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 nonwhite victims and are especially likely to make arrests when the case involves a white victim and a minority offender (see Smith, Visher, and Davidson 1984; Stolzenberg, D'Alessio, and Eitle 2004; Parker, Stults, and Rice 2005). Some have argued that this is direct evidence that the police put a higher value on white than 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 more than 10,000 Toronto arrests—between 1996 and 2001—for

simple drug possession reveals that black suspects (38 percent) are much more likely than white suspects (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 persons 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, 2002b). Studies that have examined the treatment of young offenders in Ontario have yielded very similar results (Commission on Systemic Racism 1995).

E. Pretrial Detention

The bail decision is recognized as one of the most important stages of the criminal court process. Not only does pretrial detention represent a fundamental denial of freedom for individuals who have not yet been proved guilty of a crime, 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 their counterparts who have been released (see Friedland 1965; Reaves and Perez 1992; Walker, Spohn, and Delone 2004). Thus, racial disparities in pretrial outcomes could have a direct impact on the overrepresentation 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 nonwhites are more likely to be held in pretrial detention than whites. A similar situation seems to exist in Canada. An examination of 1,653 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 offenses. Indeed, the study found that almost one-third of black offenders (31 percent) charged with a drug offense were held in detention before their trial, compared to only 10 percent of whites charged with a similar offense. 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 more than 1,800 criminal cases appearing in two Toronto bail courts over a 6-month period in 1994. Overall, the results suggest that 36 percent of black accused are detained before trial, compared to only 23 percent of 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, however, suggests 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 police officers, on average, spend more time justifying the detention of black than white accused. 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 overcharging) to encourage (or coerce) guilty pleas from accused persons. Those accused who are not held in pretrial custody, by contrast, are much more likely to have all of their charges withdrawn.

It is interesting to note that, even when they are released on bail, black accused are still 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 are 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 presented earlier), it is not surprising to find that blacks are greatly overrepresented among those charged with breach of condition offenses (Kellough and Wortley 2004).

F. Race and Sentencing

American and British research on race and sentencing has produced mixed results. Some studies have found that blacks and other minority defendants are treated more harshly (Hudson 1989; Shallice and Gordon 1990; Hood 1992; Mauer 1999), some studies have found that they are treated more leniently (Wilbanks 1987), and others have found no evidence of racial differences in sentencing outcomes (Lauritsen and Sampson 1998; Bowling and Phillips 2002). Recent reviews of the American research (see Spohn 2000; Johnson 2003; Ulmer and Johnson 2004) indicate that racial minorities are sentenced more harshly than whites if they are (1) young and male, (2) are unemployed or have low incomes, (3) are represented by public defenders rather than a private attorney, (4) are convicted at trial rather than by plea, (5) have serious criminal records, (6) have been convicted of drug offenses, or (7) have been convicted of less serious crimes (i.e., racial differences in sentencing are greatest among those convicted of drug offenses or less serious crimes).

Canadian research on race and sentencing has also produced contradictory findings. For example, although Aboriginal offenders are more likely to receive sentences of incarceration for relatively minor offenses, they frequently receive more lenient sentences when convicted of more serious crimes. For example, one study found that only

20 percent of Aboriginals convicted of homicide receive life sentences, compared to more than half of non-Aboriginal offenders (La Prairie 1990). Similarly, using 5 years of federal admissions data, Moyer (1985) found that sentence length favored Aboriginal accused more than whites for a number of violent crimes.

Compared to research on Aboriginal offenders, relatively little Canadian research has focussed 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 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, p. 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 offenses—are more likely to be sentenced to prison. This racial difference remains after other important factors—including offense seriousness, criminal history, age, and employment—have been taken into statistical account. Toni Williams (1999, p. 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 offense 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; Spohn 2000; Johnson 2003; 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, Williams, and Demuth 2004).

G. Race and Corrections

As with other stages of the criminal justice system, very little Canadian research has examined the treatment of racial minorities within corrections. However, consistent with studies on 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 whereas 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 overrepresented among prisoners charged with misconducts—particularly the types of misconducts in which correctional officers exercise greater discretionary judgment. This fact is important because a correctional record for such misconducts is often used to deny parole and limit access to temporary release programs. Indeed, exploratory research suggests that blacks 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 highlighted the fact that current rehabilitation programs do not meet the cultural and linguistic needs of many racial 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 blacks 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 nonwhite offenders—a fact that may further contribute to their overrepresentation in the Canadian correctional system.

V. DEMOCRATIC RACISM AND CRIMINAL JUSTICE IN CANADA

The de facto ban on the collection and dissemination of race-based justice statistics in Canada has made it exceedingly difficult for Canadian criminologists to study racial differences in crime and criminal justice outcomes. The limited data that are available has identified four major themes: (1) black and Aboriginal Canadians are significantly overrepresented in Canada's federal and provincial correctional systems—at levels exceeding those of African Americans in the United States; (2) there is some evidence to suggest that Aboriginal and black populations are overrepresented with respect to violent offending and victimization; (3) a large proportion of Canada's minority populations perceive bias in the criminal justice system; and (4) available research suggests that public perceptions are accurate—racial bias exists in the administration of criminal justice in Canada.

It should be stressed that these findings are preliminary. Nevertheless, research that has been conducted suggests that race, crime, and criminal justice are important issues within the Canadian context. Unfortunately, despite Canada's reputation as a diverse

and tolerant nation, there is evidence to suggest that the Canadian government does not want to openly deal with such issues. This view fits well with the theory of “democratic racism.” The main characteristic of democratic racism is the justification of the inherent conflict between the egalitarian values of liberalism, justice, and fairness, and the racist ideologies reflected in the collective mass belief system, as well as in the racist attitudes, perceptions, and assumptions of individuals (Henry and Tator 2005, p. 19). Democratic racism, then, is an ideology that permits the emergence of two conflicting sets of values: a commitment to democratic principles such as justice and equality on one hand, which conflict but coexist, with the solidification of racialized beliefs and practices on the other (Henry and Tator 2005, p. 22).

One manifestation of democratic racism, according to Henry and Tator (2005) is the discourse of denial; the principal assumption that racism cannot and does not exist in a liberal democracy such as Canada (2005, pp. 24–25). We see clear evidence of denials of racism in the initial response of some police executives to allegations of racial profiling when the practice first arose as a public issue in Canada. For example, former chief of the Toronto Police Service, Julian Fantino remarked “we do not do racial profiling. . . . There is no racism . . . we do not look at, nor do we consider race or ethnicity, or any of that, as factors of how we dispose of cases, or individuals, or how we treat individuals” (*Toronto Star* 2002b). Similarly, Craig Brommell, president of the Toronto Police Association at the time, stated in a news release that “[no] racial profiling has ever been conducted by the Toronto Police Service” (Porter 2002). Even local politicians weighed in to offer their denials of racism and support of the police. Mayor Lastman declared “I don’t believe that the Toronto Police engage in racial profiling in any way shape or form” (*Toronto Star* 2002a). Interestingly, one of the first pronouncements made by current chief Bill Blair, Julian Fantino’s successor, was an admission that racial profiling by the police was in fact a reality in Toronto (James 2005). Such denials also took place in the nation’s capital, Ottawa. The Chief of the Ottawa Police Service similarly denied that his police force practices racial profiling after a deputy chief told a federally sponsored forum that the Ottawa police did in fact conduct racial profiling (Tator and Henry 2006, p. 129). Six years later, in the summer of 2011, the Ottawa Police service approved and implemented a Racial Profiling Policy (Ottawa Police Service 2011).

Denials of racism in the administration of criminal justice are not limited to the policing sector. The following statement is illustrative of such denials within the court system: “crown attorneys have no control over intake and arrest, we deal with everyone equally. . . . I have never noticed that one group is treated differently, I don’t care whether someone is black, white, or green” remarked Stephen Legget, head of crown counsel at a Toronto court (*Toronto Star* 1992, as quoted in Henry and Tator 2005, p. 145). Similarly, judges have been criticized for failing to acknowledge and take judicial notice of the existence of racism in the justice system when the matter has been presented before them in court. *Regina v. Brown* is case in point.

Henry and Tator (2005) also argue that even when uncovered, little action has been taken to respond to allegations of inequality and racial bias. This, too, is an important feature of democratic racism that Henry and Tator consider indicative of a “lack of

political will” (2005, p. 145). The government’s refusal to systematically collect and publish race-based criminal justice statistics is one key manifestation of this lack of political will. Available data, official and otherwise, show that (1) disparities in Canadian criminal justice outcomes exist (Manitoba 1991; Commission on Systemic Racism 1995; Public Safety Canada 2012), (2) racial bias exists within the Canadian criminal justice system and has been confirmed by Canadian courts (*Toronto [City] Police Service v. Phipps* [2010], 325 D.L.R. [4th] 701 [Ont. Div. Ct.]; *R. v. Huang* [2010] B.C.J. No. 2627 [P.C.]; *Pieters v. Peel Law Association* [2010] HRTO 2411; *McKinnon v. Ontario [Correctional Services]* 2011 HRTO 591 [CanLII]⁹). At the same time that police and other criminal justice agents claim to provide equitable service to all Canadians, they systematically withhold information that is essential to the examination and, ultimately, the elimination of any racial disparities that may exist (Wortley and Owusu-Bempah 2011b). In fact, a lack of data has enabled the Canadian justice system to deflect allegations of bias by arguing that claims of racism lack the statistical proof necessary to substantiate them. Personal testimony, such as the more than 800 submissions provided to the Ontario Human Rights Commission’s study on racial profiling, are dismissed as the anecdotal grievances of unhappy and angry citizens.

The lack of will to ameliorate racial disparity is also evident in the lack of action taken to institute the recommendations of government commissions, task forces, and other bodies that have been set up to examine racial inequality and to develop solutions to such problems. The Commission on Systemic Racism in the Ontario Criminal Justice System, for example, was established in the early 1990s by a New Democrat government to inquire into and make recommendations about systemic racism in criminal justice practices, procedures, and policies in Ontario. In its final report, the Commission made almost 80 recommendations, few of which have actually been implemented. Similarly, the Roots of Youth Violence Review, established in the wake of the high school shooting of Jordan Manners in Toronto, made numerous recommendations relating to policing, the justice system, and other sectors of society. Again, little has been done to address these recommendations. In a sense, it appears that government action to resolve problems of racial disparity and discrimination is simply to establish these commissions, not to act on their findings.

Even where measures are taken to reduce racial disparity and discrimination, they have been criticized as lacking in substance. The training of police officers is one example. Over the past several decades, there has been increased pressure and, as a result, increased implementation of antiracism training for police officers, especially in Canada’s urban centers. However, there has been no clear agreement as to what the goals of these training programs should be, except at the most general level (Henry and Tator 2005, p. 170). Furthermore, this training has been provided within an organizational environment that has not always been particularly supportive and open to change. Such training is often not taken seriously by police officers nor, at times, by the trainers. Police officers also remain heavily influenced by the social and structural context of police institutions, thus questioning the efficacy of antiracism training. Although antiracism training has made its way into the policing world, most practicing judges, defense

counsel, and other members of the justice system have not received any comprehensive training on the manifestations of racism in public systems (Henry and Tator 2005, p. 147). The efficacy of antiracism training with police could be ascertained through rigorous evaluation of such programs; this, too, has not taken place. Nor have there been thorough evaluations of most of the other measures that have been implemented such as community relations/mobilization programs, and antidiscrimination/equality policies (Stenning 2003). The lack of evaluation signals a lack of concern for the effectiveness of these initiatives. This is somewhat surprising, given that public money is at stake.

Finally, democratic racism in Canadian criminal justice is manifested in the discourse of “blaming the victim.” According to this discourse, black and Aboriginal Canadians are overrepresented in criminal justice statistics because they commit more crime. Current Toronto police chief Bill Blair did this recently when questioned about the overrepresentation of black and brown people in police contacts in the city. Data analyzed by the *Toronto Star* showed that black males aged 15–24 were stopped and documented 2.5 times more often than white males of the same age (Rankin 2010a). Blair stated “[w]e look at it as neighborhoods because that’s where the crime is taking place. There’s a whole bunch of reasons, there are. I don’t think that race is one of them” (*Toronto Star* 2010). Although Blair acknowledged factors that lead to criminality such as poverty, unemployment, and marginalization, what is ironic is that these same data showed blacks to be overrepresented in more affluent areas of the city with large white populations and small numbers of racial minorities.

Canada’s apparent amnesia with regards to its historical treatment of racialized peoples and its involvement in both French and British colonialism continue to haunt racial minorities in the country. As the previous review has demonstrated, the significant racial disparities in one of Canada’s most important social institutions, its criminal justice system, are legacies of this past. Unfortunately, the current push by our conservative government to introduce mandatory minimum sentences for drug and gun crimes, not unlike those being repealed in many U.S. jurisdictions, indicates that we are moving further away from remedying these issues.

V. IMPLICATIONS

As this review documents, research on race, crime, and criminal justice in Canada is quite limited in comparison to other English-speaking, Western nations. This is especially true when it comes to exploring racial differences in criminal offending and victimization. As emphasized throughout this essay, a major impediment to examining these issues is the lack of race-based criminal justice data. The systematic collection and public release of racial data would enable researchers to further understand how race may be related to criminal offending and victimization, and to determine the extent to which the racial background of both offenders and victims influences criminal justice decision making and outcomes. It is also important to note that, to date, the race-based

research that has been conducted is also limited with respect to geography. Despite great regional differences in the racial composition of the Canadian population, the province of Ontario, and the City of Toronto in particular, has served as the site for most of the existing research in this area. In sum, there is a great need for more research in this field in the Canadian context. Next, we briefly discuss specific areas for future research and how such research might impact criminal justice policy in Canada.

A. Future Research Areas

Further research in the Canadian context is needed to document racial differences in victimization and offending and to identify areas that require criminal justice and social policy attention. Having established racial differences in rates of offending, victimization, and representation in criminal justice statistics, future research should examine the role that race and ethnicity play in explaining these differences. For example, our own work in Toronto communities has demonstrated a divide between blacks from continental Africa and those from the Caribbean in terms of their involvement in crime and attitudes toward the justice system. As current projections anticipate that the Canadian population will become increasingly diverse and Canada's racialized populations grow, research on intragroup differences become more significant (Statistics Canada 2010). Further research into the suppression of racial data within the criminal justice system, and the reasons for this suppression, would be useful to criminologists and other academics attempting to conduct research in the field. This line of research should document the availability of racial data in the Canadian criminal justice system, as well as the feasibility of expanding the collection of race-based data throughout the system.

B. Policy Implications

Government implemented or mandated systematic data collection, analysis, and reporting of racial data from the criminal justice system is needed to develop a better understanding of the nature of race, crime, and criminal justice in Canada. The release of these data would allow for the testing of criminological theories and the development of criminal justice policy. It would also allow for the evaluation of criminal justice policies and practices aimed at reducing racial disparities and discrimination. These data would also help determine whether justice initiatives more generally have a disproportionate impact, negative or positive, on Canada's racial minority communities. Furthermore, effort is needed to improve those socioeconomic conditions of racial minorities that lead to crime. A number of characteristics, common among racial minority groups, increase their likelihood of involvement in crime as both perpetrators and victims. These include, but are not limited to being highly concentrated, being relatively young, facing a double-digit income gap compared with the rest of the Canadian population, experiencing higher than average rates of unemployment and discrimination in the

workplace, deepening levels of poverty, and having differential access to housing, resulting in neighborhood segregation (Galabuzi and Labonte 2002).

Further effort should be directed at improving relations between racial minority groups and the criminal justice system—particularly the police. Current efforts by the police, such as “community consultative committees,” are hampered by the realities racial minorities face when they have first-hand experience with the police and relay these experiences to friends and families. Such efforts would include fostering attitudinal changes on the part of criminal justice personnel, as well as efforts to recruit a more racially diverse workforce. The identification of laws, policies, and practices that disproportionately impact racialized Canadians is warranted, especially in light of recent amendments to the Criminal Code of Canada. There is a need not only to focus on the impact that new laws, policies, and practices may have on racial minorities’ experiences with the criminal justice system, but also to explore how perceptions of and contact with the Canadian criminal justice system impact how racial minorities interact with other social institutions, including those in the education and employment sectors.

NOTES

1. The Canadian Employment Equity Act defines visible minorities as “persons, other than Aboriginal peoples, who are non-Caucasian in race or nonwhite in colour” (Department of Justice 2005).
2. Vickers (2002).
3. This essay focuses on race rather than ethnicity in the context of crime and criminal justice in Canada. Although ethnicity has become more important in influencing experiences with crime and criminal justice since the terror attacks of 9/11, criminological research in Canada has, for the most part, focused on racial rather than ethnic differences.
4. “The objective of the Integrated Criminal Court Survey is to develop and maintain a database of statistical information on appearances, charges, and cases in adult [and youth] criminal courts. . . . It includes information on the age and sex of the accused, case decision patterns, sentencing information regarding the length of prison and probation, and amount of fine, as well as case-processing data such as case elapsed time” (Statistics Canada 2011b).
5. “The Integrated Correctional Services Survey . . . collects annual data on the delivery of adult [and youth] correctional services. Key themes include new admissions (commencements) to correctional programs of sentenced custody, probation, conditional sentences, and other community-based programs. The survey also captures information on conditional releases to the community including parole and statutory release. In addition, the survey collects aggregate information on the financial and human resources involved in the delivery of adult [and youth] correctional services” (Statistics Canada 2011a).
6. Quebec gave us a more detailed breakdown of inmates by ethnicity and country of origin—not race. Most black Quebec inmates, therefore, were categorized as either Franco or Anglo-Canadian.
7. “Nonvisible minorities” include single-origin white, single-origin Aboriginal, multiple-origin white/Latin American, and multiple-origin white/Arab-West Asian respondents (Cao 2011, p. 8).

8. 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.
9. Complainants in the latter two of these cases were individuals who work within the criminal justice system.

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CHAPTER 11

ETHNICITIES, RACISM, AND CRIME IN ENGLAND AND WALES

ALPA PARMAR

UNDERSTANDING relations between ethnicity and crime requires appreciation of inter-connections in the criminal justice process, because each stage has a consequential impact. Disentangling how racism and ethnicity affect criminal justice processes and outcomes and differentially affect various minority groups is a challenging task because discrimination is often subtle and factors such as inequality are fused with ethnic background and affects groups of people in uneven ways. Unequivocal claims are therefore difficult to substantiate in this field.

A number of watershed events in the social and political history of crime and justice in England and Wales frame the effort to demonstrate relations among ethnicity, crime, and criminal justice. Official inquiries following these events have often raised public awareness of racism and catalyzed processes of change. The Brixton riots in April 1981 confirmed tensions between the police and the black community that had previously been reported anecdotally in the media and at the community level. The riots were triggered by “Operation Swamp ‘81” involving heavy use of stop and search of “suspicious” black people in south London over 4 days. Mounting resentment and anger resulted among black community members and culminated in violence and protests over 3 days. More than 300 people were injured and vehicles and buildings were destroyed. The riot triggered disturbances in other parts of the country including Manchester, Liverpool, and Birmingham (Solomos 1993/2003). The Scarman Inquiry following the riots indicated the need for more sensitive policing of minority communities, identified racism among some officers, and proposed that these attitudes be sought out during police recruitment processes (Scarman 1981). Further disorder flared in September 1985 in Birmingham. Riots a month later on the Broadwater Farm estate in north London were initiated by the death of a black woman, who died from heart failure following a police search of her home in connection with a suspected minor infraction. During the

disorders, a policeman was killed, 250 people were injured, and widespread property damage occurred.

In summer 2001, clashes occurred between the police and British Pakistani men in Northern cities including Burnley, Bradford, and Oldham. The disturbances were sparked by a demonstration in Bradford by the National Front (a far-right, whites-only political party), which expressed underlying racist tensions. Official reports commented on the high deprivation and unemployment among youths in the former mill towns and observed that the communities were segregated along lines of ethnicity, faith, and culture. A lack of “community cohesion” was proposed as a cause of the demonstrations of anger and violence by British Asian youth (Cantle 2005).

One of the most important milestones in policing in England and Wales was marked by the racist murder of Stephen Lawrence in 1993 and the police handling of the ensuing investigation. The Macpherson Inquiry into the investigation concluded that the police were institutionally racist and made a number of recommendations to address racism that was recognized as endemic. The Macpherson report was the first official document to observe that black communities in England and Wales were “over-policed and under-protected” (Macpherson 1999, p. 312). Later evaluations of the effects of the Macpherson reforms identified some improvements, including reduction in use of overtly racist language by police. However, racism was thought to have simply “gone underground,” and sexism was described to be ubiquitous throughout the police service (Foster, Newburn, and Souhami 2005).

There was some indication that overt racism was replaced by a more subtle form of cultural racism in which attributes were assigned to various minority groups and expressed covertly (Loftus 2009). This was first demonstrated in the 2003 documentary *The Secret Policeman* in which an undercover journalist joined the police service and found use of virulent racist language in private among white recruits during the training despite their engagement in diversity training exercises.

The London Underground terrorist attacks in July 2005 have altered the criminal justice landscape. Four bombs detonated by British Muslim citizens on London’s public transport system resulted in 52 deaths and over 700 injuries. The young men from Leeds justified their actions in prerecorded videos by stating that they were avenging the deaths of Muslims across the world. Anti-Muslim sentiment following the attacks was reported, as were perceptions of Muslims as representing “the enemy within” (Hudson 2007). Muslim communities were said to come under the gaze of terrorist policing and to be treated as inherently suspect (Pantazis and Pemberton 2009). Following the attacks, government policy for countering terrorism was altered. Since 2007, there has been an increase in police stops and searches of British Asian males under Section 44 of the Terrorism Act 2000, despite official assurances that the legislation is not aimed at particular minority groups (Parmar 2011). The controversy associated with Section 44 led to its withdrawal in January 2012.

In 2000 the Prison Service was charged with institutional racism when Zahid Mubarek was murdered by his cellmate in a young offenders institution in South London. Even though Mubarek’s murderer had previously shown racist tendencies, inappropriate risk assessments by the prison establishment left Mubarek vulnerable.

More recently, intense rioting occurred across London and other parts of the United Kingdom over 4 days in the summer of 2011. The riots developed from initially peaceful protests organized in response to the police shooting of Mark Duggan, a black man from the Tottenham area of north London. Riots spread across London and England including in Manchester, Bristol, and Birmingham. Five deaths resulted, 3,443 crimes were recorded in London, and there was large-scale looting and property damage. Research on causes suggested that anger, distrust, and resentment toward the police were major contributing factors (*Guardian* and LSE 2011). Though these were not “race riots” as such, the initial protests were organized because of a perceived sense of injustice by local residents in an ethnically diverse borough of London who were seeking answers as to why Mark Duggan was shot dead.

Racism is problematic at the societal level, making its presence in criminal justice institutions and practice unsurprising. Given the criminal justice system’s role in promoting justice and in guiding, protecting, punishing, and reforming citizens, the system should arguably be exemplary even if many lay members of society are not. Past events and research have shown that the criminal justice system maintains and perpetuates policies that result in discriminatory consequences for minority group members.

In this essay, the experiences of members of minority groups in the criminal justice process, compared with those of whites, are discussed as a whole, and each stage is discussed in detail. A number of main conclusions emerge:

- Disproportionality in stops and searches of young black men continues unabated and their disproportionate use against Asian men is increasing.
- The role of inequality in explaining group differences in offending remains obscure, and affects minority groups in different ways.
- Differences in offending and victimization between minority groups require in-depth empirical attention and critical examination of the categorization of minority groups.
- Progress has been achieved in recognizing and addressing racism in official practices, however processes remain in place whereby types of crime become associated with groups of people and require further investigation.
- Changes in society, including an increase in migration to England and Wales warrant closer examination of connections between border control, punishment, and criminal justice.

The essay contains five sections. The first discusses concepts used to organize the experience of minority groups and discusses historic and contemporary migration patterns. Group differences in victimization, offending, and criminal justice experiences are the focus of section II. Section III discusses issues that shape the experience of minority groups in contemporary society, including disproportionate policing, terrorism, and (in)security, and their effects on the “lived experiences” of minority ethnic groups. Section IV examines empirical data and theoretical analysis concerning patterns of

offending and system processing. Section V, the conclusion, summarizes main points and discusses implications for future research and policy.

I. ETHNICITY IN ENGLAND AND WALES

Concepts and categories used to distinguish ethnic groups have come under scrutiny for their capacity to reflect ethnic identities accurately. Better understanding of ethnic identities (from the perspective of minority citizens) by criminal justice officials, criminologists, and decision makers may shake taken-for-granted assumptions and undermine discriminatory stereotypes. Brubaker (2004), for example, criticizes the social sciences for a tendency to take bounded groups as fundamental units of analysis and basic constituents of the social world. Group membership is variable rather than fixed, and collective action does not necessarily stem from one's collective designation. A relational approach that guards against conceptual complacency would be appropriate in research studies, but for criminology and criminal justice, we are restricted by the group definitions by which data are researched, collected, and analyzed.

In order to indicate the fluidity and flexibility of ethnic identity and group categories, the plural term *ethnicities* has been preferred in recent scholarship (Phillips and Bowling 2012) and is used in the title of this essay. Studies of crime and criminal justice lend themselves to the excavation of lived experiences and the consequences of being a minority group member in a society and their experiences within a system. However, issues such as "mixedness" and hybridity, and the distrust of difference have often been overlooked in studies of crime and criminal justice (Gilroy 1993; Bauman 2000; Ali 2005).

This essay is written and structured in accordance with the existing descriptive boundaries between ethnic groups that research studies have embedded in their designs and findings. Arguably, ethnic group categories should be used as heuristic devices—to signify differences and the direction of patterns rather than to reconstitute these categories or reify them. The boundaries between and within ethnic groups are not fixed, but porous, and are shaped by time, space, and political priorities.

Criminal justice statistics use fairly broad categories in order to maintain statistical power of the findings for ethnic minority groups. Five broad ethnic categories have recently been used in annual reports published by the Ministry of Justice since 1991 on ethnic minorities in the criminal justice system: white, black, Asian, mixed, and other.¹ There is some further subspecification, for example, British-Asian Indian. The official statistics allow for broad pictures of patterns of offending, victimization, and interaction with the justice system rather than a more nuanced understanding of ethnic groups as described above. Empirical data that allow for a detailed understanding of the differences between ethnic groups are often not available or presented and so the disaggregation of categories such as "Asian" remains the exception rather than the norm.

Over the last 2 decades, understanding and study of race and ethnicity have become detached from broader social structures such as inequality and class (Knowles and Alexander 2005). Analyses of crime and ethnic minority people's involvement in the justice system demand appreciation of the ways in which class and inequality intersect with ethnicity and gender. The task is, therefore, complex: to use ethnic categories as a marker, but not necessarily be guided by their boundaries, to appreciate issues such as history and social class but to also allow for the fluidity of categories and nuanced understandings. Racism in studies of criminal justice needs to be accepted as a potential explanation for outcomes while other possible explanations for patterns are sought.

A. Post-Colonial Journeys and Multicultural Spaces

An informed understanding of the experiences of ethnic minorities in Britain requires an overview of Britain's colonial past. There is as much (if not more) to be said about people's migratory routes as about their ethnic "roots" when discussing where they "came from." In England and Wales, political concerns about migration invariably tend to focus on ethnic minority migrants who can be identified by the color of their skin.

Black people of Caribbean origin were the earliest arrivals in the period of expanded immigration, and tended to settle in London and large cities such as Birmingham and Bristol. The high point of Caribbean immigration was from the mid-1950s to the mid-1960s (Lupton and Power 2004). Indians have had a presence in the United Kingdom since the 1600s as servants and lascars (seamen) (Visram 2002). Following independence from the British Empire in 1947, Pakistani and Indian migration to the United Kingdom peaked in the mid-1960s, with a further boost in the early 1970s by East African Indians who were expelled from Uganda.

The number of Bangladeshis living in London in the 1950s was estimated at 300; most were men. Following the displacement caused by partition and other factors, by 1962 there were around 5,000 Bangladeshis in the United Kingdom, who mainly came in response to the postwar demand for cheap unskilled labor. Bangladeshi migration to the United Kingdom peaked between the 1950s until 1962, a time when immigration controls were relatively open. Following that, immigration from the Commonwealth was restricted by the *Commonwealth Immigrants Act 1962*, which allowed entry only to those who fit into a required category for skilled work (Visram 1986; Gardner 2002).

More recently, the United Kingdom has experienced the arrival of many entrants from Eastern Europe. In May 2004, eight central and European countries joined the European Union (EU) with rights to work in the United Kingdom. These were the Czech Republic, Estonia, Hungary, Poland, Lithuania, Latvia, Slovenia, and Slovakia. An estimated 165,000 citizens from the European Union migrated to the United Kingdom in 2011 and approximately 91,000 were estimated to have emigrated. Although there was an initial panic in the United Kingdom about people arriving from Eastern Europe and dominating the workforce, in 2009, Eastern Europeans made up only 1.63 percent of workers (Office for National Statistics 2011). As discussed earlier, recent migration

patterns are important to decipher within the context of criminal justice because there is a growing body of scholarship which suggests that border crossing is increasingly criminalized and that the enforcement of immigration law can be used as a form of punishment (Bowling 2013).

B. Population Figures

Of the 54 million people living in England and Wales in 2009,² 83.35 percent were British whites, 5.87 percent were Asian or Asian British, 2.81 percent were black or black British, 0.82 percent were Chinese, and 1.8 percent belonged to the mixed group. The main change from 2001 was the increase in the mixed-race population from 672,000 in 2001 to 986,600 in 2009.

C. Multicultural Citizenry and Space

Table 11.1 provides disaggregated population data for 2009. It demonstrates the heterogeneity that exists within groups. The geographical distribution of ethnic minorities in the United Kingdom is uneven. Initial employment and kinship networks that existed when people first migrated and labor market demands have shaped settlement patterns. Minority-group people are more likely to live and work in urban areas because of the availability of cheaper housing and greater employment opportunities. The areas with high ethnic minority populations are London and its environs, Birmingham, and the Midlands including Coventry, Leicester, Nottingham, and Derby. Lancashire, West and South Yorkshire, Glasgow, Liverpool, Bristol, and Cardiff were also major areas of settlement.

The concentration of minority groups is important because geographical space is policed and subject to surveillance to different extents (Reiner and Newburn 2007). This is often entangled with discrimination; the places that receive the most police attention often are also more ethnically diverse than other areas or residential concentrations of ethnic minority groups (Gordon 1983; Keith 1993; Lea and Young 1993). Whether ethnic minorities are simply more “available” to be policed or are targeted by the police has become a central issue in the stop-and-search debate (Waddington, Stenson, and Don 2004; Bowling and Phillips 2007). Urban areas receive more focused intervention than do rural areas. Police patrols, stop-and-search operations, and counterterrorism efforts, for example, more often take place in major cities than in smaller towns. Fears of crime and victimization also vary according to space, and are more pronounced in areas where minority groups live (Webster 1995; FitzGerald and Hale 1996). Figures from the Office for National Statistics (ONS, 2010) show that in England and Wales the greatest diversity is to be found in 24 London boroughs and Birmingham, Slough, Leicester, and Luton. Based on census figures from 2001, the ONS found that the London borough of Brent was the most diverse place in the United Kingdom; any two people had an 85 percent

Table 11.1 Ethnic composition of England and Wales

Ethnic Group	Number (thousands)	Percent
White British	45,682.1	83.35
White Irish	574.2	1.05
White other	1932.6	3.53
Total white	48,188.9	87.92
Mixed: white and black Caribbean	310.6	0.56
Mixed: white and black African	131.8	0.24
Mixed: white and Asian	301.6	0.55
Mixed: other mixed	242.6	0.44
Total mixed	986.6	1.8
Asian or Asian British: Indian	1434.2	2.62
Asian or Asian British: Pakistani	1007.4	1.84
Asian or Asian British: Bangladeshi	392.2	0.72
Asian or Asian British: other	385.7	0.70
Total Asian or Asian British	3219.5	5.87
Black or black British: black Caribbean	615.2	1.12
Black or black British: black African	798.8	1.46
Black or black British: other black	126.1	0.23
Total black or black British	1540.1	2.81
Chinese or other ethnic group: Chinese	451.5	0.82
Chinese or other ethnic group: other	422.6	0.77
Total Chinese or other ethnic group	874.1	1.59
All ethnic groups	504,809.1	100

Source: Office for National Statistics (2011), Population Estimates by Ethnic Group 2002–2009

chance of being from different racial groups. In the London borough of Newham, the level was 83 percent, and in Westminster 71 percent. The London borough of Harrow was the most religiously diverse, with a 62 percent chance that any two people would declare different religions.

D. Measuring Ethnicity and Data Capture

Understanding of the relationship between ethnicity and crime is reliant on careful and accurate measurement, data capture, and analysis. However, information about

ethnic background is not collected in a uniform way. Agencies use different categorization systems and some use self-defined ethnic background questions as the basis for categorizing. In addition, measurement of ethnicities has changed over time, rendering retrospective comparative studies less meaningful.

Understanding of levels of crime is dependent upon accurate and consistent reporting and recording. The study of offending, victimization, and prosecution is difficult because much of what scholars hope to learn is hidden. People may be reluctant to disclose information about their involvement in crime and the justice system because of the potentially negative consequences and pejorative judgments they may experience. Prosecution figures have at times been criticized for reflecting patterns of policing rather than patterns of offending. Self-report studies as a measure of offending have demonstrated high levels of validity and reliability (Bowling 1990; Graham and Bowling 1995). Some questions have been raised about the willingness of members of ethnic minority groups to disclose their involvement in offenses (Junger 1989), but these doubts have been largely discredited (Sharp and Budd 2005).

II. DIFFERENCES IN VICTIMIZATION, OFFENDING, PROSECUTION, AND PRISON

Ministry of Justice statistics show that ethnic minority people's involvement at various stages of the justice system has risen slightly in all categories for black and Asian groups over the last 10 years.³

As table 11.2 shows, the number of stop-and-searches of black and Asian people increased over the decade of 2000–10, whereas those for white people decreased. The largest increase was for black people (6.4 percent) followed by Asians (5.2 percent). For Asian people, the number of stop-and-searches was above what would be expected from population composition; for example, in 2009, 5.6 percent of the population aged 10 or older were Asian. Black people are highly overrepresented in prisons: 10.8 percent were in prison in 2010 whereas black people aged 10 years or older made up only 2.7 percent of the population of England and Wales.

A number of hypotheses, not mutually exclusive, can be put forward to explain the increase in stop-and-searches of Asians from 4.4 percent in 2000 to 9.6 percent in 2010: changes in policing practice toward Asian people who were not previously thought to present a crime problem but later became perceived as a threat; changes in policy and legislation; increased enforcement of crimes for which Asian groups might be suspected; an increase in the proportion of Asian people aged 16–25 because of migration patterns which have shaped the demographic age structure; and an increase in the policing of urban areas where Asian people are more likely to reside. This is clearly a simplified approach to trying to explain complex data, but it highlights the many reasons that can explain trends.

Table 11.2 Proportion of individuals at different stages of the criminal justice system process according to ethnic group compared to the general population, England and Wales. A comparison of 2010 and 2000 figures, population aged 10 and over, criminal justice system processing

	White (%)	Black (%)	Asian (%)	Mixed (%)	Chinese/ Other (%)	Unknown (%)
Population, aged 10 or over						
2009	88.6	2.7	5.6	1.4	1.6	—
2000	94.5	1.8	2.7	—	0.9	1.3
Stop and Searches						
2009/10	67.2	14.6	9.6	3.0	1.2	4.4
1999/00	85.2	8.2	4.4	—	0.9	1.3
Arrests						
2009/10	79.6	8.0	5.6	2.9	1.5	2.4
1999/00	87.0	7.3	4.0	—	0.8	0.9
Cautions						
2010	83.1	7.1	5.2	—	1.8	2.8
2000	87.2	5.7	4.1	—	1.0	2.0
Court Order Supervisions						
2010	81.8	6.0	4.9	2.8	1.3	3.2
2000	—	—	—	—	—	—
Prison Population 2010 ¹	78.1	10.8	5.5	3.5	0.3	2.2
Prison Population 2000	81.2	12.3	3.0	—	3.4	0.1

¹The prison figures exclude foreign nationals.

Source: Adapted from Ministry of Justice section 95 Statistics 2010 and 2000. Ministry of Justice (2010) and Home Office (2000).

Table 11.2 also identifies the gross disproportionality of the black group at every stage of the system. This disproportionality has increased, except in the prison population, where it has decreased slightly; however, it remains higher than would be expected from population composition.

A. Victimization

According to the 2004–5⁴ British Crime Survey (BCS) (Nicholas et al. 2005), there were no differences in the overall prevalence of victimization (all crimes) between ethnic groups, except that people from a mixed ethnic background (29 percent) were at a higher risk of victimization than white people (24 percent) (Jansson 2006).

Differences between groups are more evident when victimization data are disaggregated. Differences between minority ethnic and white groups may be attributable to

sociodemographic factors. For example, factors associated with minority groups that might increase risk include that households with fewer security devices are at a higher risk of burglary, inner city areas are at a higher risk of vehicle-related theft, and young men are at higher risk of violent incidents (Nicholas et al. 2005).

Ministry of Justice figures separate personal and property crimes; personal crimes include violent crimes such as assault, robbery, and thefts from the person. Eleven percent of people from mixed ethnic backgrounds were victims of personal crimes compared with 6 percent from white or Asian backgrounds (Jansson 2006). The same pattern was observed for violent incidents; those of mixed background were most at risk followed by the white, Asian, black, Chinese, and other ethnic groups. The mixed group was most likely to be at risk of acquaintance violence (Jansson 2006). The importance of disentangling variables and factors that might contribute to group patterns is highlighted by the finding that ethnicity was not independently associated with victimization when other factors were taken into account. The relevant factors were being young and male, living in areas with high levels of perceived antisocial behavior, visiting pubs regularly, and being separated or divorced. All tended to explain the likelihood of experiencing personal crime. Further factors such as low income, unemployment, inner-city residence, and a lack of academic qualifications were also significant in explaining minority groups' higher victimization. However, as Phillips and Bowling (2012) suggest, factors such as unemployment and housing status may themselves be partly attributable to discrimination.

Table 11.3 shows that those belonging to the mixed group were more likely to report being victims of household crime⁵ than were Asians, whites, Chinese, or others. The least likely were black people. The figures reported are of course a reflection of victimization reporting patterns rather than of events. It has been speculated that some groups are less likely to report victimization if they lack confidence or trust in the police (Myhill and Beak 2008).

Table 11.3 Victimization rates of ethnic groups per 10,000 households reported in the 2004/05 British Crime Survey

Victimization Type	White	Mixed	Asian	Black	Chinese or Other
Vandalism	1,139	1,352	1,354	584	797
Burglary	326	399	382	401	477
All vehicle thefts	810	1,289	1,029	1,071	752
All household crime	2,988	3,937	3,373	2,548	2,647

Source: Home Office Report 25/06, Jansson (2006).

Asian people were at the second highest risk of being victims of all types of household crimes. Jansson (2006) notes that Asian Pakistanis were at higher risk of all household crimes than Asian Bangladeshis and Asian Indians. Risks of vandalism and burglary were also higher for Asian Pakistanis than for Asian Bangladeshis and the white group. Although the reasons for these differences are unclear, the findings indicate that experiences within ethnic groups are not homogeneous and thus that disaggregated data are always desirable when sample sizes permit.

The most recent figures from the 2010–11 BCS reveal similar patterns. The risk of being a victim of personal crime⁶ was higher for adults from a mixed background (11 percent) than for other ethnic groups, and higher for all minority groups (8 percent) than for whites (6 percent).

1. *Racially Motivated Crimes*. Racist victimization as opposed to “conventional” victimization involves victims who are victimized not in their capacities as individuals but as representatives of the community to which they belong (Witte 1996).

Racist violence was an unacknowledged issue for decades, which prevented policy change and accurate monitoring of its extent (Bowling 1999). The Macpherson Inquiry led to pressure for recognition, recording, and prioritization of racist incidents, primarily by the police. Official data suggest that racially motivated crime has remained consistent over the years—ranging between 180,000 incidents in 2006–07 and 150,000 in 2010–11 (Ministry of Justice 2011).

Minority groups were all more likely to report having been victimized once or more by racially motivated incidents than were whites; mixed ethnic group people experienced the highest rates in 2010–11, followed by Asians, Chinese or other, and black people (Chaplin, Flatley, and Smith 2011). Racially motivated incidents account for a small proportion of total victimization—between 1 percent and 2 percent of all BCS crime. However, the effects on individuals can be far reaching, difficult to stop, and more likely to involve repeat victimization (Sampson and Phillips 1995; Chahal and Julienne 1999). The majority of racist incidents involve damage to property or verbal harassment; overall, reported racist incidents have been declining over the last 5 years (Ministry of Justice 2011). 2004–05 BCS data show that the most common places for racially motivated crimes to occur were around the home, in the street, or in a pub or club, and to occur in the evening or night. The majority of offenders were white, aged 16-to-24, and male (70 percent).

Young people from ethnic minority groups are at higher risk of victimization than adults. Webster’s (1995) local victim survey found that young Asians, particularly Pakistanis and Bangladeshis, suffered greater risks of victimization than any other group and were particularly vulnerable to repeated racist violence (Webster 1995, 2004). The victimization of young people in the United Kingdom is often overlooked and overshadowed by the focus on youth offending. Minority youth are more vulnerable to personal and property crime most likely because of the combination of social factors associated with being at higher risk generally (social class, urban, and precarious living) and their ethnic minority backgrounds.

Patterns of racism vary across England and Wales. Most incidents are reported in urban spaces, but there is increasing evidence that some minority groups are more

vulnerable to racist harassment in rural areas (Rayner 2005; Garland and Chakraborti 2006), or where they are becoming a larger minority (Brimicombe et al. 2001). Rural racism is thought especially likely to occur in response to mixed ethnic couples. The conflation of rurality with Englishness and “whiteness” reinforces a sense of marginalization and isolation for some (often affluent) ethnic minority families (Garland and Chakraborti 2006).

Offenses have been recognized as racially or religiously aggravated because of provisions in the *Crime and Disorder Act 1998* and the *Anti-terrorism, Crime, and Security Act 2001*. Crimes that involve religious or racial hatred are vulnerable to harsher sentencing as aggravated offenses. Nearly 32,000 offenses fell into this category in England and Wales during 2010–11. There has been a rise in religiously aggravated offenses toward Muslims. Initially, anecdotal evidence pointed toward an increase in anti-Muslim sentiment, particularly since the US terrorist attacks in 2001 and the London underground attacks in 2005. For example, within the first few days following the London bombings, an Asian schoolboy was assaulted and was told it was a revenge attack for the bombings. Arson attacks on Asian homes in London were reported and a mosque was defaced, as was a Sikh temple in Kent (Poynting and Mason 2006). The European Monitoring Centre on Racism and Xenophobia (2005) also reported increases in hate crime reports in London in the weeks following the London Underground attacks.

Relatively few religiously aggravated offenses have been successfully prosecuted under the *Anti-Terrorism, Crime, and Security Act 2001*. This may be because religious intent is difficult to prove and because victims feel there is little to be gained from reporting these crimes. Of 34 cases between 2004 and 2005, 23 involved Muslim victims, four involved Christians, and two involved Hindus. Overall reporting of religious crimes remains low.

2. *Homicide Rates and Patterns*. Offenses recorded as homicide include murder, manslaughter, and infanticide. Data on the ethnicity of homicide victims are relatively complete. Of 2007 homicides recorded between 2007–08 and 2009–10, 75 percent of victims were white, 12 percent black, 8 percent Asian, and 3 percent “other.” Black and Asian people are overrepresented. A greater proportion of black (25 percent) than white (4 percent), Asian (7 percent), and other (10 percent) victims were killed by shooting (Ministry of Justice 2011). A majority were believed to have been killed by someone from the same ethnic group.

3. *Policy Responses*. “Operation Trident,” a campaign to reduce gun crime among black people, was launched in 1998 in London in response to a number of shootings of black people. The aim was to investigate gun crime and inform people about it, to organize gun amnesties, and to raise public awareness. Trident was criticized for perpetuating stereotypes about black criminality and apparently had limited preventive effects (Fisk 2006). A recent overhaul of Trident to include a campaign against teenage gangs highlights how associating different types of crime to particular ethnic groups reinforces ethnic stereotypes. The shooting of Mark Duggan in July 2011 that sparked riots across the United Kingdom was reported to have been conducted within a Trident operation.

B. Offending

Self-reported offending studies have tended to achieve high levels of reliability and validity. In comparing drug use between different groups, surveys have found similarities across ethnic groups in reported rates of use (Phillips and Bowling 2012).

Based on findings from the 2003 Offending Crime and Justice Survey (OCJS), Sharp and Budd (2005) reported that white respondents and people of mixed ethnic origins were more likely than others to report having offended in the previous year. The pattern held for different types of crime. Those of Asian origin were least likely to report involvement in offending. Unfortunately, the sample size for this survey was too small to allow disaggregation of the ethnic groups.⁷ The OCJS confirmed earlier findings that Asians report low levels of contact with the justice system and low levels of offending (Graham and Bowling 1995; Flood Page et al. 2000). Black respondents were more likely to report contact with the justice system, to go to court, and to receive a custodial sentence (Sharp and Budd 2005). The authors controlled for age differences between groups. This is important because minority groups have younger age structures than whites, which means that more people fall into age categories in which offending is especially likely to occur and peak.

Levels of antisocial behavior did not vary between groups. Males of mixed ethnic background were less likely to admit to antisocial behavior than were whites. Sharp and Budd (2005) noted that white, black, and mixed background females reported similar levels of antisocial behavior.⁸ However Asian females were significantly less likely to report involvement in problematic or antisocial behavior.

The reasons for low levels of Asian female involvement in crime and deviance are not well understood. Sociological research suggests that Asian women are acutely influenced by notions of shame and strive to maintain the honor (*izzat*)⁹ of their family and to fulfill traditional roles. Females are regarded as custodians of the family's *izzat*; they represent the family's identity, and provide continuity and "worth" to the family (Wilson 2006). The obligations and conditions associated with *izzat* are shaped by the patriarchal structures of Asian cultures. Male family members are not bound by the same cultural values (although they too are less likely to be dealt with by the justice system). The maintenance of social control is thought to constrain Asian women's activity and their propensity to engage in criminality. However, it is important not to homogenize the experience of Asian females:

While *izzat* is a fundamental feature of Asian communities, it is not culturally homogeneous in its transmission and role. Asian communities are diverse and there are many differing assemblages of age, class, culture, and religion which serve to shape the nature and role of *izzat* in the lives of Asian women. (Toor 2009, p. 245)

Even when Asian women have been involved with the justice system, they are often reluctant to discuss their offending with their family. Of the comparatively small

numbers of Asian women who have offended, many had deviated from traditional expectations such as by having left home at an early age, had a child outside of marriage, or had an extramarital affair (Gill 2003).

The OCJS 2003 examined drug use. Males of mixed origin were most likely to have used any drug in the last year (27 percent) compared with white or black (both 16 percent), other (13 percent), and Asian males (5 percent). This pattern was largely a consequence of cannabis use. Logistic regression analysis identified the predictors of drug use in the preceding year as including being frequently drunk, offending in the last year, living in affluent urban areas, being male, having truanted from school, and being aged 17–25. The chances of Asian people having taken a drug in the last year were half those of white people and this held when controlling for other factors. Sharp and Budd (2005) speculated that factors not measured, such as religious or moral beliefs, are responsible for the low reports of drug use among Asians. Possible explanations for Asian people's lower offending rates, despite high levels of disadvantage among Pakistanis and Bangladeshis, have been addressed by Fitzgerald (1995) and Smith (2005), and are discussed later.

C. Police Custody

Data on minority ethnic peoples' experiences in police custody show that differences in treatment and outcomes vary with ethnic background. Newburn, Shiner, and Hayman (2004) showed that even when other factors are controlled for, black (mainly African Caribbean) people were more than twice as likely as Asians and whites to be strip-searched. Arabs and East Asians were least likely to be strip-searched.

Uneven practices in police custody can have far-reaching consequences—for example in relation to case progression, sentence lengths, and access to legal advice (Skinns 2011). Black suspects were less likely than white suspects to have their requests for advice met.

Mistreatment, violence, and deaths in police custody have been disproportionately experienced by members of minority ethnic groups (Inquest 1996). In 1996–97, black people were six times more likely to die in police custody than would be expected given their proportion in the population (Bowling and Phillips 2007). Later figures relating to 2011–12 show that 15 people died in police custody or following detainment. Thirteen were white British, one person was from a mixed group and another belonged to the black other category (Keogh 2012).

D. Sentencing Patterns

Presentence reports (PSRs) are prepared with a view to assisting the court in determining the most suitable method of dealing with an offender. A PSR is required before a custodial or community sentence is imposed. PSRs contain risk assessments and advise on risk of reoffending. Hudson and Bramhall (2005) analyzed 211 PSRs from mainly white

and Asian defendants during 2000. PSRs on British Pakistanis tended to contain less detail and to be “thinner” and distancing language was more often used in the Asian reports. These were subtle distinctions which indicated that information was provided by the offender as opposed to being inferred by the probation officer: for example, “he has taken steps” is more emphatic (and suggestive of action) than “he tells me that.” More of the white offenders were reported to have behavior problems, evidenced by treatment or diagnosis, whereas more Asians were recorded as reckless and as having mental health problems. That Asian files held less information worked against them. It indicated that their interviews were less open and textured, and so had less conversational space for interactions that might reflect remorse or understanding of the seriousness of the offense.

The study demonstrated the pliability of stereotypes and thus highlighted the importance of understanding the dynamic ways racism operates. The research identified the changing discourse of Asian otherness—from law-abiding and subservient to a belief that Asian criminality was rising—thereby underlining the process of criminalization and the “othering” of Pakistani and Muslim males. The study underlined the importance of disaggregating categories such as “south Asian” in order to reveal the religious, national, and historical diversity of minority groups.

The sentence a person receives once convicted has been found to vary with ethnicity. A higher percentage of black and other minority defendants were sentenced to immediate custody for indictable offenses in 2010 than in the white group—the figures were 23 percent for whites, 27 percent for blacks, 29 percent for Asians, and 42 percent for “others.” The differences could conceivably be explained by taking into account the seriousness of the offense, the presence of aggravating factors, and the defendants’ plea. People from minority ethnic backgrounds are more likely to plead not guilty and as a consequence have their cases go to trial. This operates to make sentences of minority suspects harsher, because a guilty plea can reduce a sentence by up to one-third (Thomas 2010). The highest average custodial sentence length in 2010 was 20.8 months for black people, followed by Asian (19.9 months) and other ethnic groups (19.7 months). The average sentence length for whites was 14.9 months (Ministry of Justice 2011).

A slightly higher percentage of ethnic minority people are sentenced to custody for indictable offenses: in 2010, 23 percent of white, 27 percent of black, and 29 percent of Asians were sentenced to custody (Ministry of Justice 2011). These differences could result from group differences in guilty pleas—minority suspects are more likely to plead not guilty, which generally results in a harsher sentence.

Roger Hood (1992) conducted a seminal study of Crown Court sentencing in the West Midlands. After controlling for the legally relevant factors that might explain differences in sentencing, he found that black defendants were 5 percent more likely to be sent to custody than comparable whites. Black and Asian defendants also received longer sentences than white people. Hood concluded that 7 percent of the overrepresentation of black males in prison was the result of the use of custody in ways that could not be explained by legitimate factors, thereby corroborating the hypothesis that discriminatory practice was the explanation.

Mhlanga (1999) studied the prosecutions and court dispositions of black, Asian, and white youth in London and found that black youth were more likely to receive a custodial sentence than were youth from other ethnic groups. Racial differences could not be explained by social and legal factors, or by the offense type. Feilzer and Hood (2004) found that among those prosecuted, convicted, and sentenced, higher proportions of black and mixed background males in the youth justice system were remanded in secure conditions and committed for sentence at the Crown Court. Asian people were more likely to be sentenced to custody than would be expected from case characteristics. Asian and mixed background males were more likely to be sentenced to a restrictive community sentence than were whites. By contrast, young females of all groups were treated less severely than males, and black females were not treated disproportionately severely compared with white females. The main outcomes were that young people from mixed backgrounds were treated differently and that the differences were evident across multiple regions of the United Kingdom.¹⁰

Perceptions of fairness and legitimacy among minority groups in relation to court experiences have received little attention. A study by Shute, Hood, and Seemungal (2005) is a notable exception; it shows that 31 percent of defendants in the Crown Court believed their sentences were unfair. Thirty-eight percent of black defendants and 37 percent of Asians who believed they were treated unfairly in magistrates' courts attributed it to their ethnicity. By contrast, interviews with witnesses showed that very few associated unfairness with ethnic bias. This suggests that perceptions among ethnic minorities of the courts and their fairness may be more favorable than in the past.

E. Imprisonment

The prison population in England and Wales on December 31, 2012, was 83,757 (including foreign nationals). For the same period, 10,592 foreign nationals were in prisons in England and Wales and were most likely to be from Jamaica, Poland, and the Irish Republic. Over one-quarter of the prison population (26 percent) were from minority ethnic backgrounds. Blacks were the most over-represented among the prison population, making up 13.4 percent of the prison population compared to comprising only 3 percent of the general population. The rest of the minority ethnic prison population was comprised of Asians (7.4 percent), mixed (3.7 percent), and Chinese or other (1.1 percent). Compared with the figures from 2010, these proportions have been increasing; respectively they were 10.8 percent, 5.5 percent, 3.5 percent, and 0.3 percent for black, Asian, mixed, and Chinese or other people (Ministry of Justice 2011). The overall increase of 2.5 percent over the last decade in the number of Asian prisoners largely represents an increase in Muslim prisoners (Berman 2012). The proportion of Muslim prisoners more than doubled over the last decade with figures indicating that they rose from 4,298 in 2010 to 10,672 in 2011. Compared with 2006 figures, the black percentage was unchanged and the Asian and mixed ethnicity proportions increased (Ministry of Justice 2011). Looking back further, the black and Asian male prison populations grew

by 104 percent and 261 percent, respectively, over 15 years and the white population by 41 percent (Phillips and Bowling 2012).

Approximately 4,200 females were in prison at the end of March 2012. Over the preceding decade the number of female prisoners increased by 12 percent—much less than the 30 percent increase for males (Berman 2012). In 2007–08, among female British National prisoners, 29 percent were from minority backgrounds: 19 percent were black, 3 percent Asian, 4 percent mixed, and 3 percent Chinese or other (Ministry of Justice 2011). In December 2011, the number of women in prisons was 4,211; of these, approximately 650 were foreign nationals, comprising 15 percent of the women's prison population. Most of the foreign national women imprisoned for drug offenses were there for the illegal importation and exportation of drugs, though most were not themselves drug users. Trafficking or supplying offenses are followed by fraud and forgery offenses (Joseph 2006). Foreign nationals imprisoned for fraud and forgery tend to be women who have sought entry to the United Kingdom, often to seek asylum using forged passports obtained through traffickers.

Minority women in prison, the “forgotten minority” (HM Inspectorate of Prisons 2009), are often triply disadvantaged in coming from socially and economically disadvantaged backgrounds, being female, and being members of minority groups (Chigwada-Bailey 2003). As the figures suggest, the majority of the women's prison population is held for drug offenses and this group has increased greatly. Indicative of the growth over the years, the 7 percent of women prisoners imprisoned for drug offenses in 1995 had risen to 35 percent in 2005 (HM Inspectorate of Prisons 2009). This is an example of how policy choices which criminalize and punish certain types of crime more harshly can disproportionately affect members of particular minority groups (Tonry 1994, 1995).

Women's experiences in prison also vary between ethnic groups. For example, white women are much more likely to harm themselves than are minority women. However, drug dependence was associated with deliberate self-harm among black and mixed race women, but not among white women (Home Office 2003). Minority women's perceptions of prison life are much less positive than white women's—26 percent report having been victimized by staff compared with 16 percent of white women. Fewer ethnic-minority women felt respected by prison staff and there were marked differences in access to prison programming and resettlement opportunities (HM Inspectorate of Prisons 2009).

Research on racism in prisons in the late 1980s indicated that black prisoners were stereotyped by prison officers as lazy, and believed they were treated in a discriminatory manner (Genders and Players 1989). Allegations of racism in prison have persisted. The case of Zahid Mubarek has brought problems into sharp focus. Mubarek, a British Pakistani prisoner, was murdered in 2000 at Feltham Young Offender's Institute by a psychopathic man with whom he shared a cell. Mubarek's murderer had shown overt signs of racial hostility and marked out plans to attack him, but this was overlooked by prison service staff. The Mubarek inquiry concluded that there were inadequate procedures and policies for dealing with racial hostilities and incidents. The inquiry stressed

a need for better procedures for risk assessments of mentally disordered offenders and acknowledged problems of institutional religious intolerance.

Cheliotis and Liebling (2006) found that minority group members were more likely than whites to hold negative perceptions of race relations in prisons. Views on the quality of race relations were significantly associated with prisoners' views on more general aspects of their treatment. The authors suggested that efforts be made to strengthen perceptions of the legitimacy of penal practices as part of the larger effort to reduce discrimination.

The overall increase in the Asian prison population between 2000 and 2009 (shown in Table 11.2) consists predominantly of Muslims. From 2000 to 2011, the number of Muslim prisoners rose from 4,298 to 10,672. This is, by far, the largest increase of any minority religious group, in comparison (and for the same period), the number of Hindus rose from 246 to 452 and of Sikhs from 394 to 711 (Berman 2012). These figures include those who converted to Islam while in prison. Islam is said to act as a resource for coping in prison and provides a moral framework around which people rebuild their lives (Spalek, El Awa, and MacDonald 2008).

Media coverage of Muslim groups in prison has raised concerns about solidarity within them (Crewe 2009), and has been misinterpreted as a rise in Muslim gangs. In an ethnographic study of gangs in prisons, Phillips (2008) concluded that group-based formations existed in Rochester and Maidstone Prisons, but they did not conform to standard definitions of gangs. Instead, the groups were sometimes premised on ethnic background and were configured according to geographical zones such as housing estates or town areas. Phillips explains that most prisoners rejected associations with black or white gangs. They instead interacted in largely same-ethnicity friendship groups linked by culturally similar life experiences, and insisted on ethnic diversity in informal trading within the prison. Other prisoners saw solidarity and self-reliance among Muslims, which may have been prompted by senses of exclusion and ostracism, as signs of a "Muslim bloc" or as Muslims always "sticking together." This was envied and resented by other prisoners, as protection and peer solidarity are coveted resources in an insecure environment (Phillips 2008).

Studies such as these highlight the importance of deconstructing taken-for-granted assumptions and concepts in media accounts and statistics, and the need to distinguish the variant processes and contours that occur at inter- and intra-ethnic levels (see also Alexander 2000). As Phillips conveys:

As a racialised referent, the gang provides a repository for prisoners' racialised anxieties which are tied to the changed socio-demographics of the late-modern prison. The cohesion of the Muslim prisoner population serves to undermine the potential of a universal prisoner identity which transcends ethnic, cultural, and racial identities. The political significance of the spectre of the 'Muslim gang' is that it represents real and imagined fears about radicalization and terrorism but also provides a new racialised folk devil whose threat is internalized among prisoners. This can be seen as part of a broader anti-Muslim

political climate, but more significantly for the Prison Service perhaps, it may signify a potentially implosive aspect of race relations in the early 21st century. (Phillips 2008, p. 63)

Understanding of ethnicities and racism in prison (and other institutions) need to acknowledge the fluidity and hybridity of ethnic identity in contemporary multi-ethnic societies. The social cleavages of gender, religion, ethnicity, and geography, which shape interactions on the outside, are reflected, often more acutely, within prison walls and criminal justice processes.

F. Probation

Probation services appear to treat minority groups differently. Long-standing probation personnel reported their own or colleagues' discrimination and harassment at work (Phillips 2005). Calverly et al. (2004) examined black and Asian people's experiences of probation. In their assessment of the criminogenic needs of probationers, the researchers identified no differences between groups. In interviews with 483 black and Asian people, they established that "good" probation officers were those who were perceived as fair and respectful. Only one-third of respondents preferred an officer from their own ethnic background. Respondents favored programs that included participants from diverse backgrounds (rather than specific programs for minorities). Probation staff was advised to note the particular needs of individuals belonging to mixed ethnic groups, because they may face double exclusion in experiencing racism from members of other groups while not being accepted within minority ethnic communities.

III. SPECIAL ISSUES

Members of minority groups encounter special problems as a result of recent developments in police tactics and policies. These are exacerbated by methods employed in responding to the "War on Terror" and particular types of crime associated with certain minority ethnic groups. Questions of over-policing and under-protection of certain groups have been raised, alongside the way in which media and police focus toward some communities may promote processes of exclusion or criminalization.

A. Policing Minority Ethnic Communities

Much research has explored relations among racism, ethnicity, and policing and has sought to discover whether police racism is the main reason why so many black and

mixed ethnic group people are entangled in the justice system. The subject is complex, and needs to be considered within the functions and contexts of police work:

The crucial source of police prejudice is societal racism, which places ethnic minorities disproportionately in those least privileged and powerful social strata, with exposed public-on-the-street lifestyles, that are most prone to the kinds of crimes the police concentrate on. So they disproportionately become police property. (Reiner 2010, p. 131)

As Reiner suggests, policing processes need to be contextualized at structural and societal levels. The police need to anticipate conflict and disorder, and this places a responsibility on them to suspect those who might violate or are violating the law. Police officers can, therefore, stop and search individuals under a range of legislative powers including section 1 of the Police and Criminal Evidence (PACE) Act 1984, section 60 of the Criminal Justice and Public Order Act 1994, and section 44 of the Terrorism Act 2000. Use of these powers has been controversial and raises issues of discriminatory and disproportionate use toward ethnic minorities (Bowling and Phillips 2007).

Relationships between the police and minority communities have been worsened by failures to protect ethnic minority communities, by direct and institutional police racism, and by anti-immigrant sentiment. This has resulted in resentment, frustration, and mistrust. Research suggests that racism and disproportionate treatment continue despite attempts to address them and to build confidence among ethnic minority communities.

The Brixton riots in 1981 involved clashes between the police and members of the black community in London. The riots followed heavy use of stop and search practices in a predominantly black community. People were angered by, as they saw it, being stopped without good reason. The ensuing Scarman report identified problems of racial disadvantage, uneven policing, and inner-city decline, and warned that, unless ameliorated, they threatened the fabric of society and community relations. Scarman recommended changes in law enforcement, police selection, and training. The report acknowledged that prejudiced views of some officers contributed to the riots and that unwitting discrimination was in operation (Scarman 1981).

The murder of Stephen Lawrence in 1993 and the following inquiry marked another watershed moment. The Macpherson report (1999) concluded that the investigation of Stephen Lawrence's murder was marred by a professional incompetence, institutional racism, and a failure of leadership by senior officers. MacPherson revealed that officers did not provide first aid to Lawrence, that a black friend of Lawrence's was treated as a suspect rather than as a victim, that Lawrence's parents were not treated with sympathy, that vital evidence was not promptly collected, and that arrest of the suspects was delayed. Macpherson concluded that the police were institutionally racist, which he described as:

the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes, and behavior which amount to discrimination

through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people. (Macpherson 1999, p. 321)

The Macpherson report made a number of recommendations, including redefining how racist crimes are recorded and understood by the police, and stressed the need to change prevailing cultural attitudes of police in which racism and sexism were normalized.

In 2001 police in Northern England clashed with British Pakistani youth. The disturbances were sparked by a march scheduled by the National Front, a xenophobic political group, in Bradford. This led to conflict between the police and South Asian men (Bagguley and Hussain 2008). The disturbances continued over 2 days and illuminated social and economic deprivation experienced by poor British Asians. The ensuing Cattle Report (2005) suggested that the affected areas lacked “community cohesion.” This became the central explanatory paradigm for the riots. The locations of the riots were described as segregated ethnically along residential, employment, and social lines. These notions of segregation and dysfunctionality were criticized for being poorly grounded in evidence and for directing attention away from economic inequalities and toward alleged cultural pathologies in South Asian communities (Simpson 2003; Bagguley and Hussain 2008).

These notorious events, each in its own way, left an indelible mark on the landscape of policing and minority ethnic relations. The Macpherson inquiry placed police racism on the public agenda and fostered widespread acknowledgement of institutional racism. Though questions have been raised about the utility of the concept of institutional racism and whether it assuaged individual accountability by blaming an institution, nevertheless, recognition and awareness of the problem of racism was its most important achievement.

B. PACE and Section 60

Consistently disproportionate rates of police stops and searches of black males have been contentious for decades. Stops and searches provoke controversy because they promote a sense of violation and of being singled out. People feel targeted because of their appearance, rather than any suspicious behavior (Parmar 2011).

Ministry of Justice (2011) data show that the number of stops and searches under section 1 of PACE increased for all ethnic groups by 20 percent between 2006–07 and 2009–10. The largest increase was for Asians (62 percent), followed by the mixed race and Chinese/other ethnic groups (both 54 percent), and blacks (50 percent). The increase in stops and searches of Asians has been enormous. In 1997–98, 5 percent of those stopped were Asians (Home Office 1999); that broadly reflected what might be expected given their representation in the population. The subsequent increase suggests a change in policing practices and perceptions, or may reflect the relatively younger age composition among Asian groups. I discuss this in Section IV Explanations of Offending and Victimization.

Of people stopped and searched in 2009–10, there were 67.2 percent white, 14.6 percent black, 9.6 percent Asian, 3 percent of mixed ethnicity, and 1.2 percent Chinese or other. Whites were underrepresented relative to population composition, blacks were nearly five times overrepresented, and Asian and mixed background people were two times overrepresented.

Section 60 of PACE allows the police to stop and search people in a defined area at a specific time when they believe there may be the possibility of serious violence or that a person may be carrying a weapon. Use of this power has increased significantly. Compared with 2006–07, the largest increases in 2009–10 were for black and Asian groups (303 percent and 399 percent, respectively). In comparison, the mixed ethnicity and Chinese/other proportions remained constant, and the white proportion decreased from 53 to 40 percent (Ministry of Justice 2011). The majority of searches took place in the London area.

Arrest figures are influenced by police practices and policies and by situational decision making. A majority of stops and searches do not result in an arrest, which is why questions are raised about their effectiveness. In 2009–10, just over 9 percent of section 1 PACE stops and searches resulted in an arrest. In England and Wales, the lowest percentage of arrests (7 percent) was for Asians and the highest (11 percent) for the Chinese or other ethnic group. In comparison, arrests from section 60 stops and searches were much lower, especially for Asians (1 percent). The arrest rates for blacks and Chinese or other were 2.5 and 3.5 percent respectively.

Bowling and Phillips (2007) surmised that disproportionate stopping and searching of black people is due to unlawful racial discrimination. They found that a lack of regulation has meant that the power is used inappropriately, noting for example that not all searches conducted under PACE 1984 satisfy the requirement for reasonable suspicion. Officers who conduct a stop without reasonable suspicion are not penalized or criminalized. This effectively sanctions the operation of police discretion without accountability.

The argument has been made that policing reflects “available populations”¹¹ as opposed to resident populations and implies greater disproportionality than really exists (Waddington, Stenson, and Don 2004). Bowling and Phillips (2007) have convincingly discredited this by noting that “availability” for arrest is by no means a neutral criterion. The extent to which members of a social group are “available” is related to structural factors such as unemployment, homelessness, and employment in occupations that involve night or shift work. In addition, stops and searches are concentrated in areas where there are high proportions of members of ethnic minorities, yet where crime rates do not necessitate such a policing focus (MVA and Miller 2000). This further discredits claims about the neutrality of selection for stop- and-search operations (see Parmar [2011] on the lack of neutrality in the geographical places of counterterrorist stop-and-search operations).

Bowling and Phillips (2007) favor using per capita figures to assess the extent of disproportionality and conclude that discrimination is at work in the use of police stops and searches. They also argue that the number of arrests gained from minority stops cannot justify the high level of disproportionality affecting black people. A fresh approach is

needed whereby stop-and-search powers are regulated and the basic requirement that an officer must have reasonable suspicion of wrongdoing should be enforced.

Studies of policing since the 1980s have shown that police culture and practice have changed in some ways but remained static in others. The Macpherson report proposed various initiatives to eliminate racism. However, the apparent failure of the Macpherson reforms has been shown by research that indicates that overt racist comments and banter have declined but that racism may simply have gone underground (Foster, Newburn, and Souhami 2005). A vivid example is provided by the 2003 BBC documentary *The Secret Policeman*. Police recruits were filmed undercover expressing racist attitudes toward black and Asian people. Racist terms were used in private, and open threats of aggression were made toward ethnic minorities. Following the showing of the documentary, the Commission for Racial Inquiry established an inquiry (Calvert-Smith 2005), which led to the creation of a new disciplinary offense of racial misconduct.

Further questioning the capacity of the Macpherson reforms for achieving real changes in attitudes, Loftus's (2009) in-depth study of police culture showed that established white police officers begrudged reform efforts directed at racism. What was seen as the constant reaffirming of diversity-related issues provoked defensiveness and accusations of racism, which promoted resentment toward ethnic minority groups. Minority officers were believed to receive special treatment in the post-Lawrence climate and this too produced suspicion and resentment. Expressions of racism involved coded schema through which negative perceptions were attributed to different minority groups in specific and subtle ways to evade charges of racism.

C. Terrorism, Security, and Ethnicity

Stops and searches under section 44 of the Terrorism Act 2000 raised debate because they did not require reasonable suspicion prior to 2011 (Parmar 2011). Following the case of *Gillan and Quinton v. United Kingdom*, the European Court in 2010 ruled section 44 unlawful in respect to the right to respect for privacy and family life. During the implementation of section 44 and its increased use, black and Asian people were disproportionately more likely to be stopped, despite assurances at the policy level that the power did not sanction profiling. The absence of a reasonable suspicion requirement allowed much more discretion and arguably allowed a lack of accountability in its usage.

The extensive use of section 44 had a negative effect on police and minority group relations in areas such as East and West London (where there are concentrations of Bangladeshi Muslims, Pakistani Muslims, and people from the Middle East). Muslim people felt targeted as a community (Pantazis and Pemberton 2009; Parmar 2011).

Following a review of counterterrorism and security powers on March 18, 2011, all section 44 powers were formally replaced with section 47 stop-and-search powers, which are said to have a significantly higher threshold for authorization of the power (Home Office 2011). Section 47 allows for authorizations of use of the powers only when the person authorizing reasonably suspects an act of terrorism will take place and considers the

powers necessary to prevent such an act. Section 43 of the *Terrorism Act 2000* also grants police officers the power to stop and search without the need for authorization, but there must be reasonable suspicion that the suspect is involved in terrorist-related activity.

Between 2006–07 and 2009–10, police use of section 44 increased for all ethnic groups: 212 percent for blacks, 207 percent for Chinese or other, 202 percent for Asians, and 15 percent for whites. In London, the Metropolitan Police Service conducted the vast majority of searches (96 percent). In 2009–10, less than 1 percent of section 44 stops and searches resulted in an arrest. This necessarily raises the question whether the ends justify the means in the use of counterterrorist policing. Research indicated that the power was being used to detect ordinary street crime. The overall aim may have been to improve feelings of security, but minority citizens felt targeted and profiled (Parmar 2011).

Research has long suggested that some minority groups tend to become stereotypically associated with certain types of crime. Hall et al. first described the criminalization of black males in 1978 in relation to street crime (“mugging”). The process of criminalization includes the media, public perceptions, and institutions of criminal justice. The case of South Asian people is interesting because they were stereotyped in the 1980s and 1990s as mainly law-abiding, and were perceived as being involved in only such crimes as fraud, tax evasion, or immigration violations (Waddington and Braddock 1991; Jefferson 1992). In recent years these stereotypes have taken a 360-degree turn, according to some scholars who have suggested that Asians are now the “new folk devils” in society. Focus has shifted toward their perceived involvement in gangs, violence, and drug use (Webster 1996, 1997; Alexander 2000; Parmar 2007).

Following the terrorist attacks in the United States in 2001 and in London in 2005, the criminalization of British Muslims has intensified. British Asian Muslims perpetrated the London attacks, and some identified a shift from the notion of an external threat to an internal threat as the perpetrators were “home-grown.” Within this climate, allegiance to Islam was thought to indicate potential terrorism rather than moral virtue and suspicion toward Muslim communities has heightened (Pantazis and Pemberton 2009). Characteristics long thought to inoculate Asians against criminality (tight knit communities, family honor, and religion) became regarded as justifications of criminality (Hudson 2007). The notion of the Asian Muslim as the “enemy within” was compounded by counterterrorist policies and policing practices. Government spokesmen claimed that Muslims were not profiled while observing that Muslims should accept as a reality that they were more likely to be stopped and searched under the *Terrorism Act 2000*. The methods of policing and the disproportionate numbers of Asian and black people who were stopped and searched¹² exacerbated negative inter- and intra-ethnic tensions (Parmar 2011). Ethnic and migrant communities were increasingly framed as suspect, and the criminal justice agencies have reinforced the criminalization by surveillance operations that specifically target Asian communities (Spalek, El Awa, and MacDonald 2008; Hickman et al. 2011).

Insecurities are thought to fuel and justify the criminalization of particular ethnic and migrant groups. Gilroy (2010) argues that the concept of race was invented to

legitimize racism and that colonialism relied on biological definitions of race to deny universal entitlement to citizenship and to rationalize the suffering of colonized natives. According to Gilroy (2010) an imposed racist order, with roots in Britain's colonial past, is repeatedly reaffirmed in domestic politics and in the post 9/11 "politics of security." Alongside an increase in global mobility for some groups, there is the exclusion and expulsion for other groups, who are thought to represent a threat to security (Aas 2005). Immigrants are criminalized, controlled, and subjected to surveillance in response to the threat of terror and to protect "borders" (Rajaram and Grundy-Warr 2007; Bowling, 2013).

IV. EXPLANATIONS OF OFFENDING AND VICTIMIZATION

Various explanations have been put forward for offending and victimization patterns. Police practice and the operation of stereotypes, the effects of social demographic characteristics common to minority groups, social inequalities, educational attainment, and low social mobility have all been proposed as explanations for offending. The question of why black groups appear to have higher offending rates in the United Kingdom than do South Asian groups, despite apparent socioeconomic similarities (for Bangladeshis and Pakistanis in particular), has sparked debate for years. As Tonry (1997) suggests, although all disproportionately criminalized minority groups in Western countries are disadvantaged, not all disadvantaged minority groups have elevated rates of offending. Nor are they all disproportionately criminalized. This issue has been discussed in the context of intergenerational differences among ethnic groups (Fitzgerald 1995; Smith 2005).

A. Intergenerational Patterns and Family Structures

The immigration and crime thesis suggests that first-generation immigrants are typically more law-abiding than the resident population, that their children and grandchildren suffer assimilation problems that result in higher rates of offending and imprisonment compared with their parents' generation, and that their crime rates gradually become closer to that of the general population (Tonry 1997). In England and Wales this pattern appears to apply to black groups, if official offending and arrest data are reflective of actual offending. However, the same pattern is not discernible in relation to Asian groups. This underlines the importance of disaggregating ethnic group experiences, and also emphasizes that further investigation is required to understand which factors mediate the relationship between ethnicity and offending behavior, and indeed whether other factors mitigate against offending risks. In 1995, Fitzgerald predicted that numbers

of Pakistani and Bangladeshi offenders would increase over the next 10 years because the apparent underrepresentation of offending among these groups was due to their demographic profiles. According to Fitzgerald's analysis, given that offending among young people tends to peak between ages 14 to 18 (Smith 2007), disproportionate numbers of Pakistani and Bangladeshi youth falling into these ages would produce an apparent rise in their offending and arrest rates.

Table 11.2 shows data on stops and searches and arrests between 2000 and 2010. It shows an increase in Asian people's involvement in the justice system. It is, of course, possible that this reflects a change in the policing of Asian youth and in police perceptions of their criminality (Goodey 2001; Parmar 2007). In addition, events such as the 2005 London underground attacks have shifted police attention toward Bangladeshi and Pakistani Asian Muslim youth. Research evidence suggests that these groups have experienced marginalization and increased racism following the terrorist attacks and through police and security interventions to respond to the threat of terrorism (Parmar, forthcoming).

Clearly, the factors are incredibly complex to tease apart. In contrast to Fitzgerald's demographic projections, Smith (2005) posited a combined structural and cultural argument. He insisted that there were no signs that elevated offending rates were developing or would emerge among Indians, African Asians, and Bangladeshis. Smith was ambivalent about Pakistanis who had shown some signs of an elevated offending rate, though he maintained that any increase was much smaller in magnitude than was the case for African-Caribbeans.

However, figures from the 2003 OCJS indicate that Asians report much less involvement in offending and drug use (unfortunately, more recent data on offending which disaggregates the Asian group are not available). Despite agreement that the youthful age structure of minority groups is relevant when considering offending rate differences, overall, Smith's prediction refutes the notion that the difference in offending rates between black British and Asian British people is simply a product of the timing of migration and age composition.

Smith suggests that Pakistanis and Bangladeshis have had fewer educational and socioeconomic advantages than Indians and African Asians. According to Smith, the different levels of cultural capital among the groups has resulted in very different experiences in the face of prejudice and discrimination, and with varied levels of success. He asserts that "the diverse origins and divergent futures of ethnic minorities in Britain do not map onto the differences in rates of offending over the generations, or at least not in a simple way" (Smith 2005, p. 64). Therefore, intergenerational variations in patterns of family structure may provide some explanation for offending patterns. This line of reasoning necessitates careful analysis in order to avoid pathologizing families according to their ethnicity. Despite experiencing similar or higher levels of disadvantage as British African Caribbeans and Africans, British Pakistanis and British Bangladeshis have traditional and stable family structures and networks, whereas black families have experienced higher levels of family dissolution. Family functioning and styles of parenting have been associated with offending propensity and Smith posits that the most

important factor explaining high African-Caribbean offending rates is the development of a high prevalence of lone-parent families.

In searching for explanation for this pattern, Smith looks to Patterson's (1998) thesis that long-term consequences of slavery have had enduring effects, because slavery severed kinship ties through the buying and selling of people and prevented the development of conventional relationships and family structures. Fragmented families were a corollary in which fatherhood became marginal. Smith acknowledges that African-Caribbeans have experienced both high rates of offending and racial discrimination. In combination with the factors associated with lone parenting, this may explain the higher rates of offending among black people in England and Wales. However, separating family structure from social structure and disadvantage is very difficult. As Webster (2007) suggests, we cannot separate cause and effect—whether poverty causes family instability or whether instability creates poverty is a key question that remains obscure. Lone-parenthood, separation, and divorce are significantly higher among the working class and poor whites than among middle class whites, so that differences in family structure between whites and African Caribbean people are reduced when blacks and whites of similar socioeconomic status are compared. Better understanding is required about whether lone parenthood per se explains the differences or whether it is the lower level of parental supervision that is important.

Lone-parent families are more common in mixed and black households in England and Wales, and these families are overwhelmingly likely to be headed by the mother (Social Issues Research Centre 2008; Mokhtar and Platt 2010). Webster (2007) posits a "masculinities and crime" thesis in which he examines the role of fathers and husbands within stable families. He suggests that young males are more likely to offend when they are ungoverned and lack role models. Among ethnic groups in the United Kingdom, Asians have the largest households—those headed by a Bangladeshi person were the largest, with more than half containing four or more people, followed by Pakistani and Indian households. Chinese households were smallest (Mokhtar and Platt 2010).

The larger families common among Asians may increase the monitoring, social control, and household responsibilities of young people, thereby acting as a protective factor against offending. Alternatively, larger families may promote stronger bonds and a sense of belonging, which might deter Asian people from offending (Mawby, McCulloch, and Batta 1979; Wardak 2001).

Such analyses have been criticized for implying that there is homogeneity among and within Asian communities. By reifying communities as tight-knit and self-policing, some have suggested that cleavages of class, gender, and age are rendered invisible and Asian communities are viewed anachronistically (Alexander 2000; Parmar 2007). The overall conclusion to be drawn is that there is a lack of clarity about how we can explain the disparity between black and Asian offending rates.

Smith (2005) shows that black and Asian people have been subjected to discrimination from wider society and the police, and so he pays less attention than some others to the proposition that discrimination may hold explanatory power. However, this underestimates the possibility that the police and wider society have different stereotypes for

different groups and that cultural racism is nuanced. In furthering the argument about specific racist stereotypes being applied to ethnic groups, Alexander (2000) examined a shift in perceptions of British Asian Muslim youth. She argued that the media demonized British Muslim men from the mid-1990s onward, which created a moral panic around the notion that they were increasingly likely to be violent gang members. This in turn increased attention from criminal justice agencies, particularly the police, toward Asian males. This transformation was particularly perceptible because previously Asian males were perceived as law-abiding and subservient; hence their assumed increase in criminality was made to seem all the more severe and shocking.

Table 28.2 shows an increase in stops and searches of Asians. However, arrest numbers remain low relative to the population. The number of Asians in prison has increased over the last few years, but the figures are not disproportionate to the Asian population. This supports the hypothesis that Asian groups are subjected to increased attention from the police, but that their reported offending remains low and the number of arrests also is low. This supports Smith's argument that family or cultural factors may explain distinctive Asian offending patterns.

B. Inequality, Socioeconomic Status, and Education

Disadvantage does not explain offending and victimization in a straightforward way (Tonry 1997). The complexity of the relationship goes beyond deprivation and control theories. According to Albrecht (1997), as society becomes more segmented along ethnic lines, the lowest segments are increasingly composed of members of immigrant groups that are especially likely to be affected by unemployment, bad housing, and poverty, and to experience these conditions for sustained periods.

Cultural arguments have been put forward to explain how characteristics of some ethnic groups might mitigate against the effects of disadvantage, thereby maintaining low offense rates. Wardak (2001) adapted Hirschi's (1969) control theory to apply more specifically to a Pakistani community in Edinburgh; attachment was conceptualized as the extent to which young people were attached to their parents, the school, and the mosque; commitment became *izzat* (honor); involvement became the participation of young people in conventional activities; and belief became the extent to which one followed Islamic teachings. Among his sample of 60 deviant and nondeviant boys in a mosque school, Wardak showed that social control and social deviance were closely linked.

The study revealed that four institutions constituted the social and moral order of the community and operated as forms of social control. These were the family, the wider social network, the mosque, and the regional Pakistani Association. Boys who were less attached to parents and teachers, less committed to a conventional line of action, less involved in school and community-related activities, and less accepting of the moral values of their community, and to a lesser extent of the wider society, were much more likely to be among the deviants.

Individuals whose social bonds to the conventional order of society were weak or broken were more likely to be involved in crime and deviance. Wardak showed that particular religiocultural factors were used in the community's construction of the definition of deviance. People who deviated from the community's norms prompted the agencies of control to tolerate and redefine deviance.

This study provides possible avenues for understanding offending differences between Asian and black groups, and allows an engagement with cultural and religious interpretations. The social control thesis may hold value in interpreting Asian people's relative lack of deviant involvement despite experiencing significant levels of social and economic disadvantage. Further research is required here. A study involving other ethnic groups would test the validity of the reported findings.

Educational underachievement has often been associated with offending (EdComs 2008) and has been invoked to explain differences between black and Asian offending rates (Mac an Ghail 1988). However there is a paucity of recent scholarship examining this issue, particularly in the differences between ethnic minority groups. Looking at the now-dated study conducted by Sewell (1997), teachers were more likely to frame problems of schooling young blacks in terms of the students themselves rather than of the problems of structural racism. Sewell showed that black boys (mainly African-Caribbean) experienced school as a series of tensions and conflicts, which challenged their self-conceptions of ethnicity and masculinity. They were more likely than members of other groups to be disciplined and criticized, and described having to choose between attachment to their peer group and community and being successful at school. Academic success was not seen as compatible with "being tough," joining in with the hypermasculine culture of their peer group, or being invested in the labor market.

Educational underachievement can be seen as both symptom and cause of disadvantage and may explain differences between groups in self-reported offending. All minority groups within the black category and pupils of mixed, white, and African-Caribbean background are consistently below the national average for educational attainment (DfES 2004). Bangladeshi children, who also suffer high levels of disadvantage, achieve higher levels of attainment in national examinations than do black pupils, suggesting that other factors, such as treatment by teachers, or cultural/family drivers, may encourage educational attainment. Discrimination against black and mixed ethnicity boys and labeling have also been suggested to influence high levels of school exclusion among these groups, leading to the conclusion that the educational system harbors institutional racism (DfES 2006). The schooling system needs to be closely examined in order to understand the relationship between ethnicity and education and its links to offending.

Structural level pressures percolate to the level of individual attention in schooling. Gillborn and Youdell (2000) suggest that pressures on teachers from school managers to support the most able students in order to achieve a favorable place in rankings of successful schools mean that pupils from poorer and ethnic minority backgrounds receive second-rate teaching. The higher educational attainment among Asian groups may explain some of the differences in propensity to offend and police attention between Asian and black youth. The questions of how educational attainment is promoted among

Asian families and whether this differs among Indians, Pakistanis, and Bangladeshis deserve closer investigation.

C. Victimization

Little attention has been directed to the overrepresentation of victims among minority groups. Surveys and in-depth research suggest that young Asians and particularly Pakistanis and Bangladeshis suffer greater risks of victimization than members of any other group, and particularly from repeated racist violence. Young people from these groups feel a sense that they need to defend their geographical spaces or their territory (Kershaw et al. 2000; Webster 2004). Risks of victimization may be higher for ethnic minorities because they are more likely to reside in inner-city areas and areas of disadvantage, and lifestyles related to their socioeconomic backgrounds may make them more vulnerable to attack. For example, working late or shift hours and using public transport may be more common among minority ethnic people and make them more at risk of victimization. In addition, with regard to property crimes, security devices are expensive to buy and install, and thus are less affordable for disadvantaged people. Community schemes that aimed to prevent crime, such as Neighborhood Watch, were found to work more effectively and to have had higher participation in affluent areas than in inner-city and working-class areas where the potential benefits might be higher (Husain 1988).

D. Policing, Space, and Place: The London 2011 Riots

Differential policing is a major explanation for minority offending and victimization patterns. It is important for police practices to accommodate social and economic factors that explain offending and victimization.

The London riots of 2011 show how resentment among young people, socioeconomic disadvantage, and mistrust toward the police can result in violence and offending on a wide scale. The 2011 riots were among the worst in UK history. Analyses of the riots and their causes are underway; however racism and related resentments and the targeting of disadvantaged groups by the police have been proposed as subtexts to the disturbances as explained in the introduction.

The *Guardian*-London School of Economics (LSE) study (2011) analyzed data and interviewed rioters and concluded that distrust and antipathy toward the police were key causal factors. Community frustrations about stops and searches were cited as a key source of unhappiness. Seventy-three percent of those interviewed said they had been stopped and searched in the previous 12 months. A large number of acquisitive crimes were explained by reference to opportunity and to a seeming suspension of normal rules, which allowed people to acquire luxury goods they could not usually afford. A sense of injustice seemed to pervade many rioters' reasoning and although "race" was

not necessarily considered a causative factor, injustices and social disadvantage inevitably affect minority groups to a greater degree. The shooting of Mark Duggan which sparked the initial protests of the London riots was carried out under the Operation Trident initiative which aims to reduce gun crime among the black community in the United Kingdom. The location of the shooting was in the same place as where race riots occurred in the 1980s (on the Broadwater Farm estate in north London). This underlines the continued presence of the historical past in police and ethnic minority community relations today. Community members felt that police disproportionality was directed toward a black man from the local area, and this galvanized them to protest.

The ensuing riots resulted in a large number of arrests; of those arrested the vast majority were male (89 percent). Forty-six percent were aged 18 to 24, and 26 percent were aged 10 to 17 (Ministry of Justice 2012). Police information on arrestees' self-reported ethnicity indicated that 40 percent were white, 39 percent black, 11 percent from a mixed ethnic background, 8 percent Asian, and 2 percent from other ethnic backgrounds. These figures demonstrate overrepresentation of members of minority groups. As always, however, it is important to remember that arrests are at least as much an indicator of police practices as of offender behavior. The disproportionate minority arrests may also be because the riots took place principally in ethnically diverse areas. The great majority of arrestees (88 percent) were previously known to the police through previous arrests, cautions, or convictions; again, the ethnic background of people known to the police may not be ethnically neutral or representative of the offender population. Fifty percent of arrests were for acquisitive crimes, 36 percent for criminal damage, 7 percent for personal violence, and 3 percent for disorder.

Other interpretations of the riots note that young people lack access to the consumerism that society promotes. According to Bauman (2011), the riots are best understood as a revolt of frustrated consumers. High levels of unemployment lead many youth to believe they do not have a legitimate future (Topping 2011). Interviews with rioters seemed to echo the disillusionment hypothesis—those involved said they had “nothing to lose” and did not have a stake in society. Further explanations included unemployment, disaffection, school exclusions, stops and searches, and criminalization. All disproportionately affect members of minority groups.

V. CONCLUSIONS

There is value to be gained from interpreting interpretations, perhaps more so than from interpreting “things” (Montaigne 1993). There may be merit in applying this to the relations among ethnicity, crime, and criminal justice in England and Wales. Media and policy analyses can at times suggest that official data describe offending patterns. However, it is vital to acknowledge that the data are interpretations—police figures are a product of discretion, victimization levels are dependent on acceptance of victim accounts, and offending figures rely on the offender's willingness to disclose the truth.

Minority groups are overrepresented at all stages of the criminal justice system. This is reflected in official data and in empirical research. Clearer pictures of minority involvement in the justice system are obscured by imprecision in statistics and over-aggregation of minority group categories. There are differences between Asian and black groups, but we do not know why these differences exist or persist. In addition, newer minority groups and recent immigrants have altered the landscape. The research findings and data discussed in this article support the conclusion that policing and legislation can criminalize ethnic minority groups in ways that are difficult to interpret as intentionally racist or neglectful (Tonry 1995). However, the discussion in this essay does question the ways in which the police apply their tactics and legislation to certain groups more than others. The nature of the influence of social disadvantage on different minority groups and offending also remains obscure, particularly because of the differential impact inequality seems to have or whether these can be mitigated against by culture or family structures.

Racism is dynamic and influenced by histories and contemporary political priorities. This is exemplified by the recent increase in use of stops and searches of people of Asian and mixed ethnic backgrounds and indicates that group stereotypes are pliable, not static. Future research should adopt new approaches to understanding ethnicities, racism, and identities. The study of the production of racism and of its sources is important, but we must also take account of its effects, which in turn should enable a better understanding of its production.

The aim of this essay has been to illuminate the effects of racism in criminal justice settings so we can understand how the system and its actors produce and perpetuate unfair practices. Further research at macro- and micro-levels is required to understand why racist practices and different outcomes for different groups persist, despite attempts to reduce them.

There is also need to disrupt the dichotomous understanding of producers and victims of racism. Differences in offending between Asian and black groups have long been recognized, but progress in understanding the differences is stymied by lack of adequate statistical data. Survey designers should disaggregate ethnic group categories to represent reality more clearly. Victim-offender overlap, for example, is high; this should be explored in reference to minority groups. In addition, better understanding of increased victimization rates among minority groups and their fear of victimization would enrich efforts to reduce disproportionate victimization.

Empirical work should investigate intra-ethnic tensions and explore how minority groups can produce and contribute to discriminatory and exclusionary practices. Sociological analysis has identified the need for ethnic identities to be better understood in contemporary societies. This may lead to a more nuanced understanding of how ethnicity and social action intersect. That a person can choose but also renounce an identity, and produce, invent, and fragment an identity make it almost impossible to fix a stable image of a population. The constant need for ethnic identity categories to shift and be reintroduced challenges the very principle of categorization (Wieviorka 2012). Criminological research has been reluctant to acknowledge these paradigms. Studies

of crime and criminal justice would better reflect the lived experience of minorities if broad categories were excavated for differences within them, and if the possibility of the fluidity of ethnic and other identities were incorporated into their interpretative frameworks.

NOTES

1. The Criminal Justice Act 1991, section 95 requires the secretary of state each year to publish information as he considers expedient for the purpose of avoiding discriminating against any persons on the ground of race or sex or any other improper ground.
2. Based on population estimate data released in 2010 by the Office for National Statistics.
3. Direct comparisons are not possible for all ethnic group categories because some data (e.g., the mixed category) are missing or were not collated in previous years.
4. These reports are not published annually; the 2006 figures were the most recent available at the time of writing.
5. These include bicycle theft, burglary, theft in a dwelling, other household theft, thefts of and from vehicles, and vandalism to household property and vehicles.
6. Figures for property crime were not available at the time of writing.
7. Sharp and Budd (2005) note that use of broad ethnic groups masks diversity. For example, analysis of socioeconomic characteristics of Asian group shows that Indians are generally more affluent than Pakistanis and Bangladeshis.
8. Antisocial and problem behaviors in the OCJS include being noisy or rude in a public space, behavior leading to a neighbor complaining, graffiti, joy-riding, carrying a weapon, and racial harassment.
9. This term is used across Asian groups and refers to honor, reputation, or prestige.
10. The study does not specify where it was conducted, but indicates that eight Youth Offending Teams were chosen, seven in urban areas with relatively high concentrations of minority ethnic young people and one in a rural area with a relatively low minority concentration.
11. The street population may differ greatly from the resident population of an area because people are drawn to shopping areas, ethnic minorities are more likely to be out and about, etc.
12. Section 44 (1) and (2) enabled the police and the home secretary to define any area of the country and a time period in which they could stop and search any vehicle or person, and seize "articles of a kind which could be used in connection with terrorism." There was no requirement of reasonable suspicion.

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CHAPTER 12

INDIGENOUS PEOPLE AND SENTENCING COURTS IN AUSTRALIA, NEW ZEALAND, AND CANADA

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UNTIL recently, the main participation or presence that indigenous¹ people have had with the mainstream criminal court system has been as the “black” defendant. Judicial officers, defense lawyers, prosecutors, and other criminal justice agency representatives who are often present in a courtroom are usually white and Anglo-Saxon. This is, however, changing, and now the “black” defendant is sometimes confronted with people from his or her community when having sentences determined or supervised. The impetus for such change has been the overrepresentation of indigenous people in the criminal justice system and in custody. It is assumed that community input and participation will make a court or justice process more meaningful for the offender, which will, in turn, ultimately assist in changing his or her behavior. This essay’s focus is on the introduction of innovative indigenous-centered justice practices in Australia, Canada, and New Zealand.

As part of colonization, the indigenous peoples of Australia, Canada, and New Zealand were forcibly introduced to a foreign system of justice. Despite the signing of treaties in two of those countries (Canada and New Zealand), recognition of traditional laws and customs was all but erased with the arrival of the colonizers. Assimilating the original inhabitants of the land into the social and legal systems of the newly formed colonies entailed a civilizing process to transform “native savages” into conforming Christians (Cunneen 2008, p. 163). Indigenous peoples were unable to practice their customs, speak their language, or live on their traditional lands. More abhorrent was the massacres of thousands of original inhabitants as colonizers seized lands for resettlement and cultivation. For various reasons, inextricably linked to the devastating impact

of colonization, the indigenous inhabitants of all three countries are today significantly overrepresented in the criminal justice system. For the past two decades, governments of all three countries have been attempting to rectify this complex and enduring problem. Policies have been introduced that have attempted to control indigenous people through overpolicing and surveillance, but very few have resulted in empowering communities and encouraging a social transformation. It might be argued that the recruitment and participation of indigenous people in various criminal justice agency roles is one of the few policy reforms that has enabled indigenous people to exert some degree of control over outcomes. As a result of such policies, indigenous people are now employed in a number of policing and corrective services roles, as court workers, and as judicial officers. By employing indigenous people in such roles, it is assumed that they will have greater opportunities for input into how services are provided to members of their community, to assist with addressing the problem of institutional racism, and to provide avenues for community empowerment. Diversification of the police force has not, however, necessarily reduced the covert or overt existence of institutional racism (whether it be toward indigenous people or toward people from non-Anglo-Saxon origins) (Chan 2008; Behrendt, Cunneen, and Libesman 2009), although there is some evidence suggesting that, in New Zealand, there has been “something of a paradigm shift” in relation to the existence of racism within the New Zealand police force. A small-scale qualitative study found that this shift in police culture was a result of changes to workplace policies and the increased diversification of new recruits (Jaeger and Vitalis 2005, p. 18).

Related to this is the ever-expanding initiative, which has been particularly successful in Australia but that has also been evident in Canada and New Zealand, to invite indigenous Elders or community representatives to participate in a sentencing process. The participation of Elders or community representatives at times occurs in a diversionary context, but in some jurisdictions, such as Australia, it operates as part of the formal criminal court process. This essay focuses on this new type of initiative that, in contrast to those policies that have recruited indigenous staff, has in effect attempted to imbue the sentencing process, not just individuals, with culturally appropriate practices and knowledge. We find that:

- Australia is the most advanced in its development of indigenous-centered court or justice processes that reflect and incorporate indigenous community values and knowledge.
- Practices vary among and between jurisdictions, but the main goals of these innovative justice practices are to create a forum in which a defendant’s offending behavior is better understood as relating to his or her cultural heritage and to ultimately reduce recidivism.
- Evaluations have found that indigenous-centered justice practices facilitate increased community participation and the provision of a more meaningful and culturally appropriate process for indigenous defendants, despite the fact that they have had little impact on reoffending rates.

- Without proper measurements of “success,” it is difficult to determine whether these new innovative justice processes can reduce indigenous overrepresentation in the criminal justice system.
- To be most effective, any new sentencing court or diversionary justice initiative needs the support and approval of the local community, as well as culturally appropriate postcourt support programs.

In section I of this essay, we describe how indigenous people in Australia, Canada, and New Zealand have been and still are affected by colonization. Section II expands on this discussion by focusing primarily on the impact colonization has had on the relationship between indigenous people and the police. In particular, this section explores whether the prevailing mistrust between these two groups can be rectified. Section III provides an overview of the various indigenous sentencing courts and diversionary practices that exist in Australia, Canada, and New Zealand. Finally, section IV concludes with recommendations for future policy reform in the area of innovative justice practices and makes suggestions for future research.

I. COLONIZATION AND ITS ENDURING LEGACY FOR INDIGENOUS PEOPLES OF AUSTRALIA, CANADA, AND NEW ZEALAND

The manner in which colonization affected and ultimately impacted indigenous peoples in Australia, Canada, and New Zealand was, in many respects quite different. In Australia, the Crown, in a legal sense, completely ignored the presence of Indigenous Australians, and British settlement was justified on the basis that Australia was “terra nullius” and was thus available for “settlement.” As such, Indigenous Australians were considered uncivilized and were classified as subjects under the *Flora and Fauna Act* of New South Wales. Indeed, Australia lagged (and continues to lag) behind the other two countries “in recognizing native title and Indigenous peoples’ rights more generally” (Behrendt, Cunneen, and Libesman 2009, p. 4). In Canada, the Crown’s recognition of Aboriginal land rights can be traced back to the Royal Proclamation of 1763, which affirmed native title rights and clarified that Aboriginal Canadians, although under Crown rule, were politically autonomous (Coates 1999). Although “numbered treaties” later saw a transfer of land rights to the Crown (for the purposes of resource development), Aboriginal Canadians were recognized relatively early as being the First Peoples of Canada (Bartlett 1991). In New Zealand, the Treaty of Waitangi was signed between the Māori and the Crown in 1840; it was intended (but never realized) to provide Māori with control over their land and resources and sovereignty over Māori affairs (Quince 2007).

In Australia, it is now acknowledged that, precolonization, “Indigenous people were guided by a highly sophisticated system of justice based on principles of rights and

responsibilities . . . which formed the basis of traditional law” (Robertson 2000, p. 182). The invalid use of an international law that deemed Australia a “no man’s land” was the beginning of a devastating relationship between Indigenous people and the colonial rulers, particularly police enforcers of British laws and regulations. These laws were meant to protect the original occupiers of the land but instead “allowed extraordinary offenses against Indigenous Australians to occur, including random dispersals, massacres, rapes, seizure of land, and the subjugation and incarceration of the traditional landowners” (Robertson 2000, p. 182). The White Australia Policy saw children of mixed descent, who appeared “whiter” than “full-blooded” Indigenous children, forcibly removed from their families in the interests of breeding a pure “race.” In this sense, the law was fundamental in categorizing and separating those who appeared different and who were considered inferior to the Anglo-Saxon colonizers (Cunneen 2011, p. 169). The 1997 “Bringing Them Home” Report found that between 1 in 3 and 1 in 10 Australian Indigenous children were “forcibly removed from their families and communities in the period from approximately 1910 until 1970” (Human Rights and Equal Opportunity Commission 1997, p. 31). The children were permanently placed in the care of white families (where they were put to work as domestics or farm laborers) or institutionalized until they were old enough to be sent out to work. The majority of Indigenous children who were institutionalized were female, and, once they were sent to work as domestic servants, they often became pregnant, only to have their children removed and institutionalized (Human Rights and Equal Opportunity Commission 1997, p. 37). These children often experienced extreme cruelty in the institutions, which were either controlled by the state or by missionaries. The Report concluded that, throughout the generations, “not one Indigenous family has escaped the effects of forcible removal” (Human Rights and Equal Opportunity Commission 1997, p. 31). Alongside such dispossession and colonial efforts to “merge” and “absorb” Indigenous people into white society, Indigenous people were presented with a set of colonial laws that regarded them as subhuman and did not acknowledge them as citizens of their own land until 1967.

Similar atrocities occurred in Canada, where assimilationist policies placed Aboriginal Canadians in residential schools. The process was “violent in its intention to ‘kill the Indian’ in the child for the sake of Christian civilization” (Milloy 1999, p. xv). Despite a government-generated myth that Aboriginal people were “looked after and treated fairly,” the administration of Canadian Indigenous Affairs was ultimately found to be “dominated by colonialist and racist assumptions,” causing social, cultural, and economic hardship and disadvantage for contemporary Aboriginal Canadians (Coates 1999, p. 142). As occurred in Australia and New Zealand, the Canadian colonizers brought with them disease and dispossession that caused widespread death and dramatic population reductions, resulting in only about 102,000 Aboriginal Canadians remaining alive in the 1870s, from an original precontact population of approximately 500,000 (Coates 1999, pp. 142–43). Although the occupation in Canada was less violent than those in other British colonies, “the results proved to be substantially the same” (Coates 1999, p. 156). Despite the fact that the Canadian government did not use armed

forces to carry out its occupation, it did not handle “indigenous affairs with generosity of spirit and concern for the First Nations’ cultural survival” (Coates 1999, p. 156).

By the time the British colonized New Zealand, its experience with indigenous populations elsewhere had been documented and condemned by London (Sorrenson 1999, p. 162). The new “guidelines” set by the House of Commons meant that “settlers” were required to enter into a treaty with the Māori peoples, rather than relying on a fictional international norm to justify a hostile invasion, as had occurred across the Tasman. Despite this, Māori culture (including kinship networks that dealt with conflicts) was eventually wiped out. Although there were early “token attempts” to introduce a pluralistic legal system, the Māori way of “doing justice” was “reversed,” and the Magistrates Court Act (1983) “drew a formal veil of silence over those indigenous practices” (Pratt 1999, p. 317). From that point on, Māori were subjected to a foreign system of justice and, as Pratt argues, although Māori were treated “equally” under the law, the situation was fundamentally flawed because Māori were not on an equal footing in the new New Zealand. As such, “race relations were bound to take the form of a partnership of unequals,” something that became painstakingly clear in the manner in which Māori were treated by the justice system in the years to come (Pratt 1999, p. 317).

Colonization has had an undisputable impact on the socioeconomic status of the indigenous peoples of all three countries, where they continue to be disproportionately disadvantaged in areas such as health, wealth, education, and employment when compared to the nonindigenous population. Indigenous Australians have the largest life-expectancy gap, of approximately 16–17 years less than the overall Australian population (based on births between 1996 and 2001) (Australian Bureau of Statistics 2011a). In Canada, the gap is approximately 6–8 years (Tjepkema and Wilkins 2011), and in New Zealand, Māori life expectancy is 8–9 years below that of the non-Māori population (Ministry of Social Development 2010, p. 26). Caution should be used, however, in comparing these figures because measurement tools and definitions as to who is indigenous vary between studies. After reviewing 16 papers published since 1990 that compared indigenous life expectancy among Australia, New Zealand, Canada, and the United States,² the Australian Institute of Health and Welfare concluded that “it cannot be inferred in a classical statistical sense that there are any differences between countries in indigenous life expectancy, let alone the relative magnitude of difference” but that this “does not preclude that real, even large differences might exist, only that it should not be inferred from the available information” (Australian Institute of Health and Welfare 2011, p. 20). Despite this, the Institute of Health and Welfare concluded that Australian and New Zealand estimates were to some extent comparable, showing Māori life expectancy was better than the life expectancy of Indigenous Australians (p. 25). Hill, Barker, and Vos came to a similar conclusion, adding that, despite the fact that caution should be exercised when comparing mortality rates of other member nations of the Organization for Economic Cooperation and Development (OECD),³ Indigenous Australians are more disadvantaged than indigenous people from Canada, New Zealand, and the United States (Hill, Barker, and Vos 2007, pp. 586–87). Assuming such comparisons can be made, reasons for the disparity between Indigenous Australians and indigenous people

from other developed countries have been noted as including the lack of a coordinated state and federal health funding policy; the absence of a treaty between Indigenous Australians and the European “invaders,” which, it is argued, influenced the development of health services for Indigenous Australians and created a greater sense of hopelessness among the Indigenous population (Ring and Firman 1998); the remote living conditions of some Indigenous Australians and their poor English-language skills, both of which result in lack of access to proper health care; and the lack of “political leadership and will” to allocate necessary resources and funding required to improve the general living conditions and socioeconomic status of Indigenous Australians (NACCHO and Oxfam Australia 2007).

Life expectancy is not the only measure of well-being in which indigenous populations rate poorly. For example, in 2011, only 46 percent of Australian Indigenous people aged 15 years and older were classified as employed (Australian Bureau of Statistics 2011*b*). Because of geographical distribution and age structure, direct comparisons with the non-Indigenous population can be misleading; however, generally, the employment rate for non-Indigenous Australians is higher. In addition, a significantly smaller proportion of Indigenous Australians live in major cities compared with the general population (31 percent compared to 68 percent), and approximately 25 percent of the Indigenous population is still living on old colonial reserves (Newbold and Jeffries 2010, p. 189). These regional and remote “communities” offer little employment opportunities and therefore contribute to the growing unemployment problem. Even when employed, Indigenous Australians tend to work in lower paid laboring positions when compared to non-Indigenous Australians (Newbold and Jeffries 2010, p. 189).

In New Zealand, the “Native Schooling System,” established in 1867, was designed to assimilate Māori into the European culture, providing boys with skills in the rural agricultural sector and girls with “domestic” training (which is, in fact, similar to what occurred in Australia and Canada) (Quince 2007, p. 11). This lack of “formal” education has resulted in a significant number of Māori people moving into unskilled jobs and not seeking a tertiary education (or the skilled professions that come with it) (Quince 2007, p. 11). As Quince points out, although the schools were shut down in 1967, “their legacy continues to influence and impact contemporary Māori educational achievements and aspirations” (Quince 2007, p. 11). Recent statistics show that Māori are still significantly worse off when it comes to completing secondary school and gaining entry into university (Ministry of Education 2009). Māori secondary school students in 2005 were twice as likely as non-Māori students to have left school by the age of 16 and more likely to be studying at certificate level (a lower level of education) in tertiary education, despite the fact that their participation rate in tertiary education in 2003 was higher than any other ethnic group (Robson, Cormack, and Cram 2007, p. 22). Similar to the Australian Indigenous population, in 2006, Māori were “most likely to be employed in service industries (16.7 percent), and as plant/machine operators and assemblers (16.4 percent)” (Robson, Cormack, and Cram 2007, p. 23).

As one might expect, Canadian statistics paint a strikingly similar picture in relation to the Aboriginal population. In 2006, “38 percent of Aboriginal people aged 20 years

and over had not completed high school compared to 19 percent of non-Aboriginal people” and “the unemployment rate for Aboriginal Canadians was 14 percent, compared to 6 percent for non-Aboriginal Canadians” (Perreault 2009, p. 12). In Manitoba and Saskatchewan, the unemployment rate in the 2001 census for the Aboriginal population was triple that of the non-Aboriginal population (Mendelson 2006, p. 8).

Socioeconomic disadvantage is highly correlated to criminogenic behavior and ultimately contributes to the overrepresentation of indigenous people in custody. Recent (2010) statistics show that Indigenous Australians make up more than 26 percent of the total prison population, while accounting for approximately only 2.5 percent of the Australian population, an increase of 3 percent when compared to the previous year (Australian Bureau of Statistics 2010, p. 47). Furthermore, 74 percent of Indigenous prisoners had a prior adult imprisonment history, compared with almost half of non-Indigenous prisoners (Australian Bureau of Statistics 2010, p. 49). According to the 2009 Canadian census, Aboriginal adults accounted for 22 percent of the prison population while only accounting for 3 percent of the Canadian population (Perreault 2009, p. 5). The 2009 census also revealed that, in the western Canadian province of Saskatchewan, Aboriginal adults accounted for an alarming 81 percent of the provincial prison population while representing only 11 percent of the general population in that province (Perreault 2009, p. 5). In 2007, Māori represented approximately 15 percent of New Zealand’s population but accounted for more than 50 percent of the prison population and comprised 42 percent of police apprehensions (New Zealand Department of Corrections 2007, p. 23; Hess 2011). Similar to the other two jurisdictions, the situation was even worse for female Māori because they accounted for approximately 60 percent of the total female prison population (New Zealand Department of Corrections 2007, p. 6).

II. INDIGENOUS MISTRUST OF THE CRIMINAL JUSTICE SYSTEM

Although socioeconomic disadvantage influences the likelihood of indigenous people coming into contact with the criminal justice system, historical factors and systemic bias make their experience more difficult and protracted. Mistrust of the criminal justice system, stemming from the history of colonization, is a significant impediment to building better relationships between those who work within the various criminal justice agencies, particularly in the police force, and indigenous people. Studies have confirmed this sense of mistrust in all three jurisdictions; however, finding a solution has proven difficult. Each of the three jurisdictions can list its moral touchstones concerning the redress of racial inequalities in the criminal justice system. For example, in Australia, there was the 1991 *Final National Report* prepared by the Royal Commission into Aboriginal Deaths in Custody (RCIADIC); in Canada, there was the 1991 Law Reform Commission

of Canada report titled *Aboriginal Peoples and Criminal Justice: Equality, Respect, and the Search for Justice*, and a 1996 report prepared by the Royal Commission on Aboriginal Peoples titled *Report of the Royal Commission on Aboriginal Peoples: Vol. 1–5*; and, in New Zealand, there was the *Closing the Gaps* series reports prepared by Te Puni Kokiri in 1998 and 2000. However, none has managed to solve the problem of indigenous overrepresentation in custody, despite extensive research and consultation and numerous well-meaning recommendations.

The RCIADIC was heralded as the inquiry that would transform race politics for Indigenous Australians. Indeed, after more than a decade since it tabled its National Report on April 15, 1991, the inquiry continues to significantly influence Indigenous criminal justice policy in Australia. The National Report, consisting of five volumes, made 339 recommendations. One of its most significant findings was that the deaths in custody that it had investigated were not “the product of deliberate violence or brutality by police or prison officers” (RCIADIC 1991, vol. 1, p. 3). It concluded that Indigenous people did not die at a greater rate than non-Indigenous people in custody when the proportion of Indigenous people in custody was taken into account. Instead, the RCIADIC concluded that for each one of the 99 deaths investigated, the deceased’s Indigeneity “played a significant and in most cases dominant role in their being in custody and dying in custody” (RCIADIC 1991, vol. 1, p. 1). The predominant finding was that Indigenous people were vastly overrepresented in custody and that it was because of this overrepresentation that so many deaths had occurred. Although the inquiry found that hostility existed between police and Indigenous communities and that more work was needed to address Indigenous concerns relating to unequal power dynamics between the two groups, the RCIADIC also found evidence of joint efforts in some communities attempting to mend the relational divide. Other more recent government reports have since found a continuing distrust of police existing among the Australian Indigenous population (Crime and Misconduct Commission 2009, p. xviii). For example, the Law Reform Commission of Western Australia stated:

Historically Aboriginal people have been subject to oppressive treatment by police. As a consequence, Aboriginal people often distrust and resent police officers. During the Commission’s consultations many Aboriginal people complained about their treatment by police. The lack of respect by police for Aboriginal people generally, and for Elders and community leaders, was highlighted. Many Aboriginal people believe there is extensive racism within the police service. (Law Reform Commission of Western Australia 2006, p. 192)

Similarly, the Queensland Crime and Misconduct Commission more recently noted:

The relationship between police and Queensland’s Indigenous communities is highly variable, depending on place, time, recent events, and the particular police officers involved. Generally, however, it could be described as fragile, tense, and volatile. Such a description should come as no surprise to any Australian with awareness of events in our colonial history, or indeed of contemporary police-related

events involving Indigenous people. Many members of Queensland's Indigenous communities continue to be distrustful and suspicious of police, and often carry an expectation that Indigenous people will be treated unjustly and violently by police. (Crime and Misconduct Commission 2009, p. xxiv)

The indigenous community–police relational context is mirrored in New Zealand, where a 1998 study found that Māori had relatively negative attitudes toward police and that bias was common among both Māori and police officers (New Zealand Department of Corrections 2007, p. 11). Māori respondents agreed that the “police institution is a racist institution that perpetuates strong anti-Māori attitudes” (Whaiti and Roguski 1998, p. 2). Some participants felt a strong distrust for the police and said they would hesitate before seeking police assistance (Whaiti and Roguski 1998, p. 2). More recently, in response to the police shooting of a Māori man, Steven Wallace, Māori advocate and scholar Moana Jackson argued that the police view Māori “not just as criminals, but as enemies of the state” (Jackson 2000, pp. 3–5).

A similar story exists in Canada. The 1991 Report of the Aboriginal Justice Inquiry of Manitoba found that the suspicion and hostility that Aboriginal people felt toward police were based on a history of poor relations between the two groups. Aboriginal mistrust (although based on historical factors) was exacerbated by “inappropriate levels and quality of policing” (Public Inquiry into the Administration of Justice and Aboriginal People 1991, vol. 1, p. 595). The Report noted that:

Aboriginal people view the police as representatives of a culture which is vastly different from their own. Their encounters with police are framed by a history of cultural oppression and economic domination, during which use of Aboriginal languages, governments, laws, and customs was punished by laws developed by the same legal structures police now represent. (Public Inquiry into the Administration of Justice and Aboriginal People 1991, vol. 1, p. 596)

Significantly, the 1991 Law Reform Commission Report noted:

From the Aboriginal perspective, the criminal justice system is an alien one, imposed by the dominant white society. Wherever they turn or are shuttled throughout the system, Aboriginal offenders, victims, or witnesses encounter a sea of white faces. Not surprisingly, they regard the system as deeply insensitive to their traditions and values: many view it as unremittingly racist... The police are often seen by Aboriginal people as a foreign, military presence descending on communities to wreak havoc and take people away. Far from being a source of stability and security, the force is feared by them even when its services are necessary to restore a modicum of social peace to the community. (Law Reform Commission of Canada 1991, p. 5)

The underreporting of crimes by indigenous people in all three countries is also indicative of the fact that, among other things, indigenous people lack confidence in the criminal justice system. In Australia, an alarming 90 percent of violence against

Indigenous women goes unreported (Willis 2011). Aboriginal Canadians suffer higher rates of violent victimization than do non-Aboriginal people and about 6 in 10 incidents of violent crime go unreported (Brozowski, Butts, and Johnson 2006, p. 5). Reasons other than a distrust of the justice system for the lack of crime reporting include language and cultural barriers and a perception that police and courts are racist and sexist (Willis 2011, pp. 5–6), a belief that judges and police may use a “culturally distorted view of sexual assault to legitimize men’s behavior citing sex as a cultural right” (Robertson 2000, p. 98), a desire to protect the perpetrator from possible imprisonment and perhaps dying in custody, and a belief that judges and barristers minimize violence in indigenous communities (Willis 2011). Some Indigenous Australians living in remote or regional communities also engage in traditional forms of punishment, such as spearing, banishment, or “payback,” instead of relying on the non-Indigenous criminal justice system to prosecute and punish the perpetrator of an offense (Blagg 2008).

Racial bias within the criminal justice system in all three countries is prevalent and affects the discretionary judgment of people who work in various roles within the system. It is well documented that Indigenous Australians are often overcharged, are much less likely to receive a summons as opposed to being detained, and are less likely to receive bail than non-Indigenous people in similar circumstances (Cunneen 2001, p. 32). It is possible that these factors are a result of Indigenous people committing more serious offenses and of their prior offending record, however,

Earlier discrimination in the system results in Indigenous people being less likely to receive diversionary options and being more likely to experience the most punitive processes and sanctions. These factors compound and apparently equitable treatment at the point of sentencing may simply mask earlier systemic biases. (Behrendt, Cunneen, and Libesman 2009, p. 143)

The New Zealand Department of Corrections referred to this as “amplification,” whereby formal and informal “profiling” by various government agencies serves to increase the likelihood that Māori will progress further into the justice system and be dealt with more severely than non-Māori offenders (New Zealand Department of Corrections 2007, p. 5). In the Canadian context, Green suggests that Aboriginal perspectives of law and justice not only reflect a “deep distrust and rejection” of the criminal justice system, but, more so, they suggest “a fundamental difference in the meaning of justice” (Green 1995, p. 36). Here, Green is referring to a difference between the purpose of the law for Aboriginal and non-Aboriginal people, and he surmises that Canadian law only punishes offenders without delving deeper into the reasons why the offense was committed and without considering how “offenders” may be dealt with according to Aboriginal notions of justice (Green 1995, p. 36). It is for these reasons that it is so important to find other ways to administer justice that better reflect culturally appropriate practices and that can repair the historical mistrust between indigenous groups and criminal justice agencies.

III. INDIGENOUS SENTENCING COURTS AND CULTURALLY APPROPRIATE DIVERSIONARY PRACTICES IN AUSTRALIA, CANADA, AND NEW ZEALAND

Liberal legal ideology is limited in contemplating “differences” and inequalities (Graycar and Morgan 1990; Fitzpatrick 1992, p. 107; Delgado 1995; Davies 2002), and some would take the point a step further, arguing that the law ultimately reproduces itself in its own (white) image (Watson 2000; Davies 2002, p. 278). Legal institutions of power assume a position of whiteness without acknowledging a position of humanity and without recognizing that the dominant white culture is also raced (hooks 1992; Dyer 1997; Razack 1998). As Moreton-Robinson, an Australian Indigenous academic explains, “[w]hiteness remains the invisible omnipresent norm. As long as whiteness remains invisible . . . ‘race’ is the prison reserved for the ‘Other’” (Moreton-Robinson 2000, p. xix). Attempting to imbue another viewpoint into the dominant white criminal justice system is not easy. Simply recruiting indigenous employees in various criminal justice agencies roles will only scratch the surface in changing cultural normativity. Other initiatives are required that strive to decolonize institutions of power, such as the criminal court system, where indigenous people of all three countries are vastly overrepresented.

Vermette argues that Canadian courts continue to represent a form of illegitimate colonial control over Aboriginal Canadians, arguing that the courts have “ignored the existence of Aboriginal communities as polities having a legitimate role in the management of their rights” (Vermette 2008–2009, p. 228). The lack of an Aboriginal “voice” in the courtroom means that Canadian law remains a colonizing process; “the perpetuation of colonial power means that Aboriginal people continue to be faced with the inability to define their own world within the confines of Canadian law” (Vermette 2008–2009, p. 320). Vermette argues that complex legal language and the fragmentation of legal issues isolate Aboriginal people and alter the focus from a holistic approach to an issues-based enquiry (Vermette 2008–2009, p. 228). As such, application of colonial law and court processes to Aboriginal people is meaningless because it “fails to respect the particular view of the world held by the people” (Vermette 2008–2009, p. 240).

Advocating for increased indigenous participation and presence in the criminal justice process, so that different standpoints are reflected and respected, is not a new concept. Many of the RCIADIC recommendations centered on increasing Australian Indigenous participation in the criminal justice system by incorporating culturally sensitive practices in the dominant criminal and legal justice systems (Marchetti 2009, p. 137). Similarly, the Canadian Royal Commission on Aboriginal Peoples recognized that

The justice system is an area where Elders have found the most opportunity in recent years to effect change—they work in prisons and with a broad range of community

programs, participate in community sentencing, and act as justices of the peace. Successes and lessons learned in these areas can direct policy makers to other suitable avenues for Elders' participation and collaboration. (Royal Commission on Aboriginal Peoples 1996, p. 130)

There have been initiatives in New Zealand under the *Children, Young Persons, and Their Families Act* to introduce "family group conferences," which has its roots "in the Māori way of doing justice" (Pratt 1999, pp. 323–24). However, Justice Ministers over time have refused to consider a "separate" system of justice or a system that can accommodate both Western and traditional modes of justice for *adult* offenders, "instead, they have continued the move towards some 'indigenization' of the existing process, with a view to equalizing Māori-Pakeha relationships" (Pratt 1999, p. 324).

The prevailing system of justice has traditionally provided little room for judicial officers to incorporate the unique position of indigenous people when sentencing offenders. Indeed, according to some, it would be impossible to imagine a society created from a history of colonialization that could establish criminal justice practices that are decolonized and nonracial. Instead, what is more likely is a cultural "hybridity" in which the colonizer both "affirms and excludes" the colonized while continuing to "define itself as different and superior" (Darian-Smith 1996, p. 294; see also Fitzpatrick and Darian-Smith 1999, p. 1). Attempts have been made in Canada, Australia, and New Zealand to create criminal court and diversionary processes that more aptly reflect indigenous cultural traditions, however, none has gone as far as creating a separate sovereign system of justice. All three jurisdictions allow a person's indigeneity to be taken into account at sentencing, but the manner and extent to which this occurs in each jurisdiction varies. Recognition by the judiciary or the legislature of the impact an indigenous person's cultural heritage has had on their offending behavior has occurred as a response to the continual overrepresentation of indigenous people in custody. In Australia, the courts have not used a person's indigeneity per se as a mitigating factor in sentencing, but they have instead acknowledged that matters relevant to a person's membership to a particular cultural group may be used to explain the circumstances of the offense and of the offender. Justice Wood in *R v Fernando* (1992) 76 A Crim R 58 at 62–63 concluded that

- a) The same sentencing principles are to be applied in every case irrespective of the identity of a particular offender or his or her membership of an ethnic or other group, but that does not mean that the sentencing courts should ignore those facts which exist only by reason of membership of such a group.
- b) The relevance of Aboriginality of an offender is not necessarily to mitigate punishment but rather to explain or throw light on the particular offense and the circumstance of the offender.
- c) It is proper for the court to recognize that the problems of alcohol abuse and violence, which to a very significant degree go hand-in-hand within Aboriginal communities are very real ones, and their cure requires more subtle remedies than the criminal law can provide by way of imprisonment.

- d) Notwithstanding the absence of any real body of evidence demonstrating that the imposition of significant terms of imprisonment provides any effective deterrent in either discouraging the abuse of alcohol by members of the Aboriginal society or their resort to violence when heavily affected by it, the courts must be very careful in the pursuit of their sentencing policies to not thereby deprive Aboriginals of the protection which it is assumed punishment provides. In short, a belief cannot be allowed to go about that serious violence by drunken persons within their society are treated by the law as occurrences of little moment.
- e) While drunkenness is not normally an excuse or mitigating factor, where the abuse of alcohol by the person standing for sentence reflects the socioeconomic circumstances and environment in which the offender has grown up, that can and should be taken into account as a mitigating factor. This involves the realistic recognition by the court of the endemic presence of alcohol within Aboriginal communities, and the grave social difficulties faced by those communities where poor self-image, absence of education and work opportunity, and other demoralizing factors have placed heavy stresses on them, reinforcing their resort to alcohol and compounding its worst effects.
- f) That in sentencing persons of Aboriginal descent the court must avoid any hint of racism, paternalism, or collective guilt yet must nevertheless assess realistically the objective seriousness of the crime within its local setting and by reference to the particular subjective circumstances of the offender.
- g) That in sentencing an Aborigine who has come from a deprived background or is otherwise disadvantaged by reason of social or economic factors, or who has little experience of European ways, a lengthy term of imprisonment may be particularly, even unduly, harsh when served in an environment which is foreign to him and which is dominated by inmates and prison officers of European background with little understanding of his culture and society or his own personality.
- h) That in every sentencing exercise, while it is important to ensure that the punishment fits the crime and not to lose sight of the objective seriousness of the offense in the midst of what might otherwise be attractive subjective circumstances, full weight must be given to the competing public interest to rehabilitation of the offender and the avoidance of recidivism on his part.

The principles enunciated by Justice Wood have generally been adopted in later cases although there is some concern that, in recent years, courts are confining the application of the *Fernando* principles to circumstances that are too narrow in their approach (Flynn 2005). Aside from the *Fernando* principles, Australian courts have, at times, also taken customary (traditional) law into account when sentencing by structuring the penalty to accommodate the fact that traditional punishment will inevitably take place when the offender returns to his or her community (Behrendt, Cunneen, and Libesman 2009, p. 150). A court's discretion to do this, however, has been restricted

in the Northern Territory, which is the jurisdiction where this practice has most often occurred, by Australian federal government legislation introduced in 2007.

In Canada and New Zealand, the Canadian *Criminal Code* (R.S.C., 1985, c. C-46) and the New Zealand *Sentencing Act* (2002) require sentencing judges to have regard for an offender's indigenous status when considering the punishment to be imposed. As is discussed in more detail in the later section dealing with Canada, the Gladue (Aboriginal Persons) Court was established in Ontario as a result of a Supreme Court case that considered section 718.2(e) of the *Criminal Code*. Thus far, there have been no adult sentencing courts developed in New Zealand, and evidence suggests that New Zealand courts do not fully utilize and apply the provisions of the *Sentencing Act* when sentencing Māori offenders (Hess 2011). In this regard, it appears that Australia is further advanced in its attempts to institute some form of legal pluralism within its sentencing court system.

A. Australia

There are two kinds of Indigenous justice practices in Australia: courts in urban or regional centers, which set aside 1–4 days a month to sentence Indigenous offenders; and practices in remote Indigenous communities, which do not follow any formalized procedure but that canvass the input of Elders or community representatives when judicial officers travel on circuit (e.g., in Western Australia, courts in Wiluna, Yandeyarra, Geraldton, and in the Ngaanyatjarra Lands, and in Queensland, the Justice Groups' oral or written submissions to magistrates and judges at sentencing in the circuits to Cape York, the Gulf area, Thursday Island, Palm Island, and other circuits to remote areas). Hybrid forms are now emerging, with the introduction of Indigenous sentencing courts in more remote areas that follow more formalized procedures and operate when a magistrate is on circuit.

This section focuses on the first type of Indigenous justice practices, Indigenous sentencing courts that rely on agreed practices and protocols. At the end of 2011 there were more than 50 adult's and children's Indigenous sentencing courts operating in all Australian states and territories, except Tasmania.⁴ These courts were first established in Port Adelaide, a suburb of Adelaide on July 1, 1999, and today they operate under varied legislative frameworks and with differing eligibility criteria (Marchetti and Daly 2004, 2007). They were established to operate at a magistrates' (or lower) court level, but they now operate at a district (middle-tiered) court level in Victoria and in children's courts in Queensland, Victoria, and the Australian Capital Territory. They are not practicing or adopting Indigenous customary laws. Rather, they are using Australian criminal laws and procedures when sentencing Indigenous people, but they allow Indigenous Elders or community representatives to participate in the process, thereby creating a more culturally appropriate forum for sentencing Indigenous offenders.

The practices and processes vary among and between jurisdictions. Some limit the types of offenses that can come before the courts (e.g., breaches of family violence

protection orders are excluded in Victoria, and sexual offenses are excluded in all of the jurisdictions apart from Queensland and South Australia). Some have specific legislation that governs the courts (e.g., Victoria and New South Wales), whereas, in other jurisdictions, the courts were established under general provisions of the various sentencing Acts.

There are two main models for the courts: one is called the *Circle Court model* and the other is called the *Nunga Court model*. The Circle Court model is loosely based on the Canadian Circle Court model and is used in New South Wales and the Australian Capital Territory. The Nunga Court model is used in Queensland, South Australia, and Victoria. Western Australia and the Northern Territory use a hybrid of the two models, although some courts in the other jurisdictions are also evolving into the Circle Court format. The Circle Courts are convened in a room other than a courtroom or in a building that bears some form of cultural significance for the local community. There are usually four Elders or community representatives sitting on a Circle Court, and it is more likely that victims participate in the process. Usually one to two Elders or community representatives sit with a magistrate in the Nunga Court model, which is convened in a purpose-built courtroom with oval tables and Indigenous paintings and symbols. The degree of involvement of the Elders or community representatives varies between courts, but in all courts they will speak frankly with the offender (Marchetti and Daly 2007, p. 436). All of the courts employ Indigenous court workers (either within their own court administration or via the related department of justice) who arrange for Elders or community representatives to appear at the hearings; liaise among the offender, prosecutor, and victim (if they agree to participate); and sometimes monitor an offender's progress after the hearing (Marchetti and Daly 2004, p. 3).

A number of evaluations have been conducted of the Indigenous sentencing courts, of which all but one have been of the adult courts. Four have focused on the New South Wales Circle Courts (Potas et al. 2003; Cultural and Indigenous Research Centre Australia 2008; Fitzgerald 2008; Daly and Proietti-Scifoni 2009), two on the Victorian Koori Courts (Harris 2006; Sentencing Advisory Council 2010), one on the Victorian Children's Koori Court (Borowski 2010), two on the Queensland Murri Courts (Parker and Pathe 2006; Morgan and Louis 2010), and one on the South Australian Nunga Courts (Tomaino 2004). Payne also prepared a report for the Australian Research Council that was based on an "exploratory review" of specialty courts in Australia (Payne 2005). It is not easy to compare findings because the studies are mostly jurisdiction-specific and because they have all identified limitations in the manner in which the data were either collected or analyzed. However, by focusing generally on criminal justice and community-building aims, some comparisons and conclusions are possible.

Generally speaking, the evaluations have found that the Indigenous sentencing courts have improved court appearance rates, but they have not had a significant impact on recidivism (Fitzgerald 2008; Morgan and Louis 2010). The only qualitative analysis of the impact of the courts on recidivism rates, which used data collected from in-depth interviews of nonfamily violence offenders, found that the participants had had positive Circle Court experiences, whether they desisted from further offending or not,

and that “[m]any other facets of a defendants’ circumstances and their will to change” ultimately explained their desistance from reoffending (Daly and Proietti-Scifoni 2009, p. 110). In relation to the community-building aims, the evaluations found that the Indigenous sentencing courts provide a more culturally appropriate sentencing process that encompasses the wider circumstances of defendants’ and victims’ lives and that they facilitate increased participation by the offender and the broader Indigenous community in the sentencing process (Potas et al. 2003; Tomaino 2004; Harris 2006; Parker and Pathe 2006; Cultural and Indigenous Research Centre Australia 2008; Morgan and Louis 2010).

The court practices are sometimes associated with restorative justice and therapeutic jurisprudence (King 2003; Freiberg 2005; McAsey 2005; Harris 2006). However, although they share some similar qualities, the Indigenous sentencing courts should be viewed as being in a category of their own because their aims and objectives are more politically charged and focused on community participation than are other forms of court initiatives (Marchetti and Daly 2007). Legislation, court guidelines, and other explanatory materials associated with the courts in all jurisdictions state that the main aims and objectives of these courts are to make the court process more culturally inclusive and appropriate and to reduce offending and recidivism (for a detailed discussion of the aims and objectives of the courts, see Marchetti and Daly 2007, table 2). In all states, apart from Queensland, Western Australia, and Victoria, increased participation and support of victims is also stated as an aim of the courts. However, in most hearings, victims do not attend, and, when they do attend, they are usually offered little or no support (Holder 2004).

B. Canada

A number of initiatives in certain Canadian provinces have resulted in local Aboriginal communities participating in healing circles and in the monitoring or formulation of sentencing outcomes for Aboriginal offenders. Many of the initiatives operate at a diversionary level and not within a criminal court sentencing process, which to a large extent differentiates them from the Australian Indigenous sentencing court model. One of the main court-based initiatives, which currently operates in three locations in Toronto, Ontario, is known as the *Gladue* (Aboriginal Persons) *Court*.

The Gladue Court resulted from a decision of the Supreme Court of Canada in *R v. Gladue* (1999) 1 S.C.R. 688. The defendant, an Aboriginal woman, had pleaded guilty to manslaughter for having killed her common law husband. She had been celebrating her 19th birthday on the night of the killing and was intoxicated when she accused her partner of having had an affair with her sister. When she confronted him with her suspicions, he replied that she was “fat and ugly and not as good as the others” (*R v. Gladue*, p. 2). The defendant ran after the victim when he tried to leave and stabbed him in the chest. The Supreme Court noted that section 718.2(e) of the Canadian *Criminal Code* “mandatorily requires sentencing judges to consider all available sanctions other than

imprisonment and to pay particular attention to the circumstances of aboriginal offenders” (p. 3–4). In particular, the court, in upholding the sentencing judge’s sentence of 3 years imprisonment, emphasized the need for alternative methods of analysis when sentencing Aboriginal offenders, including those in urban centers, which consider:

- (a) the unique systemic or background factors which may have played a part in bringing the particular aboriginal offender before the courts; and
- (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection. In order to undertake these considerations the sentencing judge will require information pertaining to the accused (p. 4).

Critics of the *Gladue* decision argued that it lacked clarity and therefore provided little guidance and direction for lower courts to follow (Anand 2000). Moreover, they rightly noted that unless resources were made available for the courts to obtain the relevant information, it was unlikely that the *Gladue* decision could be properly or effectively implemented (Roach and Rudin 2000).

Subsequent to this decision, a judicial conference was held in Ottawa, in September 2000, at which judges expressed their concerns in implementing the Supreme Court’s decision (Proulx 2005, p. 90). A year later, and after much consultation, the Gladue Court was established to operationalize the Supreme Court’s interpretation of section 718.2(e). An Aboriginal offender can elect to have his or her charges heard in the Gladue Court for sentencing or to determine bail applications but not for determination in a trial (Bakht 2005, p. 240). If there are any issues in relation to an offender’s Aboriginal identity, then the Aboriginal Legal Services of Toronto will be utilized to resolve the issue. In making determinations about an offender’s charges, the court refers to sentencing reports, which are prepared by defense counsel (usually the Aboriginal Legal Services of Toronto) or by an organization familiar with the offender’s local community. The report contains information about “the particular needs and circumstances of the Aboriginal defendant. It is an essential part of examining the underlying causes of the criminal behavior, and forms part of the special effort made at the Gladue Court to implement sanctions that are appropriate given the broader systemic context in which Aboriginal peoples have come into contact with the criminal justice system” (Bakht 2005, pp. 240–41). Aside from the preparation of such reports, there is no other involvement of Aboriginal Elders or community input in the sentencing process.

The Cree Courts are another court-based initiative, established in the province of Saskatchewan. These are circuit courts that sit in various sites across northeastern Saskatchewan and are conducted entirely or partially in Cree (Courts of Saskatchewan 2010). The presiding judge is a Cree member and there are usually Cree-speaking legal aid lawyers acting for a defendant. The benefits provided to the offender and community, include:

- a) enabling the court to communicate with an accused in a manner suited to his or her language and cultural needs;

- b) encouraging the participation of community leaders in the criminal justice system and recognizing the community's role in supporting both the victims and the accused;
- c) incorporating traditional values into sentences, making them more responsive to the needs of particular communities;
- d) affirming the court's position as a local institution with an interest in building a safe and healthy society in Saskatchewan's North;
- e) acknowledging the value of certain aspects of First Nations' culture and language, and the role they can play in addressing current challenges. (Courts of Saskatchewan 2010).

Other initiatives, which are of a much smaller scale and generally diversionary in nature, can be found in Alberta, British Columbia, Saskatchewan, and Manitoba. Most of these initiatives involve the community or justice stakeholders working with a sentencing court to monitor or supervise offenders, review orders, devise "healing plans," or provide presentence reports that identify culturally appropriate programs and resources. Most are programs that are considered fitting under the heading of "restorative justice." One particularly interesting initiative is the Tsuu T'ina Peacemaking Court in Alberta, which began as a pilot project in 1999. The court operates under the auspices of the Alberta Provincial Court, but it is restricted to only hearing reserve offenses, aside from homicide and sexual assault offenses (Parker 2004). The members of the court, including the judge, prosecutor, and other court and probation workers, are of Aboriginal descent. The diversionary aspect of the Court comes into play if an offender admits to an offense, and the crown council and peacemaker coordinator believe a particular case is appropriate for resolution through peacemaking. In such a situation, the case will be adjourned in the provincial court and will be assigned to the peacemaking process. The victim of the offense must also agree to participate. The peacemaking process involves the offender's and victim's family, Elders from the community, and representatives from community rehabilitation programs meeting in a circle to reach an agreement about how to "make peace between the victim, wrongdoer, and the community, using the traditional values and beliefs of the Tsuu T'ina people" (Large 2001, p. 20). If the prosecutor believes that the offender is adhering to the conditions reached in the agreement, the charges are dropped when the matter returns to the court. If the offender does not make sufficient progress, the court will consider the agreement when sentencing.

The Canadian Department of Justice released its final report of the Aboriginal Justice Strategy Summative Evaluation in April 2007. The evaluation reviewed documents, conducted case studies of 10 communities that had established community-based justice programs through Aboriginal Justice Strategy funding (such as diversionary court initiatives and community participation in the sentencing of offenders), interviewed and surveyed a number of key stakeholders, and conducted analyses to determine whether the Aboriginal Justice Strategy had an impact on rates of reoffending and was cost-effective (Department of Justice, Canada 2007). The evaluation found that in Canada, in 2004–05, a total of 28,600 individuals were charged for offenses committed

on reserves but that the Aboriginal Justice Strategy programs had only accepted approximately 7,400 Aboriginal offenders, indicating that the program was not accessible to many Aboriginal offenders (Department of Justice, Canada 2007, p. 24). Similar to the findings of the evaluations of the Australian Indigenous sentencing courts, the Aboriginal Justice Strategy programs were found to offer sentencing alternatives that were more culturally appropriate and better suited to Aboriginal offenders and the community. Linked to this was the finding that once age, gender, and the number of prior convictions were held constant, participation in an Aboriginal Justice Strategy program reduced the likelihood of recidivism when compared to offenders who had been referred to the programs but did not participate in them (Department of Justice, Canada 2007, p. 26).

C. New Zealand

Despite the fact that in New Zealand the Treaty of Waitangi recognized, to some extent, Māori sovereignty, there has until very recently been no criminal justice initiatives that incorporate Māori culture or knowledge. One very recent initiative has been the Gisborne Marae Youth (or Rangatahi) Court, which was established by Judge Heemi Taumaunu on May 30, 2008, after extensive community consultation. It has now been expanded to 10 sites with the support of a group of Māori youth court judges. The court was initially an initiative of the New Zealand Police, the Ministry of Justice, and the New Zealand Department of Child, Youth, and Family Services (Gillespie 2008) to give Māori juvenile offenders the opportunity to have their Family Group Conference (FGC) order monitored in a culturally appropriate manner. The process still sits within the regular New Zealand Youth Court system and applies Western criminal laws, but adopts Māori *tikanga* (customs and traditions) in diverting matters to the Marae Youth Court from an FGC for the purpose of monitoring and guiding an offender's progress with the FGC order. The judge and community Elders talk to an offender about their connection to the *marae* (a complex of ceremonial buildings), their Māori culture, and their offending behavior.

The Marae Youth Courts sit fortnightly in most sites, inside a *wharenuī* (meeting house). Only minor offenses go before a Marae Youth Court. An offender must also have admitted to the offense in a regular court and elect to have the next hearing on the *marae*. The *marae* Chief of the Papakura Marae in Auckland stated in a recent (November 2011) news radio broadcast that any juvenile offender (not just Māori juvenile offenders) would be welcomed on the *marae* but that the proceedings would be according to *tikanga* Māori values. The furniture in the *wharenuī* usually only consists of tables and chairs set up in a corner of the meeting house. The protocols, including starting the hearing with a formal Māori welcome, were settled by community Elders during the original consultations (Taumaunu 2009). After the formal welcome, everyone shares morning tea, which is a ritual designed to “remove the sacredness (*tapu*) from the visiting group immediately after the formal welcome” (Taumaunu 2009, p. 5). Elders sit with the judge

at a head table, while other participants sit at tables in close proximity to the judge. A lay advocate, selected from a pool of advocates, is assigned to offer the offender and his or her *whanau* (extended family) support throughout the process. Judges, defense lawyers, and police claim that the Marae Youth Court has improved court appearance rates, assisted with encouraging offenders to respect court processes and changing attitudes, and reestablished a connection with the Māori culture (Gillespie 2008; Ritchie 2008). Mihinoa Tangihaere and Twiname state that “[f]or some, *marae* have become a symbol of trial resistance to *Pakeha* [non-Indigenous New Zealanders] dominance and a focus for cultural renaissance in rural tribal hinterlands” (Mihinoa Tangihaere and Twiname 2011, p. 107).

According to Judge Andrew Becroft, the principal youth court judge of New Zealand, “there has been a surge in support” for the courts from Māori communities, which has resulted in a rapid expansion (Becroft 2010, p. 8). He lists the following as the purpose and goals of the Marae Youth Courts:

- hold the young person accountable and ensure victims’ issues and interests are addressed;
- address the underlying causes of the offending behavior;
- seek solutions with the active involvement of whanau, hapu, and iwi (family, sub-tribe, tribe);
- promote and maintain interagency cooperation and accountability;
- keep communities safer by reducing recidivism; and
- use Māori language, culture, and protocols as part of the court process (p. 8).

IV. WHERE TO FROM HERE?

A. Policy Recommendations

It may be surprising to some that indigenous peoples in all three countries are still so disadvantaged in most measures of well-being when one considers that there has been well over 200 years in which to redress and repair the historical injustices caused by Anglo-European invasions. However, it needs to be remembered that the colonizing process is a continuing one and that many of the atrocities, such as forcibly removing children from their families and basic violations of human rights, occurred in recent (not distant) times. Therefore, there is a continuing need for reparation and reform of the dominant Anglo-Saxon justice system. The development of more culturally appropriate criminal justice practices is one way to begin to address one of the devastating impacts caused by the historical injustices; namely, the overrepresentation of indigenous people in the criminal justice system. Such initiatives need to empower, not disenfranchise, indigenous communities, which entails extensive community involvement

in all aspects of the implementation of any new initiative and respect of indigenous values and knowledge. If this occurs, it becomes more likely that the wider community (both indigenous and nonindigenous) will accept the initiative and more likely that it will succeed.

Ultimately, any culturally appropriate diversionary or criminal court practice would not exist without the support, dedication, and commitment of community Elders and community representatives. This needs to be acknowledged, valued, and respected by continuing to involve community representatives in the development and evolution of any new initiatives and by appropriately compensating those involved (in whatever method they deem appropriate) for their time and knowledge. The role of the judicial officer is also an integral part of the process, and it is therefore important that there be a careful and considered selection process for appointing judicial officers to preside over any new indigenous justice practices. If possible, indigenous appointments should be made to such positions, as has occurred in Canada with the Cree and Tsuu T'ina Peacemaking Courts, and in New Zealand with the Marae Youth Courts. The impact of having more indigenous faces present in a forum that is predominately populated with "white" faces cannot be underestimated (Marchetti and Daly 2004). Moreover, initiatives should not stop at the courtroom door. Without the development of culturally appropriate postcourt support programs, an offender's day in court will have little impact on his or her future criminal trajectory (Daly and Proietti-Scifoni 2009).

B. Areas for Future Research

Unfortunately, most innovative justice practices are often evaluated and assessed using narrow measures of "success," in particular, measuring whether such initiatives have any impact on reoffending behavior rather than assessing their impact on indigenous community empowerment. There is also a premature desire on the part of government departments, which have funded the initiatives, to determine whether the culturally appropriate practices are "value for money" and are therefore cost effective. Without proper comparisons with mainstream court and justice practices, and without allowing any new initiative a sufficient amount of time to fulfill their aims and objectives, any assessment of their cost effectiveness is futile. Not only do such evaluations reflect Western Anglo-Saxon values and criteria of what constitutes "success," they also fail to acknowledge that it is unlikely that one appearance in an indigenous court or diversionary process can have a lasting impact on an offender's future offending behavior. Instead, there should, particularly at the early stages of the implementation of any initiative and as a continuing point of reference, be assessments of whether the practices are transforming mainstream court processes into something that is more meaningful for everyone present and, if so, whether such transformations are strengthening and empowering indigenous communities. Initiatives that are able to achieve such cultural transformations will, as many of the commissions of inquiry have concluded, have a significant impact on reducing the social, economic, and cultural disadvantages of indigenous

peoples, which will ultimately assist in addressing their overrepresentation in the criminal justice system.

NOTES

1. When referring to the First Peoples of all three countries, we have used the term “indigenous.” In this context, “indigenous” is not capitalized since it is being used as an adjective to collectively describe people from a number of cultures and who are normally referred to individually in more specific terms. The word “indigenous” has only been capitalized when referring to Indigenous Australians, even when the word “Australian” is implicit, and when capitalized in a direct quote taken from a text. In referring to Australian Indigenous peoples, we are referring to both Aboriginal and Torres Strait Islander people. We do this not only for the sake of simplicity, but also because many of the studies cited in this essay do not differentiate between the two groups. Similarly, for Native Canadians, we use the term “Aboriginal” as including First Nations, Inuit, and Métis people. We do, however, acknowledge that the experiences and enduring impact of colonization differed for the various indigenous groups of each country.
2. The papers reviewed did not include those cited in this article, although earlier work of two authors was reviewed. It is, however, assumed that the same issues relating to the collection and analysis of the data would apply to the studies cited in this paper.
3. The OECD aims to promote policies that will improve the economic and social well-being of its members. The OECD has 34 member countries. For more information, visit www.oecd.org.
4. The information contained in this section is current as of the end of December 2011. Since that date there have been changes to the operation of the courts in Queensland and the Northern Territory.

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CHAPTER 13

COLONIAL PROCESSES, INDIGENOUS PEOPLES, AND CRIMINAL JUSTICE SYSTEMS

CHRIS CUNNEEN

My aim in this essay is to consider the interaction between colonial processes, indigenous people, and criminal justice systems rather than to focus solely on indigenous “crime.” There are commonalities in the experiences of indigenous peoples in white settler societies derived from English common law traditions (Australia, Canada, New Zealand, and the United States), including the loss of land, social, economic, and political marginalization, and the contemporary phenomenon of overrepresentation in criminal justice systems (Havemann 1999). A significant part of this common experience derives from the history of colonization and the profound disruption caused to preexisting traditional societies. In short, *every* part of aboriginal society was attacked during the colonial process. Early contact often involved open warfare, to be replaced later by extensive government controls. Government policies and practices have variously attempted to assimilate, “civilize,” and Christianize aboriginal peoples who were viewed as pagan, childlike, and primitive. This was done through legislation; the establishment of reservations; forced removal of children and forced education in residential schools; the banning of language, cultural, and spiritual practices; and the imposition of an alien justice system (Stannard 1992; Cunneen 2001). The devastation to families and communities caused by government policies are only beginning to be confronted through various reparative measures relating to stolen children, abuse in residential schools, the loss of lands and various financial losses caused through government mismanagement, and misappropriation of indigenous trust funds.

The major themes of this essay are as follows:

- The overrepresentation of indigenous people in crime and victimization statistics needs to be contextualized within a much broader framework of the effects of

colonization. From an indigenous perspective, the question of “crime” is contested as is the legitimacy of an imposed criminal justice system.

- The long-term social and economic marginalization, the denial of citizenship rights for indigenous peoples, and the limited recognition of indigenous law and governance are central components to understanding overrepresentation.
- Despite appeals to equality and the rule of law, colonial states constructed highly racialized systems for defining crime and imposing punishment. Although legalized racial discrimination has, in the main, ceased, current processes built around risk assessment continue to single out indigenous peoples as a “crime-prone” population.
- The political demands by indigenous peoples for the exercise of self-determination, including recognition of aboriginal law and greater control over criminal-justice decision making are having and will continue to have long-term implications for developments in western criminal justice systems. A developing “postcolonial” hybridity can incorporate both indigenous and western law and justice (for example, through processes like healing lodges or circle sentencing). However these developments require an abandonment of the conceptual framework that continually positions indigenous people as a *problem* group.

This essay explores the implications of the colonial process for understanding indigenous contact within western criminal justice systems. The essay is organized into six sections. Section I discusses the high rates of criminalization and victimization of indigenous people in North America, Australia, and New Zealand. The role of colonization in defining crime and the counter interpretations of crime and punishment provided by indigenous people are the subject of section II. In section III, I turn to the negative impact of criminalization, particularly through the loss of citizenship rights and the increasing tendency to see indigenous people within the context of “risk” in the criminal justice system. Section IV discusses two key points in the relationship between indigenous people and the criminal justice systems of liberal democratic societies: firstly indigenous systems of law were in the main delegitimized and replaced by colonial legal systems and, secondly, legislative definitions of crime and punishment emerged, which only applied to indigenous peoples. The role of indigenous methods of healing and identity, and their potential to transform approaches to offending behavior is discussed in section V. Finally, section VI concludes with reflections on the role of neo-liberalism and “law and order” politics in further entrenching the overrepresentation of indigenous peoples within western criminal justice systems.

I. CRIMINALIZATION AND VICTIMIZATION

The high level of criminalization and victimization of indigenous people is relatively well-known (even if only inconsistently documented). The following is a brief overview of the data on indigenous overrepresentation in criminal justice systems across the settler societies of North America, Australia, and New Zealand. Data show that Māori are

overrepresented at every stage of the New Zealand criminal justice system. They are four to five times more likely to be apprehended, prosecuted, and convicted for a criminal offence than non-Māori, are 11 times more likely to be remanded in custody, and are more than seven times more likely to be sentenced to imprisonment. The result is that Māori make up approximately 14 percent of the general population and over 50 percent of the prison population (Morrison 2009, p. 18). In Canada, aboriginal people comprise 2.7 percent of the general population, but aboriginal offenders make up 17.3 percent of inmates in the federal penitentiary system (Correctional Services of Canada 2009). The situation is even worse in provinces and territories with larger aboriginal populations, particularly in Manitoba, Saskatchewan, and the Yukon, where aboriginal people make up more than 70 percent of the total prisoner population. In Saskatchewan, for example, aboriginal people are incarcerated at a rate 35 times higher than the mainstream population (Prison Justice Canada 2005).

In the United States on any given day, over 4 percent (or more than one in 25) of American Indians aged 18 years and older are under the jurisdiction of the nation's criminal justice system—contrasted with just 2 percent of the white population (Perry 2004). In states like Montana, overrepresentation is greater, where American Indians form 6.2 percent of the population but 20.5 percent of the state's prison and local jail population (Prison Policy Initiative 2007). Older data from the 1990s showed that the rate for American Indians under the jurisdiction of the nation's criminal justice system was 2.4 times the rate for whites and 9.3 times the per capita rate for Asians, but about half the rate for blacks. The number of American Indians per capita confined in state and federal prisons was about 38 percent above the national average. The rate of confinement in local jails is estimated to be nearly four times the national average (Greenfeld and Smith 1999). In Australia in September 2011 the indigenous imprisonment rate was 2,221 per 100,000 of the adult indigenous population, compared to a general adult imprisonment rate of 166 per 100,000. Nationally, 26 percent of the total prisoner population were indigenous people, although they comprised only slightly more than 2 percent of the adult population (Australian Bureau of Statistics 2012, pp. 4–6).

Criminal victimization rates for indigenous peoples are also much higher than the rates found in the general population. A study by the Bureau of Justice Statistics found that American Indians are much more likely to become victims of crime than any other group, experiencing crime at a rate of one in 10, or twice that of the general population (Perry 2004). In Canada some 35 percent of aboriginal people report being a victim of crime compared to 26 percent of nonaboriginal people. Aboriginal people are nearly three times more likely to be victims of violent crime than nonaboriginal people, and aboriginal people were five times more likely than the general population to have been the victim of sexual offending (Department of Justice Canada 2012).

Criminal victimization is particularly high for indigenous women. To take Australia as an example, indigenous women are:

- More than 10 times more likely to be a victim of homicide than other women.
- Forty-five times more likely than nonindigenous women to be a victim of domestic violence.

- Ten and seven-tenths times more likely to be victims of violent crime than nonindigenous women.
- More than twice as likely to be the victim of sexual assault than nonindigenous women.
- Seven times more likely to suffer grievous bodily harm in an assault than nonindigenous women.
- Thirty times more likely to be hospitalized for assault than nonindigenous women. (Memmott et al. 2001, pp. 38–44; Aboriginal and Torres Strait Islander Social Justice Commissioner 2006, pp. 97–101; see also Department of Justice Canada 2012).

One might conclude from this data that the mass incarceration of indigenous people has not resulted in ensuring the safety of individuals within indigenous communities. Many indigenous and nonindigenous commentators argue that the roots of the current crisis can be found in colonial dispossession (Trudgeon 2000), the social and historical contexts of indigenous crime (Ross 1998), and new forms of domination—particularly through administrative, economic, and legal controls, which have created new types of enforced dependency on government (Altman and Hinkson 2007). Certainly, indigenous imprisonment rates are deteriorating. In the 20 years leading up to 2008, the Australian Indigenous imprisonment rate rose from 1,234 to 2,492 per 100,000 of population, whereas the nonindigenous rate was both significantly lower and increased at almost half the rate (Baldry et al. 2011, p. 28). In New Zealand, the Māori imprisonment rate has grown as the general imprisonment rate has increased, from a rate of 150 per 100,000 in 1999 to 195 in 2009, with Māori remaining at slightly more than 50 percent of the prison population (The Treasury 2009). A paucity of reliable and complete historical data makes comparable analyses on the deterioration of indigenous incarceration rates in Canada and the United States difficult (Brzozowski, Taylor-Butts, and Johnson 2006; Mauer and King 2007). However, available data suggest that, although incarceration rates for nonaboriginal Canadians declined during the late 1990s and the early years of the new century, the aboriginal imprisonment rate remained stable (Prison Justice 2005). More recent data show a steady increase in Canadian imprisonment rates (Statistics Canada 2012). In the United States, American Indians are being sent to prison at increasingly higher rates. For example in 1980, there were 145 per 100,000 American Indians in California's prisons, a rate that jumped to 767 per 100,000 in 2000 (Guma 2005). However, these changes also need to be contextualized by similar dramatic increases in the overall US prison population (Wacquant 2009).

It is clear that despite policy initiatives aimed at ameliorating the overrepresentation of indigenous people in the criminal justice system, in all the states that are the subject of this essay, the situation has not improved. Indigenous imprisonment rates have either increased alongside more general increases in imprisonment (and consequently their level of overrepresentation has remained), or their rate of incarceration has in fact accelerated more quickly than the general rates (and, therefore, their level of

overrepresentation has increased). I will return to some of the reasons for these negative changes toward the end of this essay.

II. UNDERSTANDING AND DEFINING CRIME IN A COLONIAL CONTEXT

Rather than simply rehearse the data on criminal offending by indigenous peoples, I prefer to begin the discussion with the prior question of defining crime. Some 30 years ago criminologist Colin Sumner argued that an historical perspective on criminal law “must inevitably turn us towards colonialism . . . crime is not behaviour universally given in human nature and history, but a moral–political concept with culturally and historically varying form and content” (1982, p. 10). Traditional criminology has had a problem with understanding the importance of colonialism in structuring ideas about crime and punishment. It is a concept that has been largely missing from the discipline (Cunneen 2011a). Blagg notes the limitation with taking American or European criminological traditions as our starting point: “they all tend to operate without a theory of colonialism and its effects” (Blagg 2008, p. 11). Part of the process of “decolonizing” criminology is to see that criminology is a product of a particular set of narratives within western social sciences formed during the later 19th and early 20th centuries. They were a set of narratives that were developed in relation to the experiences of the European diaspora particularly in the United States, and “in the construction of complexly stratified societies within and around the urban conurbations of western cities” (Blagg 2008, p. 202). The criminological imagination falters when confronted with indigenous genocide and dispossession, and with indigenous peoples who demand that their radical difference, their laws and customs, their alterity to the West be recognized (Morrison 2004; Blagg 2008; Cunneen 2011b).

As many indigenous people have noted, when theft of the land, dispossession, forced relocations and removals, and discriminatory policing and legislation are considered, then the answer to the questions of “who is the criminal?” and “what is justice?” take on a different meaning (see for example, Barsh and Youngblood Henderson 1976; Sykes 1989; Dodson 1997; Langton 1992; O’Shane 1992; Jackson 1995; Ross 1998; Tauri 1998; Smith and Ross 2004). In this context, it is not surprising that, as one aboriginal organization expressed, “many aborigines feel they are political prisoners—gaoled by the discriminatory laws of a racist society—a society that’s very foundation is illegal” (Aboriginal Coordinating Council 1990, p. 44). The dominant society’s decision to name actions as “criminal” silences the kind of dissent possible when these actions are named another way. The perspective of indigenous peoples in both understanding and in responding to “overrepresentation” in the criminal justice system is ignored. The criminalization of indigenous resistance to colonization silences criticism of mass dispossession and the theft of land. “Many aboriginal people maintain that dispossession, loss of land and

culture, the desecration of aboriginal sites, the breakdown of skin and moyete systems (traditional rules for identifying appropriate marriage partners), and the unwillingness of white authorities to acknowledge the jurisdiction of aboriginal law have *direct and immediate* relevance to both criminal behaviour and to processes of criminalization” (Blagg 2008, p. 16). Attempts by the state to eliminate, restructure, and reconstitute aboriginal identity in the interests of the colonizer is the core issue for many indigenous people rather than criminal offending per se (Blagg 2008, p. 3).

Developing an appreciation of colonialism within criminology has important ramifications for how we understand indigenous crime, punishment, and overrepresentation in criminal justice systems. The dominant paradigm is to “tick the aboriginal box” when researching indigenous justice issues such as overrepresentation, without ever attempting to understand indigenous perspectives (Blagg 2008, p. 3). In addition, there appears to be a complete absence of recognition of indigenous research methodologies in criminology. These methodologies begin from a critical standpoint, recognizing the need to “decolonize western methodologies, to criticize and demystify the way in which Western science and the modern academy have been part of the colonial apparatus” (Denzin, Lincoln, and Tuhiwai Smith 2008, p. 2). As many indigenous academics have noted, core aspects of a decolonizing methodology involve respecting indigenous knowledge and epistemologies, providing a voice for indigenous perspectives, and building collaborative research with indigenous communities (Battiste 2000; Tuhiwai Smith 2001; Simpson 2004). It is not the case that indigenous people are ignored in criminology—quite the contrary they are the object of intense scrutiny and intervention. Criminologists produce and reproduce data on offending, policing, and sentencing patterns comparing indigenous and nonindigenous people.¹ However, indigenous understanding and explanations for their own predicament *viz-a-viz* western law and justice is often ignored. Too often, race and indigeneity are reduced to a potential *risk factor* for involvement with the criminal justice system, akin to alcohol and drug abuse, offending history, or age.

Being an indigenous person has been and is *risky*,² and an important part of the process of renaming and reconceptualizing “crime” is to consider the problem of crime against indigenous peoples who have been victims of profound historical injustices and abuses of human rights over a long period of time. The modern liberal democratic nations of Canada, the United States, New Zealand, and Australia developed on the back of the expropriation and exploitation of indigenous peoples who are now minorities within those states. At least some of the activities and policies of colonial states can be understood in the context of state crime. Furthermore, contemporary criminal justice systems within those states are often seen as disregarding or undermining respect for indigenous people’s human rights. I have dealt at length elsewhere with both historical and contemporary abuses of human rights (Cunneen 2007, 2008; see also Stannard 1992, Churchill 1997, Baker 2007) and so mention in passing here only the more egregious problems. The historical abuses of indigenous peoples, although clearly variable over time and place, include genocide, mass murder, slavery, forced labor, forced removals and relocations, the denial of property

rights, systematic fraud, and the denial of civil and political rights. Current abuses within criminal justice systems that violate contemporary international human rights standards can include racial discrimination and failures to ensure a fair trial; to exercise an appropriate duty of care for those in custody; to use arrest and imprisonment as sanctions of last resort; and to ensure freedom from cruel, inhuman, and degrading treatment—for example see the Royal Commission into Aboriginal Deaths in Custody (Johnston 1991, Cunneen 2001) and the Canadian Royal Commission on Aboriginal Peoples (1996).

By defining and understanding crime through a broader lens, we can begin to better appreciate contemporary indigenous priorities for reform and change within criminal justice systems, and their search for solutions to social disorder and dislocation, which enhance indigenous authority and lie outside approaches built around criminalization.

III. THE NEGATIVE IMPACTS OF CRIMINALIZATION

Crime and crime control are deeply embedded in the experiences of colonization and subsequent nation building (Cunneen 2001, Baker 2007, Perry 2009a). There is an extensive literature on the relationship between the nation and the “imagined community,” including the way the state defines itself as synonymous with the nation (Anderson 1990) and the boundaries of the moral community within it (Pettman 1996, p. 47). To be outside the moral community is to be susceptible to the violence of the state. The “civilizing” of aboriginal people by the colonizing powers was built on the assumption that indigenous cultures needed to be abandoned because they were outside the moral community of the colonizers (Stannard 1992; Churchill 1997; Milloy 1999). The “remaking” of indigenous people was a violent process, attacking both the body and the identity/culture of the native. Discourses on nationalism and the state also bear directly on definitions of crime and criminality. Sumner has argued that the moral censure of crime attempts to unify and publicize a vision of the nation and its morality (Sumner 1990). Crime is seen as a threat to national unity—a sign of the “moral malaise threatening the constitutional integrity of the state” (Sumner 1990, p. 49), and criminalization is a key part of the building of the nation through processes of exclusion—of keeping out the moral unworthy who lack commitment to the social contract. Criminalization legitimates excessive policing, the use of state violence, the loss of liberty, and diminished social and economic participation. In other words it actively increases marginalization. To take one example, criminalization undermines basic citizenship rights. Perry (2009a, p. 274) notes that a sizable portion of the American Indian community is disenfranchised because of various US state restrictions on voting rights for convicted felons, particularly when we consider that one in

24 Native Americans is under correctional control on any given day (including probation, prison, and parole). Perry notes,

Felony disenfranchisement is an extension of historical patterns of restrictions on the political participation of racialized minority groups. The communities most in need of a political voice—those that are marginalized and often disadvantaged in myriad ways—are precisely those whose ability to affect change through electoral choices is most dramatically limited. (Perry 2009a, p. 274)

New developments around “risk” have also had an adverse effect on indigenous peoples and their ability to assert authority within the criminal justice area. It has been argued that globalization has led to a deep-seated insecurity within liberal democracies (Bauman 2000). Theorists such as Ulrich Beck have argued that the politics of insecurity in late modern societies like Australia, Canada, the United States, and New Zealand has led to a preoccupation with and aversion to risk, uncertainty, and dangerousness (Beck 1992). One reaction to the “ontological insecurity” generated by risk aversion is a decline in tolerance and a greater insistence on the policing of moral boundaries (Van Marle and Maruna 2010, p.10). As a result, the role of the state in representing itself as the guardian of internal and external security has become enhanced. This insecurity and risk aversion has been accentuated in the post-9/11 world. Concerns with security and the war on terror have led to what some commentators have referred to as a “paranoid” nationalism that emphasizes order and conformity over difference (Hage 2003). Within this context, indigenous claims to greater self-determination can be easily portrayed as a threat to the national fabric. As indigenous legal advisor to the UN Permanent Forum on Indigenous Issues, Megan Davis notes in discussing sovereignty claims, “it is difficult to comprehend how the patriotic, warlike, race-divided Australia of today can even begin to think in earnest about what principles underpin a liberal democracy or to seriously consider reform of our public institutions” (Davis 2006, p. 134). Although her comments were directed specifically at Australia, their sentiment could equally be applied to other nations, which are the focus of this essay. The basic point is that respect for human rights and progressive reform of institutions (particularly criminal justice systems), is more difficult in an environment of paranoia and punitiveness.

In addition, there have been developments in risk thinking that increasingly permeate criminal justice policy, most obviously shown in the development and utilization of various risk assessment processes: the “techniques for identifying, classifying, and managing groups assorted by dangerousness” (Feeley and Simon 1994, p. 173). Criminal justice classification, program interventions, supervision, and indeed detention itself is increasingly defined through the management of risk. The assessment of risk involves the identification of statistically generated characteristics drawn from aggregate populations of offenders, and includes characteristics such as drug and alcohol problems, school absenteeism, rates of offending and reoffending, living in crime-prone neighborhoods, single-parent families, domestic violence, prior child abuse and neglect, high levels of unemployment, low levels of education, and so forth. These characteristics are

treated as discrete “facts” that can be separated, quantified, measured, and subject to regression analysis.

This increased focus on risk and risk assessment within criminal justice has at least two significant implications for indigenous people. One is that an understanding of crime and victimization in indigenous communities is removed from specific historical and political contexts. This has important implications for how we might explain overrepresentation of indigenous people within the criminal justice system. Mainstream criminology increasingly understands racial or ethnic overrepresentation as the result of essentially individualized factors drawn from aggregate populations (as identified above). These factors are reproduced as individualized characteristics removed from the social, economic, and political relations that lie at the root of indigenous marginalization. Criminogenic risk- and needs-assessment tools such as the *Youth Level of Service Inventory (YLSI)*, used in Australia and Canada, for example, validate particular family relationships (the nuclear family), which may not be either as valued or as prevalent in indigenous communities (Priday 2006). Race, ethnicity, and indigeneity cease to be social and cultural relationships embedded and created within and between social groups. As noted earlier, they simply become other “risk” factors.³

The second implication is that, within the risk paradigm, any rights of indigenous peoples (such as self-determination or self-government) are seen as secondary to the membership of a risk-defined group. In other words the group’s primary definition is centered on the type of risk characteristics they are said to possess. Within criminology these characteristics are invariably negative: alcohol and drug abuse, high prevalence of domestic violence, child abuse and neglect, and so on. Within this context, it is difficult to conceive of indigenous people as bearers of collective rights, of culture, of law. Indigenous claims to sovereignty and self-government are presented as, at best, irrelevant to solving the problems of social disorder, which are increasingly defined as a threat of criminality from risk-prone populations, or, at worst, the claims are seen as a threat to national unity and security. A recent example of this type of government approach was the Australian Northern Territory Emergency Response (NTER) in 2007 to allegations of indigenous child abuse. Indigenous civil rights were suspended with far-reaching consequences in areas such as governance and social security (Altman and Hinkson 2007).

IV. PUNISHMENT AND THE RULE OF LAW

Western liberal democratic states define their criminal justice systems as neutral, fair, and universal in their application; indeed their legitimacy demands that these principles be upheld. Equality before the law and equal protection of the law are seen as the defining features of the rule of law—which itself is understood as a universal principle and a fundamental good. Yet it is clear there has been a substantial gap in universality and equality before the law when it comes to indigenous people. Two academics

separately captured the same problem at different times and in different nations. Charles Rowley writing about Australia remarked in the early 1970s, "it is still true... one can be incarcerated either for crime or for being Aboriginal" (1972, p. 123); Russell Barsh (1980) noted, a decade later, that Native American reservations were the only places in the United States where the criminality of an act relied exclusively on the race of the offender and victim (Barsh 1980; see also Ross 1998, pp. 23–27). Rowley (1972), Barsh (1980), and Ross (1998) based their conclusions on the analysis of various legislation and case law in Australia and the United States, which differentiated between indigenous and nonindigenous people (see for example Ross' discussion of Public Law 280 passed by Congress in 1954). More recently, Baker (2007, p. 317) has noted the "inherent hypocrisy of a society that espouses social justice and equal rights to all persons while concomitantly disenfranchizing racial minorities" through a form of internal colonialism over American Indians. Throughout the British Empire and the subsequent independent colonies, the rule of law was always selectively applied to racial minorities. We live with that legacy today.

Angela Davis has argued that a genealogy of imprisonment and punishment in the United States must "accentuate the links between confinement, punishment, and race" (Davis 1998, p. 97). Indeed it would appear that the racialization of punishment is fundamental to understanding the contemporary overrepresentation of indigenous peoples in prison across North America, Australia, and New Zealand. Yet before we embark on a discussion of the application and development of a Western penalty aimed at the control of indigenous peoples, it is important to note that the imposition of western penalty only makes sense in the context of the sustained denial and attempted eradication of aboriginal law. Despite the overwhelming ideologies about aboriginal and American Indian primitivism that underpinned the colonial project (see for example, McGregor 1997; Williams 1989), indigenous peoples exercised sovereign jurisdiction within the context of aboriginal law. Prior to colonization they were self-governing peoples.

Indigenous law was viewed disparagingly by British colonialists: it became defined as "customary" law and was regarded as distinctly inferior to colonial law. In this context,

the historical debate as to whether or not the tribes, in various parts of the far-flung British empire, had a legal system, or whether they were controlled "merely" by custom, is indicative of myopic thinking of the worst order, or a lack of knowledge of the historical development of the law, or a deliberate denigration of the societies—or a combination of these factors. (Sheff 1999, p. 83)

Sheff argues that both ethnocentrism and the effects of "a narrow positivistic doctrine of jurisprudence" have served to denigrate indigenous systems of law (Sheff 1999, p. 83). James Zion, in discussing American Indian law, has commented that "it is unfortunate that the term 'custom' implies something that is somehow less or of lower degree than 'law.' There are connotations that a 'custom' is somehow outside the 'law' of government, which is powerful and binding" (Zion 1988, p. 121). The New Zealand Law Commission (2001, p. 18) notes that legal positivism, "as the dominant jurisprudential tendency in the English legal system," has reinforced this view that law is inherently

linked to the institutions of the modern political state. By definition then, the laws of indigenous peoples were seen as inferior. The delegitimization of indigenous law was part of the “civilizing” process designed to bring the superior political and legal institutions of the West to the native. The idea that indigenous law was merely *customary* was essentially an imperialist concept used to invalidate indigenous law. Colonial states at times *recognized* indigenous law when it was in their interests to do so, but they defined it in a way that rejected the broader sovereignty from which indigenous law derived (Jackson 1994, p. 123).

With this history in mind, Maori lawyer Moana Jackson states that considerations of indigenous people and the law are

best addressed by acknowledging the dialectic of colonization. Any debate which fails to acknowledge that dialectic will inevitably seek only to describe the operations and biases of the imposed law. It will not address the measures necessary to bring about the structural change which will enable indigenous people to seek their own explanations . . . and their own solutions. (Jackson 1995, p. 262)

The colonization of law and legal process has had a number of consequences. First, it has meant the continued subjection of indigenous peoples to legal processes that are systemically racist—they are built on the denial of the legitimacy of indigenous law. Secondly, it has led to equating *justice* with the law of the colonizing power—both in general public consciousness and within indigenous communities themselves (Jackson 1994, pp. 117–18). Indigenous rights become defined by the colonial legal system. Speaking of the situation of Indigenous Hawaiians, Haunani-Kay Trask comments, “by entering legalistic discussions wholly internal to the American system, Natives participate in their own mental colonization” (Watson 2000, p. 5). Moana Jackson makes a similar point when he notes that Maori may be compelled into “seeking a culturally ‘sensitive process’ within an ideological framework that actually forces them into adopting the very consciousness which they wish to transform, and which maintains the illusion that law (and hence justice) is isolated from issues of political power” (Jackson 1994, p. 118). The colonial state continues to choose which indigenous laws can be recognized. Yet it is clear that many indigenous peoples see state criminal-justice systems as oppressive, and they insist on aboriginal law as a rightful alternative to an imposed system of law (Zion 1988; Jackson 1994; Black 2010). The introduction of an imposed criminal law was part of the dialectic to which Jackson referred previously—it was the other side of the process to the removal and denial of indigenous law and cultures.

As elaborated in more detail later, criminalization and punishment was an important part of the colonizing process and became a central part of the operation of the colonial state in its governance of indigenous peoples (Ross 1998; Cunneen 2001). Separate modes of confinement and punishment were introduced and justified on the basis of the Europeans’ “superior” race and “rightful dominance” of indigenous peoples. Although differing and often competing definitions of “race” have operated across the broad historical terrain of European domination of colonized peoples, racial discourses on indigenous people remained central to penalty. Systems of punishment that differentiated

between the colonizers and the colonized were foundational to the colonial state. For example, Ross (1998, p. 3) has noted America's indigenous people were imprisoned in a variety of ways and confined in forts, boarding schools, orphanages, jails and prisons, and on reservations.

Racial understandings of indigenous people played a constitutive role in defining penal strategies and different types of punishment. The use of the death penalty in both the United States and Australia is illustrative of this differentiating process between Europeans and indigenous people. In Australia in 1871, reflecting changing sensibilities around punishment, the Western Australian Parliament passed legislation banning public executions and requiring that they take place within the walls of the prison. However, within 4 years the legislation was amended to allow for the public execution of aboriginal people (*The Capital Punishment Amendment Act 1871 Amendment Act, 1875*, sections 2 and 3, 39 Vic No 1). The legislation continued with the requirement that all other persons be executed within the walls of the prison. The law allowing for the public execution of aboriginal people remained in force until repealed in November 1952 (Markovich 2003). Aboriginal people were significantly overrepresented in death sentences (Finnane 1997, pp. 129–30) and two-thirds of those hanged in South Australia during the mid-nineteenth century were aboriginal (Kercher 1995, p. 12). In addition to judicially sanctioned killing, police-led “punitive expeditions” which gave rise to mass killings were still recorded and the subject of official inquiry as late as the 1920s in the Northern Territory and Western Australia—the last recorded was the police-led Coniston massacre in 1928 (Cunneen 2001, p. 55).

In his study of the history of American Indian executions, Baker (2007) notes that these deaths were

clearly nested within a sociopolitical context of genocidal colonialism calculated to dispossess American Indians of their *Indianism* by removing them from their sacred tribal territories, disrupting their traditional cultures, and continuing their marginalized status in US society today. (Baker 2007, p. 317)

The most notorious mass execution of American Indians occurred in 1862 in Minnesota when 39 people were executed by the federal government in the aftermath of the Dakota-Sioux uprising. The defendants were tried and convicted for civilian crimes by a military commission (Baker 2007, p. 338). American Indians continue to be overrepresented in death penalty statistics. Although constituting 1 percent of the US population, they represented 13.3 percent of executed prisoners between 1977 and 2002, and 45 percent of those on death row (Perry 2009a, p. 269). Baker notes that the 15 Native Americans executed between 1973 and the time of his writing (2007), “accent the problems [of] increasing rates of voluntary executions, botched executions, racist prosecutorial discretion, and ineffective capital defense counsel. In these cases, all the victims were white and the American Indian defendants largely suffered from severe alcoholism, drug abuse, and mental illness” (Baker 2007, p. 353).

Criminal law and penalty reflected different cultural understandings of indigenous people. Modernity and the development of modes of punishment that disavowed corporal punishment and public execution were seen as inapplicable to indigenous people because of their perceived racial and cultural characteristics. In writing of the way punishment differentiated between whites and slaves in the United States, Angela Davis has noted that the deprivation of white freedom tended to affirm the whiteness of democratic rights and liberties. White men acquired the privilege to be punished in a way that affirmed “equality and the racialized universality of liberty,” but “the punishment of black slaves was corporal, concrete, and particular” (Davis 1998, p. 99). There are some parallels here with the way in which colonized indigenous people were treated in terms of the extreme physicality and brutality of punishment. There are also parallels with Garland’s (2010) analysis of the death penalty in the United States and its historical links to slavery and lynching.

The idea of the inferior status of the colonial subject reinforced the idea that appropriate punishment for indigenous people was a salutary public spectacle of violence. For example, in Australia the extended use of physical punishments and restraints (lashings, floggings, chaining) for aboriginal offenders continued until well into the twentieth century (Finnane 1997; Cunneen 2001). Often the cultural ideas underlying more brutal forms of punishment were justified in terms of benevolence. When introducing the amending legislation allowing public executions for aboriginal people noted previously, the Western Australian Attorney-General stated,

the object of this measure was to strike terror into the heart of other natives who might be collected together to witness the execution of a malefactor of their own tribes.... The Bill had been framed in no vindictive spirit, but in the belief that it would operate beneficially. (Hocking 1875, p. 28)

Public execution was recast as a form of tutelage, as part of the civilizing process for indigenous people. At the same time the public spectacles of punishment were being relocated behind prison walls for European offenders.

The places of confinement for indigenous peoples were by no means restricted to the prison. Reservations and missions became a key site of colonial penalty. Legislation allowed government-appointed officials to extensively regulate aspects of indigenous peoples’ lives: whether their children would be removed to an institution, their rations, who they could marry, where they could work and for what salary, access to savings, which areas were prohibited, and where the person would reside.⁴ Many indigenous people and communities, particularly those who were seen as unable to demonstrate the level of “civilization” required to exercise citizenship rights, were segregated on government and church-run reserves and missions. Under various legislation, reserves and missions administered their own penal regimes outside of, and essentially parallel to, existing formal criminal justice systems. For example, the Queensland *Aboriginals Preservation and Protection Act 1939* established local policing and court functions under the control of reserve superintendents. In addition, the policies of forced removal

of children and their confinement in institutions (residential schools) created new generations of institutionalized indigenous people (National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families 1997). Requirements for indigenous labor also shaped distinctions within penal law. To take an Australian example, potential terms of imprisonment were much longer for aboriginal workers who could be imprisoned for up to 5 years for breach of employment contracts compared to a maximum of 3 months for nonaboriginal workers (Haebich 2000, p. 10).

These policies and practices reflected various racial assumptions about indigenous people, some built on “science” like eugenics, others reflecting popular prejudices about the incapability of indigenous people to live like civilized white folk, or their inevitable demise as a “doomed” race. These racial discourses were also gendered: indigenous women were separated from other women because of perceived biological and culturally-defined racial differences: sexually promiscuous, incompetent mothers, and so forth (Green and Baldry 2002). Indigenous women were also subjected to colonial control by being locked up in disproportionate numbers in women’s “factories” and in mental asylums, and punished further by having their children removed because they were seen as incompetent and negligent parents. The rape of indigenous women was clearly commonplace across the colonies, and was integral to the colonial conquest of indigenous people. Baker (2007, p. 328) notes that in the United States white men could rape Indian women with impunity because Indian women had no legal standing before the courts. Indigenous women continue to be overrepresented in penal institutions and to suffer particularly because of their cultural difference and marginalized status (Ross 1998, Baldry and Cunneen 2012).

As demonstrated earlier, indigenous people who came into contact with the colonial criminal-justice system were treated differently and more punitively because of their perceived racial characteristics—the history of capital punishment provides one extreme example of this differentiation. Indigenous people were also subject to unique punishment regimes (such as existed on reservations) and had policies enacted such as forced child removal, which reinforced intergenerational institutionalization. Penal sanctions were applied liberally and often without external scrutiny. It is not surprising today that American Indian academic Luana Ross writes,

It is common for Native people either to have been incarcerated or to have relatives who have been imprisoned. Because we are a colonized people, the experiences of imprisonment are, unfortunately, exceedingly familiar. Native Americans disappear into Euro-American institutions of confinement at alarming rates. People from my reservation simply appeared to vanish and magically return. (Ross 1998, p. 1)

V. IDENTITY AND HEALING

Many of the innovative developments in indigenous justice arise from a disbelief in the functionality and the legitimacy of state-centered institutional responses. For the most

part, criminalization and incarceration are seen as destructive avenues that cause further family and social disintegration, and do not change the behavior of the perpetrator. The disbelief in the criminal-justice system as reformatory or rehabilitative is hardly surprising given that most colonized peoples have had firsthand experience of police, courts, and prisons over many generations.

The assertion of indigenous culture and identity has been an important part of decolonization. The focus on indigenous culture as a solution to the problems generated by colonization has been as pronounced in the area of criminal justice as it has in other areas of social and political life. Put simply, a concentration on *healing* lies at the foundation of changing and reforming criminal behavior among indigenous people. If we reflect on indigenous developed interventions,⁵ it is evident that they start from a different place than conventional individualized programs, like those founded in cognitive behavioral therapy (CBT). Indigenous programs start with the collective indigenous experience. Inevitably, that involves an understanding of the collective harms and outcomes of colonization, the loss of lands, the disruptions of culture, the changing of traditional roles of men and women, the collective loss and sorrow of the removal of children, and relocation of communities. Australian indigenous academic Rosemary Wanganeen (2008) discusses the seven phases of cultural healing, which include acknowledgment of ancestral losses, contemporary grief and loss (such as child removal), and future strength through a contemporized traditional culture.

The importance of a healing approach is that individual harms and wrongs are placed within a collective context. On the one hand, offenders are dealt with as individuals responsible for their own actions; their pain and the forces that propel them to harmful behavior toward themselves and others are confronted. However, they are *understood* within a collective context of the experience of indigenous peoples in a nonindigenous society. What this means in a practical context is that there is a focus on so-called non-criminogenic needs such as grief, depression, spiritual healing, loss of culture, and educational deficits, and a recognition that these needs must be addressed because they are directly related to criminal offending (Gilbert and Wilson 2009, p. 4). For example, grief and loss, which is experienced by indigenous Australians at a much higher frequency and much younger age than nonindigenous Australians, have been identified as a core issue that healing programs can and need to address (Gilbert and Wilson 2009, p. 4). Overall, the explanatory context for individual behavior is within the collective experiences of the indigenous peoples. In this sense indigenous programs and approaches are unique because they seek individual change within a collective context.

Indigenous healing approaches are also often community-controlled programs for offenders. One of the consequences of this is the tension that is created between indigenous approaches and state-controlled interventions. In the current period, we see an institutional emphasis on criminogenic needs and various behavioral-modification programs put in place as a result of the identification of these needs. Approaches defined by criminogenic need are clearly in the ascendancy, as opposed to approaches that are more community driven or rely on community involvement and directly target greater social inclusion. This emphasis has important ramifications for marginalized groups

because, although they are most likely to be the subjects of these programs as offenders, they are also less likely as community members to be part of the professionalized interventions. Therapeutic approaches need not be completely avoided. However, the danger is that government favors those approaches that it can closely administer, control, and monitor—and these tend to be programs reliant on expert interventions that further privilege dominant definitions of crime, and disavow the voices of marginalized peoples. They also tend to be programs that are “off-the-shelf” and perhaps only slightly modified for specific experiences of marginalized peoples. They are generally not programs that are organic to indigenous people and their communities or to their needs and experiences (Day, Nakata, and Howells 2008).

Mainstream programs (like cognitive behavioral therapy [CBT]) do not understand individual change as part of a collective experience. This is why indigenous programs and indigenous people prioritize the concept of healing; healing is quintessentially and simultaneously an individual and collective experience. It is far more expansive than a notion of rehabilitation; it is concerned with simultaneously healing one’s self and community. Individual and collective grief and loss become core issues that programs need to address rather than only focusing on criminogenic need. Mainstream programs simply ignore the nexus between oppression and liberation, between collective grief and loss and individual healing. Indigenous healing programs start from this nexus; they begin with understanding the outcomes and effects of longer-term oppression, and move from there toward the healing of individuals. Within this context, the criminal-justice system is often seen as part of the problem rather than as a solution to resolving community dysfunction and disharmony.

VI. CONCLUSION: INDIGENOUS RIGHTS AND THE POLITICS OF NEOLIBERALISM

This essay set out to consider the interaction between colonial processes and indigenous peoples’ contact with criminal-justice systems. The fundamental point from this exploration is that the politics and outcomes of colonization are not simply of historical interest. The contemporary relationship between indigenous people and crime, punishment, and justice is structured by these longer-term relationships. For this reason, the ongoing effects of these processes are referred to as neocolonial (Ross 1998; Cunneen 2001) or as a type of internal colonialism (Baker 2007). Contemporary law-and-order politics have also had an effect on the relationship between indigenous peoples and criminal-justice systems. Harsher criminal-justice policies and ever increasing prison numbers have been the hallmark of the four countries focused on in this essay, at least over the last decade (see for example, Wacquant 2009; Baldry et al. 2011). A result has been what some have called the “waste-management” prison, which “promises no transformation of the prisoner . . . [i]nstead, it promises to promote security in the community simply

by creating a space physically separated from the community” (Simon 2007, p. 143). The data show that indigenous peoples fill these expanding prison systems at ever increasing rates.

The changed political conditions around law and order have reflected the growing ascendancy of neoliberalism (Wacquant 2009), and it is worthwhile noting in the conclusion to this essay why neoliberalism has proved so hostile to the reform of criminal-justice systems and the recognition of indigenous rights. Among western style democracies, it is those that have most strongly adopted neoliberalism that have the highest imprisonment rates (particularly the United States, Australia, New Zealand, the United Kingdom, South Africa, and, more recently, Canada), whereas social democracies with coordinated market economies have the lowest (Sweden, Norway, Finland, and Denmark) (Lacey 2008). The development of the neoliberal state has coincided with a decline in welfarism. The realignment of values and approaches primarily within Anglophone justice systems has emphasized deterrence and retribution. Individual responsibility and accountability has increasingly become the focus of the way justice systems approach offenders. The privatization of institutions and services; widening social and economic inequality; and new or renewed insecurities around fear of crime, terrorism, “illegal” immigrants, and racial, religious, and ethnic minorities have all impacted the way criminal justice systems operate. All of which have fueled demands for authoritarian law-and-order strategies, a focus on precrime and risk as much as actual crime (Zedner 2007, p. 262), and a push for “what works” responses to crime and disorder (Muncie 2005, p. 41).

Within this context, indigenous claims to self-determination increasingly appear to have no relevance to criminal justice administration and reform. For example, in some states of Australia, indigenous-run programs and units have been cut by correctional authorities (Cunneen 2011*b*, pp. 318–19). However it is also important to note that, at an international level, indigenous rights have become increasingly recognized—particularly with the United Nations ratification of the Declaration on the Rights of Indigenous Peoples in 2004. The Declaration provides a new standard-setting document that recognizes indigenous rights to self-determination. At the moment, there is a significant political disjuncture between the rights embedded in the Declaration and the operation of criminal-justice systems. Indigenous people still struggle with the damaging effects of one of the leading institutions of colonial control, and to change the ongoing cycles of marginalization brought about as an outcome of criminalization.

As noted previously, the indigenous search for solutions to social disorder and dislocation lie in enhanced indigenous authority. There are distinct research and policy implications that flow from the tension between indigenous claims to exercise increased authority over criminal justice and state demands for tougher law-and-order responses. To some extent the policy implications will be specific to particular nations because, *inter alia*, constitutional and other legal arrangements between federal governments and indigenous peoples structure the possibilities for change (contrast for example, the US recognition of limited tribal sovereignty to the absence of treaties in Australia or recognition of indigenous law-making capacity). However, at a general level, research

priorities might include analysis of effective mechanisms and outcomes for the development of cross-cultural hybrid ways of doing justice including, for example, aboriginal courts, sentencing circles, healing lodges, and other interventions that are built on indigenous cultures and ways of knowing. Research could also usefully contribute to our understanding of why the ascendancy of “risk” thinking in criminal justice has had the effect of further entrenching disadvantaged and marginalized peoples within the criminal justice system.

NOTES

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1. This is less so in the United States where Native American contact with the criminal-justice system has not been the subject of the same level of scrutiny (Perry 2009a) compared to other common law settler societies.
2. One area of risk, for example, not explored in this essay is the extent to which indigenous people are the victims of hate crime and racist violence: in the United States, see Perry (2009b) and in Australia, the National Inquiry into Racist Violence (1991).
3. As an example, researchers can unselfconsciously include being indigenous as a risk factor: “Over time, the probability of those juveniles, on supervised orders in 1994-95 who are subject to multiple risk factors (e.g. male, indigenous, care and protection order) progressing to the adult corrections system will closely approach 100 percent” (Lynch, Buckman, and Krenske 2003, p. 2).
4. The historical timing and the specific extent of regulation varied depending on location. However, it is possible to identify common policies aimed at detribalization, segregation, and (later) assimilation across the settler societies (see for example, Stannard 1992; Ross 1998; Havemann 1999; Milloy 1999; Cunneen 2001).
5. The type of interventions I am referring to include Healing Lodges in Canada and cultural healing approaches in Australia (such as Red Dust Healing).

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CHAPTER 14

CASE STUDY

Black Cannabis Dealers in a White Welfare State Race, Politics, and Street Capital in Norway

SVEINUNG SANDBERG

THE river Akerselva divides Oslo—the capital of Norway—into its eastern, working-class parts, and the more prosperous west. From a distance, the area along the river seems peaceful and cultivated. There are green parks and old brick houses—some of them former factories, remnants from the early industrial period. But the area has a long history of poverty and social marginality. It used to be a place for alcoholics and glue-sniffing youths. Nowadays however, “The River,” as it is called, is one of Northern Europe’s largest street cannabis markets. Harder drugs are also on sale. The sellers are a group of young marginalized ethnic minority men.

The street dealers are involved in fights, robberies, and substance abuse. They lack jobs and education, many of them do not have family or close friends, yet they do have street capital: the knowledge, skills, and competence necessary to manage life on the streets. Centered on this concept, this study presents a new theoretical framework—inspired by and expanding on the work of Pierre Bourdieu, the French sociologist—for understanding street cultures. This essay reveals how different social and economical marginalization processes are trajectories to street crime. It also studies the stories the young men live and discusses their origins and meanings. Some particularities about the Scandinavian welfare state context are also mentioned. One important argument is that street culture and crime must be seen as emerging from social and economic exclusion and marginalization. Another is that prevention programs need to offer attractive identities to be effective.

Some of the main points presented in this essay include:

- In Norway, as elsewhere, many immigrant youths are marginalized by ethnic discrimination, racism, lack of education and job opportunities, and immigration policy.

- Street culture can be seen as a response to these processes of social and economical exclusion. Street capital is a means to gain respect, status, and money.
- Street capital highlights how street culture becomes embodied and emphasizes the practical rationality involved when marginalized youths become involved in crime.
- Street capital is upheld by and embedded in gangster stories, but this is only one of the ways in which the involved young men understand themselves.
- The young men often see themselves as victims. A benevolent welfare state and well-intended social workers may reinforce this self-understanding.

The essay starts with a short version of the life stories of three street dealers, Daniel, Usman, and Hassan. They represent three common trajectories to crime, but also three different functions of street capital. The essay then turns to the language on the street. The most frequent stories are systemized and separated into *oppression* and *gangster* discourse. These have their own rationale, structure, and moral. The constant shifts between them exposes the ambivalent way in which the young men see themselves and how they are portrayed by mainstream society. The last sections of the essay discuss some theoretical and policy implications.¹

I. METHOD AND THEORY

In 2005, together with a colleague, I set out to study The River and a group of drug dealers in Oslo (Sandberg and Pedersen 2009). I started working with a group of field social workers and made some initial contacts this way. After a while, however, it seemed as if contact with the social workers was more problematic than helpful. It was hard to recruit research participants, and we began to worry that a close connection to social workers might influence the stories we got. Thus, I started working alone. I lived nearby and had easy access to the area throughout the day. I became a familiar face and was able to hang around with dealers while they were selling drugs. During a 1-year period, I observed both transactions and the social interactions among the cannabis dealers. Because of my steady presence in the area, we were also able to talk to most of the dealers and more systematically interview 20 of the 60–70 dealers. Some of them became key informants and were interviewed several times.

Most of the dealers at The River have roots in sub-Saharan Africa, but some come from the Arab world. They range in age from 17 to 30, with most of them in their 20s. To the casual passerby, there is little to distinguish one cannabis dealer from another. In reality, however, the differences among them are quite striking, as are their trajectories to The River. A concept of *street capital* is helpful for understanding these marginalized men's trajectories to street drug dealing.

Street capital is similar to what Bourdieu (1984) describes as “cultural capital,” but the competence, skills, and dispositions involved are limited to a violent street culture.² The dealers at The River, for example, have to develop skills related to the street: knowledge

of drugs and drug supply sources, the ability to deal, and the ability to fight. Bourdieu (1986) distinguishes among three forms of symbolic capital: economic, cultural, and social. In short, economic capital is money, cultural capital is control over the dominant culture, and social capital refers to valuable social networks. Street capital is the field-specific cultural capital of street culture. In the same way as cultural capital, it can have objectified, embodied, and institutionalized forms. *Habitus* is embodied cultural capital, and it is key to understanding Bourdieu. *Habitus* is the practical sense, or “what is called in sport the ‘feel for the game,’ that is, the art of *anticipating* the future of the game” (Bourdieu 1998, p. 25). This acquired system of preferences is based on a system of durable cognitive structures, produced by historical and social conditions (Bourdieu and Wacquant 1992, p. 16).

Street habitus is the relatively permanent and sometimes unconscious dispositions of individuals in a street culture. When people involved in street culture, for example, react violently or exaggerate real or imagined insults, it is their embodied street capital that dispose them to do so. Street capital is the product of many years of living in a violent street culture. It is pivotal to operating in a street drug market or in criminal subcultures. In a welfare state, however, street capital is not the only “currency” on the street. It is also a great advantage if you master the language and formal rules of the welfare state system.

II. THREE GROUPS OF DEALERS

Daniel and his friends were the youngest group dealing at The River. Most of them came from dysfunctional families and had problems at school. They felt drawn to The River by a sense of adventure. The street drug market and street culture provided an arena for enacting alternative, tough masculinities. Usman was a part of an older group of dealers. Initiated into serious crime at an early age—even as children—these dealers gradually lost the respect of the criminal groups, not least because of their own drug habits. The River gave them a place to enact roles of authority and leadership based on age and experience. The third group was the refugees. They were different in many respects, but they had all come to Norway in the relatively recent past and did not speak Norwegian well. Traumatizing wartime experiences, problems obtaining residence permits, and long periods at asylum centers had marked them. Hassan’s life story is, in many ways, illustrative of this group.

A. Daniel: Street Capital as Distinction

Daniel and those like him were the biggest group on the drug scene, at least during the summer. They were in the lower age range of our sample. They were interested in fashion and music, and some were doubtless considered trendy, cool, and stylish. Some had

come from other parts of the country, but most had grown up in the working-class suburbs of Oslo. Gradually, they started to drift downtown. Some had sold cannabis in their own neighborhoods, but they saw The River as an opportunity to become autonomous and independent and to make more money. Others came to The River with no previous experience dealing drugs. They had smoked cannabis, often quite regularly, but they were uninitiated in the trade around The River. Drawn to downtown Oslo by a sense of adventure, The River seemed to them a likely place to find friends and meet kids from similar African ethnic communities. These young men were generally not involved in serious dealing, nor were they connected with the city's established criminal networks.

Daniel was 20 at the time of the interview. He had been born in Ghana but raised in Norway. When we asked Daniel for a longish interview, we were already on speaking terms with him. He invited us back to the rented three-room flat he shared with his girlfriend. When we arrived, she lit some incense and showed us into the living room. Furniture was sparse: a small lounge suite, a dining table, and chairs. The lights were off and the curtains were partly open. A pile of DVDs was stacked next to the television, positioned against one of the walls. His girlfriend offered us juice while we waited. Twenty minutes and a few telephone calls later, Daniel appeared.

Daniel had spent his whole life in one of Oslo's working-class suburbs. He played basketball and was into hip-hop. Several relatives took turns bringing him up, but from his twelfth year, he moved in with his mother. Daniel was unhappy with the change. "You can't just go and pick up a son you haven't seen in 11 years and expect to take control just like that [snaps his fingers]. It won't work." He and his mother apparently remained on good terms for a few years, but they started arguing after Daniel turned 14. For Daniel, the situation was not acceptable. "I don't like people talking about me—'You're like this, this and this'—but that's what Ghanaian mothers are like. It was irritating." The relationship deteriorated, and he was put into residential care "to have a break." He liked his foster parents and staying at the various institutions. His needs were met, and he was not forced to go to school. Finally, he was moved to a children's home close to The River, in Oslo. It was a big place with "too many kids who were always misbehaving," he recounted, laughing. He became friendly with seven or eight of the institution's young population, and they started spending time at The River. Daniel continued: "We used to hang out there every day. That was while I lived at the youth institution. We headed straight to The River after school. You eat your dinner, you're full up, you push off down to The River. On Saturdays and stuff, we used to hang around from 6 to 12 at night. Then we'd go for a drink at a club, like. You have to make money, you know. Not everybody likes asking people for cash all the time. So while you're there, you make your own money."

Daniel remained a minor dealer. He cheated some of his customers by selling them bark or giving them less than what they paid for, partly to compensate for his inferior position. However, he was never forced to go to The River, either for drugs or for money. His additional income was pocket money. "We went there to get money for going out and enjoying ourselves, see—to have a good time. No food, 'cause everybody's got food at home. You've got food at home, and those youth institutions, they've got food too.

So we didn't need food and the like. It was only for clothes, maybe, and then cash for drinks."

Daniel's story is similar to those told by some of the other younger dealers. They congregated in the city center, needed money, and slowly began to see The River as a way of getting it. Some of them admitted that hanging out there was not a good idea, but The River was attractive, especially to young men with an African heritage. Pakistanis and other minorities formed large groups in the Oslo suburbs. During childhood and early adolescence, the boys of African descent always remained a minority—even within the minority. At The River, however, they could meet others with the same ethnic background. For some of the Norwegian-African boys from the provinces, this was even more palpable. Many had experienced racism, and some told about confrontations with neo-Nazis. A more prevalent feeling among all, however, was the sense of not belonging, of being the only person around with an African background or being the only black person. The River offered these identity-seeking young men precisely what they lacked: a sense of belonging and security. In this particular area, they were suddenly in the majority.

The actual selling of drugs seemed relatively small scale. One of the young men told us, "We often took a turn and played basketball. The minute we got hold of 200 kroner, we beat it to cool off (*laughs*). Then we went home to eat and watch a movie." The River, in other words, was part of a social round with friends, a place to hang out and meet peers. Although the money was important, it was not the only incentive. The money made them interesting, and girls found them attractive, but it came with a bitter aftertaste. "It's the wrong sort of attention, innit? It's not real. It's like . . . he dresses in that sort of gear, orders whatever he wants from the bar. You know what I'm getting at, it's like that's what the girls see. They don't see how long you've been freezing out in the cold to make the money. They just don't see it, see? It's the money, they only see the money."

For the youngest dealers, The River was where things happened. A 19-year-old dealer who was used to selling drugs elsewhere said that he always returned because, "like, you know, there's always someone to talk to. And we do lots of cool stuff together." He later called it "the pull of The River." In their accounts, Daniel and the other youths often stressed the social aspect of The River. It was a place where they could get together, not least of all during the summer months. There was action—police, fights, and access to drugs. It was easy to get there and to scrounge cannabis from your mates. After the joint was lit, it was passed around, so that everyone got a share.

In their own minds, these young men were fearless and confrontational. Daniel and his like saw themselves as alone against the establishment, and on the banks of The River, they were power brokers. Life here was associated with coolness and protest, with free spirits who refused to be straitjacketed. R. W. Connell calls it "protest masculinity," highlighting its convergence with violence, opposition to school, crime, casual labor, and insistent heterosexuality. The River was a perfect place to stage the form of masculinity characterized as "live fast, die young" (Connell 1995). In a context of social and economic poverty, the street drug market became a site for managing and dramatizing masculinity. To appear as tough, hard, and macho, and to avoid being "punks" (Mullins 2006) was important.

Hip-hop was integral to this attitude. Some of the dealers were active hip-hoppers, but more important, hip-hop provided a source of role models and points of reference. The River dealers identified not only with African-American experiences of being marginalized and discriminated against (which is common in hip-hop lyrics) but also with the protest masculinity that defines gangsta rap, one of hip-hop's most popular genres.

Thornton (1995) has argued that "hipness" is a form of subcultural capital, with several similarities to Bourdieu's cultural capital. Hipness is the cultural competence and skills that are acquired by members of a subculture and that raise their status. When Daniel and his friends were dealing at The River, this raised their subcultural capital, a form of capital available for marginalized groups who felt estranged from mainstream society. By participating in street culture, they went from being black losers in mainstream society to "thugs" and "hustlers" in hip-hop and street culture mythology. This group of dealers also had economic motives, however. Most of the young men at The River came from poor families, but the easy money they made supported a lifestyle that ordinarily would have been impossible. The money funded their conspicuous consumption of drinks, drugs, and expensive clothes as outward gestures (Jacobs 1999).

B. Usman: Street Capital as Status and Power

Usman and others in his situation were older than Daniel and his friends. They were commonly in their mid-20s, and born and raised in mainly working-class areas of downtown Oslo, close to The River. Several had records as juvenile offenders and were former members of local juvenile gangs. Most had also been involved in hard-core criminal networks but had cut off these connections themselves or been ostracized.

We met Usman at a cafe in a central part of the city, a redeveloped working-class area east of the city center. He wore sunglasses, had smoked cannabis before the interview, and spoke freely. The first thing he brought up was the difficulty he had repaying a 50,000-kroner (€6250) debt. Usman came to Norway from Pakistan with his parents at the age of 6. When we interviewed him, he was 22. He had been partly raised by an uncle who ran a takeout food shop. Their initially good relationship foundered because his Muslim uncle disapproved of him and his friends "using dope, beer drinking, and screwing chicks." Usman thought his uncle incapable of understanding what growing up in Norway was like. He spoke of his childhood.

I saw older Pakistanis, and the stuff they did was absolutely fucking unbelievable. It was just sensational. When you're that age, you think you're never going to die, you know. I was 12 and had just woken up, like, and they were 6–7 years older. I knew they were scumbags, the lot of them, and did all this shit, like. They counted me in, and I earned big bonuses. I was a delivery boy, like, because I looked so fucking innocent. Once I was carrying a bag. Cocaine, 5 kilo, right under the nose of the cops. They were raiding a building. So they let me go, like. I was just an innocent kid with an ice cream in his hand.

After several similar episodes, Usman was soon working regularly for the older Pakistanis. This work introduced him to gang life, particularly the then-infamous A and B Gangs. Family ties dictated connections, and children were recruited when they were relatively young. The younger they were, the less likely they would be to arouse the suspicion of the police. The reward was lots of money, trips abroad, and the respect and admiration of older friends, but Usman also worked for himself.

I used to be a fucking hyperactive shithead, man. Did so much crap. There were these cousins and me. We were Pakis in a country we didn't belong to. Always together and always broke. All the others had these wicked pants, so why not me? I ditched school and worked illegally at a takeaway. So I earned dough there, and sold a bit of ganja [cannabis] on the side. First we just smoked hash and downed pills [Rohypnol] for the fun of it. So we starting thinking: If we got a blister pack to sell . . . and we earned 5,000 coins in one bleedin' day. I was getting *famous*! I knew a couple of chicks from the West side who called their mates, and suddenly half the city was ringing for pills.

Usman developed good connections early in his career as a pusher. He made a comfortable profit on the Rohypnol and cannabis he bought at cut-down prices. Customers from the wealthier areas to the west of the city were willing to pay high prices. These youngsters had money to spare and often paid more than normal street value. These early times were Usman's days of glory, which he looks back on with pride and joy. Earning money and being connected with the right people gave him a sense of power and invincibility. "I knew all the big dudes on the street, and many of them gave me protection." He admits luck played a part, but he gives more credit to fate and a belief in God. "Every time I work the field, I think of God and 'Allah save me!' He saves me." "Field" is a war metaphor, suggestive of how he sees his life. Fatalism and belief in destiny are well known in the street culture literature (e.g., see Bourgois 2003).

However, within a few years, Usman's career had peaked and plummeted. He lost his protection, stopped working, got heavily into debt after a couple of big projects failed, and turned increasingly to drugs. He smoked more cannabis and took more amphetamine. The latter was the biggest problem, he said.

It's been really difficult. Used a lot of speed; my mind's all fucked up. Physically too, I've lost weight. The whole family's noticed it, 'cause when you do speed, you get thinner. You start looking like a fuckin' junkie. It's obvious you're putting yourself on the line. You feel *so* tired, and weird, and you get paranoid. Three days on speed, like, you're in deep paranoia land. You can't sleep, and you hear voices, see things, think things. It happens I take roofies [Rohypnol] and hash just to wind down from the effect of the speed [amphetamine].

Usman once occupied a central position in the dealer hierarchy. He earned good money and had extensive connections, but at some stage, partly because of his own drug habit, his debts grew to unmanageable proportions. He subsequently lost his credibility in a social network dominated by big money, debt collecting, and frequent gang-land confrontations. Several times, Usman tried to regain the reputation he once had, but he

failed. No one trusted him. Thus, there is a sense of self-contempt in Usman's story about The River. "We realized that The River was for idiots. The River is what you fall back on when everything else fails. Dealing in large quantities is preferable in my opinion. You don't sell 100-gram sheets down at The River. You're a dickhead if you do. . . . The same if you're buying. The River is the last resort, when you can't show your face anywhere. It's where dickheads buy hash."

Nevertheless, this was where we met him. He financed his escalating drug habit and honored old debts by selling cannabis on the streets. One of the other young men called it the "loan department." It was always possible to make cash easily and quickly. When dealers' drug habits got them thrown out of the criminal establishment, The River was a last resort where they did not need a mobile phone, cash, or regular customers to close a deal. The bigger dealers tended to move away from there.

Usman and those like him existed on the margins of society, but they also existed on the margins of the criminal fraternity. At The River, however, their social networks, experience, and know-how translated into social status. They knew the system and dealer network better than the younger dealers and the refugees, and they were therefore more valuable. At The River, they were knowledgeable and experienced. In the legal economy, they were losers. Likely jobs for them in the white economy would be poorly paid, requiring few skills and of low status. The River, however, offered them social rewards, a possibility of status, money, and, not least, respectability and admiration. Being at The River can thus be seen as a "search for respect" (Bourgeois 2003) for many of the older dealers who were raised in Norway.

Young men like Usman often had some work experience, spoke Norwegian fluently, and had contacts in mainstream society, so, if they wanted to, they could get a legal job. Their socialization, drug habits, and lifestyle, however, made it difficult, and being ethnic minorities certainly did not make it easier. Cultural capital is accumulated cultural knowledge that confers power and status (Bourdieu 1984). For men like Usman, their cultural capital earned them neither power nor respect in mainstream society. Their embodied street capital (or habitus), however—the product of many years of crime—gave them respect, power, and status in the social context of The River. Between amateur criminals, risk-seeking kids, and recently arrived refugees, they could take up old leadership roles. The street market thus also gave them a sense of community.

C. Hassan: Converting Street Capital to Economic Capital

During the winter, the largest group at The River was the refugees. With little chance of landing a job or gaining qualifications, they made a virtue of necessity by selling cannabis. Some of the refugees had a residence permit and some did not. Those without a permit were often nonreturnable refugees from Somalia. The others were nationals of various countries.

Hassan was typical of many in the group. We met him in front of an old church near The River on a winter's night. He was a tall, powerfully built Somali. Hassan spoke no

Norwegian and only poor English. He was frustrated. “Maybe you can write a book about how we feel or how we live. And you can explain to people, to the whole world, how we live and the hell we’re in.” At the appointed time for the interview, we asked one of the other Somalis we had interviewed several weeks previously to join us as a translator. This is his story as recounted to us.

Hassan was born in Mogadishu, Somalia, “the most dangerous place” after civil war broke out in 1991. A series of incidents compelled him to flee the country in 2003. It started with a football match:

It was relatively calm that day, and we thought we’d play football. We hadn’t played for several years. There was a war on, and it hadn’t been quiet enough. My brother and I played together, but he got into trouble with some other boys. I said, “We don’t want to fight, we don’t want to do anything.” I took my brother home. Later we sat and ate with the rest of the family. But the other kids, the ones we had been fighting, followed us, armed with guns. When they reached where we lived, they started shooting. Both my brother and I were hit, me in the side and my brother here [indicates chest]. My injury was serious and I needed hospital treatment.

He had lost a lot of blood, but to obtain treatment, his family had to pay in advance. He finally got in touch with them, and they sold off personal belongings to fund his operation. His problems were not over, however.

They were still intent on getting their own back, ‘cause, you know, if you hurt someone, the person you hurt can turn round and kill you. I was very afraid, but I decided to go to them, stop feeling afraid, like. I was thinking of taking revenge, before they came and got me. I got hold of a few guns and went towards their house. Because of my injury, walking was nearly impossible. It was dark, so they couldn’t see my face. I didn’t want anyone to know what I was doing, because those boys belonged to the biggest clan, and it could get my family into trouble.

Approaching under cover of darkness, he fired a few rounds at the house. He hit one of his rivals before they started firing back, and then he made his getaway. When his family heard about the fight, they sold their home and got him out of the country. Several countries and a false passport later, he set foot in Norway. Life definitely looked brighter. “I liked Norway from the start because they treated me well,” he says. He was given medical treatment for his injury. He was grateful for this, and it weighed heavily on his mind that he ended up being a cannabis dealer. For the first time in the interview, he attempted to say something without the help of the translator. “I didn’t want to sell cannabis, do anything illegal. They helped me, treated me well. And . . . and I sell drugs instead.”

However, he maintains that there was not much else he could do. After his discharge from the hospital, his asylum application was turned down twice, and his benefits were cut in line with new immigration legislation. He lost his right to housing benefits and was forced to leave the asylum center. Confused, he set off for Sweden and stayed with some friends for a few months. He was soon detained, however, and returned to Norway. The Schengen Convention requires all illegal aliens to be returned to the country of first

entry. The Norwegian police picked him up at the airport, transported him to the largest police station in Oslo, and then set him down in the city center, where he was left to his own devices.

Hassan was a nonreturnable refugee. He was a failed asylum seeker, and Somali policy refused entry to nonvoluntarily repatriated citizens. Returning voluntarily was not an option for him, because the clan he had clashed with would be out to retaliate. Moreover, rumors abounded in Somalia that refugees returned from Europe with money lining their pockets. He could be set upon and killed for either reason. Thus, living on the street in Oslo was preferable. He slept in parks in the summer when it was not too cold, and passersby gave him food. Later, a welfare office organized a bed at a hostel where he shared a room with another refugee. Hassan survived on 60 kroner per day and reported that he sometimes fainted from hunger. Gradually then, cannabis dealing at The River seemed like a more attractive alternative. “It was easy. I got to know a guy at the hostel and he taught me. I was trained, two or three days, to see how it worked. They said, ‘Look, this is how we do it.’ They taught me to tell whether people wanted to sell or buy, about the uniformed police and plainclothes police, so I could protect myself. I’ve never had any problems with customers to date. I only do business with Norwegians.”

When he came to Oslo the second time, he soon realized the financial potential of the drug scene. Within a couple of days, he had acquired the basic knowledge he needed and was ready to start dealing. Hassan’s story is similar to that of many refugees. Nonreturnable refugees were caught in a no-win situation and received harsh treatment from the government. Somalia was only willing to accept voluntary returnees, and the Norwegian government was doing its utmost to make life as difficult as possible in an effort to convince them that staying in Norway was simply not feasible. If they tried entering other countries in Europe, they were promptly returned.

We spoke to another nonreturnable Somali, aged 20, who compared himself with the other young men at The River. “I am staying here for several reasons. First, I don’t have money. Second, I’m almost nobody. Because I don’t have citizenship, I don’t have my own clothes, a place that I can travel to, somewhere I can get a job. Nothing, nada, null. Actually, I’m nobody. The government, they just left me somewhere.”

He asked us several times during the interview what we thought he should do and whether we had a job for him. The previous excerpt and our conversations with the other refugees all reek of desperation and despair. The refugees were depressed and felt abandoned. They were often homeless and isolated. Several times, they said that if they died, no one would know who they were. Some woke up at night screaming. Some relived violent incidents from the civil war in Somalia. Their accounts are similar to what psychiatrists call post-traumatic stress disorder. Loss of individuality and identity were also painful—the feeling of being “nobody,” as the young man mentioned previously states.

Although refugees who possessed residence permits and those who did not had different problems, their similarities justify grouping them in the same category. First, they had all come to Norway as teenagers or in their early 20s. They had all stayed at provincial asylum centers for 2 or 3 years waiting for the authorities to deal with their applications. The centers had few activities, and they grew increasingly accustomed

to lassitude. Because they were asylum seekers, they were not allowed to enroll in Norwegian-language courses paid for by the government, to get a job, or even to qualify for a job. Whether they left the center because they finally got a residence permit or because they were tired of waiting, they were ill-prepared for the rigors of the labor market. The first few months at the asylum center were not too bad, they told us, but the constant waiting soon became frustrating. Officials were often disrespectful, to the point of humiliation, according to some. The refugees had language problems and did not understand Norwegian customs and institutions. They also repeatedly felt that they were being treated poorly. According to Lindner (2000, pp. 374–75), depression is a common response to humiliation, along with drug use, aggression, and religious conservatism. Except for religious conservatism, we observed all these responses among the refugees at The River.

Another common experience of the refugees was the high cost of getting to the West: some had paid up to US\$5,000. Transportation was fraught with difficulties, such as dangerously overcrowded boats. The plan was to repay their families after establishing themselves in Europe. Their failure to do so caused widespread depression and embarrassment, especially when they had dependants waiting back home. Given their hopes of life in the West, ending up as a petty criminals and members of a generally despised social group was hard to bear. Some came from wealthy families and were used to being shown respect. In Norway, they were disrespected for being refugees, and doubly so when they were petty criminals down at The River.

Hassan's and the refugees' habitus, which was molded by their upbringing in a war-torn society, did not force them to become criminals. However, in the meeting between their habitus and Norwegian social context, small-scale drug dealing stood out as one of only a few ways they could make money. The refugees had little cultural capital (in the form of education, work skills, and language abilities), but they knew how to fight and had seen a lot of violence. They therefore had experiences they could use in street culture. In Bourdieu's terminology, we can say that they had a habitus they could convert to a form of embodied street capital. Moreover, at The River, the refugees could convert their habitus into economic capital in a way that would hardly be possible in any other social contexts.

III. VIOLENCE AND SOCIALIZATION TO THE STREET

Muggings and fights are staples of everyday life at The River. Most of the dealers have been involved in serious fights, and several have convictions for acts of violence. Moreover, knowing how to fight and to inspire fear is an important asset in their street capital—their most conspicuous resource. There are several reasons for violence at The River. The boys had grown up fighting and had kept on fighting. However, aggressive

behavior can also be linked to the drug economy and street culture. The dealers sometimes tried to increase takings by cheating customers. That can obviously lead to trouble. “Pulling a fast one” and borrowing often increased the likelihood of brute force. Ahmed told us, “I sat on the grass, opposite the tube. So I’d downed some pills, then this guy shows up, so I, like, wave him over, and he says he wants to buy a gram of hash. So I give him a bit short, to con him. But he wants more, and he starts making a racket and pushing me around. So I punch him, first, then me mate turns up and gets hold of a stick and we give him a real going over. . . . Us two, we stood there punching and kicking the guy.” Afterwards Ahmed stated proudly, “The guy pushed off—we never do. Only if the cops turn up, we’ll run.” Never giving in is a deeply rooted sentiment in the violent street culture and, as will be emphasized later, an important part of gangster discourse.

To develop a street habitus takes time. Several of the street dealers had grown up in violent families. Many also told us that they were expected to know how to fight from a young age. Experiencing violence in childhood can stunt the development of basic trust and the ability to empathize. It wreaks untold havoc on the child. However, in a street culture setting, this deficit can be turned into an asset. Middle- and upper-class people, says Bourdieu (1984), acquire and form their cultural capital and habitus during childhood. Similarly, children from violent homes may develop a tolerance for violence that can become a form of empowerment and street capital.

Some of The River dealers described what it was like to grow up in abusive homes and how it acclimatized them to violence as young teenagers. “When I was 15, obviously we were fighting every day,” one of them told us. “I used to go downtown, go from club to club, like, and make trouble,” another said. Partying at friends’ places and trips downtown often culminated in fights. Usman described a culture of irrational violence into which drugs and alcohol had recently found a channel. “Friday night, Saturday night, we got drunk, or you’re on some type of ecstasy. You just beat the shit out of someone. You do whatever you want on the spur of the moment, and you’re not afraid of anything. You can’t feel fear anymore. It’s hard the first time, but when you’ve done it a few times, it gets like normal.”

Because habitus integrates past experiences, it endows an ability to tackle unforeseen situations (Bourdieu 1990). A street habitus takes time to mature, and it resists change. Usman’s account shows how inhibitions against violent behavior gradually erode. The first time, acting aggressively is difficult. However, with practice, it becomes easier, until it arrives to the point at which the individual does not give it a second thought.

IV. TRAJECTORIES TO THE STREET

The trajectories described provide an indication of typical careers and life stories. For each of these groups, some economic and social motives also stand out as the most consistent keys to understanding why they started dealing drugs.

Daniel and those like him grew up in Oslo's outer working-class suburbs and had problems at school and in the labor market. Most of them were from rather poor families, and they wanted money to buy clothes and drinks—conspicuous consumption to impress the girls. Money was a means to empowerment and control: when they had money, people suddenly took notice of them. At the same time, The River community also provided a stage on which to act out identities and dominance roles. Dealing became a “tie sign” (Goffman 1961), a symbolic evidence of the relationship between them, and it created a bulwark against established society. The street capital they gradually accumulated functioned as a distinguishing mark. Street culture offered social contacts, new friends, and membership in a hidden society. Within this culture, protest masculinity dominated (Connell 1995). Protest masculinity is a marginalized form that reworks themes of masculinity in society at large in a context of poverty. It is a protest born of childhood experiences of powerlessness that takes form as an exaggerated claim to the potency that society attaches to masculinity (Adler 1992). Gangsta rap can be seen as exaggerated claims to the potency ascribed to black masculinity. Protest masculinity is a collective practice, and The River can be seen as a place for active and collective constructions of black protest masculinity.

Usman and those like him had both social and economic motives for dealing at The River. Spurned by the criminal fraternity, their social connections were cut along with access to easy money. They had lost credibility in the established criminal networks and, accordingly, were seen as unreliable. At the same time, they had chronic financial worries. Years of crime had left some with considerable debts, and others needed money to finance their escalating drug habits. Dealing at The River offered a dependable income. However, they also had social motives. Without the income from dealing, they faced the lowest-paid and least respected jobs in the legitimate economy. At The River, the know-how and leadership abilities they had gained through many years of crime were appreciated. Between amateur criminals, risk-seeking kids, and recently arrived refugees, they could hold sway. Thus, Usman and his like got a sense of community and respect from The River. Their street capital gave them status and power. Without the drug scene, they risked social isolation and loneliness.

Hassan and the other refugees had more plainly economic motives for dealing at The River. Overall, making money was the overriding concern for the refugees. In short, they converted their habitus from war-inflicted countries into street capital and thus also into economic capital. The nonreturnables were officially barred from the labor and education markets. Those with residence permits felt socially excluded from the labor market and, with poor Norwegian language skills, it was difficult to obtain the qualifications that would gain them entry. After years of sitting and waiting in asylum centers, they were as poor as on the day they set foot in Norway in terms of wider qualifications, job training, or education.

Macrostructural characteristics push some groups into the illicit drug trade. Problems at school and the workplace, ethnic discrimination, and government asylum and immigration policies are all contributing factors. At the same time, the drug trade also has important enticements, such as the excitement, the opportunity for identity formation related to

subcultures, and, most important, easy money. The concept of street capital offers a compromise between these macrostructural and microinteractionist explanations. The way we conceptualize it, however, is that street capital also has an important narrative element. Discourses constitute fields and cultures, and they do so as cultural structures that are used actively by people. Such an emphasis on language adds a constructivist and voluntaristic element to Bourdieu's sometimes overly materialist and structural perspective.

V. THE LANGUAGE ON THE STREET

We spent a great deal of time at The River, but as in much other ethnographic work on criminals, much of the analysis relies on self-reported data and offenders' narratives (Sandberg 2010). The stories we were told should therefore be read not only as an objective report of practice as given, but also as an expression of vivid narratives and strategic self-presentations within the street culture context. Narratives can be seen as expressions of the prevailing language or discourse in a field and as strategic self-presentations. Of discourses circulating among the dealers at The River, two stand out in particular. One is what we call an "oppression discourse"; the other is a "gangster discourse." Both reveal important information about life on the street in a benevolent welfare state, but they are also discursive tools used actively in interaction.

A. Oppression Discourse

We were doing an interview with Ali, but establishing a bond was difficult. He was conscious of the interview setting and seemed to be using us as his personal microphone—and he was lying. For example, he lied about his name (which we had not asked for), age, and country of origin. Later on, when we knew each other better, he corrected some of these early misrepresentations. The fieldwork revealed other lies. Despite his dishonesty, the interview was interesting. To Ali, we were envoys of the welfare system. We were white, well educated, and members of the Norwegian establishment. He wanted to establish his own version of his situation vis-à-vis the system.

The interview started with him describing how he ended up in bad company as a teenager, dropped out of school, and ran into more problems. "But," he assured us, "I'm not into breaking the law and that sort of crap. That's not how I am." We tended not to ask about illegal activity until well into the interview, so we tried drawing him out on topics having to do with family and girlfriends, but Ali zoomed in on what he believed we really wanted to hear.

INTERVIEWER: D'you have a girlfriend?

ALI: I've got a girl I like very much . . . and I work hard . . . getting a job, permanent job and that . . . good pay. But it's hard, sometimes, very hard. Not many understand that about

The River. You're out of work, got no wages coming in. And if you don't have money, 'cause everything you do in Norway costs money, innit. Wanna eat, gotta have cash. Pay your rent, gotta have cash. It's not like everybody you see there wants to be there, like, you know. It's like when you haven't got a chance anywhere else, 'cause the kids you see there, like, they think it's better than stealing, innit.

Ali refers to “the kids you see there,” but he is also talking about himself. He clearly feels under some pressure. He expected that we wanted him to talk about The River (which we did) and that we would try to persuade him to change his ways (as social workers do).

This interview demonstrates a way of justifying one's presence at The River to social workers and other representatives of mainstream society. He tells us he has a very good reason for being there. First, he has to make money. “You need money,” that is something everybody knows. Later in the interview, he talks about the difficulty of getting a job with a foreign-sounding name. Thus, the only chance of obtaining money is The River. Second, it is better to sell cannabis than to steal and commit other crimes in order to get money. This utilitarian argument has featured in a similar media debate about public begging, and the same rationale is rehearsed in arguments about the desirability of selling cannabis over heavier drugs. The River's dealers also do not consider cannabis particularly dangerous. Ali maintains, for instance, that alcohol is riskier than cannabis because it is more addictive. Cannabis may even have a positive effect, he argues. The kids at The River, Ali concedes, are in trouble, but not because they use drugs or alcohol. Their main problem is the lack of a steady job.

ALI: But, in my opinion, the system in Norway is ultimately to blame for what goes on at The River 'cause they can help those kids more than just letting them. . . . You know, they can do something for the kids down at The River. There's no help in just leaving them to. . . . It would be much better if they did something, that's what I think. If I was the government, like. . . .

INTERVIEWER: What can they do?

ALI: Whatever they want. Get them into public schemes.

Carrying on an interview with Ali was not easy. He was high on drugs, he lied, and he was always on the defensive. After the interview, we wondered if it had been worth the effort, but looking at the transcript later, we found a relatively coherent defense tale. Ali had probably told the same tale several times before the interview—to welfare officers in public offices and social workers out in the field. At any rate, it came unprompted and was very detailed. Ali, it seemed, knew the story.

The types of street capital we have discussed so far revolve around crime or violence. Another kind of street capital is the ability to present oneself as a victim to private and public welfare organizations and to speak the language of the system. Most of the young men had this ability not just to present a coherent narrative but also to season it with the correct terminology and jargon. Ali's use of the word “scheme” is an example. It is not part of the normal street vernacular. It is learned in contact with officials and

agencies. Ali had assimilated it and brought it out whenever he felt circumstances suggested it would be useful to speak the language of the welfare system. It made it easier to obtain various types of assistance from public and charity organizations. Moreover, Ali attempted to establish parity in his relations with these agencies by adopting their jargon.

A closer examination of the interview with Ali reveals how a larger construction of parity ran through all the stories he told us. Generally, his message was that the young men at The River were not very different from mainstream society. They needed a job, and, when work failed to materialize, The River was the only way out. They put in a full day's work, and what they earned there provided their means of support. By establishing a position of sameness, Ali dismantles some of the barriers relating to ethnicity, education, and lifestyle between him and us. This makes it easier for us to put ourselves in his shoes and thus to identify and sympathize with him. People often sympathize more with people who are similar to them. By appearing less as the "other," the dealers more easily achieved recognition as "worthy and needy persons."

Within a framework of discourse analysis (e.g., see Fairclough 1992), accounts of discrimination and marginalization—such as those in Ali's story—can be seen as a common narrative in an oppression discourse. In the words of Foucault, a discourse is "made up of a limited number of statements for which a group of conditions of existence can be defined" (Foucault 1972, p. 117). It functions as a way of structuring areas of knowledge and social practice, so that we can attach meaning to events and experiences. Discourses are broader structures of language, determining the possible speech acts of actors in a field (Foucault 1972, pp. 49, 122). Typical narratives in oppression discourse include (a) stories about discrimination and hardship in labor markets, education, and housing markets (a common example was problems for people with foreign-sounding names obtaining employment); (b) stories about racism—both severe or violent racist attacks and everyday racism (many of the dealers tended to call people that they disliked "racists"); (c) stories about psychosocial problems, often caused by, or at least not alleviated by, government institutions; and (d) narratives about meager government support.

The points highlighted in an oppression discourse are, of course, important in their own right. The young men are, for example, discriminated against in school and employment, and the nonreturnable refugees are in an extremely difficult situation. However, such accounts can also be seen as narratives embedded in and made possible by an oppression discourse emphasizing the structural or societal causes of crime. In such a discourse, subjects such as violence and selling and using drugs are relegated to the sidelines by psychosocial problems, combined with a government and city council that are unwilling to help. The moral of the tale is that everybody would act in a similar fashion under similar circumstances.

B. The Gangster Discourse

The oppression discourse was not the only way the dealers at The River talked. What can be described as gangster discourse was just as prevalent. In the gangster discourse,

however, the accent was on distance and difference. In this respect, Chris was Ali's antithesis. Even though he touched on oppression discourse, he mainly portrayed himself as a successful, violent, and dangerous criminal. In this way, he claimed a gangster subject position (Laclau and Mouffe 1985) made available by a gangster discourse and a mix of street and popular culture. He boasted, for instance, about the money he had made and how he fooled the police. "If I'd been a cop, I could've fucking nailed every crook in the city. I know every single motherfucking one of them. I know where they stash dope and money. And those guys, what they get up to."

The subject of fighting was broached as well. Typical statements included, "I tell ya, no motherfucker gets in my face, because if they do, my mates would go and fuck his mother, like." Chris was interested in weapons, too. "You sleep better at nights with a piece." If anybody was out to get him, "I stand there with that pistol, like, loaded, goes without saying. Rounds like those armor-piercing bullets, go through anything." It was almost like an action movie, with Chris scripting a role for himself. Nobody dared touch him, and, if they were that stupid, they would regret it. He also claimed to be more intelligent than other criminals. "No one's fucked me up yet," he informed us proudly. His stories spun a romantic, fascinating narrative about a solitary, invincible, tough-skinned, and smart gangster. Chris brought his story to its culmination with a detailed account of how he smuggled large quantities of cannabis from Sweden using advanced techniques.

I used to bring it over from Sweden. We had this dual car system. One of them had to look awesome, got up so as to look conspicuous, loud music, fucking suspicious. And the other had to be a fucking queer fanny car. . . . So you tune up two BMWs, premium styling in red lacquer for the top, and suspicious in the extreme. Loads of foreigners inside. . . . So you give customs something to keep them busy and you drive a little Opel Corsa, with 100 kilo right behind. They think, "Hang on, there's a couple of sports cars there filled with youngsters. That means trouble." So they flag them down—never fails. And behind there's you sitting driving a little Opel Corsa with 100 kilo weed up your arse. And you just drive on, right into Norway. They do it every day.

We do not know if Chris had been involved in large-scale trafficking—in the final sentence, a "we" is turned into a "they." In the main, though, Chris talked about dealing at The River in small quantities. His story of how cannabis is smuggled into Norway from Sweden may, in fact, be part of an urban myth doing the rounds, a particularly vivid, exciting gangster narrative. It highlights their intelligence, pulling off a customs scam. Such accounts can be seen as valid descriptions of interactions between police and dealers at The River. However, it is also interesting to see how narratives like this can be read as elements of a gangster discourse aimed at demonstrating one's superiority and competence.

The gangster discourse featured in most of the interviews, even though it was not always as explicit as it was with Chris. Sometimes it was told with great bravado. Usman gave this animated account about a fight he had been in, "But you know, when you're young, you like that feeling, 'Ah! . . . victory.' It's like being in the ring, innit. 'Whack!' And you survive, y'know. Gives you a kick, like. Like in a hefty car crash. Unbelievable, raw, like. That adrenalin spike, like."

The typical narratives of gangster discourse include (a) stories about how the young men are thick-skinned and not afraid; they pose as gangsters to avoid confrontation in an environment laced with aggression; (b) accounts about how life on the street is hard and operates under different rules from the rest of society; (c) stories about how easy it is to make a lot of money quickly, an ability they include with acquired skills and knowledge; and (d) stories about how sexually promiscuous the men are. They have had lots of sex, and girls find them attractive.

The gangster discourse bears clear resemblances to Anderson's (1999) "code of the street." Anderson sees the code of the street as a cultural adaptation to the socioeconomic situation of inner-city residents. The informal rules "prescribe both proper comportment and the proper way to respond if challenged." They "regulate the use of violence and so supply a rationale allowing those who are inclined to aggression to precipitate violent encounters in an approved way" (Anderson 1999, p. 33). However, although the code is a set of informal rules governing interpersonal behavior, using the concept of discourse highlights that oppression and gangster discourses are also conversational tools used to justify behavior. Jimerson and Oware (2006) describe it as "telling the code of the street" and argue that it is as interesting as using codes to explain conduct. Topalli (2005) describes it as "neutralizing being good." As in Sykes and Matza's neutralization theory (1957), his argument is that active criminals neutralize to support their offending. However, in contrast to the offenders Sykes and Matza studied, Topalli's hard-core offenders strive to protect a self-image consistent with a code of the street rather than a conventional one. They identify with the code of the street more than with the code of decency, and neutralize being good rather than being bad (Topalli 2005). Gangster discourse is a similar tool. By using gangster discourse, the young men wanted to be smart, and occasionally irrational and impenetrable. Stories about positive experiences with drugs and brutal, seemingly irrational, aggression surfaced when the dealers were in gangster discourse mode.

As opposed to oppression discourse, gangster discourse emphasizes the difference between the young men and mainstream society. At the end of the day, the gangster discourse is about a construction of Otherness. The young men want to be seen as smart, brutal, and sexually attractive. Such a construction of difference helps bolster self-respect and garner respect from others. The young men become active, capable individuals in their own, alternative universe.

VI. BETWEEN THE STREET AND THE WELFARE STATE

The dominant discourse on the street is the gangster discourse, and the young men used the oppression discourse in dealings with the welfare system. Chris and Ali have exemplified the two discourses, respectively. Both were quite devoted to their subject positions as gangster and victim. Most of the other dealers had a wider repertory of self-presentations. The most striking feature of the interviews was how the research

participants switched between discourses as the interview progressed. The ability to read the situation and activate the most appropriate narrative was a fascinating aspect of the young men's repertory (see also Sandberg 2009a, 2009b).

Elijah Anderson writes in a similar vein about how some of his informants appeared able to switch between a "code of decency" and a "code of the street" (Anderson 1999). In contrast to Anderson, we also noted oppression discourse, which possibly can be seen as a variant of the code of decency, when the young men justified their crimes. Moreover, as opposed to Anderson's code switching, the changes between codes or discourses were often done in the same interviews, changing from one minute to the other. The River dealers sometimes tried to justify their criminal behavior by using oppression discourse to appear as decent victims without any other choice than drug dealing. In the next minute, however, they could use gangster discourse to protect a self-image consistent with the code of the street. In discourse analysis terms, this is known as *interdiscursivity* (Fairclough 1995). When people speak or write, numerous discourses can be brought into play, often in the same text or conversation. Individuals borrow, consciously or unconsciously, to create meaning in different immediate settings.

The ability to negotiate both an oppression discourse and a gangster discourse should be seen as a form of street capital. Just as the men need to be gangster-like to survive on the street, they need to know the welfare state to obtain the help made available by the state and charities. To survive on the street in a Scandinavian welfare state, one must master both oppression and gangster discourses.

VII. POLITICS AND THE WELFARE STATE

In a theoretical framework of street capital, competence and skill that had previously been conceptualized as "streetwise" or knowing the "code of the street" (Anderson 1990, 1999), protest masculinity (Connell 1995), street masculinity (Mullins 2006), or street culture (Bourgois 2003) are reconceptualized as street capital. The River dealers were positioned at the bottom of the hierarchies of society, and street capital became a way to gain both self-respect and respect from others. By using the concept of street capital, the embodied character of this knowledge is emphasized. This concept also points to the importance of early socialization and the practical rationality involved when young men start dealing illegal drugs. As with cultural capital, street capital can be converted into economic capital, and it is closely linked to the social capital or social networks of its possessors. As opposed to cultural capital, however, it is difficult to transfer to other social arenas.

Street capital is the most important symbolic capital in street culture, and it is upheld by and embedded in gangster discourse, which is the culture's dominant linguistic practice. Gangster discourse adds a social constructivist dimension to the concept of street capital. The appeal of gangster discourse comes from narratives about the exciting and rewarding life of individuals in street cultures, as compared to the "dull" life

in mainstream society. Gangster discourse creates fascination and fear by constructing otherness, and the dealers at The River used it to gain self-respect and respect from others.

Studying marginalized drug dealers in a street culture raises the dilemma of the relationship between individual responsibility and social structural constraints—a dilemma embedded in the irresolvable debate of structure versus agency. The concepts of capital and habitus are Bourdieu's (1990) contribution to this debate. The habitus concept can be criticized for being too structural (King 2000), and the concept of cultural capital can be criticized for not acknowledging the everyday resistance in autonomous fields and popular culture (Thornton 1995). However, the two concepts still capture an important tension between structural limitations and the practical rationality of social life. This empirical study from a Scandinavian welfare state makes this particularly evident. Without the ghettos and the deprived neighborhoods often described in the dominant North American literature, theoretical conceptualizations that include agency and strategic actors become even more important.

The social context of a benevolent welfare state is important but easy to misinterpret. First, marginalization takes place in this context as well. The situation for the nonreturnable refugees is the most obvious example. Moreover, the other dealers at The River came from families at the bottom of the social hierarchy. Even in a social democratic welfare state, social class and social marginality are reproduced over generations. In addition, an ethnic minority position increases obstacles to educational and professional success. The reality of malignant experiences in the school system and in the job sector is harsh. Most of the street dealers had experienced incidences of direct racism. The more subtle experience of otherness—or not belonging—in everyday interactions was, however, more important. The overwhelming majority of the employees in the welfare state system are white, ethnic Norwegians. Probably, most of the young men's meetings with this system reproduced an ethnic hierarchical system: they were black, the welfare state system overwhelmingly white.

Second, the Scandinavian context demonstrates that, to understand street culture, we need more than marginalization theory. Street culture is not only about poverty, discrimination, or other socioeconomic processes (see also Bucerius 2007). Even in the benevolent Scandinavian welfare state, groups are left out, and they seek alternative arenas for identity development. One reason may be that the most obvious subject position the welfare state offers marginalized youths is that of the victim. Many will not consider such a position attractive, and they may seek out other social arenas that are rewarding in more empowering ways. In other words, no matter how much money is put into prevention efforts and welfare programs, these efforts will fail unless there are some attractive identities offered to youths as well.

NOTES

1. Parts of this text were published previously in Sandberg and Pedersen (2009).
2. For a theoretical presentation of the theoretical framework and further use of it, see Sandberg (2008a, 2008b, 2009c), Sandberg and Pedersen (2009), and Grundetjern and Sandberg (2012).

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CHAPTER 15

CASE STUDY

Black Homicide Victimization in Toronto, Ontario, Canada

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ALMOST three decades ago, Archer and Gartner (1984) wrote that much criminological knowledge on the nature and causes of violent crime, including homicide, is “disconcertingly provincial,” due in part to the relative dominance of research and theory grounded in the American context. One consequence on the intra-national focus of this inquiry is that the degree to which theory and research on the causes and correlates of violent crime “holds” across international boundaries cannot be ascertained (Farrington 2000; LaFree 2007; Stamatel 2009). The issue of generalizability looms especially large in the literature on the social and spatial distribution of urban homicide, which rests almost exclusively on American data. That a preponderance of this inquiry has been conducted within the boundaries of a single society is especially concerning, given the exceptional level of lethal violence that is used as the standard in this inquiry and upon which criminological theory and research is premised. The dearth of Canadian theory and research on urban homicide is understandable, however, in light of a set of institutional and political barriers that make it extremely difficult for Canadian criminologists to gain access to the requisite data.

From the American experience, we know that the social distribution of homicide—the distribution of risk across social groups—is heavily influenced by race,¹ with African Americans, especially young African-American males particularly vulnerable to high levels of homicide victimization and offending. For example, although African Americans accounted for 13 percent of the U.S. population in 2005, they were victims in approximately half of the nation’s homicides. Furthermore, when African-American homicide rates are disaggregated by the sex and age of victims, we see extraordinary concentrations in the distribution of risk among young males (15–29) and that these killings were almost exclusively committed by other African Americans (93 percent) (Harrell 2007). We also know that clustering in the social distribution of homicide by race is mirrored spatially, such that neighborhoods that are

home to large numbers of poor, African-American residents tend also to experience high levels of lethal violence (Sampson 1987; Kubrin and Wadsworth 2003; Peterson and Krivo 2005; Xie 2010).

Little is known about the relationship between race and homicide in the Canadian context. Canadian justice agencies are loath to acknowledge and discuss the intersection of race, crime, and the criminal justice system—and this is perhaps most especially the case when it comes to violent crime. This “erasure of race” (Jiwani 2002) from criminal justice discourse and a concomitant ban on the release of racially disaggregated criminal justice data makes it very difficult for researchers in Canada to document and examine issues related to racial disparity in the risk of lethal violence. At the same time, however, the concept of race is commonly invoked in public and media discourse in Canada, perhaps most especially with respect to issues related to crime and violence (Mosher 1998; Henry and Tator 2000; Ezeonu 2008).

As a consequence, I find myself, a Canadian criminologist studying and teaching at an inner-city university in Toronto, exporting theory and research grounded in the American context to help understand what appears to be a similar social and spatial clustering of the risk of homicide among poor black Torontonians and the urban neighborhoods in which they live.² Doing so necessarily requires that I reiterate the important caveat that criminological research and theory on the African-American experience may—or may not—be helpful in understanding the experience of being poor and black in Canada and the ways in which this may shape the risk of lethal violence in Canadian cities.³ We simply don’t know—there are significant gaps in our knowledge base in this regard. It is likely, however, unwise to assume that there is a core urban “black” experience that transcends national borders, even if they are as economically and socially porous as that which separates Canada and the United States. An important first step toward building a more cross-national understanding of the connections between race and urban violence, then, is to document the existence and extent of racial disparity in homicide victimization outside of the American context. That is the purpose of this case study, which will examine the social and spatial distribution of black homicide in Toronto, Canada’s largest city, for the period 1988–2003.

The main conclusions of this case study include:

- Although the overrepresentation of blacks as homicide victims and offenders has received much empirical attention in the United States, the issue has received comparatively little academic and public policy consideration in Canada.
- The dearth of research on black homicide in Canada stems, in large part, from barriers to gaining access to official homicide data, in general, and racially disaggregated homicide data in particular. This makes it extremely difficult for researchers to document and examine, and for policy makers to address, the issue.
- As a consequence of the suppression of official criminal justice data on homicide, the news media plays a crucial role in constructing the issue of black homicide victimization and in shaping popular understandings of this violence in Canada.

- Research suggests that public policy responses are also shaped by media constructions of the causes and correlates of urban violence. This is concerning in light of the fact that news media coverage has been shown to negatively stereotype, criminalize, and misrepresent the black community. The development of effective violence prevention and control policies requires thorough and systematic empirical examination of the nature of the problem at which these policies are aimed.
- Cross-national research that examines the disproportionate risk of homicide experienced by disadvantaged minority groups holds great potential to expand the breadth and depth of criminological theory and research on urban violence and to contribute to a growing knowledge base of effective public policy aimed at violence prevention and control.

This essay begins with a discussion of what we know about black homicide in Canada, which, to date, is largely informed by the news media. The second section outlines the ways in which researchers in Canada may request homicide data and my experience with this process in Toronto. Given the de facto ban on the release of race-based criminal justice data in Canada, section III discusses the process by which I gathered information on the racial/ethnic background of victims and offenders in my sample. In section IV, I present an overview of my central findings, which highlight the perhaps ironic conclusion that despite the official silence on issues of race and violent crime in Canada, “race matters” for understanding the social and spatial distribution of black homicide victimization. The final section discusses directions for future research and major policy implications that stem from my findings.

I. WHAT WE KNOW ABOUT BLACK HOMICIDE VICTIMIZATION IN CANADA

Although race-based data on victims and offenders of violent crime, including homicide, are routinely collected and used internally by agents of the criminal justice system, in Canada these data are not made publicly available.⁴ There is, however, one exception: Aboriginal identity data is collected and disseminated (albeit not in an entirely systematic way) by many criminal justice agencies in Canada, due to what amounts to limited permission in a political culture that is otherwise not open to discussions of race and crime.⁵ This permission appears to stem from a collective understanding among researchers, policy makers, and others that a series of historic, social, and economic conditions have, taken together, played a key role in the overrepresentation of Aboriginal Canadians within the criminal justice system, as both victims and offenders (Brzozowski, Taylor-Butts, and Johnson 2006).⁶ As such, the vast majority of empirical evidence on the issue of racial disparity in homicide victimization is specific to Canada’s Aboriginal population.

Canadian research shows that although Aboriginal people constituted, on average, about 3 percent of the Canadian population between 1997 and 2004, they represented 17 percent of homicide victims in Canada (Brzozowski, Taylor-Butts, and Johnson 2006). We also know that the distribution of risk varies according to victim sex: between 1997 and 2000, the average victim homicide rate for Aboriginal males was 12.2 per 100,000 population, which was twice that of Aboriginal females (5.4 per 100,000), and almost seven times greater than the rate for non-Aboriginal male victims (1.8 per 100,000). The context for and characteristics of Aboriginal homicide victimization also differed from that of non-Aboriginals: Aboriginal homicides were more likely to involve stabbings (44 percent) or beatings (32 percent, compared to 27 percent and 22 percent, respectively, for non-Aboriginals); for the victims to know their killers; to involve alcohol or drug consumption on the part of both victims and accused persons; and, perhaps as a consequence, to involve victim precipitation (Brzozowski, Taylor-Butts, and Johnson 2006). This analysis suggests that Aboriginal homicide is different in a number of important respects from lethal violence among non-Aboriginal Canadians, which provides an empirical justification for the discrete examination of this particular group.

There is, however, one Canadian study that suggests that similar consideration ought to be extended to black Canadians. In an attempt to quantify the risk of homicide for blacks in Toronto, Canada's largest city, Gartner and Thompson (2004) found that blacks—in particular, young black males—are disproportionately represented as homicide victims and offenders, and these researchers argue that a specific set of political, social, and economic conditions, past and present, have shaped the quantity and quality of this violence. Since at least the early 1990s, the homicide rate per 100,000 blacks in Toronto averaged 10.1 (compared to an overall rate of 2.4), and the risk of this violence has become increasingly concentrated in Toronto's black community over time. Gartner and Thompson tie increases in black homicide over this period to a series of public policy decisions that undermined Toronto's educational system, social welfare system, public health system, and the infrastructure and cohesion of disadvantaged communities.⁷ Taken together, they argue that these findings highlight the need for research that racially disaggregates homicide rates in order to better understand the causes and correlates of this violence but also to inform decisions about the types of policies required to reduce homicide in Toronto among those at the greatest risk. Unfortunately, the de facto ban on the dissemination of race-based data has made it incredibly difficult for researchers to document and examine racial/ethnic disparity in risk of lethal violence in Canadian cities.

As a consequence of this official silence and the suppression of data on issues related to race/ethnicity and crime, Toronto-based news media play a crucial role in constructing the issue of black homicide victimization and in shaping popular understandings of this violence (Henry and Tator 2000, 2002; Ezeonu 2008). Media coverage on homicide in Toronto—particularly since the early 1990s—portrays it as a phenomenon that overwhelmingly involves young black males killing other young black males with handguns (Porter and Campbell 2001; Shephard, Sheppard, and Davis 2002). High levels of so-called black-on-black violence are variously attributed to drug- and gang-related

activity (Porter and Campbell 2001), the importation of a violent Jamaican subculture (Blatchford 2003), or rap culture that glamorizes and encourages the perpetration of a “thug” lifestyle (Rivers 2005; Wenthe 2005).

The news media has also increasingly acknowledged the importance of “place” in shaping the risk of homicide in Toronto, identifying a small number of “at-risk” neighborhoods that are thought to be rife “with the festering conditions that spawn and nurture violent crime” (James 2005). The discourse of pathology that characterizes much media discourse over poor, racialized urban neighborhoods in Toronto is in keeping with research that has long demonstrated that popular discourses over disadvantaged urban neighborhoods can produce deeply stigmatized and racialized spaces—thereby reproducing a stereotypical link between race, space, and serious violent crime in the public imagination (Purdy 2003; Wacquant 2007).

In a broader political climate that precludes an empirical examination of these issues, media constructions of violence involving the black community appear to be, for most Torontonians with little to no first-hand knowledge, an accurate depiction of reality. This is a problem, as news media coverage in Toronto, as elsewhere, has been criticized for constructing and shaping lay criminologies in public discourse over violent crime. In other words, studies demonstrate that media portrayals often simplify important and complex social issues into smaller problems that are viewed as the responsibility of individual people or the broader communities of which they are a part—rather than the result of flaws in the larger social structure (Henry and Tator 2000, 2002; Ezeonu 2008). Research has also suggested that public policy related to violence prevention and control is itself often informed by media portrayals of violent crime (Henry and Tator 2000; Ezeonu 2008). This is particularly worrisome in light of the fact that there are few empirical “checks” with which to balance media coverage of social and spatial concentrations in the risk of homicide in Canada. In what follows, I offer the results of my research on black homicide victimization in Toronto, along with directions for future research and policy implications, as a first step in this regard.

II. CASE STUDY: THE SOCIAL AND SPATIAL DISTRIBUTION OF BLACK HOMICIDE VICTIMIZATION IN TORONTO, 1988–2003

There are two main ways that researchers in Canada, in theory, can gain access to homicide data: (1) through the Canadian Centre for Justice Statistics (CCJS), a division of Statistics Canada, and (2) from individual police departments and coroner’s offices.⁸

Police services in Canada are legally mandated to provide information on all homicides that occur to Statistics Canada, via the CCJS. When a homicide becomes known to police, the lead investigating officer completes a “Homicide Survey,” which provides detailed information on the homicide event, the victim, and accused person(s),

if known. This information is then forwarded to the CCJS, where it is verified and catalogued in a national database. These data are then publicly disseminated via the production of reports and summary tables that document select aggregate (i.e. national-, provincial-, and territorial-level) patterns, trends, and characteristics of homicide offences, victims, and offender(s), as well as city-level counts and rates for select (usually recent) time periods. Raw data are not publicly available, nor are data for aggregations below the city-level. In sum, information on homicide in Canada that is produced for public consumption by the CCJS really provides little more than a broad-brush picture of lethal violence over short periods of time.⁹

Even if raw data on homicide in Canada were to be made publicly available, information on the race/ethnicity of the victims and offenders would, for the most part, be unavailable. Specific information on the racial/ethnic background of victims and offenders is only collected if they are of “Aboriginal origin” (i.e. Inuit, Metis, and First Nations) due to limited permission in a political and organizational culture that is otherwise not open to discussions of race, particularly if they also involve criminal victimization and offending. Further, the reliability of data that are gathered for Aboriginal groups is itself questionable; many police agencies in Canada refuse to report this information to Statistics Canada (Millar and Owusu-Bempah 2011). As such, although race-based data are routinely collected by police and other criminal justice agencies in Canada, they are not subsequently publicly or systematically disseminated.

More detailed information on homicide in Canada can be gathered from police and coroner’s files. The process to gain access to these files is, however, lengthy, and the success of such requests uncertain at best. In Canada, specific data requests must first be submitted, in writing, to the requisite public institution (the individual police organization, coroner’s office, etc.). Should requests submitted through such “normal access procedures” not be successful (due to, for example, organizational concerns over a variety of legal and privacy issues that often accompany the collection of “sensitive” data), researchers are required to file a Freedom of Information (FOI) request. Governed by the Freedom of Information and Protection of Privacy Act, this legislation provides individuals with a right of access to records and information under the custody or control of government ministries and agencies, including law enforcement. Yet this is not a straightforward process. In Ontario, for example, if the data requested from law enforcement agencies fall within the boundaries of a series of mandatory and discretionary exclusion categories (that again pertain largely to privacy issues), disclosure of these data can be (and often is) refused. If, on the other hand, a research request is ultimately successful, the researcher(s) will then enter into a legal agreement with that public institution, which will specify the terms and conditions under which these data can be collected.

A. Homicide Data Collection for This Research

In early 2004, I began the process of requesting, from the Toronto Police Service and the Office of the Chief Coroner of Ontario, files on all homicides in Toronto for the

period 1988–2003. The Toronto Police Service requested that I file a formal FOI request, and 3 years later, when the process was complete, I was permitted to begin data collection in the homicide squad's offices, with a research agreement that stipulated I not collect information on the racial/ethnic background of homicide victims and offenders and that I not share the data I collect with researchers outside of the immediate project. The Office of the Chief Coroner of Ontario, by contrast, processed my research request in-house (i.e., a more formal FOI request was not required), and, approximately 2.5 years after the initial request was made (and due to the length of time required to process that request), I began data collection at their offices in Toronto. The research agreement entered into with the Office of the Chief Coroner also expressly prohibited the collection of race-based information from their files.¹⁰

Data collection at the Toronto Police Service was on a full-time basis and took approximately 4 months; I worked out of the Chief Coroner's Office for about 1 year on a part-time basis. From the files of both organizations, and for each case, I collected demographic information on the victim and accused person(s) (including sex, age, employment status, job type, drug/alcohol use at the time of the killing, prior criminal record, number of children, marital status, etc.), situational characteristics of the homicide (including the motive, method, address of and circumstances surrounding the killing, weapon type, etc.), and case disposition outcomes, where available. I also wrote a short narrative that summarized the incident description that was included in these reports.

A crime reporter at the *Toronto Star* provided me with a list of all homicides that had occurred in Toronto over the period of examination, including the name of the victim, the date, and location of the killing. Using an electronic newspaper search engine, I collected comparable information on victims, offenders, and the homicide incident, and wrote a short summary of the coverage. The newspaper coverage also enabled me to collect data on the racial/ethnic background of victims and, where possible, offenders; I relied on newspaper reports and photographs of victims and accused persons that were printed as part of those reports, assigning persons to an admittedly crude and overaggregated "black/nonblack" classification scheme. I was, however, able to cross-check my racial classifications against a list of black homicide victims over much of the period of investigation that was compiled by Toronto's Black Action Defense Committee, preferring their classifications in the two cases in which there was a discrepancy. It is impossible to overemphasize my acknowledgment that assigning race in this way is fraught with the potential for misclassification and missing data, but, given institutional policies in Canada that ban the release of race-based statistics, there was no other alternative.

B. Data and Measures

The homicide data collected from these three sources were pooled over a 16-year period of examination in order to have a sufficient number of homicides with which to perform multivariate analyses.¹¹ From this larger dataset, I selected out killings involving black victims ($n = 225$). Table 15.1 provides descriptive statistics for selected victim, incident,

Table 15.1 Characteristics of homicides involving black victims in Toronto, 1988–2003 ($n = 225$)

Victim Sex ($n = 225$)	
% Male	83
% Female	17
Victim Age ($n = 979$)	
Mean Victim Age	27
% 1–15	7
% 16–24	40
% 25–34	39
% 35–44	8
% 45+	6
Victim Marital Status ($n = 195$)	
% Single (never married)	61
% Married (including common-law)	25
% Separated/Divorced (including common-law)	13
% Other ¹	1
Victim Employment Status ($n = 200$)	
% Employed	36
% Unemployed	37
% Student	20
% Other	7
Victim–Offender Relationship ($n = 136$)	
% Friends/Acquaintances	34
% Strangers	27
% Intimate partners	13
% Illegal relationship	10
% Other ²	13
Offender Sex ($n = 150$)	
% Male	95
% Female	5
Offender Age ($n = 141$)	
% 0–15	1
% 16–24	46
% 25–34	37
% 35–44	11
% 45+	6

(Continued)

Table 15.1 *Continued*

Offender Race (<i>n</i> = 10)	
% Black	92
% White	6
% Other	2
Location of Killing (<i>n</i> = 225)	
% Residence	34
% Public	29
% Stores, bars	19
% Semi-public	8
% Car	7
% Other	3
Method of Killing (<i>n</i> = 225)	
% Shot	64
% Stabbed	24
% Beaten	7
% Strangled/Suffocated	2
% Other ³	3

¹This category includes widowed, living together for a short time (less than 1 month), or off-and-on for short periods.

²This category includes housemates/roommates, neighbors, legal business relationships, co-workers, lovers' triangles, family, and foster children.

³This category includes death by poisoning, arson, drowning, thrown or pushed from height, scalding, neglect, hit by car, overdose, and unspecified means.

and offender characteristics of black homicides (*n* = 225) in Toronto's neighborhoods between 1988 and 2003.

Over this period, the majority of black homicide victims (83 percent) were males and young people. For example, 47 percent of victims were under the age of 24, with an additional 39 percent in the 25–34 age category. In other words, approximately 90 percent of all black homicide victims were under the age of 34 (the mean age was 27), which makes them younger than victims of homicide in Toronto more generally¹² and mirrors the marked concentrations by age and sex in the American context. A large proportion of black victims were also unmarried and unemployed.

My dataset also contains information on a variety of incident characteristics, including the relationship between victim and offender (when known), the location of the homicide, and the method of and apparent motivation for the killing. Approximately one-third (34 percent) of black homicides involved friends/acquaintances (compared to 25 percent of total homicides in Toronto over the period of examination), 27 percent

involved strangers (vs. 21 percent of total homicides), 13 percent involved male or female intimate partners (vs. 19 percent), and 10 percent involved illegal relationships (vs. 8 percent). In terms of location, 34 percent of black homicides occurred in a private residence (compared to 48 percent of total homicides in Toronto); 29 percent in public spaces (vs. 21 percent)—for example in streets, parks, or parking lots; 19 percent of black homicides occurred in stores and places of leisure (vs. 15 percent), such as bars and restaurants; and 7 percent of victims were killed in a vehicle (vs. 4 percent). The use of firearms figures prominently in black homicides; 64 percent of these killings involved a gun, compared with 35 percent of total homicides over the period of examination.

My ability to document characteristics of black homicide offenders is greatly constrained by missing data. This is, in part, a function of the fact that, for 33 percent of these cases in my dataset, no information on the offender was available. As such, the following statistics should be interpreted with an understanding that a considerable amount of data is missing for offenders. Perpetrators of homicides involving black victims in Toronto were overwhelmingly young black males. Of the cases in which an offender was identified, almost half were people under the age of 24 (the mean age was again 27), 95 percent were male, and 92 percent were black. This is consistent with the larger literature on homicide, which shows that the characteristics of homicide offenders are typically very similar to those of homicide victims and that most homicides are intraracial (Silverman and Kennedy 2004). In other words, as in the American context, it is the case that young black males tend to be killed by other young black males in Toronto. I now turn to an examination of the geography of this violence.

III. THE SPATIAL DISTRIBUTION OF BLACK HOMICIDE VICTIMIZATION IN TORONTO

Each of the 965 homicides that occurred in Toronto between 1988 and 2003 was geocoded to one of 140 “neighborhoods,” based on the location of the killing, because I am interested in neighborhood contexts that generate violence events, not violent people.¹³ Again, I selected out those homicides involving black victims for analysis ($n = 225$). Figure 15.1 provides a geographic representation of the distribution of homicides involving black victims across Toronto’s neighborhoods between 1988 and 2003 ($n = 225$).¹⁴

Over this period, 111 neighborhoods (79 percent) experienced a black homicide rate that fell between 0 and 1.2 per 100,000 population (59 of which experienced no incidents of this violence); 20 neighborhoods (14 percent) experienced a rate of 1.2–2.4, five neighborhoods (4 percent) experienced a rate of 2.41–3.6, and four neighborhoods (3 percent) experienced a rate of 3.61 to 6.02. This is consistent with U.S.-based research that has found that high levels of African-American homicide tend to be concentrated in a small number neighborhoods located in the inner-city. In Toronto, black homicide is similarly

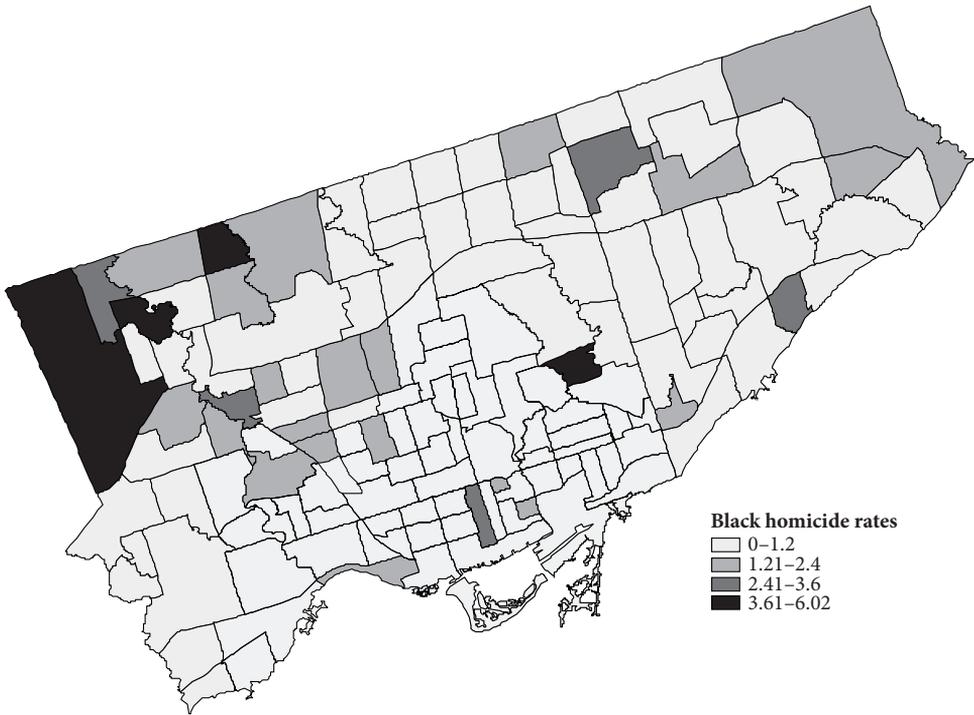


FIGURE 15.1 Homicide in Toronto's neighborhoods involving black victims, 1988–2003.

concentrated in a small number of neighborhoods, although the majority of neighborhoods that experience the highest rates of black homicide (i.e., 3.6–6.2 per 100,000) are located on the western fringe of the city. These neighborhoods, dubbed “inner cities on the outer edges” (Wente 2004), are illustrative of a trend toward the increased concentration of poverty in neighborhoods that ring the city center (United Way of Greater Toronto and Canadian Council on Social Development 2004; Hulchanski 2006), of which one consequence appears to be high levels of lethal violence.

IV. MEASURING NEIGHBORHOOD CONTEXT FOR BLACK HOMICIDE VICTIMIZATION IN TORONTO

My independent variables encompass the “usual suspects” that have had the greatest theoretical and empirical significance in the broader literature on neighborhoods and homicide. Because my period of examination spans 16 years, I combined measures of neighborhood characteristics in Toronto from four censuses (1986, 1991, 1996, and 2001) and averaged them to produce one score for each of the independent variables. To measure socioeconomic disadvantage, I use five variables often included in the

Table 15.2 Characteristics of 140 neighborhoods in Toronto, averaged across four censuses (1986, 1991, 1996, 2001)

	Mean	Minimum	Maximum	Standard Deviation
% Black	5.7	0.4	19.8	4.63
% Low Income	21.2	4.5	69.6	9.43
% Young Males	16.0	10.7	25.6	2.58
% Movers	45.4	28.2	74.4	8.35
% Unemployed	7.2	3.6	17.2	2.02
Avg. Hhold Income	\$56,484	\$22,637	\$223,232	\$24,245
% Lone Parents	17.5	7.3	44.8	5.24
% Gvt. Transfers	10.9	2.4	29	4.18
% Owners	51.0	1.44	94.6	18.30
% Rct. Immigrants	2.8	0.24	10.9	1.93
Average Population (nonlogged)	16,610	6,330	45,559	7,243

U.S.-based literature on neighborhoods and homicide, either singly or as a composite index: median family income, the percentage of the neighborhood's total income that was composed of government transfer payments, the percentage of neighborhood residents defined as low income by Statistics Canada, the percentage of neighborhood residents aged 15 and older who were unemployed, and the percentage of households in the neighborhood headed by either a male or female lone parent.¹⁵ Other measures of neighborhood characteristics included in the analyses are the percentage of neighborhood residents who identified their ethnic origin as black,¹⁶ the percentage of neighborhood residents aged 5 and older who had changed residences in the past 5 years, the percentage of dwellings in the neighborhood lived in by their owners,¹⁷ the percentage of neighborhood residents who immigrated to Canada within the last 10 years, and the percentage of neighborhood residents aged 15–24. I also include the logged population of the neighborhood as an offset variable.

Table 15.2 presents descriptive data on my independent variables and demonstrates that there is substantial variability among Toronto's 140 neighborhoods on the social, economic, and demographic characteristics I have measured. For example, only 1.4 percent of residents in one neighborhood owned their own homes, compared with 95 percent in another; the percentage of families headed by a lone parent ranged from 7 to 45 percent; and the average household income in Toronto's poorest neighborhood was \$22,637, compared with \$223,232 in the wealthiest. As such, we can see that Toronto, the self-proclaimed "city of neighborhoods" also appears to be a city of great disparity across them.

In Table 15.3, I report the bivariate correlations between my measures of neighborhood characteristics and the number of black homicides in each neighborhood. Black

Table 15.3 Pearson correlation coefficients among neighborhood characteristics and homicides with black victims in Toronto ($n = 140$), 1988–2003

Disadvantage Index	.44**
% Black	.66**
Residential Stability Index	-.22*
% Young Males	.26**
% Recent Immigrants	.4**

** $p < .01$

homicide victimization is significantly and moderately/strongly associated with the proportion of black residents (.66), recent immigrants (.40), and the level of disadvantage in the neighborhood (.44),¹⁸ and significantly, but only weakly correlated with the proportion of young residents (.26), and the residential stability index (-.22). Thus, neighborhoods with higher levels of economic disadvantage and larger numbers of young, black, and recent immigrant residents tend to experience higher levels of black homicide victimization, whereas those characterized by residential stability typically experience lower levels of this violence. I next examine whether the relationships observed in the bivariate analysis are mirrored in the multivariate analysis.

V. “NEIGHBORHOOD EFFECTS” AND BLACK HOMICIDE VICTIMIZATION IN TORONTO: MULTIVARIATE ANALYSIS AND RESULTS

In this analysis, I use negative binomial regression, the most appropriate model for my data, which are overdispersed. An important consideration when analyzing spatial data is to measure and assess the degree of spatial autocorrelation, or dependency, among observations in a geographic space. The program ArcGIS 902 was used to carry out the Moran’s I test for spatial autocorrelation. The results indicate the presence of spatial autocorrelation; I therefore add a spatial lag to the regression model to capture the effect of neighboring locations.

The results of my multivariate analyses, presented in Table 15.4, indicate that the percentage of neighborhood residents who are young (15–24) and black are positively and significantly associated with black homicide victimization; none of the other measures

**Table 15.4 Negative binomial regressions:
neighborhood characteristics and homicides with black victims ($n = 140$)**

Disadvantage Index	.039 (.054)
% Black	.177*** (.040)
Residential Stability Index	.008 (.008)
% Young People 15–24	.159* (.071)
% Recent Immigrants	.057 (.066)
Spatial Autocorrelation Coefficient	-.018 (.114)
Intercept	-8.660
Log Likelihood	207.815

*** = $p < .001$

** = $p < .01$

* = $p < .05$

Note: Standard errors in parentheses. Unstandardized parameter estimates presented.

of neighborhood characteristics is significantly associated with black homicide at the multivariate level. I now turn to a discussion of possible explanations for these results.

VI. DISCUSSION

Perhaps ironically in a country that is uncomfortable with official discussions of “race” and crime, only one of my measures of neighborhood characteristics—percent black residents—is associated with black homicide victimization in Toronto. This finding differs from a number of American studies that show that percent black is associated with homicide at the bivariate level, but not when measures of poverty are included in the multivariate model (Messner and Tardiff 1985; Sampson 1985), and begs the question why.

One answer is that a compositional effect is in operation. In other words, in neighborhoods with a preponderance of black residents, one would expect that a larger proportion of victims would also be black. Yet there might also be contextual effects at play that may help to explain why there is an association between the proportion of black residents in a neighborhood and black homicide victimization. A number of studies suggest that high rates of crime and violence in disadvantaged neighborhoods may be explained with reference to the emergence of local cultural adaptations that privilege violence as a means of status attainment or conflict resolution (Horowitz 1983; Fagan and Wilkinson 1998; Anderson 1999). These social norms that develop in response

to structural disadvantage are especially applicable for understanding violent crime among young, racialized males who, it is argued, are more likely to internalize and act upon the dictates of these “street codes” in their neighborhoods. It may be the case that such codes are operating in Toronto’s neighborhoods and that they represent an intervening mechanism that may give rise to higher risks of homicide among black Torontonians.

A second and complementary explanation of the relationship between my percent black measure and lethal violence in Toronto’s neighborhoods involves a consideration of the experience of being poor and black in Canadian society. Studies demonstrate that a high proportion of black youth perceive that Canadian society generally and the Canadian criminal justice system in particular discriminate against them (Ruck and Wortley 2002). In response to this perceived discrimination, some may develop a set of cultural values or norms that justify or excuse the use of violence. To the extent that perceptions of injustice in Canadian society have created a sense of social and legal inequality among young black males in Toronto, violence may also become part of a repertoire of behaviors for coping with the problems in their lives.

The perception that one’s racial or ethnic group faces discrimination in the school setting and later in the labor market may also prompt some to seek alternative, and illegal, sources of income. Drug markets, which are often controlled by local gangs, may offer such an opportunity to people who feel that they have few to no options in the legitimate sphere. If it is the case that, due to perceptions of inequality in the opportunities available to them, some young black males in Toronto are more likely to become involved in gang- and drug-related activity than are young men from other racial/ethnic groups, levels of violence, including homicide, among this group would necessarily be higher.

In sum, then, cultural values that emerge in response to perceptions of injustice in Canadian society may operate in tandem with the rational choice to carry a weapon for the purposes of protection and/or status attainment, and/or to seek alternative sources of income in the illegal economy. These so-called cultural adaptations to structural inequalities may be useful for understanding why neighborhood racial composition seems to matter for understanding high levels of black homicide in Toronto’s neighborhoods. As will be discussed next, additional research into the microlevel processes that give rise to higher levels of lethal violence among black Torontonians would also be helpful in interpreting my results.

VII. POLICY IMPLICATIONS

Perhaps the most obvious research-related policy implication that stems from this study pertains to the limited access that researchers in Canada have to homicide data and data on the racial/ethnic background of homicide victims and offenders. As previously discussed, these data are collected and catalogued in a number of official capacities, but

they are not subsequently made available to researchers for analysis. Such policies hinder the development of theory and research on homicide that is more cross-national in scope. So, too, does the absence of data that would allow researchers to document racial disparity in violent victimization. Although criminal justice agencies in Canada routinely collect and internally use race/ethnicity-based data, these data are not made publicly available. Yet these data are crucial to measuring the existence and extent of racial/ethnic disparity in violent victimization and in establishing measures against which the efficacy of programs and policies designed to address the problem may be assessed. I therefore reiterate the important caveat that, in order to be effective, violence reduction policies must be implemented with an empirical understanding of the problems they are designed to prevent or control. This necessarily requires that researchers in Canada be granted access to official data on violent victimization—including that which is disaggregated by race/ethnicity.

A second policy implication that stems from this study lies in its utility to assist in the identification of neighborhoods vulnerable to high levels of lethal violence, for anticipatory intervention initiatives. However, one of the most difficult challenges for practitioners and policy makers interested in reducing levels of black homicide victimization in Toronto may lie in determining what not to do (Doob 2004). A common intervention in high-crime urban neighborhoods involves intensive “targeted” law enforcement strategies. Research, however, suggests that although these interventions may sometimes have positive short-term effects, they generally do not reduce crime and violence in the long term (Cohen, Gorr, and Singh 2003; Rosenfeld, Fornango, and Baumer 2005). Studies also suggest that in neighborhoods where relationships between residents and the police are already strained, aggressive policing strategies may not only further undermine those relationships but may also serve to increase local levels of violent crime (Walker 1992). Residents of disadvantaged urban neighborhoods typically articulate that the police are overly aggressive in their interactions with local residents and with their use of coercive power more generally, which can exacerbate alienation and conflict between the two groups. As a consequence, neighborhood residents may choose to bypass agents of the formal system altogether, relying instead on informal methods to redress interpersonal disputes (Anderson 1999; Kubrin and Weitzer 2003; Kane 2005). In addition, studies suggest that decreases in perceived police legitimacy may be associated with reactions of defiance and reduced compliance with the law (Tyler 1990). As such, increased levels of violent crime in some disadvantaged neighborhoods may stem, in part, from enforcement activities that undermine the police as a legitimate institution of formal social control (Tyler and Wakslak 2004; Kane 2005). Given the evidence suggesting that police crackdowns and related tactics are unlikely to have long-term beneficial effects, it would appear that caution should be exercised in assuming that no harm could come from such activities.

On the other hand, studies have shown that concentrating more general public health interventions in urban neighborhoods—for example, building neighborhood-level social and economic capital, increasing levels of community cohesion, and promoting collective action among residents—may have important declining effects on local levels

of crime and violence (Bursik and Grasmick 1993; Sampson 1997). As such, it may be that more general policies that address social and structural deficits hold the most promise for a long-term reduction in homicide in Toronto's black community. For example, school-based programs that encourage youth to become involved in and committed to school have a number of beneficial effects, including a reduction in levels of violent offending among "high-risk" youth (Smith, Lizotte, and Thornberry 1995). Social programs designed to improve pre- and postnatal care, enhance parenting skills, and otherwise promote healthy children and families can also have important crime prevention effects (Howell and Hawkins 1998; Tremblay and Japel 2003). In the long run, such programming may also be more cost effective than heavy-handed law enforcement interventions aimed solely at preventing and reducing crime and violence. This is because crime prevention and reduction initiatives, which typically fail to address the structural "root causes" of crime, tend to focus on one possible benefit: an immediate reduction in crime. Focused public health interventions, however, have the potential to achieve multiple benefits, including but not limited to a reduction in local levels of crime and violence over the long term.

VIII. DIRECTIONS FOR FUTURE RESEARCH

The findings from this study offer a first step in understanding black homicide victimization outside of the American context. In so doing, the findings prompt both additional questions and new directions for research. In this final section, I briefly discuss two.

The first involves exploring the microlevel processes that give rise to high levels of black homicide in Toronto's neighborhoods, which would require the greater incorporation of qualitative methodologies into social ecological research. For example, as discussed earlier, it may be the case that "street codes" are operating in Toronto's neighborhoods and that they represent an intervening mechanism that give rises to higher rates of violent crime among young black males who, it is argued, are more likely to internalize and act on the dictates of these codes. It is, however, crucial that this not be assumed given the very different history and legacy of racism experienced in Canada that has given rise to the social and economic conditions within which poor, urban blacks live and the issues that face their communities. Rather, whether and the extent to which microlevel processes identified in the U.S.-based literature apply in the Canadian context must be empirically demonstrated.

Finally, for the most part, attempts to examine "racial" disparity in homicide victimization are confined to the North American context. This is because, with a small handful of European exceptions, only the United States collects and reports race/ethnicity-based criminal justice data, whereas in Canada these data are often collected but not publicly disseminated. In most European and Scandinavian nations, conversely, there is no concept of "race" in the administrative and criminal justice registers that are

used to produce statistics. Instead, there are extensive records on immigration status and/or nationality, which themselves are not collected in the North American context. Thus, although it is obviously not possible to make cross-national comparisons of “racial” disparity in homicide victimization outside of the North American context or of this disparity by immigration status/nationality outside of the European context—there is much to be learned about disparity in the risk of this violence among disadvantaged minority groups (i.e., relative to majority groups) in Western nations more generally. In this respect, cross-national research holds great potential to provide valuable theoretical and empirical information to policy makers and academics interested in urban homicide, policy interventions, and disadvantaged populations in Canada and around the world.

NOTES

1. In this paper, I use the term “race” while acknowledging it is a socially constructed concept that does not exist in the world in any ontologically objective way. However, the concept of race carries with it very real social, economic, and political consequences, which means that it matters in a number of important respects, including in shaping the risk of violent victimization and offending.
2. Research on racial self-designation has demonstrated that the label “African American” is increasingly preferred among black Americans (Ghee 1990; Sigelman, Tuch, and Martin 2005), whereas in Canada, the current self-label preference is “black” or “black Canadian” (Boatswain and Lalonde 2000). It may be interesting to note, however, that many of my nonblack students refer to blacks in Canada as “African Americans,” which suggests that the politics of black identity in Canada are informed in important ways by the American context (Boatswain and Lalonde 2000).
3. There are reasons to expect that there would be both similarities and differences in the Canadian black experience when compared to that of African Americans. Reasons to expect similarities include porous borders, the U.S. cultural influence, and deeply embedded racial resentments and animus that are characteristic of both countries (although perhaps more pronounced in the United States), past and present. At the same time, lower levels of poverty concentration and residential segregation in Canada, combined with a larger and better quality public housing stock, universal health and unemployment insurance programs, and a variety of family support programs may have resulted in a better quality of life for low-income black Canadians relative to their American counterparts.
4. It should be noted that “race” data are seldom recorded by state agencies and less often reported. Canada is an outlier in this regard among English-speaking countries, but is in the mainstream of developed countries.
5. As Roberts and Doob (1997, pp. 489–90) argue, “unlike crimes involving other groups within Canadian society, there seems to have been little political concern within the Aboriginal community or within the criminal justice policy community about public discussion of apparently higher rates of Aboriginal crime.” This has led to the production of official statistical reports on criminal offending that “could not have been written about any group in Canada other than Aboriginal people.” In other words, although the collection and dissemination of racially disaggregated criminal justice data is routine with respect to

Aboriginal Canadians, it is forbidden and widely regarded as politically incorrect for other racialized groups.

6. As Rudin (2005) argues, three explanations have typically been advanced as significant causal factors in the literature on Aboriginal overrepresentation in the Canadian criminal justice system: (1) culture clash, which emphasizes the discrepancies between Aboriginal and Western concepts of justice (Sinclair 1994; Ross 1995); (2) socioeconomic conditions that see Aboriginal Canadians living in conditions of extreme socioeconomic and political deprivation (Rudin 2005); and (3) the impact of colonialism (Royal Commission on Aboriginal Peoples 1995*a*, 1995*b*). These topics have been addressed in depth by Canadian scholars and are outside the scope of this essay, although interested readers should look to the works cited here for additional information.
7. There is a growing literature in Canada that uses qualitative methodologies to provide a more in-depth analysis of the interrelated social, political, and economic circumstances that may have prompted a set of negative outcomes, including higher rates of violent victimization and offending, among some segments of the black population in Toronto (see for example, Galabuzi 2006; Ezeonu 2008).
8. In Canada, there are ways that university-affiliated researchers may gain access to data for social science, health, and policy research. For example, the Toronto Region Statistics Canada Research Data Centre (RDC)—a research facility funded by three Ontario universities and the federal government—houses a series of core datasets available to researchers affiliated with the funding universities, access to which usually requires a formal application process and background check. Currently, the only data on violent crime that are available through the Toronto RDC are of the self-report variety, which is, for obvious reasons, not useful to researchers examining homicide victimization. In the early 2000s, there was some movement toward the implementation of a pilot project that would facilitate the release of data from the Homicide Survey to researchers via the RDC, although, to date, there is no evidence of any movement on that front.
9. In the United States, hospital admission data for intentional injury and vital statistics on deaths are used to test the reliability of police and victim data. In Canada, researchers can access the Canadian Vital Statistics Death Database to verify official criminal justice data, but, as is the case in Canada more generally, information on the racial/ethnic background of victims is not provided. As such, it was not possible for me to use this database to gain additional insight into black homicide victimization in Canada.
10. I did, however, have many off-the-record conversations with coroners and senior police officers who emphatically stated their belief that the current ban on the release of racially disaggregated criminal justice data in Canada is greatly hindering a proper examination of an important public health issue. But, given the institutional stalemate in this regard, they argued “no organization is prepared to be the first to blink.” The suppression of these data is thought by many to be rooted in efforts on the part of criminal justice agencies to avoid the controversy inherent in linking race and crime, a topic that tends to be a political hot potato in Canada. Some have even argued that the language of “high-crime” or “at-risk” neighborhoods that pervades official discourse on violent crime in Toronto is used as a metaphor for communicating notions of race, thereby using geographic space to allude to a very specific subset of the black community (usually young black males), which itself is inextricably linked to high

levels of violence in the public imagination. This is consistent with Canadian research that demonstrates that media portrayals and official discourse communicates race and racism by “omission” or strategic absence (Jiwani 2002). Put simply, when it comes to official discourse over serious violent crime in Toronto, the concept of “race” is often the proverbial elephant in the room.

11. I chose a starting point for the analysis that made practical sense. That is, I required a time period that would include a sufficient number of homicides to perform analyses of total and disaggregated homicide counts in Toronto’s 140 neighborhoods and one that corresponded with several Canadian censuses from which to obtain and average information on neighborhood characteristics. The end point for this study, however, was determined solely by Toronto Police Service (i.e., I was granted access to their files up to and including December 31, 2003).
12. By comparison, over the period of examination, 59 percent of total homicides in Toronto involved victims under the age of 34, and the mean victim age was 34.
13. These neighborhood delineations used in this research were constructed by Toronto’s Social Policy and Research Unit, based on social service areas defined by main streets, former municipal boundaries, and/or natural and manmade boundaries, such as rivers or highways. They were also chosen as they reduced the city’s 531 census tracts to a more manageable 140 neighborhoods.
14. There are a number of standard classification methods used to map quantities—in this study I used the equal interval class break method, which divides the range of values into equal-sized subgroups. The major advantage of this classification method lies in its ease of interpretation; other methods (such as natural breaks) are not always easily understood by map users, and the class breaks (range intervals) may not be intuitive. I did, however, group the highest two classes together in a custom classification technique, due to the small number of cases in each class break.
15. Including each of these measures separately in my multivariate model could create problems due to multicollinearity. To deal with this, I conducted a principal components factor analysis on my measures of socioeconomic disadvantage and my measure of lone-parent families; these variables are not only highly associated, they also load on a single factor, which I label a “disadvantage index.”
16. The percent black measure, which figures prominently in prior research on neighborhood effects and lethal violence, was excluded from the aforementioned factor analysis despite its strong correlations with the five measures of economic disadvantage. My choice to retain the racial composition of Toronto’s neighborhoods as a separate indicator in my analyses stems from Rosenfeld et al.’s (1999, p. 502) assertion that “[r]ace is conceptually distinct from ‘disadvantage,’ and treating them as attributes of the same dimension confounds attempts at untangling their distinct influences on levels of violence in a community.”
17. In keeping with U.S.-based research (e.g., Kubrin 2003; Browning et al. 2010), I created an index of “residential stability” that combined measures of population turnover and home ownership.
18. In other analyses (not reported here), the five measures of economic disadvantage (percent low income, percent unemployed, average household income, percent lone parents, and percent government transfer payments) are all highly correlated with each other: their intercorrelations range from $-.64$ (median family income and lone-parent families) to $.93$ (low income and unemployed residents). Including each of these separately in my

multivariate models could create problems with multicollinearity, so I conducted a principal components factor analysis; all measures of economic disadvantage load on a single factor, which I label an “economic disadvantage index.”

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PART III

ETHNICITY, CRIME, AND
IMMIGRATION IN THE
UNITED STATES

CHAPTER 16

THE POLITICS OF IMMIGRATION AND CRIME

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AMERICANS have long believed that immigrants are more likely than natives to commit crimes and that rising immigration thus leads to rising crime. This belief is remarkably resilient to the evidence that immigrants are no more likely than natives, and in most cases much less likely than natives, to commit crimes. Undocumented immigrants are called “illegal aliens” and many, if not most Americans believe that it is a crime to exist in the United States as an undocumented immigrant.¹ Most Americans also believe that these undocumented immigrants cause crime to increase in areas where they settle. Politically, these beliefs have resulted in three consequences—negative attitudes toward immigration and political mobilization of groups like the Tea Party, support for local ordinances that seek to criminalize undocumented people and those who would help undocumented people, and a growing trend of treating people in detention for immigration violations in the same way as criminals, blurring the line between detention centers and prisons.

These contemporary consequences have strong historical roots in xenophobic political discourse, which was often the buffer for major anti-immigrant policies excluding the flow of immigrants to the United States for several decades. However, the association between crime and immigration exists solely in the political discourse; when researchers evaluate the available data, immigrants demonstrate the exact opposite trend (see Sampson [2008] for a review). The weak (and generally nonexistent) empirical relationship between immigration and crime is nevertheless rivaled by the persistent and overwhelming public opinion that immigrants do in fact cause or, at the very least, increase the possibility of crime. Is this because most Americans believe that “illegal immigrants” are by definition criminals? Or because Americans believe that immigrants tend toward criminal activity more than natives, net of an immigrant’s legal status? These questions are in many ways difficult to answer because of a lack of available public opinion data, as well as a lack in administrative records regarding what criminal activity immigrants actually commit, with a full knowledge of the person’s immigration status and country of origin.

In spite of the declining number of illegal entries to the United States, recent punitive state laws, as well as the dramatic rise in deportations, point toward the need to examine the role of politics in shaping immigration policies, particularly when the notion of criminality is concerned. Because local policing agents are often tasked with the job of identifying and apprehending undocumented immigrants, it is crucial to explicate the relationship between immigration and crime.

We explore the myth of immigrants' propensity toward crime and the reasons why both ordinary Americans and scholars have believed it over time. Then we discuss the political consequences of this belief—the laws and social policies that have been enacted to cope with the supposedly criminal aliens. We also discuss the growth of undocumented immigrants in the United States in the past two decades and describe how this trend feeds into the mistaken notion that immigrants cause crime, while also discussing the implications for incarceration and detention practices in the United States. We conclude with the following points:

- The stereotype of the criminal immigrant is historically rooted in political discourse and surfaces in contemporary politics and attitudes; this stands in contrast to the empirical evidence that does not find a strong link between immigration and crime.
- These attitudes not only shape immigration policies, but also criminal justice and welfare policies pertaining to the rights and protection of all groups, especially immigrants.
- Immigration policy has transformed since 1965; the past 50 years—an era that also included rapid social changes—ushered in a new economy of postindustrial urban decline, rising incarceration rates, and a new politics of punitive criminal policy. These changes have had wide-ranging implications for immigrants, particularly in that immigrants are becoming the targets of criminal and antiterrorist policies.
- Policy changes arguably result from the public opinion that there is a positive, causal link between immigration and crime, which is reflected in contemporary state policies.
- A major lesson from an examination of the politics of immigration and crime is that, without a presentation of clear evidence to the public about the empirical relationship between immigration and crime, misinformation and stereotypes will continue to inform and pervade policies and practices. Thus, we strongly urge that policy makers and researchers provide accurate information about immigrant criminality to help dispel this widely believed and incorrect assumption.

I. THE STEREOTYPE OF THE CRIMINAL IMMIGRANT: PAST AND PRESENT

One of the oldest social science hypotheses in the United States is that immigration is a disorganizing force resulting in unwanted social problems, particularly violent crime.

This matches a common and persistent stereotype—the notion that immigrants are more likely to be criminals than are natives, and, therefore, immigration causes crime to increase (Lee, Martinez, and Rosenfeld 2001). For instance, California's Proposition 187, a law designed to crack down on undocumented immigrants explicitly stated, "the people of California . . . have suffered and are suffering economic hardship [and] personal injury and damage caused by the criminal conduct of illegal aliens in this state" (Rumbaut et al. 2006). Numerous scholars over the past century have examined this hypothesis, using theoretical analysis and empirical tools to test the mechanisms linking immigration and crime. Although scholarly research across disciplines has largely established that immigration inversely relates to crime rates throughout various historical and social contexts in the United States, public opinion and social policy reflect the mistaken belief that immigrants are more likely to participate in criminal behavior than are natives (Lee, Martinez, and Rosenfeld 2001; Rumbaut et al. 2006).

The stereotype of the criminal alien has deep historical roots. Common stereotypes of immigrants in the late 19th and early 20th centuries were that they were much more likely to be criminals than were the native born. Immigration to the United States was virtually unrestricted throughout the 18th and early 19th centuries. One of the very first laws that established federal control of immigration was the Page Act in 1875, and it specifically excluded criminals and prostitutes from admission. The first comprehensive law for national control of immigration, the Immigration Act of 1891, added felons and persons convicted of other crimes and misdemeanors to the list of people inadmissible to the country. This reflected the belief of many law makers that other nations were encouraging convicts to emigrate.

The criminal stereotype applied to a number of different ethnic groups. The term "paddy wagon," slang for a police van, began as an ethnic slur against the criminal Irish in the mid-19th century. Stereotypes about Italian Americans focused on organized criminal activity and the mafia, but all southern and eastern European immigrants were commonly thought to bring crime to America's cities. Social scientists such as Thorsten Sellin (1938) attributed these supposedly higher crime rates to the cultural conflict thought to characterize immigration. Immigrants were thought to be torn between two cultures, which led to a loosening of social norms. They were generally poor, and their neighborhoods were thought to be highly disorganized and anomic. Harwich (1912) cites the words of the superintendent of the state prisons of New York, "A large proportion of the vicious and ignorant . . . make the large cities their headquarters. Thus there is forced upon New York State and upon its charitable and penal institutions more than their due proportion of the undesirable classes of immigrants: the lawless, the illiterate, and the defective" (p. 478). A crime threat was one of the chief reasons cited by law makers who passed the Immigration Act of 1924. The 1911 Dillingham Commission held hearings leading to the sharp restriction of immigration; it concluded that federal laws had not prevented the entry of convicted criminals and proposed strengthening restrictions. The American Bar Association issued a statement in 1916 on the relationship between immigration and crime, "the volume of crime in the United States is disproportionately increased by immigration, and that, in consequence to reduce crime, immigration must

be reduced” (Abbott 1916, p. 116). This proposes a causal link between immigration and crime, one with direct implications for both policy and political discourse.

Although the image of the criminal alien was very common, empirical investigations at the time questioned the link. In an 1896 article published in the *American Journal of Sociology*, Hastings H. Hart, General Secretary of the National Conference of Charities and Correction, wrote:

The foreign-born population furnishes only two-thirds as many criminals in proportion as the native born; that while it is true that the native-born children of foreign-born parents as a whole furnish more criminals proportionately than those whose parents are native born, yet in more than half of the states the showing is in favor of the children of the foreign born; that the combined ratio of prisoners of foreign birth and those born of foreign-born parents to the same classes in the community at large is only 84 percent of the ratio of native-born prisoners to the same class in the community at large. *It is true that these propositions are contrary to the popular impressions, and contrary to the apparent showing of the census on a superficial view* (emphasis added). (pp. 369–70)

Hart’s study provided empirical evidence to contradict the popular notion that immigrants and the children of the foreign born participate in crime at higher rates than the native-born population. He was not alone. Other sociologists and criminologists questioned the empirical reality of the link between immigration and crime and also worked to identify exactly what mechanisms (if any) explained a relationship between immigration and crime.

Taft writes, “It was therefore an achievement for the National Commission on Law Observance and Enforcement (the Wickersham Commission) to have demonstrated that the popular view of the role of the immigrant in crime is grossly exaggerated if not altogether erroneous” (1933, p. 70). Referring to the Commission’s 1931 “Report on Crime and the Foreign Born” and the unfavorable political climate toward immigrants, Taft nevertheless accuses the Commission of a pro-alien bias within the report—what he argued was a latent sentimentality toward immigrants unfairly painting them in a favorable light.

The early Chicago School extensively studied and theorized about immigrant experiences. These seminal works by Park, Burgess, and McKenzie (1925), among others, discussing immigration and social disorganization led to specific studies about the nexus between immigration and crime (Kobrin 1951; Suttles 1968). There are at least three strands of sociological theory that inform empirical study of the crime–immigration nexus: social disorganization, cultural, and strain theories (for an extensive review, see Thomas [2011]). Taken together, these three theoretical traditions inform most contemporary studies of immigration and crime.

Social disorganization theory, regarding immigration and disorder, posits that diversity within a given locale often hinders collective community functions and certain kinds of social control, since racial and ethnic relationships are fraught with durable tension and conflict. Putnam (2007) carries this argument into the 20th century, arguing

that diversity may hinder social capital and social relations, causing individuals to “hunker down” and fail to engage in social relations both within and across groups, although Putnam does not make any claims about a link between diversity and crime.

Cultural theories proposed by Sellin (1938) and later Shaw and McKay (1972) argue that crime is in large part the direct result of cultural contradictions and conflicts (Thomas 2011). Sellin’s work focuses on the immigrant experience of being thrust into a milieu in which norms and cultures clash, particularly when rural immigrants find themselves in a cosmopolitan city setting. This is the basis for Shaw and McKay’s work, which discusses how cultural heterogeneity, brought on by influxes of immigrant groups, produces high levels of disorder via the weakening of social ties and informal social control.

Finally, strain theories proposed mainly by Merton (1938) are pertinent to the immigration–crime nexus. The general theory suggests that individuals who adhere to socially acceptable material goals within a society but are deprived of the means to achieve those goals will more likely partake in criminal activity and deviance. Immigrants may experience an increased pressure (more than the native born) to succeed under circumstances that limit their ability to do so, which in turn may produce higher than expected crime rates.

Yet the theories explaining the link between immigration and crime continue to lack strong empirical foundation. Current researchers have reexamined the theoretical link between immigrants and crime proposed by policy makers in the early 20th century. Identifying several methodological flaws in the turn of the century commissions on immigration and crime, Moehling and Piehl (2010) use time-series data from prison censuses between 1904 and 1930 to question the link between immigration and crime. They found that, in 1904, prison commitment rates for serious violent offenses were comparable between native and non-native born persons, except for 18- to 19-year-olds, where immigrants were more likely to offend. However, by 1930, commitment rates among the foreign born remained stable over the period of study, and the commitment rates of the native born began to sharply increase. In a current working paper, these authors examine individual-level data within the same time period and have preliminary results suggesting that the likelihood an immigrant was incarcerated increased with time spent in the United States, and, moreover, the children of immigrants—i.e., the second generation—had incarceration rates that were the same or even higher than those of their peers with native parents. They also find that the odds of incarceration were lower for immigrants who arrived in the 1920s, post-immigration restrictions and quotas, than for those who had arrived earlier (Moehling and Piehl 2011). They attribute several possible confounding and often-neglected factors, such as immigrant self-selection, to account for variation in the inverse relationship between immigration and crime. The early theories of Merton, Sellin and Shaw, and McKay are therefore not supported. Immigrants are far less likely than natives and than their more assimilated children to commit crimes.

The attitudes just described that associate immigration with crime persist into the present day. Despite the fact that the past 20 years have been marked by

Table 16.1 Will immigrants to the United States make the crime situation better, worse, or not have much effect?

	Better (%)	Worse (%)	Not Much Effect (%)	No Opinion (%)
2007 (Total)	4	58	34	4
Whites	2	63	31	2
Blacks	3	52	40	5
Hispanics	11	41	41	7
2004	6	47	43	4
Whites	4	49	45	2
Blacks	5	44	45	6
Hispanics	12	44	36	8
2002	8	50	37	5
Whites	6	52	37	5
Blacks	9	49	37	5
Hispanics	18	41	34	7
2001	7	50	38	5
Whites	5	54	37	4
Blacks	9	44	41	6
Hispanics	12	47	33	8

Source: Gallup, 2001–2007.

significant decreases in crime rates along with large influxes of new immigrant populations (Sampson 2008), polling data during this period show that Americans believe that immigration increases crime.

Table 16.1 displays multiyear polling data by Gallup asking the following question: “Will immigrants to the United States make [the crime situation] better, worse, or not have much effect?” In 2001, before September 11, 50 percent of all respondents believed that immigrants would worsen the crime situation. By 2007, that number reached 58 percent, with 63 percent of whites believing immigrants would worsen the crime situation in the United States. An interesting fact is that from 2001–2002, black respondents were the only racial group to see a rise in the belief that immigrants would worsen the crime situation, from 44 percent to 49 percent. By 2007, 52 percent of blacks believed immigrants to the United States would worsen the crime situation.

In 3 years of the General Social Survey, 1996, 2000, and 2004, respondents were asked a variant of the question: Do immigrants cause crime to increase? The following histograms depict the variation in response. Figure 16.1 displays the responses for 1996. In 1996, 7.5 percent of respondents strongly agreed, and nearly 26 percent agreed; thus,

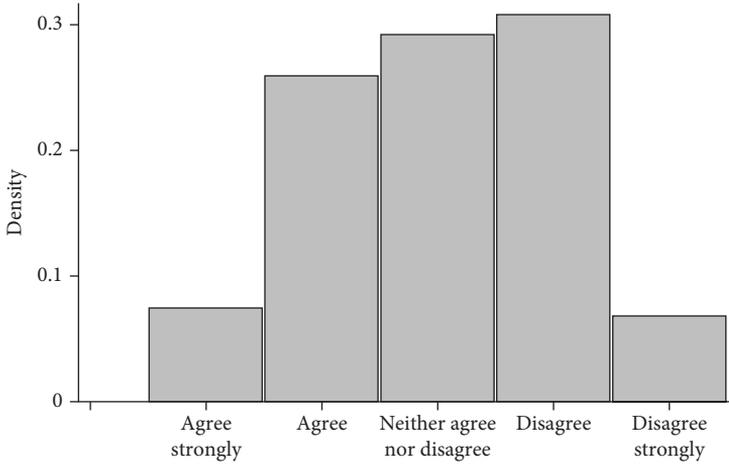


FIGURE 16.1 Do immigrants increase crime rates? (1996)

Source: General Social Surveys, 1972–2006

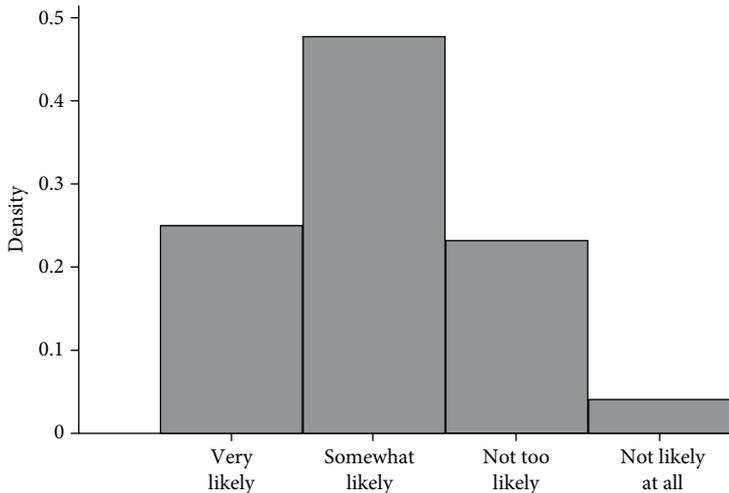


FIGURE 16.2 Do more immigrants likely cause higher crime rates? (2000)

Source: General Social Surveys, 1972–2006

a third of respondents believed that immigrants would increase the crime rate in the United States.

Figure 16.2 displays the responses from 2000. Although phrased differently from 1996 (“Do more immigrants cause higher crime rates?”), the responses change dramatically. In 2000, a quarter of respondents said it was “very likely” that an increase in immigration would cause higher crime rates. An overwhelming 48 percent said it was somewhat

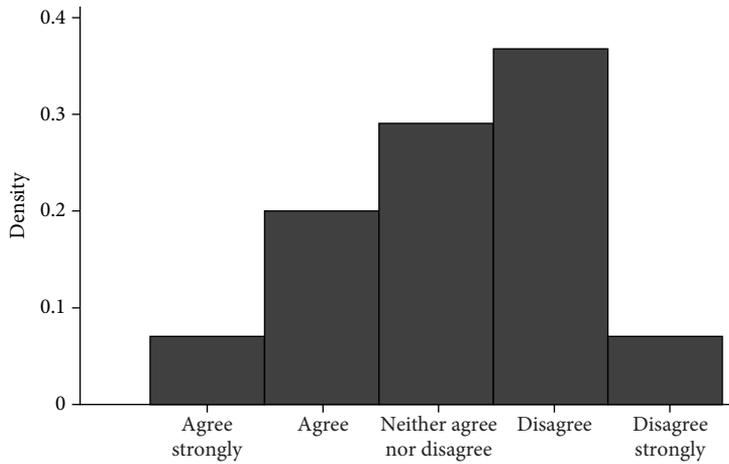


FIGURE 16.3 Do immigrants increase crime rates? (2004)

Source: General Social Surveys, 1972–2006

likely, which means 72 percent of all responses in 2000 thought more immigrants were likely, if not very likely, to cause higher crime rates.

Figure 16.3 displays the same responses to the question posed in 1996, but here in 2004. There seems to be a slight shift in the attitudes toward immigrant criminality here. Seven percent of respondents strongly agreed immigrants increase crime rates, and 20 percent agreed, which is a 6 percent decrease from 1996.

What accounts for these differences in attitudes? It is difficult to compare the data from 2000 to the 1996 and 2004 samples because the wording of the question changed. For example, perhaps it is not the mere existence of immigrants, but the notion of “increase” of immigrants that presents the criminal threat to respondents. The flow of immigrants through the metaphorical floodgates often discussed in political discourse conjures greater fear than the already settled immigrant groups. Respondents from 1996 may have shown a greater bias against immigrants because the survey was conducted at the height of the Clinton administration’s anti-immigrant legislation.

Another Gallup question addressed whether illegal immigration and providing aid to illegal immigrants should be criminal, and how changes to immigration law might affect overall crime rates. Respondents were asked in a 2006 Gallup poll: “Should illegal immigration be a crime, and moreover, should aiding/providing assistance to illegal immigrants be a crime?” Sixty-one percent of respondents said illegal immigration should be a crime, and 52 percent of those polled said it should be a crime to provide assistance to illegal immigrants.

These polling data suggest that Americans tend to conflate illegality and criminality, and moreover continue to associate immigration with increased social disorder and crime. Republicans and whites have the strongest beliefs in the relationship between immigration and crime, although Democrats and nonwhites overwhelmingly support this assumption.

Table 16.2 Should the U.S. government make the following a crime

	Yes, should (%)	No, shouldn't (%)	No opinion (%)
Illegal immigration	61	35	4
For U.S. citizens to provide assistance to people they know are illegal immigrants?	52	43	5

Source: Gallup, 2006.

The data from Table 16.2 indicate that the belief in a causal relationship between immigration and crime crosscuts political and social divides that often predict public attitudes in the United States. This explains the often wide-ranging public support for criminal justice that is not clearly supported by a single party, economic bracket, or racial group (Western 2006). These attitudes greatly influence policies, and, as we will discuss, have shaped not only immigration policy, but also criminal justice and welfare policies.

II. POST-1965 IMMIGRATION AND CRIME

The politics of recent decades pertaining to crime and immigration are preceded by major shifts in the economic, demographic, and sociopolitical landscape of the postwar United States. In short, these changes included rapid deindustrialization, large increases in immigrant populations after the passage of sweeping immigration reform in 1965, the growth of a large undocumented immigrant population in the 1990s and 2000s, and a dramatic shift toward a punitive criminal justice policy. As a result, attitudes toward both social welfare and public safety reflected a new law-and-order politics and an intensified resentment toward those—particularly immigrants—who in the eyes of voters were not entitled to social benefits (Gilens 1999; Western 2006). Welfare reform and immigration reform came together in 1996 with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This Clinton-era law transformed national welfare policy by ending Aid to Families with Dependent Children (AFDC) and replacing it with work requirements and temporary aid for needy families (TANF). It also established restrictions on the eligibility of legal immigrants for means-tested public assistance and broadened the restrictions on public benefits for illegal aliens and nonimmigrants. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act also had far reaching effects on both immigrants and benefits—increasing the ability of the government to deport both criminals and undocumented people and further restricting access to government benefits.

In addition, the growth of undocumented immigrants complicated the politics of immigration and crime. For many Americans “illegal immigrants” are by definition criminals because existing in the United States without proper documentation is often considered to be a criminal act. Yet the reality of how undocumented immigrants are treated by the law is much more complex. Historically, the regulation of immigration has been a civil, not a criminal matter. The Supreme Court ruled in 1893 in *Fong Yue Ting vs. United States*, “the order of deportation is not punishment for a crime.” The current situation is a complex mix of legal requirements and administrative flexibility, but the key point is that most undocumented people are never caught by Homeland Security, and most people who are caught are not charged with a criminal offense.

It is estimated that between 30 and 50 percent of undocumented immigrants are people who entered the country with a legal visa but overstayed it. They thus did not enter the country illegally, and although they are unauthorized, they are not guilty of a crime. Among people who did cross the border illegally, even if they are caught, most are not charged with a criminal offense. As Redburn, Reuter, and Majmundar (2011) summarize in a National Academy of Science report, people who are caught having crossed the border without authorization can be dealt with primarily in three ways: they can be offered voluntary departure, they can be formally removed from the country through standard removal process or accelerated removal, or they can be criminally charged with either criminal entry into the United States (a misdemeanor) or criminal reentry into the United States (a felony). Although many people, both researchers and lay people alike, describe the process of expelling people from the United States as “deportations,” the legal term for this process is now “removal.”

Those who are offered voluntary departure are usually people found within 100 miles of the Mexican border. They “voluntarily” agree to be taken back over the border, and they are released with no further sanctions or charges. They do not see an immigration judge, and the decision to remove them comes from Department of Homeland Security (DHS) personnel. Those who are formally removed can be ordered removed by DHS personnel (accelerated removal), or they can see an immigration judge who issues the ruling (standard formal removal). They are kept in detention until the formal ruling by the judge and then they are immediately taken over the border. If they are formally removed, a record is kept of that ruling, which has serious implications if they are apprehended crossing the border again.

The third option is that an individual can be charged with criminal entry or criminal reentry. These people are seen before a magistrate or district court judge, they are criminally charged, and their detention is paid for by the Department of Justice, not the DHS.

Aside from being apprehended at the border, the other way in which undocumented people are found in the United States is through screening by local police during arrests or by screening by prison or local jail personnel. These programs (Secure Communities or 287(g)) can also lead to voluntary return or accelerated or standard removals. Many people apprehended for crimes that are not serious (speeding, driving without a license) are offered voluntary departure, at the discretion of the Customs and Border Patrol personnel.

Undocumented immigrants who are deported are not being punished; they do not have “criminal” trials but rather “administrative hearings.” They are not allowed the protections of criminal law—the right to a lawyer, the right to a warrant before the police can search them, or other aspects of due process. Currently, it is a civil matter to overstay a visa, a misdemeanor to illegally enter the country, and a felony to reenter the country after having been caught here illegally and deported. Chacon (2009) argues that the vastly increased use of deportation and the internal enforcement of immigration law created the worst of all worlds for undocumented people. They are kept in detention and they are brought before administrative judges, but they are not given the due process protections that people charged with a crime are afforded. The increasing “criminalization” of undocumented immigrants is reflected in increased deportations and tougher policies at the state and federal level, but, legally, most of these deportations are not technically punishments for crimes. Redburn, Reuter, and Majmundar (2011) report “about 90 percent of deportable immigrants located since 1980 have been allowed voluntary return” (p. 48). People who have been convicted of serious crimes, including aggravated felonies, drug offenses, terrorism, or crimes of moral turpitude are considered inadmissible to the United States; they are not allowed voluntary departure and are formally removed. Nevertheless, removal, whether voluntary, accelerated, or standard is a civil proceeding, not a criminal one. People are not guaranteed due process or access to a lawyer, even though they can be detained for long periods, sometimes in state and local jails, but most often in federal “detention facilities” until they are removed.

Removals have been increasing since the 1996 Immigration Law and since greater attention to border security following the attacks of September 11, 2001. Removals averaged 22,000 per year in the 1980s; 79,000 per year in the 1990s; and 238,000 per year during the 2000s. Removals in fiscal year 2011 reached an all-time high of 396,906 (Redburn, Reuter, and Majmundar 2011, p. 52). These represent some of the largest numbers of deportations or removals in the history of the United States, despite historically decreasing numbers of estimated illegal entries to the United States.

When political entities declare war on a particular social or political problem (i.e., poverty, drugs, or terror), the resultant shifts in the policy domain tend to disproportionately impact marginalized groups. After September 11, 2001, particular attention to the criminalization of immigrant groups as part of national security policy went into effect, giving federal and state jurisdiction increased power to surveil immigrants through new legal tools presented by the PATRIOT Act and other policies at the state and federal level for immigrant detention and deportation (Schriro 2009). Although the desire for border control and nativist policies that target immigrants existed before September 11, 2001, the political will to implement changes in how immigrants are treated was strengthened in the aftermath of the attacks, and a number of new laws and administrative rules were created.

Because the hijackers who perpetrated the attacks on the United States had entered the country legally but overstayed their visas, the question of border control and undocumented immigrants in the United States was tied to antiterrorist legislation. Congress and the president reacted to the 9/11 attacks by passing the PATRIOT Act in October

2001. The PATRIOT Act allowed for indefinite detention of noncitizens suspected of terrorism and created a streamlined process to deport suspected noncitizen terrorists (Rosenblum 2011, p. 5).

A few months later, Congress also passed the Enhanced Border Security and Visa Entry Reform Act (EBSVERA). This act set up the National Security Entry–Exit Registration System (NSEERS). Male immigrants from 25 countries were required to register annually with the government and provide biometric data and in-person interviews.

The post-9/11 period led to an administrative change that affected immigration—the creation of the DHS and the replacement of the Immigration and Naturalization Service with the Immigration and Customs Enforcement agency. These post-9/11 changes created new ways in which legal immigrants were treated substantially differently than citizens and created new limitations on people seeking visas to visit the United States, particularly if people came from states suspected of anti-American terrorist activities. Politically, these restrictions were made possible by the conflation of immigrant and terrorist crimes in both the political rhetoric of the time and in the debates on the floor of the Congress.

The belief that being in the United States without papers is a crime has contributed to the increased treatment of undocumented immigrants as criminals and a blurring of the line between immigration enforcement and criminal law enforcement. This period of rapid social change ushered in both a new economy of postindustrial urban decline and a new politics of punitive criminal policy, effects of which remain far-reaching today. Next, we review the politics of this era of mass incarceration, rising legal immigration, and rising undocumented immigration and the subsequent shifts in immigration policy.

III. THE POLITICS OF MASS INCARCERATION AND MASS IMMIGRATION

The United States experienced unprecedented increases in the U.S. prison population in the past five decades. According to the Bureau of Justice Statistics (2010) on December 31, 2010, state and federal correctional authorities had jurisdiction over 1,612,395 prisoners, and in 2010, 7.1 million adults were under some form of correctional supervision. This quantity demonstrates a rise of over 500 percent in 25 years (Bureau of Justice Statistics 2010). These rates of incarceration began in the mid-1970s but took dramatic hold in the 1980s and early 1990s (Western 2006). Western (2006) outlines the political regime—a largely nonpartisan shift in criminal justice policy—leading to the massive increase in incarceration, particularly among low-skilled, low-income minority men.

Incarceration rates were increasing at the same time that immigration was also rapidly increasing. The Immigration Act of 1965 (also known as the Hart Celler Act) fundamentally changed American immigration rules and created the basic structure

of immigration law still in place today. Before 1965, immigration from the western hemisphere (Latin America and the Caribbean) was unlimited, and there were also racially based quotas for countries from the eastern hemisphere that severely restricted immigration from most countries, allowing large numbers of immigrants only from Northern and Western Europe. The 1965 law ended racial quotas and gave every country in the world a similar quota. It also allowed for unlimited family reunification above the per country quota. The law thus allowed immigration from Asia and Africa in appreciable numbers for the first time. At first, immigrants came under the occupational visas subject to numerical quotas, however family reunification soon led to large flows from throughout the developing world. Immigration to the United States grew rapidly, and the sources of immigrants also changed. Before 1965, most immigration was from Europe. Following 1965, most immigrants were non-European and defined in the United States as nonwhite. By 2010, figures from the U.S. Census Bureau's American Community Survey show that the foreign-born population totaled 39.9 million people, 13 percent of the population. Another 33 million people (11 percent of the total population) were second generation, the children of at least one foreign-born parent. By 2010, only 12 percent of the foreign-born were from Europe, 2 percent were from Canada, 53 percent were from Latin America, 28 percent from Asia, and 5 percent from the rest of the world (Greico et al. 2012). Thus, a visible, nonwhite immigration flow was coming to the United States at the same time that the number of people in prison was growing at a very fast rate.

The 1965 law also limited immigration from the western hemisphere for the first time. This turned a long-standing circular immigration pattern from Mexico to the United States into an illegal immigration flow and created the problem of "illegal immigration" because the need for Mexican workers continued unabated, especially in agriculture, and the pressure for emigration from Mexico and other countries in Central America also continued and grew (Massey, Durand, and Malone 2002). By 1986, the numbers of undocumented people were large enough that a legalization program was passed that ultimately regularized the status of 2.3 million people. But the forces leading to undocumented immigration continued, and the numbers of people crossing into the United States also continued. Beginning in the 1990s, the problem of undocumented immigrants gained sustained national attention, and a number of restrictive pieces of legislation were introduced, including Prop 187 in California in 1994, a bill that denied undocumented immigrants health care, education, and other public services and required providers to report suspected undocumented persons to authorities. Although it passed with a 58.9 percent majority (Jones 1994), it was later struck down as unconstitutional in the same year it passed.

In addition to the actual increase in undocumented people, the attention of the news media was disproportionately focused on illegal as opposed to the much larger flows of legal immigrants. Roberto Suro (2011, p. 11) reports, "an analysis of 1,848 Associated Press stories on immigration topics from 1980 to 2007 showed that 79 percent fit into the framework on illegality. Of 2,614 stories on immigration in the *New York Times* over the same period, 86 percent dealt with illegality in various forms." It is no wonder then

that the majority of Americans erroneously believe that most immigrants to the United States are undocumented.

The growth in incarceration and the growth in immigration intersected, and the numbers of immigrants behind bars rose. By 2009, a reported 94,498 immigrants were held in federal and state prisons (Schuck 2011). Peter Schuck (2011) estimates that more than 25 percent of federal prisoners are immigrants, as well as 4 percent of state prisoners.

A number of factors therefore came together at the turn of the century to convince most Americans that immigrants were causing increases in crime in the United States. These include the long-standing stereotype that immigrants are more likely to be criminals than are natives; the stereotype associating nonwhites with crime, together with the growth in the Latino population; the real growth of immigrants in the nation's prisons; the actual growth in undocumented "illegal" immigrants; and the disproportionate attention paid to illegal immigration and criminal immigrants in the press. There is only one problem with the conclusion that immigrants are causing crime—it is not true.

Numerous contemporary studies have estimated the relationship between immigration and urban violent crime in the United States (Butcher and Piehl 1998; Martinez 2000; Lee, Martinez, and Rosenfeld 2001; Reid et al. 2005; Butcher and Piehl 2007; Piehl 2007; Ousey and Kubrin 2009; Bersani 2010; Leerkes and Bernasco 2010; Stowell et al. 2010; Wadsworth 2010). With the exception of the work by Piehl and other economists who focus on factors such as self-selection, all of these studies find that immigration inversely relates to crime rates. Using a wide range of methods, data, and levels of aggregation, these studies also find that the crime drop observed between 1990 and 2000 can partially be explained by increases in immigration. Economists have largely argued that the available empirical work fails to consider how legal immigrants are screened for prior criminal history prior to entry into the United States. Moreover, they contend, the almost certain probability for both legal and illegal immigrants of deportation if convicted of a crime may act as a major deterrent for criminal behavior among immigrant groups (Piehl 2007).

The relationship among immigration status, race, and incarceration is highly complex. It is widely documented that members of dispossessed groups (particularly African Americans) are disproportionately represented in the prisoner population (see Western 2006) and that Latinos are the most rapidly increasing population in the prison system today (Morin 2010). As Rumbaut et al. (2006) note, few studies have attempted to relate patterns of incarceration and immigration. Is it simply that minority groups with low skills and education are at risk for incarceration? Does immigration have an effect on incarceration patterns for the native population? Borjas et al. (2006) found that immigration patterns can partially explain the increased rates of incarceration among African Americans due to the job shortages for native-born blacks. However, because most data on prisoners are presented by race or by nativity status but not by the intersection of the two, there are empirical gaps in our knowledge of this issue. Future studies may wish to address the issue of mass incarceration and immigration by considering how non-native and native-born persons within the same racial categories compare in criminal justice outcomes.

Hagan and Palloni (1999) examine the factors that have led many Americans to believe that Hispanics, and most especially Mexicans, are overrepresented in crime and in the prison population. Because young males are overrepresented among immigrants, Hagan and Palloni point out that any comparison of prison populations that does not control for the age of the population as a whole would be misleading. Because young males are the most likely group to commit crimes and to serve time in prison, any group that is concentrated in that age range would be overrepresented in crime statistics. They also point to the fact that immigrants are much more likely to be held in pretrial detention when they are arrested and charged because they represent more of a flight risk than natives and because, once they are arrested for a crime, their immigration status is investigated. This would lead to greater numbers of Hispanic immigrants being held in confinement than natives. They also note that pretrial detention is known to lead to a greater chance of conviction and imprisonment, thus leading to a greater likelihood that an immigrant who commits the same crime would be more likely than a native to end up in prison, all else equal. They conclude that “the growing proportions of noncitizens in prison populations, especially Hispanic and Mexican immigrants, had much more to do with the increased entrance into the United States of disproportionately young immigrants and their vulnerability to pretrial detention, conviction, and imprisonment, than with the over-representation of crime among immigrants. None of this is apparent from prison statistics alone . . . which have become the primary lens through which growing concerns about immigration and crime are filtered in the 1990s” (Hagan and Palloni, 1999, p. 620).

In addition, Hagan and Palloni identify another factor that could lead to the erroneous belief that immigrants are more likely to commit crimes. In 1994, the Violent Crime Control and Law Enforcement Act began to reimburse states and localities for the costs of incarcerating illegal aliens. This led to an acute interest on the part of state and local officials to identify any undocumented people in the system. There followed an increase in the “reported” number of undocumented aliens in state and local prisons, not necessarily an actual increase in the numbers during the late 1990s. Of course, this was also a period of rising undocumented immigration, so probably both trends were contributing to an increase in recorded and reported numbers of incarcerated undocumented Hispanic immigrants.

The other popular belief in the 1990s and 2000s was that immigrants, and especially undocumented immigrants, were heavily involved in the drug trade. A bestselling book by Peter Brimelow, *Alien Nation*, tied the increase in crime in the 1990s to increased immigration and asserted that “immigrants dominate the drug business in the U.S.” (Brimelow 1995, p. 183). This stereotype continues today. Governor Jan Brewer of Arizona stated in 2010, “we all know that the majority of people coming into Arizona and trespassing are now (becoming) drug mules.” In an examination of the causes of arrests of noncitizen legal immigrants and of undocumented immigrants in El Paso and San Diego, Hagan and Palloni find that there is no evidence for the widespread belief in recent decades that immigrants are much more likely to commit crimes related to the drug trade than are natives. In fact, they conclude that “drug crime is not characteristic

of legal immigrants, and is actually uncharacteristic of illegal immigrants,” who are, in fact, most likely to be arrested for property crimes.

IV. UNDOCUMENTED AS CRIMINALS

Following the legalization program of IRCA in 1986, the numbers of undocumented immigrants began to grow again as the need for unskilled labor in the United States continued and the numbers of people applying as unskilled workers for legal immigration from Mexico and other parts of Latin America far outstripped the supply of visas. In the 1990s, as the economies of the United States and Mexico became more integrated, especially after the passage of the North American Free Trade Agreement (NAFTA) in 1994, the numbers of undocumented people in the United States grew, and they began to disperse into “new destinations” outside of the West and Southwest (Massey, Durand, and Malone 2002). Growing public attention paid to this population, as well as concerns about terrorism following the first World Trade Center attack, led to the passage of a number of restrictive laws in the 1990s that targeted both legal and illegal immigrants. The net effect of these laws was to create what Kanstroom (2007) described as a system of “post-entry social control” and Buff (2008) has described as “deportation terror.” Although deportations of those apprehended trying to cross the border had been growing, beginning in the mid-1990s, authorities began trying to find undocumented people already living and working in the country. This lends a whole new meaning to the concept of “crime and immigration.” According to the DHS, in 2000, there were 188,000 removals, but by 2009, that number reached 395,000, and 387,000 in 2010 (U.S. Department of Homeland Security 2009). The criminalization of being undocumented has led to new methods of identifying undocumented people, new systems of detention throughout the country, and mass deportations unseen before in U.S. history.

The 1996 Illegal Immigration Reform and Responsibility Act (IIRIRA), the 1996 Anti-Terrorism and Effective Death Penalty Act (AEDPA), along with the 2001 PATRIOT Act laid the legal groundwork for mass deportations of undocumented immigrants, as well as greatly increasing the ways in which legal immigrants who are not yet citizens must be deported if they are convicted of a felony. The 1996 Immigration and Nationality Act (INA), which was part of IIRIRA, contained the controversial section 287(g), which authorizes state and local police to screen people for immigration status, to detain them until the federal government takes custody, and to generate the charges that will result in their removal from the country. At first, few local jurisdictions agreed to the program, but, over time, more signed up. As of 2011, there were 72 local governments signed up, 65 of which signed on after 2006. The rise in detention and deportation of immigrants resulting from these laws has led to a blurring of the line in practice between “criminals” and “illegals.”

The IIRIRA of 1996 broadened the definition of “aggravated felony” that justifies deportation of immigrants, both documented and undocumented, and expanded the

categories of noncitizens eligible for deportation (Hagan, Rodriguez, and Castro 2011). The 1996 AEDPA removed judicial review for most categories of immigrants subject to deportation. The PATRIOT Act of 2001 further increased the power of the federal government by allowing the federal government to apprehend, detain, and deport immigrants who are deemed a threat to national security. Since then, deportations have risen dramatically; from 2001 to 2009, the number of deportations more than doubled (U.S. Department of Homeland Security 2009).

In 2003, the INS was replaced by the Bureau of Immigration and Customs Enforcement. The INS had been under control of the Justice Department. The new bureau (referred to as ICE) was put under the control of the newly formed DHS. ICE saw its mission as apprehending, detaining, and deporting “criminal and fugitive” noncitizens (Kanstroom 2007). They launched three programs that aimed to identify whether undocumented people had broken the law and if they were in state or local custody. The Criminal Alien Program (CAP) places ICE officials at state prisons to conduct immigrant screening. The Secure Communities program has set up a joint database between the Federal Bureau of Investigation (FBI) and ICE into which local police can enter the fingerprints of people they arrest. The 287(g) program delegates the federal power of immigration enforcement to state and local personnel. It authorizes state and local law enforcement to screen people for immigration status, detain them until they can be transferred to federal authorities, and allows state and local authorities to generate the charges that will lead to removal of the unauthorized people (Capps et al. 2011, p. 17). Although all three programs involve integrating state and local law enforcement with the federal immigration enforcement system, 287(g) is the only program in which state and local authorities can make immigration-related arrests.

The 287(g) program is controversial. As Capps and colleagues (2011) argue, the program has been unclear both in the initial guidelines that set it up and in statements by members of the Obama administration about whether it is designed to focus on capturing immigrants who have committed felonies and other serious crimes or whether it is designed to capture the greatest number of ordinary undocumented immigrants. They write, “Public statements by the Secretary of Homeland Security and the Assistant Secretary for Immigration and Customs Enforcement have emphasized the program’s focus on ‘dangerous criminals’ but also highlighted its usefulness in identifying and removing large numbers of unauthorized immigrants” (Capps et al. 2011, p. 1). Although the program is portrayed as targeting criminals, Capps and colleagues analyzed ICE data on people apprehended through the program and found that only half of those apprehended through the program had committed felonies or other crimes deemed serious by ICE; the other half were people who had committed misdemeanors such as traffic offenses. The program is controversial because many local police and politicians believe that it reduces community cooperation with the police and because the fear it instills in immigrant communities also makes people less likely to report crimes to the police. As a result, a number of big-city mayors have refused to sign 287(g) agreements with ICE or to accept the program in their cities.

In their study of the implementation of the 287(g) program, Capps and colleagues find a great deal of variation in how local communities institute the program. Some adopt a targeted approach, focusing on apprehending ICE's top enforcement priorities—"national security threats, serious or dangerous criminals (i.e., felons), and other threats to public safety, as well as noncitizens with existing orders of removal" (Capps et al. 2011). Other local communities, particularly those in the South, characterized as "new destinations," having seen steep increases in the number of immigrants in recent years, have adopted a "universal" approach to enforcement. This means that they try to find every unauthorized immigrant they can and detain and deport them. Capps et al. argue that this yields public safety benefits because they attribute crime to undocumented immigrants and believe they are removing them before they have a chance to commit crimes.

The program designed to catch "dangerous criminals," defined by a 2007 ICE fact sheet to be people involved in "violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling, and money laundering" evolved into one based on finding every undocumented person happened in those jurisdictions where immigration was a politically sensitive and visible issue. This is especially true in the Southeast, where immigration has been increasing rapidly in areas that had no previous experience with immigration. Behind the whole program was the false idea that undocumented immigrants were disproportionately behind criminal activity. Politically, many local officials used that fear of crime and the 287(g) program to create a climate of fear and intimidation that would lead to "self-deportation" among undocumented people afraid of being caught.

The result of these laws and programs is an unprecedented number of deportations each year, averaging 400,000 people per year. In 2009, only 35 percent of the deported population had criminal convictions, in 2010, 50 percent did; although 23 percent of those criminal convictions were for misdemeanor offenses, some of which were immigration-related crimes such as repeated illegal entry (Capps et al. 2011, p. 6). The number of people detained by ICE has risen greatly since 1994, when there were 6,785 beds available per night, to 33,400 in 2008.

When people are detained for immigration violations, either through detection by ICE officials, through local police in the 297(g) program, or after an arrest on another charge and a screening for immigration status, they are held before it is decided whether they should be deported. It is important to note that people who are criminal aliens and who are convicted of a crime serve their criminal sentence before they come into ICE custody. Yet people who have not committed any serious crimes are often held for long periods of time in the immigrant detention system. The detention system consists of agreements (intergovernmental service agreements [ISGAs]) between ICE and state and local prisons to house people, a system of privately run contract detention facilities (CDFs), and ICE-run detention centers (called Service Processing Centers [SPCs]). A recent study by Kerwin and Lin (2009) of the Migration Policy Institute using ICE data obtained through a Freedom of Information Act request found that 58 percent of the 32,000 detainees in custody as of January 29, 2009 did not have any criminal record.

Four hundred people who had no criminal record had been held for over a year. They found that “the most serious convictions for 20 percent of criminal aliens in ICE custody were for traffic-related (13 percent) and immigration-related (6 percent) offenses” (Kerwin and Lin 2009). The most common criminal conviction of those in detention was driving under the influence of alcohol. Nevertheless, these detainees were primarily held in facilities designed for people who have committed serious crimes—70 percent were in state and local prisons, 17 percent in contract detention facilities, 10 percent in SPCs, 2 percent in federal prisons, and 3 percent in “soft” detention centers, such as medical centers or shelters.

The detention system is administered by officers of the ICE Enforcement and Removal Operations (ERO) program. In their job description, ERO “identifies and apprehends illegal aliens, fugitive aliens, and other criminal aliens; manages cases in immigration proceedings; and enforces orders of removal from the United States” (U.S. Department of Homeland Security 2011, p. 2). In a 2009 report ICE acknowledged the “penal” nature of detention and issued promises to revamp the system so as to make it more “civil” (“Fact Sheet: 2009 Immigration Detention Reforms”).

In addition to being held for unspecified periods in prisons and other detention facilities, people who are detained also suffer other abuses and indignities. A Human Rights Watch report (2009) estimated that more than 1 million family members had been separated through detention and deportation. Sometimes, family members vanish when they are taken in workplace raids, and it is difficult for people to find their loved ones. Julia Preston, the immigration reporter for the *New York Times*, describes the terror and uncertainty the raids produce: “It can be risky, for example, simply to live in an immigrant neighborhood in a house or apartment where a previous tenant may have had an old deportation order. Immigration agents may show up at the door with a photograph of someone who hasn’t lived there for years, roust people from bed to demand papers and take away in handcuffs anyone who cannot produce the right documents. In the aftermath of such raids, relatives, employers, even lawyers have to struggle to find out where those detained are being held” (Bernstein [citing Preston] 2011, p. 29).

In an interview study with a random sample of deportees to El Salvador, Philips, Hagan, and Rodriguez (2006) found that a substantial percentage of people were subject to verbal or physical harassment during arrest and detention and that the likelihood of abuse was much higher (2.5 times higher use of force) when local officials detained people than when ICE personnel did so. They found that “among deportees arrested by INS, 13 percent were subject to force—no different than citizens. Among deportees arrested by the police, 26 percent were subject to force—almost double the rate for citizens.” Twenty-five percent of respondents reported racial slurs during arrest, 26 percent reported slurs during detention.

Immigrant detention is legally considered an administrative, civil measure taken solely for the purpose of deportation (Bernstein 2011). Thus, legally, detention is not “punishment.” Yet immigrants who are rounded up are kept in prisons alongside criminals who have many more rights to due process and legal representation. Because almost all of this happens with little public scrutiny, and because most Americans are not aware

of the subtleties of the laws, the fact that people can be held for civil violations in state and federal prisons for unspecified periods of time without access to a lawyer has not led to any public outcry or political movements to improve the situation.

V. STATE-LEVEL IMMIGRATION POLITICS: AN ANALYSIS OF ARIZONA AND ALABAMA CRIMINAL STATUTES

For the past few decades, Congress has been unable to reach agreement on comprehensive immigration reform. President Bush tried to broker a deal that allowed a path to legalization for the millions of undocumented people living in the United States, along with tougher enforcement measures at the border, but two bipartisan attempts at passing a law, one in 2006 and another in 2007, failed to pass. As undocumented immigration hit an all-time high before the recession of 2008, these immigrants spread out to many new areas of the country that had little experience with immigration, including places in the South and Midwest. Because of the deadlock on immigration reform at the federal level, states and local areas began to pass many laws relating to legal and illegal immigrants (Fix 2007; Newton and Adams 2009). Many of these laws are unconstitutional because the Supreme Court has consistently ruled that regulating immigration is the province of the federal government alone (Rodriguez, Chishti, and Nortman 2010). In the summer of 2012, the Supreme Court struck down major elements of Arizona's restrictive immigration law. Ambiguity exists because the federal government governs immigration policy, but state and local governments can make policy with respect to resident immigrants. When state and local police are directed at apprehending undocumented immigrants, however, they are generally found to be impinging on exclusive federal rights (Williamson 2011). Although restrictive ordinances that include things like sanctioning landlords for renting to undocumented people, penalizing businesses for hiring the undocumented, and authorizing local police to enforce immigration laws receive the most attention, there have also been many state and local governments passing pro-immigrant legislation that welcome immigrants or that state an intention not to enforce federal immigration laws against the undocumented (Ebsenshade and Obrzut 2007; Ramakrishnan and Wong 2010). Most research on these local ordinances finds that localities that have seen large increases in immigrant populations are most likely to pass restrictive ordinances (Hopkins 2010; Williamson 2011). The most restrictive ordinances criminalize being undocumented and contribute to the blurring of the line between immigration violations and crime that we discussed earlier. We review the Arizona and Alabama laws below.

Arizona Senate Bill 1070 (2010), called the Support Our Law Enforcement and Safe Neighborhoods Act, addressed topics related to immigration such as trespassing, harboring, and transporting illegal immigrants; alien registration documents; employer

sanctions; and human smuggling. It made the failure of noncitizens to carry immigration documents a crime and gave the police broad power to detain anyone suspected of being in the country illegally. Section 6 of the law authorized the warrantless arrest of noncitizens when there is probable cause to believe the person has committed a public offense that makes the person removable from the United States. Prior to its going into effect, the U.S. Department of Justice filed a lawsuit requesting an injunction, arguing that the laws were unconstitutional because preempted by federal law. The injunction was granted by a federal district court and upheld by the Ninth U.S. Circuit Court of Appeals (Morse 2011). In *Arizona v. United States*, 132 S. Ct. 2492 (2012), the U.S. Supreme Court upheld a provision requiring immigration status checks during law enforcement stops but struck down three other provisions as violations of the Supremacy Clause of the United States Constitution.

The Obama administration challenged the law and, before it could go into effect, several of its more extreme provisions were prevented from becoming law because of a preliminary injunction by a federal judge.

A 2010 *New York Times* poll inquired as to whether individuals believed that the Arizona law would reduce crime. Fifty-four percent of all respondents responded in the affirmative. For Republicans, 24 percent said that it was very likely, with 65 percent saying it is at least likely to reduce crime. Of the Democrats polled, 50 percent said it was at least likely to reduce crime, and the same proportion of independents held the same belief (see Table 16.3).

Alabama House Bill 56 (2011), the Hammon-Beason Alabama Taxpayer and Citizen Protection Act, is commonly described as the strictest immigration law in the United States. It authorized a large number of anti-immigrant measures. The title of the bill is a metonym for the politics surrounding its passage: the protection from criminal immigrants of those who pay taxes and maintain legal rights as citizens. It requires schoolteachers to ascertain the immigration status of their students and report the numbers of undocumented students in their classes to state authorities, it prohibits landlords from renting to undocumented people, and it prohibits undocumented people from applying

Table 16.3 How likely do you think that the new law in Arizona will reduce crime in that state?

	Very likely (%)	Somewhat likely (%)	Not too Likely (%)	Not at all Likely (%)	Unsure (%)
Total	19	35	25	15	6
Republicans	24	41	21	11	3
Democrats	18	32	28	18	4
Independents	16	34	26	15	9

Source: New York Times Poll, 2011.

for work. It also decrees that all contracts with undocumented people are unenforceable. It requires law enforcement officers to stop anyone who “appears illegal.”

The U.S. Department of Justice sought an injunction against implementation of House Bill 56 (U.S. Department of Justice 2011). The Federal District Court for the Northern District of Alabama granted the request in part and denied it in part, finding that parts of the law were potentially preempted by federal law (*United States v. State of Alabama*, 813 F. Supp. 2d 1282 [N.D. Ala. 2011]). Portions of the law were later rescinded by the Alabama legislature. Some provisions were declared unconstitutional by the federal Eleventh Circuit Court of Appeals (*Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236 [C.A.11 2012]), but key elements remain in force.

Alabama also fits the profile of a new destination area ripe for anti-immigrant beliefs and actions. According to the American Community Survey, foreign-born persons accounted for a mere 3.1 percent of Alabama’s population. However, between 2000 and 2009, the foreign-born population shifted from 87,772 to 146,999, a 67 percent increase—sizable greater than the national growth rate of foreign-born groups (roughly 24 percent in the same time period). These statistics provide some support for the hypothesis that it is not the existence of immigrants but the growth of an immigrant presence that creates policy backlash against immigrants, particularly those who utilize public benefits or commit crimes.

VI. NEW DIRECTIONS FOR RESEARCH

New research has been focused around the effect of citizenship status on arrest patterns (Kposowa et al. 2010) and sentencing or conviction outcomes (Vargas 2006; Ulmer 2011; Wolfe et al. 2011). Wolf et al. (2011) estimate the effect of citizenship status on the decision to incarcerate and sentence length, finding that both legal and nonlegal immigrants have a higher probability of incarceration than similarly situated U.S. citizens, and sentences imposed on nonlegal immigrants are shorter than those imposed on citizens. However, once they partitioned the data by citizenship status, they also discovered that judges imposed shorter sentences on Latino citizens (than on non-Latino citizens) and longer prison sentences on Latino nonlegal immigrants. This study is one of the first of its kind to look at the impact of citizenship status on criminal sentencing outcomes.

Although these studies are excellent beginnings for understanding the role of citizenship status on criminal sentencing and incarceration outcomes, they all rely on cross-sectional data. It is extremely important to understand how these change over time, and what conditions—legal, political, and social—might affect the outcomes of native and non-native groups. We need longitudinal studies that track the treatment of the foreign born in the criminal justice system over time.

Another area for further research is an analysis of ICE immigration detention and the U.S. criminal justice system—how immigrants experience detention (both criminally sentenced and non-criminally sentenced). An important consideration is the role

of immigrant detention in determining criminal sentencing outcomes. A key question is: Do judges give harsher or lighter sentences to those who will be detained in ICE-operated facilities? ICE operates the largest detention and supervised release program in the country. A total of 378,582 immigrants from 221 countries were in custody or supervised by ICE in 2008, and, of those, 66 percent were subject to mandatory detention. Fifty-one percent were felons, of which 11 percent had committed violent crimes. However, the vast majority of the population is characterized as “low custody,” or having a low propensity for violence. A key question is interested in how immigrant detention has changed sentencing patterns over time as the use of federal immigrant detention has sharply increased in the past 10 years. How and when is it determined that a state inmate should be handed over to ICE jurisdiction? Are certain demographic characteristics of inmates (certain country of origin, for example) determining this process?

VII. CONCLUSION

The growth of immigration in the past 50 years has been a very visible phenomenon. In the past few decades, immigration has spread to new destinations—rural and suburban American counties with little experience with prior immigration. It has not only transformed the demographics and everyday life of major gateway cities such as New York, Los Angeles, and Miami, but also wide parts of the Midwest and the South which are coping with English-as-a-second-language classes in schools and demographic diversity beyond black and white for the first time. Most Americans are ambivalent about immigration. In times of high unemployment, public opinion becomes more restrictionist, but most Americans support legal immigration and report good relations with immigrants they do know.

Yet Americans are not positive about undocumented immigration and, for some people, it has become a very strong emotional and political issue. Undocumented immigration and the belief that immigrants, both legal and illegal, receive government benefits they did not work for has fueled the growth of right-wing movements such as the Tea Party (Skocpol and Williamson 2011). The belief that immigrants are more likely to be criminal than natives and that undocumented immigrants are by definition “criminals” is a strong source of anti-immigrant ideology in America. In addition to unfairly stigmatizing the vast majority of law-abiding immigrants, this stereotype of immigrant criminality has led to harsh laws targeting immigrants, to large numbers of people held in detention in prisons, and to the largest number of deportations in our country’s history. The consequences of a “get tough” policy toward legal immigrants who commit crime and all undocumented immigrants further reinforce the belief in the link between crime and immigration. This blinds most Americans to the fact that many criminologists believe part of the reason for our declining crime rate is the rise in immigrants in our population. In addition to the political consequences of these beliefs, the current broken immigration system has resulted in hundreds of thousands of people being held in prisons and detention centers without having committed any crimes. This is a much

less visible consequence of our current immigration regime, one that shows no sign of abating any time soon.

A major deficit to the political discourse is the lack of consistent and available data and documentation regarding immigrant criminality. Data on corrections, arrests, violations, and general criminal activity should not simply consider race and ethnic origin. Rather, collecting and disseminating data on immigration status and national origin would better inform the discourse on what actually constitutes criminal activity among immigrant groups. The glaring issue in the politics of immigration and crime is misinformation and improper understanding regarding what is criminal and what is an administrative violation. This, too, should be further clarified by increased awareness about why immigrants are detained and for what violations, criminal or civil.

NOTE

1. It is indeed a crime to enter or reenter the country illegally (U.S. Code Section 1326). However, residing in the United States as an undocumented person is actually a civil offense, not a criminal offense. In 1996, the U.S. Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which imposes civil penalties on any legal aliens in the United States overstaying their visa. To date, there are no criminal penalties associated with overstaying one's visa.

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CHAPTER 17

TRAFFICKERS? TERRORISTS? SMUGGLERS? IMMIGRANTS IN THE UNITED STATES AND INTERNATIONAL CRIME BEFORE WORLD WAR II

PAUL KNEPPER

IMMIGRATION and crime has been a perennial theme in the history of United States. In the decades before World War II, a number of influential politicians, journalists, and intellectuals sought to alert the public to the dangers of immigration. The U.S. Congress enacted legislation to restrict immigration in the 1880s and again in the 1920s. Advocates of immigration restriction talked about an oversupply of unskilled labor and the impact of backward civilizations. They feared that masses of desperate poor from Eastern Europe brought disease, mental illness, drunkenness, prostitution, and crime (Martin 2011). Criminologists took an interest as well. They pointed to the lack of statistical evidence for the criminality of the foreign-born (Sutherland 1924, 1934; Sellin 1938). They theorized that when immigrants did engage in criminal behavior, this was not due to racial or ethnic factors, but rather to cultural misunderstandings, adjustment to new surroundings, or concentration in the poorest areas of cities. It was not the foreign-born, but their children—the second generation of immigrants—who were at risk (National Commission on Law Observance 1931*b*).

Much of the discussion in criminology, however, focused on immigration in relation to domestic crime. There was also concern in this period of history about immigrants in relation to white slave trafficking, anarchist violence, and drug smuggling. The worry was not about masses of destitute unemployables turning to crime and immorality, but about clever and cosmopolitan individuals skilled in the dark arts of international crime. Industrialists, ministers, veterans, and other influential citizens organized campaigns against white slave dealers and drug smugglers. Campaigners talked about

an underworld that stretched across oceans and continents, invisible to ordinary citizens and unreachable by conventional legal measures; about professional criminals and political agitators from overseas who took advantage of U.S. immigration policy to organize criminal activities (Deflem 2000; Limoncelli 2010; Knepper 2011). With a few exceptions, criminologists overlooked these questions, quite possibly because they could not be addressed with the emerging social science techniques. Unlike domestic crime, there were no government statistics of international crimes for analysis. Rather, there was only a sketchy body of evidence assembled from the reports of undercover researchers and statements of public authorities who claimed to have inside knowledge.

Looking back, several points can be made about the issue of immigration and crime before World War II:

- Claims about the overinvolvement of the foreign-born contributed to the politics of immigration restriction, although it is difficult to know whether such claims reflected the views of a few influential alarmists or represented more widely held popular ideas.
- Generally, studies of immigration and domestic crime concluded that official statistics did not support claims that immigrants in general brought about an increase in domestic crime and that it was unreasonable to conclude from the statistical evidence available that any particular nationality was prone to crime.
- Criminologists tended to argue that although immigrants did not turn to crime, their children—the second generation—were disproportionately engaged in delinquency.
- The idea that some crimes, or some amount of crimes, originate overseas is a convenient political argument because it deflects attention from local circumstances.
- Much of the information about international crime was collected by private individuals and organizations acting in cooperation with public authorities; it was not gathered or reported in a way that could be corroborated or systematically examined by others.
- The late 19th century to the early 20th century is an important period for understanding the study of immigrants and crime because it produced concepts such as “trafficking” and “organized crime” that endure today.

This essay examines the issue of immigrants and crime from the 1880s to the 1940s. Specifically, the discussion here examines research and theory that appeared during this period about immigrants and crime. Section I examines immigration and domestic crime. Because there are excellent reviews of this topic (Tonry 1997; Hagan and Palloni 1998; Martinez and Lee 2000), this section is rather brief. The following sections examine international crime in more detail. Section II looks at the alleged role of immigrants in the white slave trade (human trafficking). Section III examines immigrants in relation to anarchist violence (terrorism). Section IV looks into immigrants and drug trafficking.

I. IMMIGRANTS AND CRIMINALITY

Political discussion in the late 19th century was about waves of poor, destitute immigrants arriving in the United States, some of whom were already criminals, many of whom would become criminals. In 1882, the U.S. Congress enacted the first law to restrict immigration. The Act to Regulate Immigration imposed a tax of 50 cents on each alien arriving by sea from a foreign port. It authorized inspectors to board incoming ships to identify the mentally ill, the destitute, and criminals and to return foreign convicts to ports of embarkation. The Immigration Act of 1891 further defined categories of persons to be excluded, including those who were mentally disturbed, affected by a contagious disease, or had been convicted of a felony or other “infamous crime” (Martin 2011).

The Immigration Act of 1907 created a commission to inquire into the impact of immigration and crime. The act established the Immigration Commission, which became known as the Dillingham Commission, after Senator William P. Dillingham of Vermont, who chaired it. Members of Congress speculated that large numbers of immigrants entering the United States overwhelmed the capacity of American society to absorb them. The Commission heard testimony, gathered facts and figures, and made a study tour of Europe that resulted in a massive 41-volume report (Immigration Commission 1911).

The Dillingham Commission presented a mixed picture of immigration and crime. Although Italian criminality had troubled the commissioners, their report presented contradictory findings. They cited statistics for robbery, blackmail, and extortion to demonstrate the propensity of Italians to pursue crime and violence, yet their statistical tables showed relatively few crimes in the “robbery, extortion, and blackmail” category (Zeidel 2004, p. 55). The report minimized the threat of Italian criminality, pointing to restrictions on passports maintained by the Italian government, which allowed few to emigrate. Although the Commission did find evidence that Italian criminals had gained illegal entry to New York City, their report stressed that most Italian Americans were “law-abiding and industrious” (Zeidel 2004, p. 109). The report concluded that statistics showing immigration led to elevated levels of crime were hard to find, and what statistics there were tended to show that native-born Americans were more likely than foreign-born to commit a range of criminal acts. American-born children of immigrants displayed higher rates of delinquency than their parents, and this was explained by greater concentration in urban areas. The criminality of immigrant youth was “largely a product of the city” rather than of immigrant families (Zeidel 2004, p. 109).

The Dillingham Commission received advice from members of Congress, newspaper editorialists, and police leaders, as well as from criminologists. In 1910, the American Institute of Criminal Law and Criminology at Northwestern School of Law in Chicago organized a committee on crime and immigration. The Institute had been founded a year before to encourage cooperation between lawyers and social scientists, and it

contributed significantly to the establishment of criminology in the United States. The committee was established to look into the subject of alien crime and the experience of aliens in the courts. Robert Ferrari, a New York lawyer who served on the committee, welcomed the Dillingham Commission's work. He was impressed by the body of facts assembled and suggested that the statistics provided the foundation for serious study. He pointed to the conclusion that American-born persons displayed a greater tendency to commit more serious crimes than did the foreign-born. The criminality of the foreign-born had mostly to do with minor offenses explained by congested city life. If immigrants were to be spread across rural areas, rather than concentrated in cities, the criminal aspect of immigration would disappear. There was "little, if any, ingrained badness in a race" (Ferrari 1913, p. 534).

Grace Abbott, at Chicago's Hull House, who also served on the committee, was less impressed. Based on her contact with immigrants in Chicago courts, there were three theories important for the discussion of crime and immigration: (1) that the volume of crime in the United States was increasing disproportionately, such that, for crime to be decreased, the level of immigration would need to be reduced; (2) that because of "racial and environmental differences" the kinds of crime committed differed between the foreign-born and American-born, so that, to be effective, crime prevention would need to be calibrated accordingly; and (3) that the foreign-born did not receive the same access to justice in the criminal courts as the American-born and that a special program for their protection was necessary. The evidence produced by the Dillingham Commission, she said, was insufficient to examine these theories, and she stressed the importance of further study (Abbott 1915, p. 522).

In the years after World War I, newspapers printed frequent stories about crime waves, and commissions of inquiry sprouted up across the United States. For the most part, these commissions pointed to inefficiencies in criminal justice administration as the reason for high levels of crime, but immigration was also an issue. Richard Armstrong, a Virginia lawyer, complained that the United States led the world in crime because of its immigration policy. The calendar of any criminal court in any American city confirmed that Europe exported its crime problem across the Atlantic: "It is in the main their scum and not their representative citizenry which we receive" (Armstrong 1926, pp. 662-63). In 1925, a Minnesota businessman, Mark O. Prentiss, organized the National Crime Commission. He persuaded several prominent judges and lawyers to join a panel of business leaders to examine the rising threat of crime. From "authoritative sources," he claimed to have learned "that the great majority of our crimes of violence are committed by foreign born persons." He alleged that 60 percent of crimes of violence in the United States had been committed by foreign-born persons or sons of the foreign-born (Prentiss 1925, p. 6).

In 1931, President Hoover appointed George W. Wickersham, former U.S. attorney general, to head the National Commission on Law Observance and Enforcement. The Commission, chiefly concerned with the impact of Prohibition, produced 14 volumes of findings. Contrary to Prentiss's Commission, the Wickersham Commission found that immigrants contributed less to the crime problem than did residents. Based on

an analysis of police statistics from cities across the country, the *Report on Crime and the Foreign Born* concluded that “in proportion to their respective numbers the foreign born commit considerably fewer than the native born” (National Commission on Law Observance 1931a, p. 195). For crimes of violence, rates of the foreign born compared favorably with that of the native born, and for rates of property crime, rates by native born exceeded those of foreign born. Although there were significant variations in crimes within the foreign-born category, the information available was insufficient to draw firm conclusions about the criminality of any particular nationality (National Commission on Law Observance 1931a, pp. 195–96). For Walter Reckless and Mapheus Smith (1932), the findings were instructive. There had been misapprehensions about delinquency and nationality: Italians had been blamed for a crime wave and organized gangs. But, as evidence in the Wickersham report revealed, foreign-born children were less likely to engage in delinquency than were native-born children. They explained this with reference to family structure within Italian families. Traditions and parental controls within immigrant families accounted for the better behavior of these children (Reckless and Smith 1932, p. 60).

Yet the Wickersham Commission was less conclusive on the issue of immigration and crime than it might have been, and this did not have to do with inadequate statistics. The Commission’s *Report on the Causes of Crime* included a lengthy discussion by Clifford Shaw and Henry McKay, from the University of Chicago, into social factors of delinquency. Using records from Cook County Juvenile Court, they produced impressive maps of the geographic distribution of crime within the city. The “delinquency areas” of Chicago, which remained constant over the years, were characterized by physical deterioration, high rates of poverty, and high percentages of the foreign born. Shaw and McKay attributed this to the continuous movement of older residents out of these areas and the influx of newer groups. The transience of the population brought about “social disorganization,” which contributed to higher levels of crime. In 1900, German, Irish, and Scandinavians represented the largest immigrant population in the city, to be replaced within a few decades by Polish and Italians. When the Germans, Irish, and other groups had occupied the areas of first settlement, they contributed a large population to the juvenile court. By the 1920s, Poles, Italians, and black Americans had high levels of delinquency for the same reason (National Commission on Law Observance 1931b, pp. 386–89).

Criminologists continued to challenge the evidence concerning immigration and crime while offering theories for why immigrants would have higher levels of crime. Thorsten Sellin (1938) offered a thorough discussion of the issues raised by the Wickersham report within a conceptual framework of “culture conflict.” Following the Wickersham report and the Dillingham Commission, it was generally held that the foreign born came into contact with the law less frequently than did the native born. But he pointed out that the conclusions of these commissions “offered no great scientific interest, for the term foreign-born is wide” (Sellin 1938, p. 74). Categories in statistics mixed together national and ethnic distinctions that would need to be taken into account. He reworked the statistical information in the report, from which he drew several

conclusions. Although the foreign born in general did not come into contact with law as often as did the native born, some foreign-born populations, such as the Mexican population, did have much higher rates of criminality. Although offense rates remained low, they were disproportionately high among Italian Americans (Sellin 1938, p. 74).

Sellin used the point about questionable statistics to challenge racist views of immigrant crime. In the 1920s, when Congress was discussing the formation of the quota system, one of the prominent theories of immigrant crime referenced the idea of old and new immigrants. The idea was that “old” immigrants, of Nordic stock, brought a more advanced civilization than did “new” immigrants from “backward areas” of Southern Europe and the Mediterranean. This idea appeared in full flower in *The American Criminal* (1939), in which Harvard anthropologist Earnest Hooton tried to demonstrate variation in criminality across categories of prisoners classified by body type (Hooton 1939). The sociological view, Sellin explained, accounted for patterns of foreign crime differently. Crime among immigrants reflected a conflict between old and new conduct norms, the removal from rural to urban locations, or a transition from well-organized homogenous communities to heterogeneous society (Sellin 1938, p. 83).

II. WHITE SLAVERS

In the decades before World War I, there was great concern about the white slave traffic. Through newspaper articles, pamphlets, books, and films, Americans learned how traffickers made innocent young women into diseased sex slaves. A best-selling novel, *The House of Bondage* (1910), told of an overworked, small-town girl who falls for a German-Jewish procurer who proposes marriage and a wonderful life in New York. But, after a night of champagne, she wakes up in a brothel, locked in and without her clothes, in the custody of a madam who threatens to beat her if she makes trouble. The novel became a film, one of a series in the first decades of the 20th century. The most successful of these, *Traffic in Souls* (1913), played to a packed house at Weber’s 1,000-seat theater on Broadway in New York. More than 30,000 viewers produced the high admission price of 25 cents to see the film during its opening weeks (Lindsey 1997).

In 1910, Congress enacted the White Slave Traffic Act, also known as the Mann Act, to prevent the transportation of women for “an immoral purpose” across state and national borders. Congressional action responded directly to claims that procurers diverted thousands of immigrant girls at Ellis Island into lives of squalor and prostitution. Theodore Bingham, commissioner of police in New York City, stated that approximately 85 percent of criminals in the city were of foreign origin. Immigration had brought predatory criminals from all nations, as well as feuds between rival bands of Sicilian mafia and Chinese “Tongs.” But the “lowest and most contemptible malefactors” among foreign criminals brought the white slave traffic. The vile trade had its agents across Europe, in French-speaking areas and “southeastern Europe generally.” They tricked peasant girls, Bingham said, with promises of marriage or employment and

brought them as second-class passengers, in compliance with immigration laws. After arrival, they were forced to work as prostitutes, and, without knowledge of the language or law, had to endure fearful conditions. Most of the white slave traffickers were Belgian or French, although Italians and Jews were also involved (Bingham 1908, pp. 388–90).

Bingham served as a consultant to the Dillingham Commission, which carried out an inquiry into the white slave trade as part of its overall inquiry. The investigation started in November 1907, with a special agent in charge of numerous assistants. These agents worked in secrecy. Using various false identities and cover stories, they gathered information in bars, dance halls, massage parlors, and late-night cafés in New York, Chicago, San Francisco, and other cities. It was, as the report pointed out, a dangerous business; researchers had reason to fear for their lives, and, on one occasion, a female agent was beaten (Immigration Commission 1911, p. 59). The research discounted the white slave narrative as told in the books and films, but it did not end speculation. It was impossible, the investigators reported, to “secure figures showing the exact extent of the exploitation of women and girls in violation of the Immigration Act” (Immigration Commission 1911, pp. 59–60). Between 1904 and 1908, the authorities prevented 205 alien women from entering the United States on the grounds that they were prostitutes, and prevented 43 persons from entering because of their connection with importing prostitutes. In New York City during 1908–09, 2,093 persons were convicted of prostitution, of whom 581 were foreign-born. Based on interviews with police and social workers, the report concluded that these figures revealed only a “small percentage” of the number of persons violating the law. They concluded that some of the girls brought into the country were innocent, but most of them were already practitioners of the sex trade, lured by the prize of higher wages and better economic conditions. Sex workers could make 10 times the profits they received in Europe (Immigration Commission 1911, pp. 64–65).

In 1909, an article in *McClure's* magazine claimed that New York City had become the worldwide center of the sex trade. White slavers shipped girls, mostly obtained from tenement districts, to every continent on the globe. The problem began, according to the account, with the arrival of Austrian, Russian, and Hungarian Jews. “Among these immigrants there were a large number of criminals who soon found that they could develop an extremely profitable business in the sale of women in New York” (Turner 1909, p. 47). The allegation prompted a grand jury inquiry in 1910. The district attorney appointed John D. Rockefeller Jr. as foreman, and Rockefeller used his position to carry out an extensive investigation. The grand jury conducted its own research, assisted by investigators from the prosecutor's office; by posing as brothel owners, these investigators managed to purchase two women. The researchers felt that because of the publicity surrounding Rockefeller's role, the traffickers had suspended their regular activities, which meant they could not substantiate a number of claims that had been made about the extent of the traffic. The Rockefeller grand jury concluded that whereas there were individuals involved in trafficking in women, there was no organized conspiracy engaged in the traffic, as had been alleged in the press (Knepper 2012).

Rockefeller was disturbed enough by what he saw that he set up his own organization, the Bureau of Social Hygiene, to fund further research. One of the Bureau's

first projects was a study of vice in New York City, led by George Kneeland, who had led the research for the Chicago Vice Commission. In New York, Kneeland collected information about approximately 500 men who represented proprietors or owners of “vice resorts” in Manhattan—tenement houses, hotels, saloons, cabaret theaters, and massage parlors where prostitution had been found to occur. “The majority of these men” he said, “are foreigners by birth. Some of them have been seducers of defenseless women all of their lives” (Kneeland 1913, p. 79). They did not come to the United States directly, but drifted through Europe, where they acquired young girls in small rural towns or the poor areas of cities. They established New York as their headquarters and made trips back to Europe to refresh their stock. The international traffickers were not poor or desperate. “If a composite photograph could be made of typical owners of vice resorts, it would show a large, well-fed man about 40 years of age . . . his clothes are the latest cut, loud in design and carefully pressed. A heavy watch-chain adorns his waistcoat, a large diamond sparkles in his flashy necktie, and his fat, chubby fingers are encircled with gold and diamond rings” (Kneeland 1913, pp. 80–81).

Kneeland’s data came from undercover researchers. As was usually the case, these individuals seldom received training in research techniques; more often, they were selected on the basis of ethnicity and gender. African-American investigators would be sent into Harlem, for example (Robertson 2009). Kneeland explained that his researchers might present themselves as a visitor from out-of-town, the owner of a dance hall or massage parlor from another city, or as a trafficker in the market for new women. By this method, investigators were “admitted to confidences” within the underworld and collected their observations in the form of “affidavits of frequent conversations and discussions.” But he went on to say that “whether the details are literally accurate or not, these conversations . . . at least portray the state of feeling and opinion of the participants and their like” (Kneeland 1913, p. 146).

In 1921, Howard Woolston, head of the Department of Sociology at the University of Washington, carried out a study of prostitution that included research into the white slave trade. He concluded that the traffic in women for purposes of prostitution existed in the United States, but to a lesser extent than before the war. The difficulty of travel during the war had probably reduced the volume of traffic from overseas, but it was reasonable to conclude that a certain amount continued and that “native Americans” were involved not only as victims but as exploiters as well (Woolston 1921, pp. 161–62). At Woolston’s request, a member of the legal staff at the Bureau of Immigration analyzed a sample of 100 cases of alien deportation in which the records were reasonably complete. A third of these cases could be considered white slave trafficking; that is, they involved force, fraud, or duress to victims. He identified a number of foreign traffickers: seven from Greece, six from Italy, five Russian Jews, and two Austrian Jews, as well as French, Japanese, Chinese, and Mexican men. Most had resided in the United States for at least 5 years; only three could not speak English. “It appears from such facts that the majority of the foreign exploiters were fairly familiar with American ways” (Woolston 1921, p. 168). At the same time, most of the men had only been in the business of procuring

women for less than 3 years. A few worked with associates, but most “conducted the business as a private venture” (Woolston 1921, pp. 169–70).

Several years later, American antitrafficking campaigners instigated a worldwide study of trafficking in women through the League of Nations. Although the United States was never an official member, the government did contribute to particular activities, including efforts to suppress white slave trafficking (and drug trafficking). President Harding sent Grace Abbott, head of the Children’s Bureau, to Geneva to serve as an observer on the Advisory Committee on the Traffic in Women. She proposed the need for gathering social science facts about the extent of traffic in women and the League agreed to commission a worldwide study. The study was led by William Snow and Bascom Johnson of the American Social Hygiene Association (ASHA), the organization established in 1913 by Rockefeller and others to promote sexual morality. The researchers surveyed governments, collected reports from international organizations, and carried out field research in Europe, the Mediterranean, and the Americas. They completed approximately 1,500 interviews with welfare workers, police, and government officials, as well as 5,000 interviews with members of the “international underworld.” Undercover researchers talked to prostitutes, pimps, brothel-keepers, and others involved in the sex trade in cities from Beirut to Buenos Aires (Knepper 2012).

The ASHA’s report for the League, *Report of the Special Body of Experts into the Traffic in Women* (1927), received coverage in newspapers across the United States. There were major routes of trafficked women from Eastern Europe, through Atlantic ports in England, France, and Holland, to Argentina, Uruguay, and Brazil, and through Mediterranean ports to Egypt and Turkey. However, because the white slave trade was invisible, it proved impossible to produce an accurate estimate. Snow and Johnson decided that large numbers of foreign prostitutes in a city signaled white slave traffic because these women could not have travelled on their own. They pursued the idea, widely accepted among American antitrafficking campaigners, that the systems of regulated prostitution in Europe and South America produced the worldwide market for the bodies of women. If there were no licensed brothels in places such as Buenos Aires and Montevideo, there would be no traffic in women. It was a corrupt system that existed because it was under the control of the “international underworld.” For the ASHA researchers, this did not amount to a single worldwide conspiracy, but rather consisted of individuals of different nationalities who shared a common interest in supplying brothels with foreign women. The international underworld included those who owned and managed brothels, the pimps and procurers, and crooked lawyers and doctors who prepared forged documents and arranged transportation (League of Nations 1927a, pp. 24–29).

The field survey carried out in the United States absorbed several months. Snow and Johnson devoted a relatively long time to the United States, looking for traffic across the Canadian and Mexican borders. They concluded that the problem of women being smuggled into the country was not extensive. In New York City, where 40 percent of the population was of foreign birth, about 37 percent of the city’s prostitutes were foreign. Most of these foreign women had been in the country for many years and were probably

not brought into the country specifically for prostitution. There were relatively small numbers of Mexican girls involved in prostitution along the border. European women were, as a rule, unwilling to undergo the hardships of entering the country by a small boat from Cuba or across desert wastes for a chance to work in a brothel along the border (League of Nations 1927*b*, p. 161). The only exception to the general conclusion that there was little traffic into the United States was that of Chinese girls in California. The traffickers, and patrons, of the trade in Chinese girls were members of Chinese secret societies or “Tongs” operating in San Francisco. The immigration authorities found this situation difficult to prevent because the girls, as young as 10 years of age, entered the country legally as wives, sisters, or daughters of Chinese-American citizens (League of Nations 1927*b*, p. 164).

III. ANARCHIST CRIMINALS

In addition to the white slaver, immigration was feared to have invited another foreign threat to America: the anarchist. In the late 19th century, quite a few individuals across Europe called themselves anarchists. Some wanted to organize trade unions and improve working conditions, some favored affordable medicine and free education, and others ranted against religion or moral traditions. And then there were anarchists who talked about “direct action”—strike, revolt, theft, and assassination (Bach Jensen 2004).

Robert Pinkerton, head of the Pinkerton National Detective Agency, explained that the foreign anarchist threat overwhelmed the capacity of federal law enforcement to control it. It would require a reorganization, a large increase in federal agents, and a significant expenditure for the government to succeed in “controlling or eradicating the dangerous anarchists we have here now as well as those who are coming here in greater or lesser numbers at all times” (Pinkerton 1901, p. 610). Most anarchists, he acknowledged, were sufficiently harmless. But, he emphasized, “the picture of the anarchist drawn by most people, a bearded, drunken, lazy creature is not at all in line with the facts.” Most of the leaders did not drink at all and kept secret their political beliefs to avoid the attention of the police. It was “the quiet, cultivated element behind the loud-mouthed tribe” that represented the real threat, and catching them would require “clever work and a great deal of patience” (Pinkerton 1901, p. 616).

Most of the reports of anarchist outrages—bomb blasts, shootings, political murders—came from European capitals. But there were anarchists in the United States who made regular news, and, when a bomb exploded in Chicago in 1886, the authorities suspected it was a case of “direct action.” In May of that year, labor organizers in Chicago held a rally at Haymarket Square to protest the police shooting of several strikers at the McCormick Harvesting Machine Works on the previous day. A few speakers advocated violence, but despite appreciative applause, the gathering remained calm. The police arrived, waded into the crowd, and someone hurled a bomb. The police began shooting—at civilians, maybe at themselves. Seven police died and 60 others sustained

wounds. Although the subsequent investigation failed to identify the bomb-thrower, eight anarchists stood trial for murder. Three received a prison sentence, one committed suicide, and the rest were hanged at Cook County Jail in 1887. Six years later, the governor of Illinois pardoned the three sent to prison and criticized the police, prosecutor, and trial judge for bringing about the Haymarket tragedy (Avrich 1984).

In 1901, an anarchist assassinated President William McKinley. McKinley was touring the Pan-American Exposition in Buffalo, New York, when a man with a bandaged hand appeared, unwrapped a pistol, and shot him. Leon F. Czolgosz was convicted of murder. In his statement to the district attorney, he declared that he accepted neither governments nor marriage and regarded McKinley as a tyrant. For several years, he had studied anarchist theory and particularly enjoyed the ideas of Emma Goldman (Parker 1901, p. 87). A month later, he died in the electric chair at the state prison in Auburn, New York, an event many people witnessed through the new medium of cinema. Thomas Edison combined a reenactment of the execution, along with actual scenes of the prison, for his film *Execution of Czolgosz, with Panorama of Auburn Prison*. Czolgosz did not appear to be a "typical anarchist murderer," but a man of medium height and ordinary expression. Nor was he an immigrant. He had been born in Detroit, attended common schools, and sometimes went to Catholic mass (Parker 1901, p. 93). Nevertheless, Congress passed legislation in 1903 to regulate the political views of immigrants. Immigration law prohibited entry of "anarchists, or persons who believe in, or advocate, the overthrow by force of violence the government of the United States, or of all government, or all forms of law, or assassination of public officials."

Was there a specific type of anarchist criminal? A criminologist, Arthur MacDonald, offered his answer in a study of political murder. He compared assassinations with attempted assassinations from 1897 to 1902 across several countries. Although the United States had a relatively low number (4) compared to England (10) and France (17), it had the highest completion rate (75 percent). Only a few political murders in England and France had been "successful" (MacDonald 1911, p. 520). Based on biographical details, Macdonald said that assassins carried out their deeds owing to a particular mental state. Most had a "morbid obsession" that allowed them to rationally plan their attack. Most committed their act in an open and public way, with a mystical sense of mission that left them with a sense of pride. Some assassins could be described as partly insane, but Czolgosz did not belong to this category. He was an example of the uneducated man filled with anarchistic ideas in extreme form; he was physically healthy without evidence of disease or degeneracy (MacDonald 1911, p. 515).

MacDonald's study had been informed by the work of Cesare Lombroso, who had co-authored with a local lawyer, Rodolfo Laschi, a two-volume work on political crime, *Il Delitto Politico e la Rivoluzione* (1890). They saw political crime as the motor of history. The physical and psychic energy apparent in political crime pushed civilization forward or dragged it backward. They distinguished between the instigators of revolutions, which brought progressive change, and rebellions, which led to nothing. Often the result of riots, drinking, and other mindless behavior, rebellions attracted criminals, lunatics, and *mattoïdi* (a combination of the two). In a political revolution, the number of normal

people exceeded abnormal people, whereas in rebellions the number of degenerates and criminals exceeded those of genius. Lombroso and Laschi offered a surfeit of examples ranging across centuries and continents. Although anarchist criminals shared the physical and mental characteristics of born criminals, anarchist criminals were motivated by altruism rather than egoism and were, therefore, not the same. Lombroso said the difference could not solely be detected in the physical and psychic makeup of those involved, but only by the outcomes of political movements.

The book was never translated into English, although Lombroso wrote articles for American magazines. He interviewed convicted anarchists in prison to learn about their background, outlook, and attitudes. The man who murdered the Empress of Austria-Hungary had a psychological disposition characterized by “epilepsy,” by which Lombroso meant extreme mood swings (Lombroso 1899). He compared facial features of anarchists in his belief that physiognomy offered a clue to mental state. Specifically, he measured the bodies of Turin anarchists looking for facial asymmetry, cranial anomalies, abnormal ears and eyes, and tattooing. He compared these to measurements calculated from photographs of the Chicago anarchists and determined that 50 percent of the Turin anarchists and 40 percent of those in Chicago displayed features of the criminal type. This did not mean that anarchist criminals were born criminals. “When I say that the anarchists of Turin and Chicago are frequently of the criminal type, I do not mean that political criminals, even the most violent anarchists, are true criminals; but that they possess the degenerative characteristics common to criminals and the insane” (Lombroso 1891, p. 339). In other words, anarchist violence was not explained by foreignness, but by a combination of psychology and social circumstances.

Lombroso found anarchist violence in the United States difficult to explain. In Italy, Russia, and Spain, anarchy was understandable because it went hand in hand with brigandage and *camorra*. Anarchy was to be expected where there were enormous and irreparable social grievances. But not in America, where there was genuine political liberty and where a bad government would be replaced by the democratic process. The excessive protectionism and imperialist ambitions of McKinley’s government had met with strong political opposition, so there was no rational reason for murdering the man. Lombroso decided that, in a democratic system like the United States, there was fierce competition between parties, and the extremist rhetoric of the contests fueled fanaticism and, with it, political crime. So, although anarchist crime in Europe reflected the “desperation of peoples by despotic tyranny,” in the United States, it was an artifact of the “immediate fanaticism of the parties to whom liberty allows the fullest scope” (Lombroso 1902, pp. 305–307).

On September 16, 1920, a massive explosion took place on Wall Street in New York City. It was the first terrorist “car bomb”: a wagon-load of dynamite exploded in front of the J. P. Morgan building. The bomb makers had added bits of cast iron window weights to magnify the effect of the blast, and the bomb managed to kill 30 people and wound 300 others. William Flynn, head of the Bureau of Investigation at the U.S. Department of Justice, became the “official who would lead the fight against the terrorists” (*New York Times* 1920). In days after the bombing, newspaper headlines carried various theories

about who had been responsible, but suspicion settled on Italian anarchists. Flynn blamed the “disciplines of Luigi Galliani.” The followers of Galliani (or Galleani) formed a current of anarchist-communists known as *anti-organizzatori* for their aversion to political institutions. In June 1919, they carried out a series of bombings. They targeted the U.S. attorney general, the mayor of Cleveland, a federal judge in Atlanta, a New Jersey industrialist, and anybody who happened to be in Patrick’s Cathedral in Washington, D.C. The group had left leaflets claiming credit for the blasts as “The Anarchist Fighters” (Pernicone 1993).

The Bureau of Immigration regarded the Galleani group “as among the most dangerous aliens yet found within the country” (Committee on Immigration and Naturalization 1920, p. 132). Galleani had for many years edited a paper, the *Cronaca Sovversiva*, which repeatedly called for acts of violence, and his followers went so far as to circulate a booklet, *La Salute*, that contained step-by-step instructions for use of nitroglycerine, gunpowder, and blasting gelatin in bomb making. According to the Immigration Bureau, most of those associated with Galleani were aliens having been in the United States for a number of years. Galleani himself could not have left the bomb because he had been deported under an act of Congress passed in 1918. The law provided for the deportation of anarchists, whether or not they had been convicted of violence. “Philosophical anarchists” were those who stated they did not believe in government. Congress reasoned that those who taught anarchy as a philosophy were “just as dangerous as, or perhaps more dangerous than, the more violent type of anarchists.” They were magnetic leaders who could attract disciples and motivate them to commit violent acts because they were less educated and less able to restrain themselves. Galleani had given a speech at Manchester, Massachusetts, on the purpose of anarchy and, shortly thereafter, a bomb outrage had taken place in the city (Committee on Immigration and Naturalization 1920, p. 138).

The sense that anarchist violence was a foreign import provided conceptual support for the idea that political violence could be eliminated by eliminating foreign anarchists. In response to the anarchist threat, the government carried out hundreds of deportations, going so far as to fill a ship, the *USS Buford*, for transportation back to Russia. Nearly all of these people were deported for expressing political views in violation of the immigration law, not for planning or carrying out violent acts. Robert Ferrari argued for a distinction between “political crime” and “natural crime.” Political crime was criminal only in the sense that it violated a rule issued by the state; the political criminal was a “pseudocriminal” who ought not be considered in the same breath as the ordinary criminals. He urged a change in U.S. law, following European practice, to recognize political crime. This did not include offenses such as murder, assault, and robbery carried out for a political motive. Rather, the law should recognize that persons who desired to change the social or industrial order committed a purely political crime (Ferrari 1920).

In the late 1920s, John Landesco, a research assistant at the American Institute of Criminal Law and Criminology, pursued a study of bombings in Chicago as part of a larger study of gangsters in the city. The first 2 years of his study appeared as part three of the Illinois Crime Survey. Drawing on material in newspapers, such as coverage of

gangster funerals, Landesco mapped the overlap of criminal gangs, police, and politicians in the city. He described the rise of the “bombing business”: criminals who dynamited shops, hotels, and businesses they could not otherwise extort money from. The “bombing trust” carried out a campaign of destruction against churches, shops, and stores to put rivals out of business or frighten them away from neighborhoods. Landesco offered the “life history of a terrorist” in George Martini, who worked for the bombing trust of gangster Joseph Sangerman. Martini, “the son of a Neapolitan immigrant,” made bombs from black powder and dynamite. For 14 years, he dodged arrest under indictments for many bombings before being killed by a rival gangster while sitting in his car. Martini cherished a photo of himself, clipped from a local newspaper, in which he was referred to as a “terrorist” (Landesco 1929, pp. 145–46).

IV. DRUG SMUGGLERS

There were no international drug traffickers, foreign or otherwise, until after World War I (Spillane 1998). In the decades before the war, drug addicts acquired their supplies from doctors and pharmacists simply by asking and paying for them. In 1914, Congress passed the Harrison Narcotic Act, the first legislation to control dangerous drugs. The Harrison Act did not deal with imported drugs or illicit trade across borders, but instead regulated the manufacture, production, and sale of opium and cocaine within the United States (Bewley-Taylor 1997).

In 1918, the U.S. Department of Treasury appointed a special committee, led by Congressional member Henry T. Rainey, to investigate the problem of illicit drugs. The committee distributed questionnaires to doctors and druggists registered under the Harrison Act and to others with knowledge of drug use, including chiefs of police and city health officials. The survey data suggested that the United States consumed from 10 to 60 times more opium and cocaine than any other country in the world. There were as many as 4 million drug addicts in the United States, and the largest portion was American-born. With the exception of Chinese and other nationalities from the Orient, it was rare to find addicts among immigrants. The committee pointed to an “underground traffic” in dangerous drugs equal to the legitimate trade. There appeared to be a national organization behind the importation of illegal drugs that furnished products to peddlers in cities from New York to San Francisco. Drugs came into ports along the coasts, although most illegal drugs came into the country across the borders of Canada and Mexico (Treasury Department 1919).

Francis Fisher Kane, a lawyer who chaired a committee on drugs and crime established by the American Institute of Criminal Law and Criminology, agreed that most of the illegal drugs came into the country from Canada and (some) from Mexico. The problem of drug use was not as large as that of liquor, but it was clear that “enormous quantities of narcotics are being used illegitimately” (Kane 1917, p. 2). Heroin had become popular in the underworld through prisons. It was manufactured in Germany

and imported as a cough medicine. In prisons, inmates who received a dose told their associates about the “good dope” they had discovered. News spread from city to city, and heroin had become an underworld favorite by the time the Harrison Act went into effect. To supply this growing market, traffickers would make a large order through a firm in Toronto then ferry it across the Niagara “in the grip-sacks of innocent-looking travelers.” Pullman car porters were also engaged in this trafficking. Although most Pullman car porters were “fine specimens of their race and honest,” a few could be bribed into carrying packages across the frontier (Kane 1917, p. 3).

Newspaper and magazine stories appeared regularly about “dope rings” or “drug rings” importing large quantities of narcotic drugs. Most told of shipments from the Orient and the arrest of persons with Chinese names. In 1921, a group of citizens in Seattle, alarmed by reports of Chinese drug shipments at Pacific ports, formed the American White Cross Anti-Narcotic Association. The White Cross claimed to have aided local authorities in securing information leading to the conviction of more than 200 “drug peddlers and smugglers.” Narcotics represented a “far greater menace to America” than alcohol and claimed many victims outside the underworld. The association was determined to alert the public to the dangers of drug trafficking (White Cross 1926). The International Narcotic Education Association, founded by Captain Richmond P. Hobson, sought to educate the public as well. In a series of talks broadcast on NBC radio, Captain Hobson compared the danger of importing drugs to a coordinated military invasion by foreign empires (Speaker 2001).

Beginning in the 1920s, the U.S. government participated in efforts by the League of Nations to limit the world supply of opium and dangerous drugs. The League established an Advisory Committee on Opium and Dangerous Drugs (also known as the Opium Advisory Committee or OAC). This committee pursued a framework for international regulation of drug manufacture. The idea for an international commission to monitor supply and distribution of drugs worldwide had been an American proposal from before World War I. Initially opposed by Britain, it was pursued by the British government after American delegates walked out of the second opium conference in 1925 (Knepper 2011, pp. 122–27). Under the treaty of 1931, governments agreed to manufacture only enough drugs for medical and scientific purposes, and, to enforce this, they would comply with a system of quotas and certificates. From the beginning, the system ran into problems. Some of the biggest sources for the cultivation of opium—China and Turkey—were not members of the League of Nations. Furthermore, manufacture took place outside the system at “clandestine laboratories” that allowed for the supply and distribution of illicit drugs by smugglers (Block 1989).

To monitor compliance, the OAC received regular reports from League members about the production and distribution of drugs, including seizures of illegal transactions. Occasionally, the United States volunteered information. The published list of illicit transactions and seizures for 1929–30, for example, includes dozens of seizures in American cities. Some of the traffickers appear to be immigrants. In August 1929, police seized morphine and cocaine at Boston, which had been sent from New York. The nationality of persons involved was reported to be Italian: Anthony and John Ventulla,

Albert "Chuck" Longo, and Nicholas "Nick" Cervone (League of Nations 1930, p. 46). For most of the cases, no nationality is reported, apparently meaning the persons were born in the United States. A typical entry shows that police seized morphine and opium at Tampa and Louisville from Eddie Taylor, alias W. O. Judson; Jim "Dewey" Allen; and William C. Squirer, alias "Scratch" (League of Nations 1930, p. 54). Members of the League frequently commented on the amounts of drugs involved in U.S. cases, which suggested the country had a large illegal traffic.

The OAC, in trying to come up with a tighter regulatory framework and to tackle the growing problem of international drug trafficking, encouraged governments to create national narcotics enforcement agencies. The most well-known of these, the Central Narcotics Intelligence Bureau, was set up in Egypt in 1929 under the direction of T. W. Russell Pasha. Russell Pasha paid persons caught smuggling drugs into Egypt to inform on others and thereby acquired information about sources, routes, and relationships. His annual reports, which he made public, furnished the conventional wisdom on international drug trafficking. According to Russell Pasha, the first international drug traffickers organized themselves in Vienna in the aftermath of World War I. The city had lost its former prosperity, and the local economy could not accommodate the influx of immigrants. A large number of Jews arriving from Galicia and the Ukraine found in the clandestine drug trade an economic opportunity in which they could excel. Russell Pasha's first big success was to break up a trafficking network, the Zellinger gang, led by Jewish immigrants (D'Erlanger 1936, pp. 121–23).

Within the next few years, reports began to appear about connections between European drug rings and American gangsters. The leading American drug trafficker was said to be Jack "Legs" Diamond. Arthur Reeve, a journalist and author of crime fiction, summarized newspaper reports for his book on organized crime. In 1925, Diamond intercepted a shipment of cocaine, heroin, and morphine into New York and used this to insert himself into the illicit drug trade. Diamond went into business with Arnold Rothstein, who operated a million-dollar drug ring under the guise of an imported toy business. After Rothstein was murdered, Diamond teamed up with August "Augie" Del Grazio, who controlled the supply of drugs into New York before moving into the beer market (Reeve 1931). Arthur Woods, who had been commissioner of police in New York and served as a technical advisor to the OAC in Geneva, also reported the involvement of American gangsters. Diamond, Woods explained, was an exception because his criminal exploits were well-known. Enforcement of the Harrison Act meant that thousands of addicts and peddlers went to federal prison, "but with few exceptions the 'high financiers' of dope smuggling remain at large" (Woods 1931, p. 102).

Diamond was not an immigrant (he was born in Philadelphia), but was the sort of drug trafficker considered a foreign threat by the head of U.S. narcotics enforcement. In 1930, Congress created a federal narcotics law enforcement bureau known as the Bureau of Narcotics. Harry J. Anslinger, who served as commissioner from 1930 until 1962, had power to regulate domestic drug use (for medical and scientific purposes), enforce federal narcotics control laws, and engage with the OAC in international diplomacy. By suggesting the problem was foreign, both in terms of use and source, Anslinger tapped

into suspicion of immigrants. He assigned responsibility for drug trafficking to ethnic and foreign “super criminals.” Beginning in 1933, he ordered his agents to report directly to him information about narcotics of foreign origin and ethnic groups involved in drug trafficking. As far as Anslinger was concerned, Americans with immigrant parents were “foreign.” During the 1930s, he emphasized China and Japan as sources of imported drugs, and, after World War II, he pointed to the involvement of Italians and Sicilians. He claimed that local Italian syndicates were linked together through an international mafia organization (Kinder 1981, pp. 176–79).

Anslinger said that when he took over the Bureau in 1930, he discovered that a large portion of violators of narcotics laws were aliens who could not be deported under the provisions of the Harrison Act. He recommended legislation providing for the expulsion of any alien convicted for a violation of any narcotics statute, and Congress passed legislation along these lines in 1931. From February 1931 to March 1933, more than 600 people were deported under this statute (Anslinger 1933, p. 642). As Anslinger explained, the public tended to associate Chinese with opium dens. Although the “average Chinese” was a peace-loving, law-abiding resident, Chinese violators of drug laws tended to form extensive networks. “When we find a Chinese who violates the narcotics law beyond the point of mere possession for his own use, we invariably find that he does so on a large scale” (Anslinger 1933, p. 643). Anslinger was not alone in his beliefs. Police in Canada and Netherlands also insisted that large-scale smuggling took place on steamship lines from the Far East to cities along the Pacific coast.

A frequent argument of campaigns against drugs and white slavery was that the “traffic” overlapped. Traffickers made use of their networks to trade in illicit drugs, women’s bodies, pornographic photographs, and other illicit products. The *Report of the Special Body of Experts on the Traffic in Women* (1927) referenced the combined traffic. “Police experience in different countries has shown that local dealings in opium and cocaine are frequently undertaken by the same members of the underworld as are engaged in commercialized prostitution” (League of Nations 1927a, p. 17). Members of the OAC made similar statements. At an OAC session in January 1929, the Italian delegate, Signor Cavazzoni, offered evidence about “the connection between the drug traffic in the underworld and prostitution and the white slave traffic.” A surprise visit by the *Carabinieri* discovered that cocaine powder had been sprinkled on the clothing of girls 13 years of age to facilitate their entry into the white slave trade (League of Nations 1929, p. 80).

The “organized crime” view of international crime regarded criminal syndicates as motivated primarily by financial gain and organized along the bureaucratic lines of a conventional business. According to this theory, traffickers functioned as professional criminals who adhered to their own code of conduct (Lindesmith 1941). Henry T. F. Rhodes, a criminologist trained in France, explained that organized crime followed the organization and practices of modern business. “Modern gangsterism,” as he put it, “could be precisely defined as a criminal organization whose methods approximate those of a legitimate business” (Rhodes 1939, pp. 237–38). American gangsters ran their operations along business lines, as did those in Europe. They had brought about a “huge

success in illicit traffic in drugs” and the “white slave traffic is another example of a highly efficient business organization” (Rhodes 1939, p. 238).

In the 1930s, trafficking in drugs across the Mexican border joined the national concern. Police reports, amplified in newspaper stories, sounded the alarm about a “new type of drug vice” in the country: marijuana. Police in cities across the country, from Los Angeles to Detroit, said the drug had brought about a crime wave (Dowbiggin 1936). The drug was a potent developer of criminals because it swept away natural moral restraint and provided a false kind of courage. On arrest, these criminals said that they had smoked marijuana cigarettes immediately before committing their offense. Not only did the drug elevate youth crime, it provided a further means for control by drug traffickers. “The underworld has been quick to realize the value of this drug in subjugating the will of human derelicts to that of a master mind” (Stanley 1931, p. 256).

To gauge the extent of the problem, the commissioner of public safety in New Orleans, Frank Gomila, and city chemist Madeline Gomila Lambou sent questionnaires to public authorities across the country. The first use of marijuana in the United States, they determined, had occurred in New Orleans in 1910. “Smoking weed” became widespread in the city among dock workers and schoolboys, leading many of them into criminal activities. Youngsters fortified with narcotics gunned down bank clerks, the police, and bystanders. These conditions appeared to be taking place in other cities, and foreigners were behind it. New Orleans became a distribution center, and cannabis travelled up the Mississippi to cities as far north as Cleveland. The supply came from Havana, Tampico, and Vera Cruz. Quite a few sailors travelled to Mexican ports to acquire their supply. Wholesale dealers became prosperous. This group consisted “mostly of Mexicans, Italians, Spanish-Americans, and drifters from ships” (Gomila and Gomila Lambou 1938, p. 30).

V. CONCLUSION

Anxieties about immigration to the United States before World War II included not only domestic crime but also international crime. One of the differences is that, to a large and significant extent, perceptions of international crime were driven by private individuals and associations. Politicians, police, and other public officials played an important role, but responded more than initiated efforts to control crime. Combinations of civic reformers, social purity activists, wealthy philanthropists, private detectives, and antidrug campaigners urged the government to see the importance of international crime and take specific steps in response. These were individuals and organizations that saw in internationalization particular danger and threat and regarded immigration policy as an issue that needed to be addressed to solve deeper concerns. In the effort to convince the public of the danger of prostitution, drugs, and radicalism, they often gave the impression that the country was right to reduce its exposure to the foreign born.

It is hard to know the extent to which the public viewed immigrants in general as international criminals who presented a serious threat to the country, although popular culture of the interwar period may be suggestive. Novels, films, and newspaper stories presented a continuous stream of criminality, often blending fact and fiction. White slave traffickers, drug dealers, professional criminals, and subversives often had foreign-sounding names and dark faces. Dashiell Hammett's *The Maltese Falcon* presents a collection of international criminals assembling in San Francisco in 1929: an Irish woman with a French surname, a Levantine with a Greek passport, a Jewish mastermind from Hong Kong. The characters are presented in blurry, hazy images; impossible to identify with precision, but unmistakably foreign. It is up to the local detective with solid American values to expose the dangers posed by foreign influences within the nation and prevent the spread of murder and mayhem.

There is a great deal more to be learned from historical research into international crime and particularly its links to immigrants. Although the works of the Dillingham Commission and the Wickersham Commission are widely cited, much of work of the League of Nations remains relatively unknown. In addition, there were a number of private social advocacy organizations in the late 19th century and early 20th century that carried out surveys of vice in American cities. These records remain scattered across local archives and have yet to be examined for what they reveal about international crime. Although historical evidence does not readily correspond to social science evidence, the addition of archival research contributes to a wider understanding of immigration and crime.

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CHAPTER 18

ETHNICITY, CRIME, AND IMMIGRATION IN THE UNITED STATES

Crimes By and Against Immigrants

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ALTHOUGH the myth of the criminal immigrant maintains impressive resilience in public and political discourse, the observation that immigration is not associated with more crime, and may have played a key role in reducing it, is fast approaching the status of an intellectual canon (Lee and Martinez 2009). The proliferation of research on this topic over the past decade leaves little doubt within the academic community that the sounding of nativist alarms has been—for the second time in immigration history—largely unfounded. Yet, despite appreciable advances in our understanding of the relationship between immigration and crime at both the individual and aggregate levels, important gaps in the literature remain. Importantly, whereas substantial attention has been given to the criminal behavior of immigrants, far less has been devoted to their victimization. Given the negative current of public opinion in recent years (see, for example, Martinez 2006) and the heated debate over immigration law reform, the dearth of research on immigrants as crime victims marks a critical omission in the literature.

The purpose of this essay is to review the extant research on crime committed by and against immigrants, to highlight areas for further research, and to address an important gap in the literature. Section I begins with a summary of the scholarly work that has been conducted on this topic to date, partitioning this discussion into two substantive domains. The first is a review of work that broadly addresses the issue of immigrant criminality. In this section, we highlight disparities in levels of offending across immigrant generations. In the final portion of the review, we discuss the findings from macro-level research that examines the impact of immigration on levels of criminal

violence. This body of scholarship is interested in how nativity composition, treated as a demographic characteristic of an area (neighborhood, city, metropolitan area), influences criminal outcomes. In Section II, we highlight a number of areas for future research, which will continue to advance our understanding of the relationship between immigration and crime, both at the individual and aggregate levels. Sections III and IV conclude the article with a descriptive analysis of immigrant homicide victimization, a subject which has received little scholarly attention. We employ national mortality data to compare the homicide risk for immigrants with that of the American population generally, as well as homicide risks across immigrant groups of different national origins.

Notable conclusions from the current study are highlighted here:

- Due to the increasing size of the foreign-born population in the United States, criminologists have shown a renewed interest in understanding the relationship between immigration and crime, both at the micro- and macro-levels.
- At the individual level, the weight of the scholarly evidence suggests that a number of factors, such as family structure, cultural assimilation, and peer-group associations are associated with levels of criminal involvement among later immigrant generations (e.g., second and third generation). Further, individual exposure to immigrant concentration is also predictive of criminal behavior, where youth embedded in neighborhoods with a higher proportion of immigrants are more insulated from risk.
- The majority of research on immigration and crime has made use of data collected for aggregate units (neighborhoods, cities, metropolitan areas). These studies have employed cross-sectional and longitudinal analytical strategies and have reported a fairly robust set of findings. On balance, the results are inconsistent with deeply held notions regarding immigration as a disrupting, and ultimately crime facilitating social process. Rather, these studies commonly report that immigrant concentration is associated with *lower* levels of criminal violence.
- Although research has provided much information regarding the association between immigration and crime, additional research is needed in several key areas. We encourage future researchers to conduct studies focusing on the impact of undocumented immigration on levels of crime, the influence of deportation on crime rates, the victimization of foreign-born individuals, and the likely differential impact of immigrant ethnicity on criminal outcomes.
- Our descriptive analysis of immigrant victimization reveals that foreign-born individuals have a slightly higher homicide risk than native-born individuals, but that the homicide rate for immigrants has fallen more quickly for this segment of the population than for native-born individuals.
- Homicide victimization rates among Latino immigrants were the highest among the four primary racial/ethnic groups. Homicide victimization risk among Latinos fell dramatically between 1990–2004, experiencing a decline of nearly 65 percent during the period under investigation. Our analysis also reveals intra-ethnic differences in homicide risk, with Mexican immigrants having the highest victimization levels, as compared to foreign-born Cubans or Puerto Ricans.

- Based on our findings, we believe public policy initiatives designed to curb immigration as a means of enhancing public safety are misguided, because they fail to consider the empirical evidence regarding the impact of immigration on levels of violent criminal behavior.

I. IMMIGRATION AND CRIME

In the decade since Martinez and Lee (2000) first called for more research on immigration and crime, the number of studies on this topic has grown considerably. This research has developed along two broad streams. First, a substantial body of work compares the criminal propensity of immigrants to the native born, paying particular attention to outcomes such as violence, arrest, and incarceration. Almost consistently, this literature shows that whereas first generation immigrants generally exhibit lower levels of crime than the native born, the risk of offending is higher among the children of immigrants. Cross-national and national studies of immigrant criminality outside the United States show a similar pattern (Tonry 1997).¹ Although scholars continue to debate the reasons for this so-called phenomenon of “second-generation decline,” research highlights the process of assimilation as well as generational differences in family structure and functioning, peer associations, and neighborhood context as important areas for further inquiry.

A second line of research focuses on the ecological association between immigration (typically measured as the proportion of foreign-born) and crime within certain geographic locales (e.g., counties, census tracts). Consistent with the individual-level research, most aggregate-level studies of the immigration–crime nexus indicate that the influx of immigrants to US cities has had either no effect, or more often, a negative effect on rates of crime and violence. Although excellent summaries of the literature on the immigration–crime nexus can be found elsewhere (see for example, Bucerius 2011; Ousey and Kubrin 2009), we highlight some of the key findings from this body of work here and consider avenues for future research.

A. The Criminality of Immigrants and Their Children

As DiPietro and Bursik (2012, p. 247) recently noted, “the criminological centrality of immigration research has ebbed and flowed as periods of rapid growth in the foreign-born population have given way to long stretches of stagnation.” Whereas scholarly interest in the criminality of immigrants peaked at the turn of the 20th century when a massive wave of predominantly European and Canadian settlers arrived in the United States, this interest all but vanished with the decline in the number of émigrés following the passage of the National Origins Act (1924) and the Immigration and Nationality Act of 1952. Efforts to systematically assess the nature and consequences

of the 20th century immigration movement were prompted in part by mounting public tension over the perceived dangerousness of these newcomers (see for example, Industrial Commission 1901). Stereotypes about immigrants' biological and moral inferiority were prevalent, as were admonitions that immigration was likely to "destroy the inherent racial and family-stock qualities—physical, mental, and spiritual—of the people of the immigrant-receiving country" (Laughlin 1939, p. 5).

Despite widespread anti-immigrant sentiment, most of the research conducted at the turn of the century refuted claims that immigrants constituted a dangerous class. The first of three major volumes devoted to the study of immigration and crime, published in 1901 by the Industrial Commission, concluded that foreign-born whites committed significantly fewer crimes than native-born whites. Ten years later, the Immigration Commission (Dillingham) concluded that:

No satisfactory evidence has yet been produced to show that immigration has resulted in an increase in crime disproportionate to the increase in adult population. Such comparable statistics of crime and population as it has been possible to obtain indicate that immigrants are *less* prone to commit crime than are native Americans." (United States Immigration Commission 1911, p. 23)

More than 20 years after the Dillingham Report was released, the National Commission on Law and Enforcement, known alternately as the Wickersham Commission (1931), published a volume length examination of the immigration–crime nexus covering seven decades of immigration research. Consistent with the findings of the Dillingham report, the Commission concluded that foreign-born individuals committed significantly fewer crimes than native born. An important caveat to this finding, however, was that the protective influence of immigrant status diminished across generations, with second and third generation immigrants exhibiting higher rates of crime and arrest than their parents.

Remarkably, despite dramatic shifts in the socio-demographic composition and settlement patterns of today's immigrant population, which comes from predominantly Latin American and Asian countries, contemporary research on the criminal propensity of immigrants largely mirrors what scholars observed at the turn of the century. That is, despite their "relatively high levels of disadvantage" (Sampson and Bean 2006, p. 20) immigrants on the whole exhibit lower levels of crime, arrest, and violence than nonimmigrants (Butcher and Piehl 1998, 2008; Tonry 1997; Hagan and Palloni 1999; Waters 1999; Sampson, Morenoff, and Raudenbush 2005; Rumbaut et al. 2006). This basic pattern has held across general population samples drawn from Illinois (Chicago) (Sampson, Morenoff, and Raudenbush 2005; Morenoff and Astor 2006), and California (Butcher and Piehl 2008) as well as from surveys from the United States (Bui and Thongniramol 2005; Rumbaut et al. 2006) and Canada (Hagan, Levi, and Dinovitzer 2008).

Also consistent in the literature has been the finding that the risk of offending increases among later generations and with increased markers of assimilation (e.g., language acquisition) (Portes and Rumbaut 2001; Sampson, Morenoff, and Raudenbush

2005; Morenoff and Astor 2006). Whereas first generation immigrants in the United States generally exhibit lower rates of offending than their native born counterparts, rates of offending among the second generation—though still lower than the third generation (e.g., individuals born in the United States to U.S.-born parents)—often surpass those of their parents. Sampson, Morenoff, and Raudenbush (2005), for example, observed in their analysis of self-reported offending among Chicago youth that first generation immigrants' odds of perpetrating violence were approximately half those of third generation immigrants; the odds for second-generation immigrants were roughly two-thirds those of the third generation. Bui and Thongniramol (2005) similarly found, using data from the National Longitudinal Study of Adolescent Health (Add Health), that second- and third-generation Hispanic students were, respectively, 60 percent and 88 percent more likely to engage in violent delinquency compared with first-generation (foreign-born) Hispanics.

The question of why the children of immigrants appear to be more crime prone than their parents has been of interest to social scientists since the turn of the 20th century. Several possible explanations have been offered to account for what Tonry (1997) has referred to as “not the foreign-born but their children” phenomenon. Scholars have argued, for example, that compared with the first generation, the children of immigrants may be more strongly affected by experiences with discrimination and marginalization, which may heighten their risk of criminal involvement. In other words, although the first generation may be more inclined to “interpret experiences of ‘othering’ and exclusion in the receiving country as actions of a few rude individuals as opposed to systematic discrimination,” the second generation has had ample time to adjust to the reality of a socially stratified system in which their minority status places them at a distinct disadvantage (Bucierius 2011, p. 394; see also Waldinger and Feliciano 2004).

A related line of reasoning centers on the idea that second-generation immigrants have a distinct reference point from their parents, which may create pressure to achieve success by the standards of their American contemporaries at any cost. Compared with the first generation, the children of immigrants are thrust into the challenges of adjustment by default, as opposed to a conscious decision to migrate. Thus, while their parents will “most likely compare their situation to the living conditions in the country of origin . . . members of the second generation refer to the native population as their comparison group and soon realize that they are worse off than the native born” (Bucierius 2011, p. 394).

Importantly, neither of these perspectives accounts for the possibility that first generation immigrants may differ systematically from subsequent generations in their offending behavior simply because they chose to immigrate for the goal of improved opportunities and long-term social and economic advancement (Tonry 1997). Thus, what has been attributed to problems of adjustment and relative deprivation among later generations may be an artifact of the improbably low rates of crime among first-generation immigrants, who have self-selected into their immigrant roles. That is, increasing rates of crime over immigrant generations may be a function of regression to

the mean levels of offending expected from a “normal population in that social and geographic situation” (Zimring 2009, p. 248).

Among the various explanations for observed generational differences in offending, none has received greater empirical or theoretical attention than assimilation, which refers broadly to “the process through which ethnic minorities become incorporated into mainstream culture” (Morenoff and Astor 2006, p. 39). The term has been used interchangeably with acculturation, which has been defined similarly as “the process of change that occurs when culturally distinct groups and individuals come into contact with another culture” (Samaniego and Gonzales 1999, p. 190). At the individual level, assimilation has been measured in myriad ways, ranging from generational status and residential tenure (Berry et al. 2006; Morenoff and Astor 2006) to ethnic group identification, cultural attitudes (Berry et al. 2006; Le and Stockdale 2008), and linguistic acculturation (Morenoff and Astor 2006). Regardless of how it is measured, assimilation has traditionally been assumed to follow a linear progression, whereby the degree (low to high) varies as a function of one’s degree of immersion in the host society.

Although the work of classic immigration scholars (see for example, Park and Burgess 1924; Gordon 1964) rarely specified the precise causal mechanisms by which assimilation might relate to crime, contemporary scholars have argued that that individuals who are more “Americanized” may be particularly drawn to crime because their ties to the old world culture of their parents have grown tenuous. In other words, assimilation is presumably problematic because it erodes profamily cultural orientations, creates conflict, and weakens mechanisms of informal social control within the family (Samaniego and Gonzales 1999; Portes and Rumbaut 2001; Suárez-Orozco and Suárez-Orozco 2001; Le and Stockdale 2008; Bui 2009). Portes and Rumbaut (2001) coined the term “dissonant acculturation” to describe the cleft between immigrant youth and their parents that results when immigrant youth follow divergent assimilatory pathways. Most often, this divide is manifest in differential language preferences between parents and children and the variable entrenchment of youth and parents into ethnic communities.

A small, but growing body of research suggests that differences in family structure and functioning across immigrant generations may in fact mediate the link between assimilation and crime. Samaniego and Gonzales (1999), for example, found that the influence of acculturation on delinquency was mediated by family conflict and inconsistent discipline, such that more acculturated youth experienced greater degrees of both, which increased their likelihood of delinquency. More recently, Bui (2009) found, using Add Health data, that differences in self-reported substance abuse, property delinquency, and violence across immigrant generations were partially mediated by greater parent–child conflict among later generations.

Although scholarship continues to emphasize the role of the family in explanations of crime across immigrant generations, increasing attention has been given to the role of peer groups. Extant research suggests that, as immigrants become more assimilated, they become more embedded in peer culture and relatively more distanced from parental control and familial obligations (Wall, Power, and Arbona 1993). Thus, differential exposure to delinquent peers and a shifting allegiance from family to friends may be

partially responsible for elevated rates of crime and delinquency among later generations. For example, Le and Stockdale (2008) found, using an ethnically diverse sample of Asian youth, that a composite measure of family discord was a significant determinant of violence, but that this relationship was fully mediated by youths' association with delinquent peers. More recently DiPietro and McGloin (2012) found, using data from the Project on Human Development in Chicago Neighborhoods (PHDCN), that the link between immigrant status and violence was partially mediated by greater exposure to deviant peers. Notably, however, the authors also found that first generation youth were actually more susceptible to deviant peer influence than their native born counterparts. That is, contrasting the common perception of immigrant youth as uniquely protected from risk, they found that exposure to deviant peers exerted more potent effects on self-reported violent behavior for first generation youth.

In addition to family and peer-based factors, increasing attention has been given to neighborhood context in explanations of immigrant criminality. Proponents of the "segmented assimilation thesis" argue that the likelihood that the children of immigrants will follow a "downward" assimilatory pathway toward crime and violence is contingent on the larger neighborhood context in which they reside, with immigrant youth exposed to violent subcultures in disadvantaged inner-city communities facing the greatest risk (Portes and Zhou 1993). Two recent studies, for example, consider the contextual effects of neighborhood immigrant concentration on self-reported violent behavior. Using data from the PHDCN, Sampson and colleagues (2005) found that the percentage of first generation immigrants at the tract level exerted a significant negative effect on self-reported violence, net of individual immigrant status. Similarly, using a national sample of 9,500 youth drawn from the Add Health study, Desmond and Kubrin (2009) found that the concentration of immigrants (measured as an index of the percentage of foreign-born and percentage of individuals who either do not speak English well or do not speak English at all) exerted a significant negative effect on juvenile violence. Collectively, these studies suggest that individual immigrant status and immigrant concentration exert independent effects on violent behavior, and that youth embedded in neighborhoods with a higher proportion of immigrants are more insulated from risk.

B. Immigration and Crime in the Community

The expectation that high levels of immigration would correspond with high rates of neighborhood crime figured prominently in the leading criminological theories during the first half of the 20th century. Classic social disorganization theorists (Thomas and Znaniecki 1920; Shaw and McKay 1942) argued that it was not the inherent criminal predisposition of the ethnic groups that would lead to more crime, but the population heterogeneity that characterized the areas in which they settled, which weakened community ties and impeded informal social control. Opportunity theorists (Merton 1938; Cloward and Ohlin 1960) emphasized the goal blockage and consequent pressure to

“innovate” experienced by new immigrants forced to settle in urban communities beset by poverty and high crime rates. Culture-conflict theorists (Sellin 1938) argued that the disparate value systems between immigrant groups and the dominant interest groups would result in elevated rates of crime.

Contrary to the expectations of these classic theoretical perspectives and to the politically fueled rhetoric that dominates the contemporary immigration debate, most recent scholarship on the macro-level association between immigration and crime fails to support claims that immigration is associated with an increase in crime. Not only has the unprecedented growth in immigration since the 1990s coincided with a precipitous decline in violent and property crime across U.S. cities (Wadsworth 2010)—including those with large populations of undocumented migrants, such as Los Angeles, San Diego, and Miami—but research continues to demonstrate that “cities of concentrated immigration are some of the safest places around” (Sampson 2008, p. 30).

To date, the majority of the criminological scholarship on this subject has made use of aggregate-level data to examine the association between immigrant concentration and violent criminal behavior. Such studies have been conducted in a variety of contexts, at different levels of geography, and with variable research designs. On balance, the results presented in this literature are fairly robust and inconsistent with deeply held notions regarding immigration as a disrupting, and ultimately crime-facilitating social process. Although a detailed review of this literature is beyond the scope of this article, we provide an abridged review of the macro-level immigration and crime research before turning to our suggestions for future research.²

Thus far, much of the aggregate-level research has focused on homicide and serious violence. In their cross-sectional examination of data from the 2000 US Census and Uniform Crime Report (UCR), Reid and colleagues (2005) found that immigration (particularly recent immigration and Asian immigration) was negatively associated with homicide and theft. Relying upon the same data sources (UCR and US Census), Wadsworth (2010) found that cities with the largest increases in immigration between 1990 and 2000 experienced the largest decreases in robbery and homicide during this same period. Similarly, several recent studies by Martinez and colleagues demonstrate that, net of structural deficits (e.g. disadvantage and residential instability), the percentage of recent immigrants is negatively correlated with general homicide rates (Martinez, Stowell, and Cancino 2008) as well as rates of drug-related homicide (Martinez, Lee, and Nielsen 2004), race-ethnicity disaggregated homicide (Lee and Martinez 2002), and motive-disaggregated violent crime (Stowell and Martinez 2007). Sampson and Bean (2006, p. 21) summarize this literature nicely in arguing that the findings indicate “it is no longer tenable to assume that immigration and diversity automatically lead to social disorganization and consequently crime.”

Whereas the aforementioned studies have advanced our knowledge of the immigration–crime nexus appreciably, the majority of this work has been cross-sectional, which has inhibited a clear understanding of the dynamic nature of the immigration–crime nexus. Longitudinal studies of the immigration–crime nexus are rare, yet three recent studies bolster the claim that immigration lowers rates of violent crime. Using pooled

Census data for years 1980, 1990, and 2000, Ousey and Kubrin (2009) assessed the longitudinal relationship between immigration and violent crime in 159 large US cities. Controlling for a number of structural correlates of crime, including percent of young males, population size, residential instability, economic deprivation, labor market characteristics, illegal drug market activity and arrests, and the relative size of the police force, they found evidence of a moderate negative relationship between within-city change in the immigration index and within-city change in violent crime. Similarly, in a study that employs annual metropolitan-level data between the years of 1994–2004, Stowell et al. (2009) found that changes in immigration predict lower levels of violent crime, aggravated assault, and robbery rates; whereas the effect is null (negative but not statistically significant) for changes in rates of homicide and rape. In their analysis of San Diego neighborhoods from 1980 to 2000, Martinez, Stowell, and Lee (2010) found that immigration is linked to reductions in lethal violence for Latinos and non-Latino whites, a finding that is consistent with the notion that the beneficial impact of immigration is not limited to foreign-born individuals. Taken together, macro-level studies on this subject, independent of research design or level of aggregation, fail to find support for the notion that immigration is a crime-generating social process.

II. FUTURE RESEARCH

One of the primary objectives of this article is to identify lines of research that have yet to be fully addressed in the current literature, and ones which will yield important new information on this subject. Despite appreciable advances in our understanding of the immigration–crime nexus in recent years, important knowledge gaps remain. Although far from an exhaustive list, we outline several areas that warrant further research.

First, further research is needed that focuses on the undocumented immigrant population. In the ongoing debate over immigration, no group has been the target of greater political or public indignation than the population of roughly 12 million illegal “aliens” currently residing in the United States. Although the perception that illegal immigrants pose a distinct threat to public safety has been widely touted in political campaigns, often serving as a justification for harsh anti-immigration legislation, the inherent difficulty of gathering data on immigrant status, as well as the limitations of existing arrest and incarceration data, has precluded careful examination of this issue. As Bucerius (2011, p. 397) observes, “many studies do not clearly distinguish between legal and illegal immigrants, and estimates of the number of undocumented immigrants currently residing in the United States vary by the millions.” Further, incarceration statistics may be misleading in that they reflect differential treatment of undocumented immigrants in different stages of the criminal justice process (as opposed to differential patterns of offending between undocumented immigrants and the native-born population). Hagan and Palloni (1999), for example, found that undocumented immigrants were more likely

than the native-born population to face pretrial detention, which generally increases the risk of criminal conviction.

Compelling arguments have been made for why illegal immigrants should be more, and alternately, less crime-prone than their legal counterparts. On the one hand, the illegal immigrant population—which is composed of predominately young males who cross the border from Mexico—may be more inclined to commit crime out of financial necessity. On the other hand, their illegal status may make them especially unwilling to risk contact with law enforcement. To date, few studies have examined undocumented populations, but those that do fail to find support for the argument that illegal aliens are especially crime-prone. For example, a recent study comparing recidivism rates of deportable (e.g., illegal) and nondeportable aliens released from the Los Angeles County Jail in 2002 found no significant differences between groups in the timing, frequency, or occurrence of re-arrest (Hickman and Suttorp 2008). Although these preliminary findings suggest that the designation of illegal immigrants as singularly more crime prone than legal immigrants is unwarranted, further study is needed to determine whether these findings are generalizable across subgroups and geographic locales.

Second, future research on the immigrant–crime nexus must consider the tremendous heterogeneity within immigrant populations. Most contemporary studies of immigration and crime have relied on nationally undifferentiated statistics or broad panethnic classifications (such as Hispanic and Latino or Asian) that “implicitly assume that criminological dynamics are relatively homogenous within these aggregations despite the important social, cultural, and historical differences that are subsumed” (DiPietro and Bursik 2012, p. 247; see also Stowell 2007). This inattention to group differences has been largely a function of data limitations. Compared with the richly detailed data on immigration and crime available at the turn of the century, contemporary data sources rarely include information on ethnicity, country of origin, legal status, or the myriad other characteristics (e.g., reason for migration, context of reception) that may shape patterns of offending.

The need to more finely delineate immigrant populations is evident in the handful of studies that do take the heterogeneity of immigrant groups into consideration. Stowell’s (2007) aggregate-level study of violence in three cities, for example, shows significant differences in the structural conditions of the neighborhoods into which members of various ethnic groups settle, as well as differences in the social conditions associated with violence in these communities. More recently, DiPietro and Bursik (2012) used data from the Children of Immigrants Longitudinal Study (CILS) to illustrate the inferential dangers of relying on pan-ethnic classifications. In their examination of four groups usually combined into the category of “Latino” (i.e. Cubans, Colombians, Dominicans, and Nicaraguans), they found important differences by country of origin in levels of human capital, family structure and dynamics, contexts of reception, and distributions of aggressive behavior, as well as differences in the predictors of aggressive behavior across these four nationalities. At the least, these studies suggest that future research should pay careful attention to the variation across immigrant groups that may give rise to important differences in adaptation and behavior.

Third, future research is needed to assess the collateral consequences of immigration policies—particularly those pertaining to deportation—on immigrant families and the community. Since the early 1990s, the number of immigration laws has grown exponentially. Among the most controversial are the Illegal Immigration Reform and Responsibility Act (IIRIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA) (both of which were signed by President Clinton during the 1996 presidential campaign when the “get tough on crime” mantra was the focus of heated political debate), and Arizona’s infamous SB1070. Collectively, these laws extended the government’s authority to arrest, detain, and deport noncitizens by increasing the categories of noncitizens that are subject to detention and deportation as well as the number of offenses for which noncitizens could be deported, and by virtually eliminating the need for judicial review in such cases. Not surprisingly, the number of deportations has increased substantially since the passage of IIRIRA; an estimated 200,000 individuals are formally removed from the United States each year (Hagan, Eschbach, and Rodriguez 2008). To date, the consequences of deportation for immigrant families and the community have received scant empirical attention, yet the potential for these policies to disrupt family ties and destabilize communities makes this a critical area for future study.

Fourth, further research is needed to elucidate the causal mechanisms linking immigration and crime, particularly at the aggregate level. To date, most contemporary studies measure the *direct* effects of immigration, paying little attention to how it may relate to crime *indirectly* through changes in economic, demographic, and social structures (Stowell 2007; Ousey and Kubrin 2009). Given that some of the most prominent theoretical explanations for the immigration–crime link (e.g. social disorganization theory and Lee and Martinez’s [2002] “immigrant revitalization thesis”) posit that immigration will impact crime indirectly through its effects on existing social structures, thoughtful consideration of these intervening causal mechanisms is warranted. Thus far, the intervening processes linking immigration and crime have been largely speculative. Lee, Martinez, and Rosenfeld (2001), for example, theorized in their study of homicide patterns in three cities (Miami, El Paso, and San Diego) that the suppression of crime in immigrant neighborhoods is due to immigrant’s relatively stronger ties to family and labor markets, which presumably compensate for structural deficits. However, the authors stop short of testing these potential mediating mechanisms.

The few studies that do consider causal processes offer equivocal findings. Consistent with the immigrant revitalization perspective, Ousey and Kubrin (2009) found that the negative association between immigration and crime in US cities was attributable in part to the lower levels of divorce and single-parent households that characterize immigrant communities. Stowell’s (2007) study of violence in Miami, Houston, and Alexandria, Virginia, however, presents a significant challenge to the notion that immigration is negatively related to crime, suggesting that it may actually increase crime rates *indirectly* through its effects on structural covariates of crime such as poverty. At the least, the findings of these studies underscore the complex nature of the relationship between immigration and crime, and the need to look more closely at the potential linkages in the causal chain.

Finally, future research is needed that focuses specifically on crimes committed *against* immigrants. To date, most aggregate-level studies of the immigration–crime nexus have failed to differentiate between crimes committed by and against immigrants. This conflation of crime statistics is particularly problematic given that “it is rarely noted that crime associated with immigration may be the result of higher rates of immigrant victimization rather than offending” (Mears 2001, p. 2). This inattention in the literature reflects, in part, the unique challenges posed by studies of immigrant victimization, including the overreliance on official government records, that fail to identify the immigrant status of crime victims (Mears 2001), and the fact that experiences with victimization among immigrant populations often go unreported. The reasons for underreporting are numerous and include fear of reprisal from victimizers of the same national origin, culturally proscribed beliefs that crime—especially among families and close-knit communities—is a “private” matter, as well as the fear of deportation, which is most pointed among the undocumented (e.g., illegal) population (Horowitz 2001; see also Lysakowski, Pearsall, and Pope 2009). Ironically, it is the same reluctance to report victimization that makes illegal immigrants particularly vulnerable to it.

Notwithstanding the complications surrounding the study of immigrant victimization, a handful of studies have emerged in the research literature over the past several years. Thus far, this body of work has focused on several substantive areas, including the association between immigration and levels of hate crimes (McDonald 2009; Stacey, Carbone-Lopez, and Rosenfeld 2011), domestic violence among immigrants (Menjivar and Salcido 2002), and crimes committed against undocumented migrants seeking day work (Valenzuela 2006). In the following section we review briefly some recent aggregate level research on immigrants as victims of hate crimes before turning to our descriptive analysis of patterns in immigrant mortality nationally over the past several decades.

III. CRIMES AGAINST IMMIGRANTS

A. Hate Crime

It is not surprising, given the pervasiveness of anti-immigrant sentiment in today’s political climate that scholars have speculated that the influx of immigrants to the United States would correspond to higher rates of hate crime against the foreign-born (Stacey, Carbone-Lopez, and Rosenfeld 2011). In the wake of highly publicized acts of violence, such as the beating of two Mexican day laborers by white supremacists in Farmingville, New York, proponents of hate crime legislation have argued that the passage of laws addressing this form of violence is necessary to ensure the protection of immigrants from xenophobic intolerance (McDonald 2009). Thus far, however, much of what is

known about immigrants as victims of hate crime is anecdotal; systematic evaluations of the effects of immigration on hate-motivated crime are scarce, and the few empirical examinations of this issue offer equivocal findings. For example, drawing from the FBI's Hate Crime Statistics, McDonald (2009) found no association between the influx of Hispanic immigrants and the prevalence of reported hate crimes in the United States and California between 1995 and 2007. Speculating on these findings, the author suggests that the lack of a correlation may be due to the tendency of immigrants to reside in ethnic enclaves, where they may be shielded from the abuses of would-be assailants. Importantly, though, McDonald draws his conclusions from bivariate analyses of the association of immigration with hate crime.

By contrast, the work of Stacey, Carbone-Lopez, and Rosenfeld (2011) offers support for the hypothesis that recent changes in Hispanic immigration are positively related to hate crime targeting Hispanics. Using state-level data from the UCR, Department of Homeland Security (DHS), and Census data from 2000 to 2004, the authors observe higher levels of anti-Hispanic hate crime in places and periods with higher levels of Hispanic immigration, controlling for economic conditions, urbanization, and demographic composition. These results lend credence to the idea that immigrants may fall prey to what Horowitz (2001, p. 2) calls the "long, ignominious tradition in this nation...of violence toward newcomers." More research on hate crimes perpetrated against immigrants is needed.

B. Trends in Immigrant Homicide Victimization

We turn now to a descriptive analysis that highlights patterns in immigrant mortality nationally over the past several decades. More specifically, the discussion to follow concentrates on homicide victimization of foreign-born individuals, a topic that has been the subject of few criminological research projects to date. As an initial, national-level assessment of immigrant victimization, we urge caution in generalizing the results, because we recognize much additional work is necessary before the patterns are well understood. Further, we acknowledge that, at the center of social scientific research, is a keen interest in quantifying the factors systematically associated with a given outcome. However, a more involved analytical design is beyond the scope of this article. Although such approaches certainly represent fruitful (and important) directions for future research, we submit that exploratory analyses such as this provide an important foundation from which future studies on this topic can build.

The mortality data we employ for this analysis were extracted from the Multiple Cause of Death records provided by the National Center for Health Statistics (NCHS) (1990–2004) and made publicly available through the National Bureau of Economic Research (NEBR).³ These data are ideally suited for our purposes because they offer annual, individual-level mortality information regarding causes as well as a number of other important characteristics of decedents. In addition to information about the racial/ethnic characteristics of individuals, these data also document nativity status.

Such detailed information allows us to identify homicide victims along a number of substantively meaningful dimensions.

To identify foreign-born individuals, we made use of the “State of Birth” indicator, designating those not born within the United States or the District of Columbia as immigrants.⁴ For the purposes of comparison, we also created race/ethnic specific indicators for foreign-born individuals that take into consideration Hispanic/Latino origin. We believe such consideration is important given that Latinos comprise a disproportionate share of the current immigration stream (see Stowell 2007; Stowell and Martinez 2009). Following Sorenson and Shen (1996) we identify homicide victims according to the International Classification of Diseases external cause of death categorization. Specifically, we designate victims as individuals for whom homicide was listed as the primary cause of death, independent of the manner in which the crime was committed (i.e., firearm, stabbing, poisoning, strangulation). It is important to note that the categorization of homicide is standardized, meaning that annual fluctuations in the number of homicides cannot be attributed to definitional discrepancies across the period under investigation.⁵ Calculating foreign-born homicide victimization rates required the use of information collected through the Current Population Survey (CPS) and provided by the Integrated Public Use Microdata Series (IPUMS) (for a discussion of the CPS, see Noonan, Smith, and Corcoran 2007; Stowell et al. 2009).⁶

Finally, because reliable annual intercensal estimates for the size of the foreign-born population are not readily available in the CPS, we limit our focus to the period between 1990–2004.⁷ We contend this represents an important initial period of investigation because it extends the earlier work by Sorenson and Shen (1996) on immigrant homicide victimization, which analyzes trends through 1992. More importantly, between 1994 and 2004 rates of immigration into the United States grew exponentially and yet little is known about the homicide risk experienced by this increasing segment of the population (see Stowell et al. 2009).

C. Overall Immigrant Homicide Victimization

Nationally, between 1990 and 2004, there were an average of approximately 3,200 homicides committed against foreign-born individuals. Figure 18.1 shows the annual number of immigrant homicides over this period, a pattern that shows a slight increase in lethal violence committed against foreign-born individuals between 1990–92, followed by a steady decline through 1998, and some moderate fluctuations through 2004. One point worth noting is that during this period the number of immigrant homicide victims decreased by nearly 29 percent (3,817 to 2,725) during which time the size of the foreign-born population in the United States nearly doubled (growing from nearly 20 to over 38 million individuals). Similarly, the total number of homicides dropped by slightly more than 30 percent (from 25,020 to 17,457). We also observed that the share of all homicides committed against immigrants has remained fairly stable since 1990, accounting for an average of 15 percent of all killings (ranging from 13.9 percent to

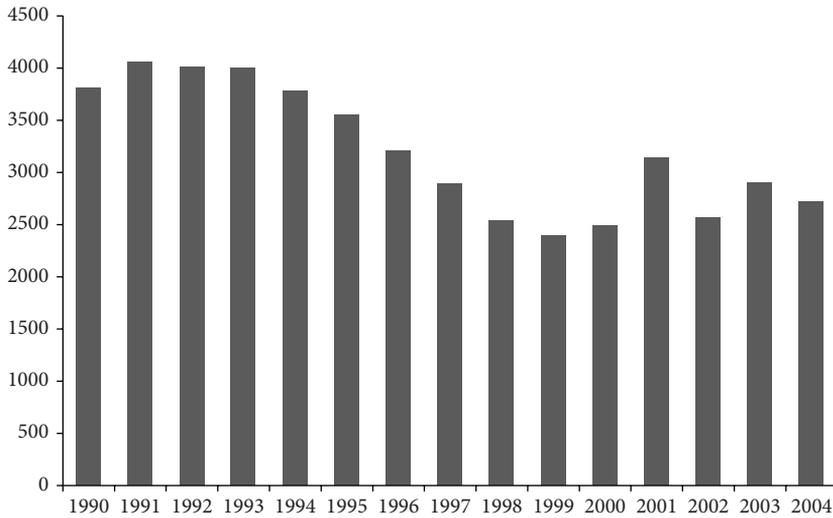


FIGURE 18.1 Number of immigrant homicide victims, United States 1990–2004.

Source: National Center for Health Statistics (NCHS).

16.3 percent). Further, by 2004, the number of immigrant homicides was proportionate to their share in the total population, comprising about 14 percent of the total population and just over 15 percent of all homicide victims (13.6 percent and 15.6 percent, respectively).

Figure 18.2 displays information for overall, native-born, and foreign-born homicide rates, which reveals a number of interesting patterns. First, we see in this figure that homicide risk follows a similar trend for native- and foreign-born individuals, marked by a clear decline throughout the 1990s. More specifically, over this period, the national homicide rate fell by nearly 40 percent, reflecting the well-documented declines in violent criminal outcomes (see Blumstein and Wallman 2000). It is also clear that the homicide rates for the native-born victims resonate closely with the national victimization rate, which has also experienced a decrease of nearly 40 percent since 1990. The rate for immigrant victimization, on the other hand, is noticeably higher, particularly during the early part of the period, where it was nearly double the national level (19.1 compared to 10.2 per 100,000 in 1990). By 2004, however, the rates had converged, with the foreign-born victimization rate only slightly higher than the national rate, 7.1 and 6.0 per 100,000, respectively. To place this precipitous drop in perspective, the immigrant homicide victimization rate fell by nearly 170 percent over 15 years, a rate of decline more than twice the national average.

We believe that the trends, although compelling, are not easily explained. Based on the scope of this study, it is not necessary to speculate with respect to the causal processes underpinning the steep reductions in homicide risk for foreign-born individuals. Likely there are a host of factors that contributed to the observed decline in the levels of

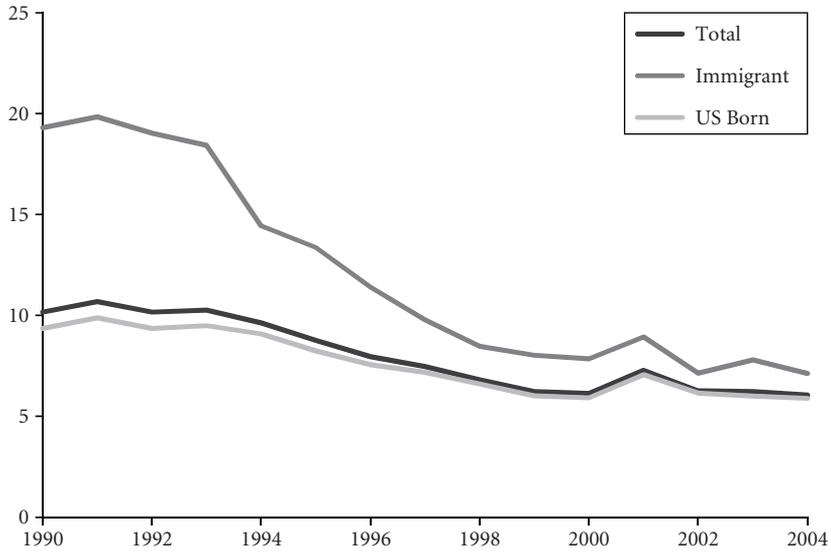


FIGURE 18.2 Total native-born and foreign-born homicide victimization rates, United States 1990–2004.

Source: National Center for Health Statistics (NCHS).

foreign-born homicides, which are yet to be quantified. If nothing else, the data illustrate that with the shifting demographic and, in turn, structural changes associated with immigration, foreign-born individuals currently do not experience a dramatically increased risk of homicide victimization. Documenting such a decline, and the possible questions it raises, we hope will encourage further research on this subject.

D. Race/Ethnic-Specific Immigrant Homicide Victimization

As mentioned previously, Latinos make up the largest share of the foreign-born population, with recent Census estimates indicating that more than half (54 percent) of the immigrants are of Latino descent.⁸ This fact suggests that a more detailed comparison of the homicide victimization rates for immigrants, disaggregated by race and ethnicity, may be informative. That is, due to the differences among immigrants, in terms of both social and human capital and the structural composition of the communities into which they settle, it is clear that the likelihood of victimization is not uniform (see Martinez 2002; Stowell 2007; DiPietro and Bursik 2012). Figure 18.3 offers a comparison of homicide rates between non-Latino white, non-Latino black, non-Latino Asian, and Latino immigrants.

Although each group experienced a decline in homicide risk since 1990, the inter-group differences are clearly evident in Figure 18.3. Specifically, we observe that foreign-born whites, blacks, and Asians are victimized at very similar levels across the

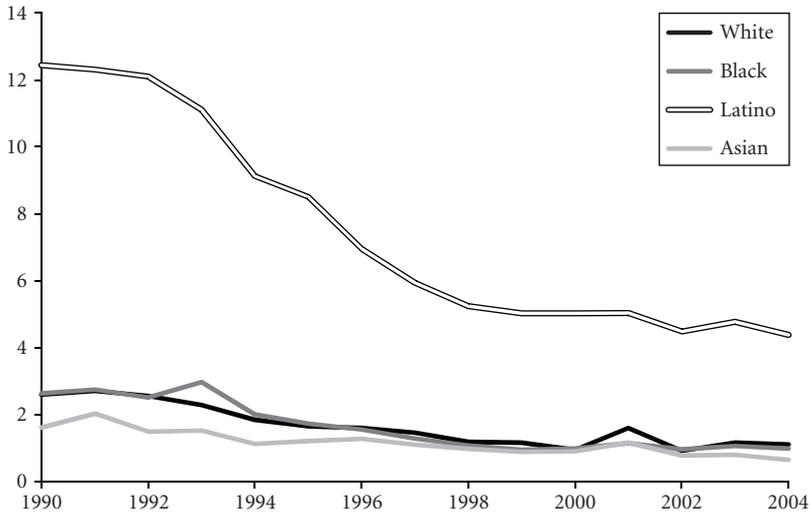


FIGURE 18.3 Race/ethnic-specific foreign-born homicide victimization rates, United States 1990–2004.

Note: Foreign-born white, black, and Asian categories include only individuals of non-Latino origin.

Source: National Center for Health Statistics (NCHS).

entire study period. Since the late 1990s, homicide rates for these groups are nearly indistinguishable from one another. Although the base rates for these groups are lower than the national average, each experienced similar declines, ranging from 57 percent to 62 percent, for whites and black immigrants, respectively. Relative to the other groups, however, foreign-born Latinos are killed at dramatically higher levels. By 2004, Latinos were approximately four times more likely to be murdered than any other immigrant racial group, a pattern that was much more pronounced a decade before. In the early 1990s, rates of Latino immigrant homicide were at least five times greater than for any other group. Of the four groups, homicide rates for foreign-born Latinos experienced a moderately steeper decline, falling by approximately 65 percent. Moreover, given the size of the foreign-born Latino population, it appears that the large drop in immigrant homicide victimization observed in Figure 18.2 was driven, to a large extent, by the reductions in the homicide risk for this group.

The preceding discussion offers clear support for the need for criminologists concerned with immigration issues to be sensitive to variations in the foreign-born population as they may translate into differential criminal outcomes. The wide disparities across racial groups presented in Figure 18.3 underscore the importance of this point. In the section that follows, we extend this analytical approach by offering a comparison of victimization rates for Latino-specific immigrant groups. It is hoped that providing information about racial and ethnic disparities will serve as further justification for researchers to incorporate refined measures of immigration more readily.

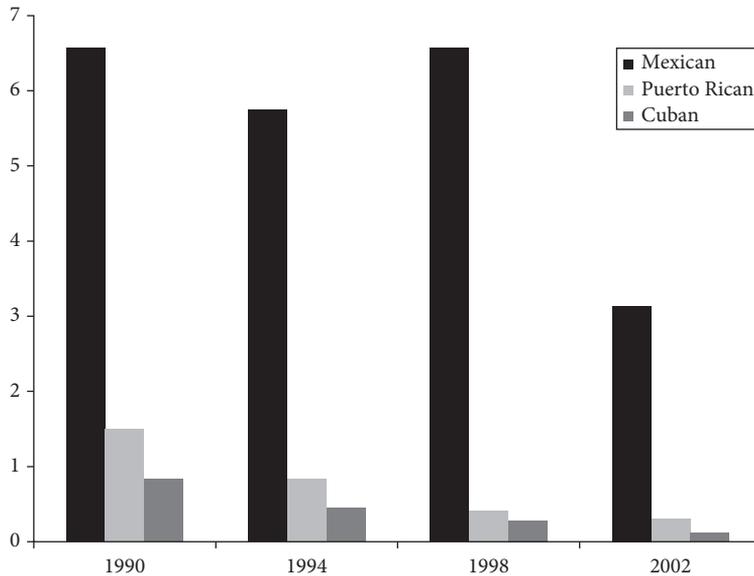


FIGURE 18.4 Ethnic-specific foreign-born Latino homicide victimization rates, United States 1990–2004.

Source: National Center for Health Statistics (NCHS).

E. Ethnic-Specific Latino Homicide Victimization

Our final discussion of immigrant homicide victimization focuses on ethnic-specific rates for the three large foreign-born Latino groups; Mexicans, Puerto Ricans, and Cubans. Figure 18.4 compares the rates for these groups at four points in the study period; 1990, 1994, 1998, 2002.⁹ We recognize that, as mentioned earlier, the Latino foreign-born population is diverse and growing increasingly more so (see Stowell 2007; DiPietro and Bursik 2012). Still, the relevance of these particular ethnic groups, particularly for the purposes of this analysis, is illustrated by the fact that they make up a disproportionate share of all immigrant Latino homicide victims. For each of the years presented in Figure 18.4, victims born in one of these three countries accounted for more than 70 percent of all foreign-born Latino homicides (ranging from 71 percent in 1990 to 80 percent in 2004). This is not to suggest that future studies should focus primarily, or exclusively, on these particular ethnic groups, as the balance of foreign-born criminal victimization (or participation) will depend on the composition and context in which immigrants settle (see Lee, Martinez, and Rosenfeld 2001; Martinez et al. 2010).

Turning now to Figure 18.4, it is immediately clear that Mexican immigrants experience a much higher risk of being murdered than those born in Puerto Rico or Cuba. It is entirely possible that this observed disparity is due to important demographic differences across groups; for example, Cubans tend to be older and hold generally higher

socioeconomic standing than foreign-born Mexicans. Quantifying the origin of these patterns is beyond the scope of this study, however. Nevertheless, as a share of the total immigrant population, Mexican immigrants were more than four times as likely to be killed. Other than the relatively high rates among foreign-born Mexican individuals, there is no strong evidence suggesting that the likelihood of victimization for any of the groups was stable over time. Rather, the risk of homicide rates reduced dramatically for each group between 1990 and 2002. Focusing on the homicides committed against Mexican immigrants, we observe that the rate fell by more than half over this period, dropping from 6.5 to 3.3 per 100,000 foreign-born individuals. It is worth noting that these findings are consistent with the pattern observed for immigrants more generally and foreign-born Latinos specifically (see figures 2 and 3, respectively).

In our estimation, the findings just discussed help to bridge an important gap in the existing literature on immigration and crime by casting new light on an area that has not been the subject of many contemporary studies. More specifically, by highlighting temporal trends in immigrant homicide victimization, this article raises new questions regarding the underlying causal processes contributing to the steep reductions in homicides committed against foreign-born individuals. Based on our findings, the evidence is consistent with the calls for criminological researchers to use more precise measures of immigration, and to move beyond what Rumbaut et al. (2006, p. 85) argue is the “national bad habit of lumping individuals into a handful of one-size-fits-all racialized categories.” In this vein, we urge scholars to continue to incorporate refined measures of immigration in their studies when feasible, as such approaches will yield a more nuanced understanding of the complex relationship between immigration and various violent criminal outcomes.

IV. CONCLUSION

As we have noted earlier, there is a renewed interest among criminologists on the topic of immigration. As in eras past, the increased attention is most likely attributable to the exponential growth in the size, and diversity, of the foreign-born population in American society (see DiPietro and Bursik 2012). The current research being undertaken in this area, both at the micro- and macro-level, is sophisticated, theoretically grounded, and has yielded many new insights into the relationship between nativity and crime. Yet, we also point out, much remains unknown with respect to this association, particularly as it relates to the victimization experiences of immigrants. A primary objective of this article was to focus attention on this gap in the research literature and to bring some empirical evidence to bear on this subject. Our analysis of immigrant homicide victimization, though limited, illustrates the need for additional research in this area. More specifically, we believe there is an opportunity for researchers to build on the results presented here, including both a wider array of criminal outcomes and a more refined geographical specification. Such studies will offer a more well-rounded

understanding of how victimization experiences differ both as a product of outcome *and* location.

Studies that examine the relationship between immigration and crime are, to some extent, inextricably linked to ongoing public policy discussions. Currently there are few social issues that garner such widespread attention as does the subject of immigration. Often anti-immigration advocates point to restrictive immigration legislation as a necessary step toward making communities safer, both along the border and beyond (Martinez, Stowell, and Cancino 2008). As Martinez and colleagues (2008, p. 13) argue, the large-scale commitment of resources to restricting immigration, particularly along the border, may be “out of step with the actual needs of many of these areas.” The results from the current study concur with this assessment, and our review of the existing literature suggests that the resources may be more effectively allocated in other areas.

For example, policies designed to promote educational attainment of immigrants, and more specifically the educational outcomes of members of the second and third generation, may assist with more conventional assimilation patterns, and, in turn, curb the increase in criminal involvement across generations. Indeed, recent educational statistics indicate that educational retention may be an important point of interventions, as Latinos drop out of high school at more than twice the national average (US Department of Education 2011). We recognize that educational initiatives represent only one of many areas that could benefit from additional funding. More generally, we believe that the increasingly punitive direction immigration policy has taken in recent years (e.g., Arizona’s SB1070, similar laws in Alabama) is not likely to yield the desired results. To the extent that more immigrants generally means less crime, as Martinez and Stowell argue (2012), it stands to reason that social contexts inhospitable or unwelcoming of immigrants may potentially carry the unanticipated consequence of increased levels of violent criminal deviance.

NOTE

1. Notably, however, some studies of immigration and crime in the European context find that immigrants have higher crime rates than the native-born (see, for example, Martens 1997).
2. For more extensive literature reviews, see Lee and Martinez (2009) and Peterson and Krivo (2005).
3. <http://www.nber.org/data/multicause.html>
4. The foreign-born category includes individuals born in Puerto Rico, the Virgin Islands, Guam, Canada, Cuba, Mexico, and the “Remainder of the World.” Individuals for whom birthplace was unknown are excluded from our analysis.
5. Homicides classified according to the Ninth Revision 34 Causes of Death.
6. <http://cps.ipums.org/cps/>
7. For the years 1991–93 the foreign-born population was interpolated using values from the 1990 decennial census and the annual values provided by the CPS.
8. <http://www.census.gov/prod/2010pubs/acs-11.pdf>
9. NCHS data do not provide ethnic-specific birthplace information for individuals born in Mexico or Cuba beyond 2002.

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CHAPTER 19

IMMIGRATION AND CRIME IN U.S. COMMUNITIES

Charting Some Promising New Directions in Research

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In a widely cited (and contentious) *New York Times* op-ed published in 2006, criminologist Robert Sampson identified what he claims was largely responsible for the crime drop in U.S. cities during the 1990s. He downplayed the “usual suspects” offered up by criminologists, such as changing police practices, increased incarceration, shifting drug markets, gun control efforts, and economic opportunity and argued instead that, in attempting to understand why crime rates declined, “we have been overlooking something obvious—something that our implicit biases caused us not to notice” (March 11, 2006, p. A-27). His “*unusual suspect*” was foreigners. Drawing from his research in Chicago neighborhoods, Sampson claimed that evidence points to increased immigration as a major factor associated with decreased crime rates of the 1990s. Sampson (2008) further developed his argument in a piece he wrote for *Contexts* titled “Rethinking Crime and Immigration.”

In the years following publication of Sampson’s op-ed, research on the immigration–crime link has proliferated. The majority of studies examine whether immigration to neighborhoods, cities, or metropolitan areas affects crime rates in those areas (for a recent review of much of this literature, see Ousey and Kubrin [2009]). Several researchers also have attempted to explicitly test Sampson’s argument about the crime drop by employing longitudinal research designs (Stowell et al. 2009; Wadsworth 2010).

Of course, research on immigration and crime is nothing new. More than 70 years ago, Taft (1933, p. 69) commented that “we clearly need to know through unprejudiced study the effect of migration on crime; the relative effects of different nationalities, and of different elements within a nationality. We also need to know the indirect effect through the behavior of the children of immigrants. And if possible we must distinguish between

immediate and long-time effects, which may be different or even opposite.” Yet attention devoted to the issue has been intermittent. Investigations of immigration and crime have varied along with immigration itself. When immigration flows have been high, scholarship has flourished; when flows have been low, scholarship has waned (Stowell 2007).

Regardless, in both earlier and more recent scholarship, and contrary to public opinion, studies generally report consistent findings: immigration to an area is negatively associated with crime rates or not associated with crime at all. For example, in their study of U.S. metropolitan areas, Reid et al. (2005) find little support for the idea that immigration and crime go hand in hand: “Across our analyses of four different types of crime, there is no evident crime-conducive effect of immigration. The effects of a variety of measures of immigration on homicide, robbery, burglary, and theft are consistent. Even controlling for demographic and economic characteristics associated with higher crime rates, immigration either does not affect crime, or exerts a negative effect” (p. 775). This finding holds across studies that employ neighborhoods and cities as their units of analysis (again, for a review, see Ousey and Kubrin [2009]).

Despite general consistency in research findings, we argue that it is premature to draw firm conclusions about this relationship for two reasons. First, a recent publication suggests that when scholars dig deeper, the immigration–crime relationship may be more complex than previously envisioned. Kubrin and Ishizawa (2012) illustrate this when they examine the possibility that city-level context conditions the immigration–crime relationship. In particular, they determine whether neighborhoods with high levels of immigrant concentration that are situated within broader immigrant communities are especially likely to enjoy reduced crime rates, compared to those that are more spatially isolated. Studying neighborhoods in Chicago and Los Angeles—two cities with significant and diverse immigrant populations—they find diverging results: immigrant neighborhoods embedded within broader immigrant communities have lower than average violent crime levels in Chicago, consistent with the literature, but *higher* than average levels in Los Angeles. In essence, they find that some immigrant neighborhoods are safer than others. Context clearly matters.

A second reason why it is premature to draw firm conclusions about the relationship between immigration and crime is that there are key omissions in the literature that may impact the findings scholars have uncovered to date. In particular, research has largely ignored the role of local institutions in the community, neglecting to analyze how the organizational and institutional capacity of a neighborhood may affect the immigration–crime link. More specifically, in none of the studies just mentioned do researchers incorporate measures reflecting the policies and practices of local institutions such as the police, schools and school programs, labor centers, or other community organizations. Moreover, this research has disregarded the larger policy or political context within which such local institutions operate. To be fair, this shortcoming is relatively common in neighborhood crime studies (but see Peterson, Krivo, and Harris 2000; Triplett, Gainey, and Sun 2003; Gardner and Brooks-Gun 2009). Yet, as we argue later, this omission may be particularly detrimental for those studies that explicitly seek to examine immigration and crime.

The goal of this essay is to begin to address these omissions. Herein, we discuss them in some detail and describe how addressing these omissions would provide further (and necessary) insight into the immigration–crime relationship. To that end, for illustrative purposes, we consider the potential importance of two types of local institutions and their associated exclusionary or integrative practices. We describe how these practices, shaped to a strong degree by the broader city-level context, affect immigrants and their families, with implications for the immigration–crime nexus.

In line with a focus on these issues, several conclusions can be offered:

- A number of communities in the United States have responded to the current influx of immigrants on an institutional level, establishing particularized interventions that have not been adequately accounted for within the immigration and crime neighborhood literature.
- These interventions include (a) institutional policing policies and practices that involve local peace officers in immigration enforcement activities of one type or another and (b) institutional practices designed to promote the integration of immigrant newcomers into community life.
- Criminological theory, along with anecdotal data, suggests that such local policies and practices, along with emerging state laws that mandate local institutional participation in immigration enforcement activities, are likely to impact both community organizational capacity and criminogenic conditions within localities.
- Further study of these phenomena is likely to provide new insights into the relationship between crime and immigration.

In the remainder of this essay, we first outline a number of local policies directed at immigration and immigrants. We then discuss in some detail two types of local institutional interventions—exclusionary and integrative—and provide a basis in theory and practice to argue that these types of interventions likely influence the immigration–crime nexus at the community level. We also suggest that the extracommunity context likely influences local institutional responses to immigrants, and potentially crime, within communities. In the conclusion, we chart some promising new directions for scholars interested in studying immigration and crime across neighborhoods.

I. BROADENING THE RESEARCH FOCUS

Despite the abundance of data demonstrating that immigration does not lead to higher crime rates, the very aggregate nature of much of this data necessarily hides variations across communities and thus clues as to the causal links in this relationship (Kubrin and Ishizawa 2012). Just as important, variations across communities provide anecdotal grist for politicized claims that immigration is linked with crime (see, e.g., Sobczak 2010). As Brettell and Nibbs (2011) point out, tropes of the “illegal” alien are invoked in

communities across the United States to portray an invasion of lawless immigrants into communities and thus to advocate for policies that institutionally target immigrants. As a consequence, we believe that current research in this area should be supplemented to account for local variations in the relationship between immigration and crime—variations that are more than demographically driven. In particular, additional scholarly attention should be devoted to two facets of the local community context: (1) local community institutions that potentially impact the immigration–crime nexus and (2) the broader extracommunity context in which local institutions enact policy decisions, including the influence of this context on the procedures implemented.

Many communities, not surprisingly, have developed particularized institutional responses to immigration, responses that may well affect overall crime rates within those communities, as well as perceptions of criminality among certain populations. Existing research demonstrates, for example, that communities with ethnic enclaves provide important institutional and social supports for new immigrants and thus help to promote prosocial activity within these communities (Portes and Rumbaut 2006). A contrasting example can be found in communities that have enacted—or are subject to—directives that require identification of the undocumented during the normal course of police duties (Wilson, Singer, and BeRenzis 2010). Some police chiefs argue that such policies negatively impact police–community relations to the detriment of public safety (see Provine et al. 2012), a topic discussed in greater depth in section II. Examples of this type strongly suggest that local policies, the institutions that implement those policies, and the procedures that flow from these implementations, all likely impact crime rates in communities that experience immigration. Such institutional factors, in other words, may help explain some of the local variations in the immigration–crime nexus and thus lead to better explanatory frameworks.

To date, scholars have not adequately explored these institutional factors. By “institutional factors” we refer here to those organizations, committees, and businesses—both public and private—that implement policy decisions within neighborhoods. Local police and sheriff practices are a particularly visible type of institutional intervention in community life, but other institutions are salient. Area schools and school programs, local labor centers, libraries, community organizations, and community alliances that implement programs for housing, homelessness, or delinquent youth, as well as policy-making institutions such as city councils and their subcommittees, are all institutions that could potentially affect the crime rate within a community, as well as the immigration–crime nexus in those same communities. This is particularly true if these institutions implement policies directed at immigrants, such as policies that allow localities to enforce aspects of federal immigration law through 287(g) agreements with the Immigrations and Customs Enforcement Agency of the U.S. government (“ICE”)¹ or policies that mandate the use of the federal e-verify program by selected governmental or private employers to verify the employment eligibility of prospective employees.²

Of equal importance, external institutions and advocacy groups contribute to the political and policy context in which local institutions operate, and these are likely to influence the efficacy with which local policies are enacted, as well as the level of

public and financial support garnered for such policies. This external policy context can include supportive (or resistant) federal governmental agencies such as ICE or the U.S. Attorney's office, advocacy groups such as the Federation of Americans for Immigration Reform (FAIR) or the Minuteman Project, national support organizations such as the League of United Latin American Citizens (LULAC) or Habitat for Humanity, and other state and local agencies that have interests in the policies being proposed or implemented at the local level. For example, in the 2005–06 timeframe, the city of Costa Mesa, California debated a possible agreement with ICE to cross-designate and train jail personnel, and perhaps other police officers, as immigration agents. In the months of city council debate, members of LULAC and the Minuteman Project provided resistance or support for the proposed policy, with many speaking members residing outside of the city. Indeed, groups of Minutemen would show up en masse at some meetings to ensure positive public comment on behalf of the policy and its council adherents (Trager 2012). Such groups, in other words, can intensify or alleviate political pressure on city council members to vote in particular ways with regard to policies that may impact immigrants in a given locale. They can also put pressure on council members to ensure that policy is carried out as advertised, or, alternatively, provide civil resistance to the implementation of policy.

To illustrate the relevance of local institutional initiatives and resultant policies to the immigration–crime nexus, in the remainder of the essay we discuss in more detail two types of institutional interventions within communities: the first related to direct efforts to control crime within communities, in particular through community peace officer activities; the second related to efforts to produce integration in communities through public efforts, public–private partnerships, or simply private initiatives. This discussion will include both specific examples of the types of institutions implementing such policies, as well as the theoretical basis for assuming a pragmatic impact on immigrants and, potentially, the immigration–crime nexus.

II. INSTITUTIONS WITH EXCLUSIONARY PRACTICES: POLICING THE COMMUNITY

Perhaps the most salient local institution that impacts neighborhood crime is law enforcement. By definition, the local police are empowered by the state to enforce the law, protect property, and limit civil disorder, so it comes as no surprise that their practices and policies help shape, to a strong degree, crime rates within communities. An important component of this equation is the flexibility officers have in dealing with situations they encounter in their communities, resulting in discretionary decision making that may occur from initial contact to arrest. Of course, police officers do not have unfettered discretion; rather, they are bounded by professional, community, legal, and moral norms. Still, the widespread discretion they enjoy has led some scholars to suggest that

official data—overwhelmingly used in neighborhood crime studies—typically reflect law enforcement practices as much as they do criminal behavior itself (Mears 2002, p. 286).

Ironically, studies on the impact of policing practices and policies in neighborhood crime research are noticeably scarce. Even scarcer, however, are neighborhood studies on the immigration–crime nexus that incorporate measures related to local law enforcement policies and practices. In fact, we are unaware of even one published study that empirically accounts for police practices in a neighborhood analysis of immigration and crime. Yet it is axiomatic that policing practices, and the broader policies that inform them, have the potential to significantly impact the immigration–crime relationship. This is especially true, we argue, in the context of policing today. Policing practices have become increasingly authoritarian and, in turn, exclusionary toward immigrants. This has consequences for crime rates in communities across the United States, as well as for the immigration–crime relationship in those same communities.

Of course, the police need not be exclusionary in their practices with respect to immigrants but, in fact, this has been the trend for the past two decades (Provine et al. 2012). Fueling this trend are increasing demands that local police become more involved in enforcing immigration laws in their communities, something to which they are not accustomed. Historically, enforcement was left to the federal government, and a long-standing policy of the federal Department of Justice prohibited local enforcement of civil immigration violations except in very limited circumstances. As such, state and local police were not empowered to arrest and detain violators, something viewed as the special responsibility of the (then) Immigration and Naturalization Service. But, starting in the 1990s, things began to change as legislation was introduced to create closer ties between local police departments and federal officials charged with immigration enforcement. And then, in 2002, the Bush administration's Office of Legal Counsel issued a memorandum claiming that local law enforcement officials have "inherent" authority to make arrests for civil immigration violations. This memo, released under a Freedom of Information Act request by the American Civil Liberties Union (ACLU), overturned earlier interpretations of federal law that had denied local police such authority (Kobach 2005). Local law enforcement officials became empowered, and were strongly encouraged, to police immigration in their communities.

These trends have resulted in what scholars refer to as the "devolution of immigration enforcement" (Provine et al. 2012; see also Koulisch 2010). In general terms, devolution consists of the statutory granting of powers from the central government of a sovereign state to government at a subnational level, such as a regional, local, or state level. In the context of immigration enforcement, devolution encourages a push toward formal partnerships between federal immigration authorities and local police. These relationships rely on the more intimate contact of local police with residents to, among other things, assist in the detection and removal of unauthorized immigrants. Advocates describe these partnerships as a "force multiplier" to enhance interior enforcement by federal officials (Provine et al. 2012). Under devolution, local law enforcement officials in communities throughout the United States have been encouraged to be more proactive

when it comes to policing immigration, and the federal government has worked hard to encourage compliance.

Strategies for compliance have followed two tracks. As just noted, the first is a series of measures giving local police officers the authority to identify and begin the process of deporting unauthorized migrants (Skogan 2009). The principal vehicle for this is the 287(g) clause of the federal Illegal Immigration Reform and Immigrant Responsibility Act. Under this legislation, state and municipal law enforcement agencies can sign agreements with the U.S. Department of Homeland Security (DHS) that allow local officers to perform immigration law enforcement functions, including using federal databases to check the immigration status of individuals, and to begin processing them for a deportation hearing. Although state and local officers have inherent legal authority to make immigration arrests, 287(g) provides additional enforcement authority to these selected officers, such as the ability to charge illegal aliens with immigration violations and begin the process of removal. Under the program, a law enforcement agency agrees to a number of its officers receiving intensive immigration enforcement training, to supervision of 287(g) officers by federal agents for immigration enforcement duties, and is assured of federal immigration cooperation and coordination in certain immigration-related enforcement activities. In line with this strategic track, yearly allocated federal funding for the 287(g) program has steadily increased from about \$5 million in 2006 to more than \$50 in 2009 (Vaughan and Edwards 2009).

The second strategic track involves offering incentives to local police agencies (and even individual police officers) to encourage them to become more proactive in enforcing immigration statutes (Skogan 2009). One incentive to participate is threatening to withhold federal funds from jurisdictions that do not comply. For example, states receive necessary federal funding to help pay for prisons, and Congress has threatened to withhold this money unless state legislatures take action to force their cities into line.

Devolution, for many law enforcement officials, is less than desirable (Skogan 2009; Provine et al. 2012). Increasing involvement in policing immigration, officers maintain, runs at cross-purposes with community policing and other strategies to engage more closely with the community. The police need the trust and cooperation of residents, including immigrants, to do their job effectively. Police rely on the willingness of victims and bystanders, for example, to cooperate with their investigations. To gain this cooperation, police must remain in close and trusted contact with community members.

Developing trust and cooperation had been a hallmark of policing for years prior to devolution, as community policing—a more integrative policing model—was adopted in communities throughout the United States. Community policing is a philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, disorder, and fear of crime. For decades, community policing helped make the police more responsive to the particular issues facing local communities, including immigrant communities, through the regular channels they created for civic engagement and via special arrangements for reaching out to immigrant groups (see Skogan [2009] as an example of this in Chicago).

Many worry that devolution is eroding the decades of progress police officers worked hard to achieve under community policing (Khashu 2009). As officers increasingly occupy the role of immigration enforcers, a breakdown in trust, or what some characterize as a “chilling effect” in the local immigrant community, is likely to occur (Khashu 2009). Immigrants’ greatest fear is that contact with local authorities might somehow threaten their status in the United States. Residents may question, “Who is the police?” “Who is *la migra*?” And, of course, if local police visibly join the ranks of immigration enforcement officials, residents of immigrant communities may simply stop talking to them altogether. Consider the following statement a Costa Mesa, California resident made at a city council meeting in January 2006, discussing a proposal to train city police officers to enforce immigration laws:

Why would an undocumented worker or person like to report a crime in front of a police who... can enforce immigration law? What is taking place here in Costa Mesa is called emotional abuse, at the community level. It is the same thing that happens when a father verbally abuses his child; the child will do as he’s told, not out of respect, but out of fear for his punishment. This ICE proposal is fostering fear in the community. And a community that lives in fear cannot integrate, and cannot be safer. (Trager 2012)

In essence, shifting responsibility for enforcing immigration laws to local police puts at risk the two-decade investment they have made in community policing and trust building.

But more is at risk with devolution. A related collateral consequence of authoritative or exclusionary policing practices in the context of policies such as 287(g) is the underreporting of victimization among immigrants (Khashu 2009). It has long been documented that immigrants, compared to the native-born, are less likely to contact the police for assistance and to report victimization to local law enforcement officers, even when the victimization is serious (Davis and Hendricks 2007). Findings from a National Institute of Justice–sponsored survey and from selected site visits in immigrant communities across the United States indicate that, compared to other crime victims, immigrants face unique pressures in deciding to cooperate with local law enforcement authorities following victimization (Davis and Erez 1998). According to the report, reasons behind underreporting include possible embarrassment to their families, language difficulties, cultural differences in conceptions of justice, and a lack of knowledge of the criminal justice system (pp. 3–4). Not surprisingly, though, fear of becoming involved with authorities tops the list of reasons why victimized immigrants are reluctant to turn to the police for help. With immigrants already hesitant to seek help following victimization, underreporting is likely to become especially problematic in communities where local law enforcement officials actively police immigration. In this sense, police intervention may serve to increase violence and exacerbate victims’ vulnerability and alienation. And communities may experience a sharp rise in unsolved crime and an even greater underreporting of crime by immigrant populations.

As mentioned at the outset of this essay, the practice of local institutions, exclusionary or otherwise, does not exist in a vacuum; rather, it reflects a broader policy and political context. This broader context has been a recent topic of interest among immigration scholars. Some argue that the framework within which communities used to think about security—street crime, lack of respect for community values, avoiding external dangers—has now become intertwined with concerns about legal status and fears of foreign people (Provine et al. 2012). After the terrorist attacks of 9/11, the federal government instituted law enforcement measures that targeted people of particular nationalities in the name of national security. In particular, several new laws have been passed that combine (some might say inflate) antiterrorism concerns with renewed attempts to control (undocumented) immigration (Ewing 2008, p. 7). Along these lines, Provine and her colleagues (2012) highlight the fact that federal immigration enforcement now sits within the DHS, established 1 month after the September 11, 2001 deadly attacks on the Pentagon and World Trade Center. This is especially significant, they argue, in light of the agency's mission of "protecting the American people and their homeland." This theme is echoed by Welch (2012), who further claims that the result of this enhanced set of concerns is a sense of insecurity that justifies more exacting governmental controls. What is ironic about all of this, Welch argues, is that it occurs in spite of the fact that empirical evidence consistently finds that immigration, including unauthorized immigration, does not increase crime.

Despite a strong push by the federal government and the support of groups such as State Legislators for Legal Immigration (SSLI), there has not been a blind acceptance of devolution. After initial growth, in the last few years, fewer law enforcement agencies have been joining the program (i.e., the rate of increase is declining), thus creating variation in program compliance not only across cities but within them as well. To get a better sense of how local police executives have responded to the push to become involved in enforcement of federal immigration laws, Provine and her colleagues (2012) distributed questionnaires to police chiefs in large- and medium-sized U.S. cities. Findings from their study reveal a high degree of variation in local responses to federal devolution of immigration-enforcement responsibilities; although the vast majority (nearly 75 percent) answered that they have no formal agreement with the agency but do contact ICE when holding suspected unauthorized immigrants for criminal violations, very few (less than 5 percent) had a Memorandum of Understanding with ICE (a 287[g] agreement) to help manage incarcerated inmates and to work with ICE on investigations and arrests for (civil) immigration violations. Thirteen percent responded that they "do not participate or assist in ICE immigration enforcement activities" in any way. In short, they describe a multilayered, multijurisdictional patchwork of enforcement across the United States. What emerges from this snapshot of perceptions of chiefs is that municipalities have not, in general, acted forcefully to direct their police departments toward greater engagement with immigration enforcement. Nor have departments seized the opportunity to engage in policy making in this area. Provine and her colleagues argue that a strong commitment to community policing, as well as the heated politics of unauthorized immigration, help to explain this reluctance.

Such reluctance is perhaps less surprising in light of the growing number of so-called sanctuary cities. Sanctuary cities are cities and towns where local officials have pushed back against the enforcement priorities of the federal government, and even the demands of their state legislatures, and have continued to emphasize the role of the police in serving *all* residents (Skogan 2009). In such locations, local policies and practices run against the demands of the federal government, resulting in policing that is more integrative than exclusionary. In Skogan's words:

When it comes to policing, what supposed sanctuary cities have in common is that their police have been instructed to make enforcement of immigration laws a very low priority. They do not participate in the 287(g) program. They may not ask apparent immigrants about their status or even place of birth, perhaps even when they arrest them. They frequently prohibit officers from inquiring about citizenship when they apprehend them for minor traffic offenses or misdemeanors. They do not immediately turn people with suspect documentation over to federal immigration authorities. They do not make arrests based on immigration holds placed in the national "wanted persons" database. They certainly do not make inquiries about the status of crime victims or people they interview during investigations. (2009, p. 198)

Although continually evolving, the list of sanctuary cities includes such well-known places as New York, San Francisco, Houston, Austin, Los Angeles, Portland, Baltimore, Minneapolis, and San Diego. An up-to-date and comprehensive list can be accessed at <http://ojjpac.org/sanctuary.asp>.

So, what does all this mean? What are the implications of this discussion for the broader arguments advanced in this essay? Accounting for local institutions such as the police and their practices—be they exclusionary or otherwise—is absolutely fundamental to understanding crime within communities. Even more fundamental, perhaps, is the need to account for the role of local law enforcement when analyzing the immigration–crime nexus. It is clear from the previous discussion that, should researchers choose to incorporate local law officials' practices into their analyses, they can expect to find variation across communities in the tolerance or acceptance of devolution and the (exclusionary) practices that go along with it. They will also be in a better position to determine whether differences in the immigration–crime nexus across localities is an artifact of defined local policies and practices, reflects a more amorphous relationship between community contexts and the characteristics of the immigrant population in that locality, or results from some combination of the two.

A final point is worth repeating: the police need not be authoritative or exclusionary in their practices. More integrative policing practices in immigrant communities include incorporating community leaders into citizen advisory boards for police and prosecution agencies, sponsoring in-service training in the cultures of various ethnic groups, and encouraging police officers to attend and speak at meetings of ethnic organizations in their communities, among other things. Although the focus in the next section is on the practices of other (more integrative) local institutions, such as labor

centers and churches, examples of partnerships that include local law enforcement, where the police are less exclusionary, are mentioned in passing.

III. INSTITUTIONS WITH INTEGRATIVE PRACTICES: BRINGING IMMIGRANTS INTO THE COMMUNITY

As just outlined, local institutions do much more than implement—or not—policies that invoke federal law to attach and remove certain persons from the body politic. Local institutions, governmental and otherwise, also serve more integrative functions within the community.³ With respect to governmental institutions, Mitnik and Halpern-Finnerty (2010) have outlined a number of policies employed by local governments that shield the undocumented from the restrictions and punishments of federal policy. But many more mundane examples of governmental policies aimed to assist in the integration of new arrivals exist across the nation, policies which are implemented by a variety of public and private institutions. The city of Monterey Park, California, for example, has funded language classes for recent immigrants run by various institutions, including the local senior center, and the police department has conducted outreach and held classes to teach basic traffic safety to its residents, many of whom are recent immigrants (Trager 2012). The city of Plano, Texas, has implemented similar policies directed at integrating newcomers (Brettell 2008). Both of these cities, as well as many others throughout the nation, celebrate ethnically oriented holidays and festivals, such as Chinese New Year and Cinco de Mayo, festivals that seemingly validate the presence of persons from specific places as being full “Americans.” Such festivals tend to be organized through public–private partnerships. Local governments also provide school and after-school programs for immigrant children, as well as open space for all members of the community to bond, at least theoretically. Such spaces include community centers, libraries, parks, and playgrounds and are generally administered by parks and recreation or other city departments. Finally, local governments often assist businesses in the area, including providing support for chambers of commerce and, occasionally, for job centers as well—both institutions that, again, are animated by a public–private partnership.

Private organizations can be instrumental in the integration of immigrants as well. In Mount Kisco, New York, for example, Neighbors Link has established a number of services for recent immigrants with the express goal of “strengthen[ing] the whole community by actively enhancing the healthy integration of recent immigrants” (<http://www.neighborslink.org>). Such services include preschool, after-school programs, adult education, skills development, leadership training, family support, and a worker center. Moreover, this organization has accomplished its goals, in part, by forming strong alliances with local government and police. A new branch of this organization has recently been established in Stamford, Connecticut. Other organizations focus more

on the economic integration of newcomers, such as the Spanish-American Merchants Association in New Haven, Connecticut. This particular Merchant's Association provides educational opportunities for entrepreneurial immigrants to learn computers, gain business licenses, and locate (last resort) financing opportunities (Olvera and Rae 2011). Less localized private organizations also provide assistance to immigrants. For example, LULAC, which does not explicitly aim to help immigrants adjust to life in the United States, still provides a number of services that help to foster integration. However, as national organizations, entities such as LULAC tend to work with and through more local organizations that provide similar services.

Places of worship are another set of local institutions that plays a significant role in the integration of immigrants into the community. In a study of immigrant incorporation in the city of New Haven, for example, Olvera and Rae (2011) found that the Catholic Church, in particular, offered services tailored to recent Mexican immigrants, including Spanish-language services, and also encouraged both documented and undocumented alike to become politically active in the community. Moreover, church services directed specifically at immigrants often exist within a framework of other social services offered by religious institutions and their secular partners. For instance, the Catholic Charities CYO of San Francisco, San Mateo, and Marin provide not only low-cost legal services for immigrants, but programs for youth, the elderly, the homeless, and for families as well (see <http://community.cccyo.org/page.aspx?pid=190>).

Despite suggestions as early as the 1990s that research on the relationship between local policies like these and community crime rates might prove fruitful in the realm of immigration studies (see, for example, Sampson and Wilson [1995]), little research of this kind has actually been conducted. Nevertheless, research and theory both within immigrant studies and within criminology more broadly suggest that the types of efforts just described are likely to enhance community relations and may therefore inhibit crime within the community as well. We shall briefly discuss three different areas of study that validate additional research on community institutional interventions.

Initially, research on the acculturation patterns of recent immigrants suggests that communities that successfully incorporate new immigrants into the socioeconomic fabric of community life are likely to see more prosocial choices made not only by immigrants themselves but also by their children. Drawing on longitudinal data about the children of immigrants in the cities of Miami and San Diego, Portes and Rumbaut (2006) distinguish three types of acculturation paths that immigrants to the United States follow. The first path is restricted to immigrants who bring substantial human capital with them and often results in children becoming professionals and entrepreneurs. The second path relates to working-class immigrants who settle in areas with strong co-ethnic community structures and results in acculturation through educational achievement and eventual integration into mainstream culture (by the third generation). These two paths to acculturation and integration find support in the work of such scholars as Jensen (2008), who has shown that new immigrants from both India and El Salvador, as well as their children, believe that civic participation—first cultural, but also political—is important to their sense of belonging in the United States. Such

participation is initially focused on co-ethnic ties (Stepick, Stepick, and Labissiere 2008) and includes a sense of civic belonging and pride.

Portes and Rumbaut's final acculturation path is typified by working-class parents who settle in areas with weak co-ethnic ties. Unlike the former two, this final path is typified by children who experience sociocultural dissonance, and who often stagnate socially and economically, or even assimilate into deviant lifestyles or reactive ethnicity (Portes and Rumbaut 2006; see also Portes and Rumbaut 2001). According to Portes and Rumbaut, it is only the final path to acculturation, one in which children of immigrants feel alienated, that leads to deviant behavior. Indeed, they point to the difficulties faced by Mexican-American youth who face widespread discrimination because of their potential undocumented status, as well as a lack of socioeconomic resources in the relevant co-ethnic community. As a result, such children are more likely to turn to antisocial activity. Nor are feelings of alienation limited to immigrants from any single country of origin. For example, Wray-Lake and her colleagues have found that immigrant youth of Arab origin who were exposed to constant portrayals of Arabs as "the enemy" were more likely to feel alienated from their new country (Wray-Lake, Syvertsen, and Flanagan 2008).

Portes and Rumbaut's claims are buttressed by a number of long-standing criminological theories. First, social disorganization theory focuses on the lack of community cohesion, and thus supervision within local communities, as core precursors of crime. In other words, it is a lack of community cohesion that leads to inadequate supervision of delinquent youth and, thus, to an increase in delinquent and criminal activity (Shaw and McKay 1942/1969). Similarly, opportunity theories suggest that crime occurs in places in which a motivated offender has an opportunity to engage in criminal activity (Clark and Felson 2004). Localities marked by high levels of cohesion, no doubt, would minimize such opportunities; by contrast, communities without such cohesion would seemingly present greater opportunities for criminal behaviors. Third, strain theory would suggest that youth experiencing sociocultural dissonance—along with blocked or limited legitimate opportunities—would be more prone to criminal activity to meet their (socially manufactured) desires (Agnew 1992, 2006). Finally, labeling theory would argue that immigrant youth in noninclusive communities might tend to be labeled as different, and perhaps even illegal, and that such labeling has both cognitive and real-world consequences, driving such youth to gradually conform to such behaviors (Sampson and Laub 1997; Lemert 2011).

Another line of criminological research suggests that community institutions that promote not only incorporation but also education and a youth-centric focus might promote more prosocial, stable communities and thus experience less overall crime. In particular, scholars who have stressed the need to educate youth in impulse control and deferred gratification (Gottfredson and Hirschi 1990; Gottfredson 2006) have laid the groundwork for programs that clearly demonstrate that youth intervention can reduce later aggressive behaviors, delinquency, and perhaps even criminal activity. Examples of such programs include the Midwest Prevention Project, which targets drug abuse through a multidimensional strategy that begins intervention in early adolescence; the

Nurse–Family Partnership, which assists low-income women in learning to parent their first child; and the Incredible Years Series, which arranges parent and teacher education for youth ages 2–10 who exhibit unusual amounts of aggression and also contains a youth intervention aspect. These programs and others have been evaluated by the Colorado Center for the Study and Prevention of Violence Blueprints Program (<http://www.colorado.edu/cspv/blueprints>), and the evidence-based cost-effectiveness of programs of this type has been evaluated by the Washington State Institute for Public Policy (<http://www.wsipp.wa.gov/default.asp>). Since the birth rate of new immigrants tends to be higher than it is for multigenerational families (see, e.g., Passel and Taylor 2010), and since scholars like Portes and Rumbaut (2001) have emphasized the ill effects of dissonant acculturation, community programs that focus on the emotional and psychological well-being of children, immigrants included, would appear to increase the likelihood of prosocial activity among community youth.

One final line of research that is relevant to an evaluation of efforts taken by localities to integrate new immigrants includes studies about communities undergoing rapid demographic change. Since at least the 1980s, scholars have argued that changing demographics within communities—and in particular rural communities—can lead to a cultural clash with differing understandings about the role of law and, thus, criminality. David Engel (1984), for instance, in a study of a small Midwestern community, found that long-time residents saw tort-type injury risks as being assumed by the person injured and, thus, as outside the law. Newcomers, by contrast—many of whom worked in wage labor—were more likely to turn to the legal system to deal with the unexpected costs of an injury. Yet the participants in that system were rarely willing to provide the requested compensation. In other words, the legality of the activity at issue turned on community values that were, at the time, directed by those who had lived in the community for many years.

Recent research findings are consistent with this claim. In an investigation of a small Texas town, for instance, Brettell and Nibbs (2011) argue that rapid demographic change—ethnic- and class-based—caused a great deal of unease among long-time residents of the town. This unease tended to be worded in terms of illegality, in which the persons arriving in town were assumed to be undocumented and, thus, rejecting of the “rule of law.” Brettell and Nibbs suggested there was a strong class element to this unease and that it led to the passage of anti-immigrant ordinances and practices targeting immigrants. This contrasts with Brettell’s (2008) own study of the nearby city of Plano, which has enacted a number of inclusionary policies to address its own rapid demographic changes. These policies include an International Festival, efforts by the Chief of Police to recruit minority officers, a Citizen’s Academy that teaches newcomers about the workings of government, a multicultural roundtable within which to discuss city policy, and a number of programs run by the local library for both adults and youth (Brettell 2008).⁴ These two examples suggest that efforts taken by city leaders to minimize (or highlight) the sociocultural distance between newcomers and old-timers in a community can enhance (or exacerbate) community relations and, thus, the social cohesion of the community.

Taken together, these three lines of research suggest that the implementation of policy at the local level can impact both the behavior of new immigrants and long-time residents' perception of them in positive ways, minimizing both sociocultural conflict and cultural dissonance. Conversely, opponents of such efforts argue that institutions that assist new immigrants are likely to attract large numbers of less desirable residents, particularly if the programs involved are equally available to the undocumented. As one resident of the city of Costa Mesa, California put it during city council meetings in 2007 and 2008, concentrating city services for the poor in an area of a city tends to depress property values, attract persons looking for a handout, and turn the area into a ghetto, with all the attendant crime problems (Trager 2012). In either case, we believe that local institutions, the policies they implement, and the procedures that flow from this implementation constitute a fruitful area for new research on the relationship between immigration and crime.

IV. CONCLUSION

Historically, immigrants have disproportionately taken the blame for many of society's problems, including high or increasing rates of crime and violence. The media has played a central role in shaping public opinion in this respect. For one, the constant juxtaposition of the words "immigration" and "crime" in news story after news story helps forge the perception of a causal link between the two. Yet scholars have been quick to challenge these claims, providing empirical evidence that immigration and crime do not go hand in hand. As we stated at the outset of this essay, at least with respect to the relationship between immigration and crime across neighborhoods, cities, and metropolitan areas, the overwhelming finding to emerge from the social science literature is that areas with greater concentrations of immigrants, or that have witnessed increases in immigration, report less crime and violence compared to their counterparts. Although these studies do not report identical results, it is quite remarkable just how consistent these findings have been in the literature.

Yet, as we have also argued throughout this essay, it would be premature to abandon research on immigration and crime at this point. Central to our argument is the fact that, to date, studies have not fully accounted for all of the (potential) forces that can impact neighborhood crime rates generally and the immigration-crime relationship specifically. Important missing elements, we maintain, are local institutions within the community, along with their concomitant practices and policies. Our discussion centered on the practices and policies of local law enforcement officials, which we claim have become more authoritarian—and exclusionary—in the current context of devolution of federal immigration enforcement. Our discussion also highlighted several examples of more integrative institutions, such as private organizations and churches that have resulted in the greater incorporation of immigrants into the community fabric. These local institutions—and our discussion of their potential exclusionary or

integrative practices—are meant to be illustrative. Certainly, additional local institutions could be incorporated into a neighborhood analysis, given their likely influence on the immigration–crime nexus.

We should also note that community institutions likely influence the immigration–crime nexus in more than their policy-making and policy-enforcing roles. Because most policy is, in the final analysis, implemented at the community level, local institutions have become focal points in the wider political debates over immigration. As a number of scholars point out, local institutions often serve as guinea pigs in the debate over immigration policy (see, e.g., Rosenblum and Gorman 2010; Waslin 2010), and occasionally are tasked with serving as enforcement proxies for the federal government. Even when localities themselves are not actively pursuing policies that impact immigrants, local institutions that perform vital local functions can be swept into the glare of a national or statewide policy enforcement scheme, often to the detriment of the stated goals of the institution impacted. Given this, we conclude our essay by providing a few examples of the ways in which extralocal laws, policies, and concerns have inserted themselves into local institutional practices in ways that hinder the prosocial mission of those institutions.

Local schools provide a perfect example of this inadvertent role. Localities are responsible for the education of residents under the age of 18, and federal and state mandates (such as the No Child Left Behind Act of 2001) direct school districts to focus efforts on low-performing schools and students in an effort to help them achieve basic academic competence (PL 107-110, 115 Stat. 1425 [2001]). Some school districts have attempted to accomplish these goals through integrative strategies. Yet some newly implemented state laws, in line with trends in devolution described earlier, place an immigration-enforcement burden on schools, requiring school officials to determine and report the immigration status of enrolling children and their parents. Although such laws do not prohibit the education of unauthorized children (see, e.g., Human Rights Watch 2011, p. 45), and although the courts typically block the implementation of school provisions of this type (see, e.g., *U.S. vs. Alabama*, No. 11-12532), they can have significant negative impacts on the educational mission of affected schools and, thus, on the future path of success or delinquency of many students.

A good example of this can be seen in the recent Hammon-Beason Alabama Taxpayer and Citizen Protection Act (“H.B. 56”), which was signed into law in June, 2011. As noted by Human Rights Watch (2011), H.B. 56 has contributed to a climate of fear at the community level and a distrust of the educational system. Section 28 of the H.B. 56 bill requires school authorities to determine the immigration status of every child enrolled. Prior to the court action that enjoined the implementation of section 28, school authorities stated that more than 5,000 Hispanic children were being held out of school, when normal absences would be about 1,000 children. The total population of Hispanic children in Alabama schools at this time was 31,000, including U.S. citizens. Many children were temporarily held out of school by their parents—and returned when section 28 was enjoined—but many others were formally withdrawn by parents fearful of the consequences of school policing of immigration status. These children not only lost time at

school, but also lost their places in vital educational programs in which they were previously enrolled. For instance, children who were withdrawn from the preschool program Head Start lost their places in the program. Other children never returned to school because their parents were afraid to drive them there for fear of being stopped by local authorities. Indeed, Human Rights Watch noted that police are often a visible presence in the areas around schools (Human Rights Watch 2011). And even students who did return to school often had parents who became distrustful of the schools, thus depriving their children of the critical connections between teachers and parents that promote enhanced learning.

Just as important, this shift of focus from education to fear of actual or potential consequences has undermined the ability of children to learn in these intellectually formative years. Human Rights Watch has found, for example, that many children who never stopped attending school have been traumatized by the sudden disappearance of so many of their friends and classmates. Other students have asked their teachers if they would adopt them if their parents were ever deported. And still other families drag their children to school hours before classes begin in an effort to avoid being pulled over by the police. Although school officials and teachers often make an effort to reassure the children of their safety, this does not eliminate the anxiety felt by such students—an anxiety grounded in the efforts by state and local authorities to make the unauthorized excluded and unwelcome. And the consequences do not stop with school hours. Many families with one or more unauthorized members no longer engage in activities that take them into public visibility. Families live in a climate of fear, even those who own homes or businesses in Alabama. This means that many school-aged children no longer participate in activities such as soccer, cheerleading, or scouts (Human Rights Watch 2011). Moreover, some teachers have suggested that the law has diminished the drive to learn among some students, since they no longer feel they will be able to attend college (AFL-CIO 2011). The theories reviewed earlier in this essay in varied ways all suggest that these developments will have the unintended consequence of increasing vulnerability to delinquency and crime.

Although state laws that impact schools and education constitute an especially visible intrusion into community life, other regional and statewide developments have drawn other local institutions into the wider political debates over immigration. Indeed, regulated businesses and institutions that operate at the local level have been especially vulnerable to such intrusion, including public utilities, courts, jails, county election offices, probation offices, and even local branches of the state bar. The fear and uncertainty created by this intrusion can be palpable. In a recent investigatory effort in Alabama following the implementation of H.B. 56, the AFL-CIO discovered many situations in which regulated local businesses refused services to alleged unauthorized persons. Examples include,

- A local bar association advised its lawyers that they would be required to report information about their unauthorized clients if requested.
- Local water authorities posted signs that Latino customers would have to provide proof of immigration status immediately.

- Probate offices published notice that they will not provide services without proof of immigration status, thus denying many immigrants of birth or death certificates.
- A Latino man in jail was denied use of the telephone to call his attorney because it constitutes a business transaction.

To make matters even more complicated for many residents, H.R. 56 specifically states that a driver's license from another state is not adequate proof of the right to live in the United States, thus making new residents of the state particularly vulnerable to these developments (AFL-CIO 2011). Developments of this type—which are far from universal—suggest there may be increasing ambiguities in the evaluation of the immigration–crime nexus at the local level because developments like these suggest increased scrutiny for the “criminal” behaviors of the unauthorized and also make ordinary lifestyles more difficult for the unauthorized to maintain.

Finally, extralocal organizations involved in the national debates over immigration can also directly impact institutional policies and practices at the community level. One particularly visible example of this is the Minuteman Project and its role in influencing community institutions, particularly at the level of police enforcement. Because the Minuteman Project as an organization advocates supplementing federal border security through private action (<http://www.minutemanproject.com>), the organization impacts the immigration–crime nexus in two fairly direct ways. First, it encourages local institutions to take actions that either criminalize the civil acts of unauthorized immigrants and those who assist them or to enforce federal or state laws that provide for such criminalization (Doty 2009). Second, the Minuteman Project also encourages individuals to take private action either to apprehend unauthorized immigrants or to provide information to the local authorities that will enable them to take steps to apprehend unauthorized immigrants (<http://www.minutemanproject.com/borderwatch.php>). Both types of action lead to increased probabilities that persons will be apprehended under laws that criminalize the undocumented and, thus, directly impact both the operation of peace services within the community as well as the immigration–crime nexus itself. This would even be the case if such apprehensions were improper, in which criminal charges could be filed against the private individuals involved.

In closing, we hope that our discussion has underscored the importance of bringing local institutions to the forefront of neighborhood research on immigration and crime. Clearly, there are many directions researchers could choose to explore. At a minimum though, we hope the arguments made in this essay spur researchers to continue examining the (likely) not-so-straightforward immigration–crime nexus.

NOTES

1. Agreements under 8 U.S.C. § 1357(g).
2. The e-verify system is operated by the DHS in cooperation with the Social Security Administration (see <http://www.uscis.gov/portal/site/uscis>).

3. Although we do not explore such policies here, local institutions can also attack the rights of immigrants to live or work in communities (see Varsanyi 2010).
4. Significantly, however, the demographic shift in Plano did not include rapid class change, since many of the new immigrants brought substantial human capital with them (Brettell and Nibbs 2011).

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CHAPTER 20

IMMIGRANTS AND THEIR CHILDREN

Evidence on Generational Differences in Crime

LUCA BERARDI AND
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MACRO-LEVEL studies have found, quite unequivocally, that immigration does not increase crime—a finding particularly true with respect to violent crime (Butcher and Piehl 1998a; Reid et al. 2005; Rumbaut and Ewing 2007). Credible sources suggest that, after controlling for other factors that may influence crime rates, a higher level of immigrant concentration in cities and neighborhoods is strongly associated with lower levels of violence, including homicide (Reid et al. 2005; Morenoff and Astor 2006; Sampson 2008; Ousey and Kubrin 2009; Stowell et al. 2009; Vélez 2009; Martinez, Stowell, and Lee 2010). Sampson, Morenoff, and Raudenbush (2005) suggest that immigration may have played a critical role in the overall crime drop that occurred in the United States in the 1990s (see also Reid et al. 2005; Rumbaut and Ewing 2007; Ousey and Kubrin 2009; Nielsen and Martinez 2011). Although important resources for dispelling popular misconceptions that immigration causes crime to increase, these studies do not (and often cannot) speak to differences and anomalies in offending and victimization across immigrant generations. In this essay, concentrating primarily on studies conducted in the United States, though drawing on comparative examples from Europe, we outline the main findings on generational differences in crime and victimization among immigrants and highlight, wherever possible, variations in these patterns within and across racial and ethnic groups.

In both the United States and Canada, research suggests that although second-generation immigrants experience higher crime rates than first-generation immigrants, their rates are typically lower than, or very similar to, those of native-born Americans (Morenoff and Astor 2006; Hagan, Levi, and Dinovitzer 2008; Bucerius 2011). First-generation immigrants, on the other hand, tend to enjoy crime rates that are

significantly lower than the resident population (Tonry 1997; Bucerius 2011). However, there are racial and ethnic variations in levels of offending and deviant behavior across generations; some groups are more or less criminally involved than others (although the intragenerational pattern generally holds).

Explaining these variations is one of the greater challenges in criminology. Patterns clearly suggest that immigrants experience disparate levels of acculturation and assimilation into, and exclusion from, the same host society—indicating that “immigrants,” comprised of various generations and racial and ethnic groups, are not a homogenous category and should not be studied as such. The unique opportunity structures that different racial and ethnic groups face in society, “the parental human capital, the modes of incorporation, family structure, and the neighborhood in which they live” (Bucerius 2011, p. 394), may play a role in explaining the different crime patterns among these groups.

As in the United States, second-generation immigrants in most Western European countries are typically more involved in crime than first-generation immigrants (the major exception being Sweden, where the trend seems to be completely reversed [Ahlberg 1996; Martens 1997]). However, unlike the findings in the United States, “the crime rates of *some* second-generation immigrant groups in the European context drastically *exceed* the crime rates of the native-born population” (Bucerius 2011, p. 387, emphasis added), again showing that these patterns do not hold true for all immigrant groups within or across all countries. In Europe, differences in generational offending are found across immigrant groups residing in the same country (e.g., second-generation Turks and Moroccans have different crime rates in the Netherlands despite having similar migration histories, comparable socioeconomic backgrounds, and being present in similarly large numbers) and within immigrant groups residing in different countries (e.g., second-generation Turks are more crime-prone than their Moroccan counterparts in Germany, but the reverse is true in the Netherlands [Tonry 1998, p. 23]). First-generation immigrants in Western Europe mostly experience lower crime rates than the native-born population (as in the United States and Canada); however, this general pattern does not hold true for all first-generation immigrant groups. Some studies have found that recent immigrants—especially those with illegal status—seem to be more prone to crime than the native-born population (e.g., see Engbersen, van der Leun, and de Boom 2007 for the Dutch context).

Unfortunately, most research is not sensitive to generational differences in crime, let alone to generational differences across and within racial and ethnic groups. Part of the problem, of course, has to do with a lack of available and reliable data sources. In the United States, the most reliable data sources on crime and victimization—for example, the Uniform Crime Reports and the National Victimization Survey, respectively—do not include information on the generational status of immigrant offenders and victims (Morenoff and Astor 2006; Rumbaut et al. 2006).

Most jurisdictions in the United States when collecting data focus solely on racial indicators, often ignoring ethnic group differences, nationality, or immigration status (Bucerius 2011). Given that “no official criminal justice statistics are collected by national

origin, immigration, or generational status” (Rumbaut et al. 2006, p. 67), it should not be surprising that “contemporary criminology has focused largely on the stratification of race (still largely framed in black and white terms), place, class, age, and gender, leaving out ethnicity, nativity, and generation” (Rumbaut et al. 2006, p. 67).

Large differences also exist in Western Europe in the availability of data sources and in the definition and classification of the term *immigrant*. In most European countries (except for the United Kingdom), the collection or reporting of data based on race and ethnicity is strictly forbidden (except for data on Roma and Sinti, see Albrecht 1997); in most of these countries, only citizenship status may be used to measure crime across immigrant groups or generations.

An additional problem, when trying to compare crime rates across different European countries is that citizenship laws vary widely. For example, in France and Sweden, it has been relatively easy to obtain citizenship over the years, which has created difficulty for researchers interested in breaking-down categories based on generational status or nationality. In France, for instance, it is possible to distinguish between “French” (i.e., “native-born”) and “foreigners” or even “foreign nationals” (i.e., some of the first-plus generation), but the categories are still largely imprecise. The “French” category, for example, includes many people who were born abroad but who subsequently naturalized. As a result, there could be as many, or more, “foreign-born” persons in this category as there are individuals who were born in France. Second-generation immigrants who acquired French citizenship by birth also fall into the category “French.” The “French” category in a group analysis could include a large number of first-generation immigrants and their children, making it difficult to draw meaningful conclusions about generational differences in crime and victimization.

At the other extreme, Germany (until recently) and Switzerland (still) have made it very difficult for immigrants to gain citizenship—a reality that manifests itself in various data sets, research studies, and the categories that they employ. The “foreign” or “immigrant” category, for example, often includes second- and third-generation residents. This seems nonsensical, as second-plus-generation immigrants are, by definition “native-born.” However, German and Swiss immigration histories and citizenship laws have placed the descendants of guest-workers who initially settled between the 1950s and 1970s and other immigrants into the “foreigner” category, making it nearly impossible to break such groupings down further by generational status.¹ In other European countries (e.g., in Scandinavia and the Netherlands), it is possible to get data on the birthplace, or parents’ birthplace, of offenders and to do single-country empirical analyses that define foreigner/immigrant in ways that circumvent the naturalization problem, thereby also getting data on generational status. In general, however, analyses of generational differences in crime are difficult to conduct in both the United States and Europe due to the scarcity of data sources and problems with categorical distinctions between the native-born and immigrants.

Aside from the shortage of available data, many scholars seem deliberately to ignore generational differences in crime because of an unrelenting focus on “debunking” the immigration and crime link—that is, to prove, unequivocally and at the macro-level

that no positive relationship between immigration and crime exists. As the articles in *The Oxford Handbook of Ethnicity, Crime, and Immigration* illustrate, most scholars in the field have already reached this conclusion. In our opinion, more research is needed at the individual level, where comparisons are not solely drawn in “immigrant” versus “nonimmigrant” terms, but where the “immigrant” and the “native-born” groups are disaggregated and broken down by generational status, race, ethnicity, socioeconomic and political status, and migration histories. Only then will a clearer picture emerge on differences in crime and victimization across succeeding generations of immigrants.

Understanding variations in crime patterns is necessary in order to properly assist different immigrant groups. This is especially true for the second generation, which seems to experience—on average, and in most countries—higher crime rates than their parents’ generation. Breaking down crime patterns even further, based on racial and ethnic background, is also vital—especially if we take the view that some ethnic groups are not “inherently more criminal” than others, but instead, seem to experience different challenges when integrating into a new host society. This article, thus, is less concerned with the broader impact of immigration on crime and victimization rates as a macro-level process than with predominantly individual-level studies that take account of the generational status of immigrants and tease out important disparities in crime and victimization across racial and ethnic groups.

The most important points can be summarized as follows:

- Although the literature has pointed to a number of significant improvements for second-generation immigrants compared with their parents, especially with respect to socioeconomic status and educational attainment, this groups tends to fare worse with respect to crime rates, health status, and certain social outcomes (e.g., divorce rates, alcohol use, etc.)—a phenomenon known as “the paradox of assimilation” (Rumbaut and Ewing 2007).
- Historic and contemporary research findings show that second-generation immigrants in the United States and Western Europe (with the exception of Sweden) have higher crime rates than their parents’ generation. Thus, the “immigrant advantage”—said to help the first generation be law-abiding and live crime-free lives—does not seem to carry over to the second generation. Many researchers, including Edwin Sutherland (1924), have largely explained the rising crime rates of the second generation as a result of the process of acculturation into, and immigrants’ length of residence in, the new country.
- Most studies in the United States show that second-generation immigrants have crime rates that are lower than, or similar to, those of the native-born population, but this pattern does not generally hold true in Western Europe, where rates for second-generation immigrants typically exceed those of the native-born population.
- Some evidence suggests that very recent first-generation immigrants in Europe are more crime-prone than the native-born population—likely due, at least in part, to recent immigrants engaging in subsistence crimes in order to survive.

- Generally speaking, there is a real lack of research on generational differences in immigrant victimization. This is particularly a challenge for policy makers and local organizations interested in addressing these issues.
- Although crime rates tend to increase across subsequent generations of immigrants in both the United States and Western Europe, researchers cannot adequately explain why some second-generation immigrant groups have higher crime rates than others. Future research needs to pay particular attention to factors that may help us understand the distinct offending (and victimization) patterns of various immigrant groups—particularly across various ethnic groups of second-generation immigrants and in different national contexts.
- Available data sources are inadequate for conducting meaningful research on generational differences in crime and victimization. There is dire need for future research to define and distinguish adequately between different generations of immigrants and different ethnic and racial groups.

This essay presents an overview of the literature on generational differences in crime and victimization in the United States and Western Europe, paying particular attention, wherever possible, to variations within and across racial and ethnic immigrant groups. Section I provides historical findings pertaining to generational differences in immigrant offending in the United States.² Section II discusses research and data on generational differences in crime and victimization in the United States, with some references to Western Europe, breaking down findings by types of crime (e.g., homicide, violence, delinquency, and substance abuse) and types of victimization (e.g., nonfatal and fatal). Section III discusses measurement difficulties and definitional issues. Section IV concludes with suggestions for future research and for public policy.

I. HISTORICAL FINDINGS IN THE UNITED STATES

Research on immigration and crime in the United States dates back to the early 1900s. The majority of historical literature focused on whether the “foreign born” were engaged in crime at higher rates than the “native born.” As predominantly remains the case today, much of this early research failed to account for generational differences in crime, simply focusing on differences in offending between the foreign-born and native-born residents of American parentage.

When generational differences in crime among immigrants were considered in this early set of literature, important control variables (such as the sex and age) were often neglected. Waters (1999), for example, notes that some of the earliest immigration and crime studies failed to control for the disproportionately high number of young males in the immigrant population (a typically more criminogenic group, regardless of

immigration status), thereby explaining some of the findings of higher criminal involvement among the foreign born in a handful of studies. Racial and ethnic differences were sometimes considered in broad, aggregate-level studies; however, few studies took their analyses further—that is, comparing the criminality of different generations of immigrants according to their racial and ethnic backgrounds.

Regardless of their obvious shortcomings with relation to scope and study design, the early twentieth-century literature on immigration and crime shared some fairly consistent findings. Most found that foreign-born immigrants were less criminal than native-born residents. Further, when immigrant generational status was taken into account, second-generation immigrants typically had higher rates of crime than their parents. It is less clear, however, how the second generation fared historically in comparison to the third-plus generation.

A. The Three Commissions and Edwin Sutherland

In 1901, the U.S. Industrial Commission (a government body in existence from 1898 to 1902 appointed by President William McKinley) issued a “Special Report on General Statistics of Immigration and the Foreign-Born” to try to better understand the relationship between immigration and crime. Using prison statistics as an indicator of criminality, the commission found that foreign-born whites were less criminal than native-born whites (Industrial Commission 1901). However, a large part of the native-born prisoner population was composed of second-generation immigrants. On this point, the commission stated that, “this was just as strong an argument as to the injurious effect of immigration as would be a high proportion among the foreign-born themselves” (Industrial Commission 1901 in Tonry 1997, p. 20).

In 1911, the Immigration Commission—another federal panel charged with identifying the relationship between immigration and crime—found that “no satisfactory evidence has yet been produced to show that immigration has resulted in an increase in crime disproportionate to the increase in adult population.... Such figures, as are presented... indicate that immigration has not increased the volume of crime to a distinguishable extent, if at all” (Immigration Commission 1911 in Tonry 2007, p. 20). Anticipating findings of contemporary macro-level studies, the commission concluded that immigration seemed to be suppressing crime rates as opposed to increasing them. Like its predecessor a decade before, the Immigration Commission also found that second-generation immigrants had higher crime rates for some offenses than did third-generation Americans—pointing again to the more pronounced criminal involvement of the second-generation over their parents and the native stock (see Tonry 1997).

Edwin Sutherland challenged the then commonly held (though largely unfounded) notion that immigration and crime were positively linked. He suggested, as scholars continue to do today, that crime among immigrants was not due to an inherent flaw or weakness plaguing the immigrant population; rather, immigrant criminality could mainly be attributed to the increased acculturation of these groups into a generally more

crime-prone American society (Sutherland 1924). In short, the longer immigrants resided in the United States, the more criminal they became. This held true at the individual as well as the generational level (that is, it held true for entire generations in aggregate).

Sutherland (1924) provided important pieces of evidence. First, at the generational level, he found that second-generation immigrants were more criminally involved than the foreign-born. Second, at the individual level, he showed that those who immigrated to the United States as children had higher rates of imprisonment than those who immigrated as adults. Finally, he showed that immigrants who resided in the United States had higher rates of serious crime than their counterparts in their respective countries of origin. Further, he argued that despite having higher rates of crime than the foreign-born population, second-generation immigrants had lower or, at most, equal, rates compared with their native-born counterparts—a position that contradicted the 1901 and 1911 commission findings of higher criminality among the second generation over the native stock.

Sutherland concluded that acculturation to American society, across time and generations, exposed immigrants and their offspring to native-born levels of crime. In other words, the cross-generational pattern of criminality that Sutherland observed among immigrants—one that continues to be prevalent in most ethnic groups in the United States today—was merely “a slow process of ‘catching up’ (or a social form of ‘naturalization’) to the baseline rate of the native-born population” (Hagan, Levi, and Dinovitzer 2008, p.100). Almost 90 years later, Sutherland’s work continues to provide insight into, and a strong theoretical and empirical foundation for, modern analyses of generational differences in crime.

The 1931 National Commission on Law Observance and Enforcement, more commonly known as the Wickersham Commission after its chairman, was America’s first national crime commission. Piecing together crime and arrest statistics from 52 cities, the commission found that first-generation immigrants committed fewer major offenses, in proportion to their numbers, than did native-born persons of the same age and sex (National Commission on Law Observance and Enforcement 1931).³ The commission turned its attention to the second generation but found that, due to a lack of official records on the parental birthplaces of the native-born, second-generation immigrants could not be distinguished from people born to American parents (see Tonry 1997). As a next-best effort, the commission collected formal testimony and interviews from police and probation officers, prosecutors, and judges. Every criminal justice official interviewed stated that “there was an immigrant crime problem but it was attributable not to immigrants but to their sons” (Tonry 1997, p. 20).

B. The Census Bureau, Taft, and Stofflet on the Second Generation

In 1933, after observing several years of lower commitment rates among first-generation immigrants compared with the native-born population, the Census Bureau began collecting official data on the nativity of the parents of prisoners committed to federal and

state prisons and reformatories. The Bureau found that in the majority of states that provided data, the group of prisoners with foreign-born parents had lower commitment rates than those with native-born parents. In fact, “in only nine of the 26 states did the foreign parentage group show higher commitment rates than the native parentage group” (Stofflet 1941, p. 90).

A year after the publication of the Census Bureau statistics, Taft (1936) examined the demographic composition of the general population in the 26 states that participated in the study. For the 26 states as a whole, those born to immigrant parents had a lower crime rate than those born to American parents (Taft 1936). Going back to the Census Bureau findings, he further analyzed the nine states with higher commitment rates for second-generation immigrants. He found that part of the higher commitment rate was due to the large number of immigrants within the 15–24-year age range in the general population of these nine states—a group that Taft (1936) called “the criminally significant age group” because of their greater likelihood of criminal involvement compared to their juniors and seniors.

Stofflet’s work on New Jersey State Prison admissions between 1925 and 1934 is another example of important early findings. Distributing his sample by the type of crime committed, and then comparing this distribution to the generational status of the prisoners, Stofflet (1941) found that second-generation immigrants of all national groups committed very similar offenses to those of native parentage. Like Sutherland before him, Stofflet (1941, p. 86) used this finding to suggest that, “the acculturation process in the United States is clearly evident in the second generation.”

Based on the distribution of his sample by offense type, Stofflet (1941) argued that the character of criminal behavior seemed to change across immigrant generations. First-generation immigrants were incarcerated for more violent offenses, but the second generation seemed to be imprisoned for primarily theft offenses—more closely mirroring the criminal tendencies of the native-born at the time. Similar findings by Sutherland (1934) and Giardini (1941, in Root 1927) on foreign- and native-born prisoners of Italian origin also point to decreasing levels of violent crime from the first to the second generation. Further, Stofflet (1941) found a general pattern of a shift from violent crimes committed as a defense of personal and family honor to predatory crimes across subsequent generations that held for Italians and Poles, immigrant groups that occupied similar socioeconomic positions.

II. GENERATIONAL DIFFERENCE IN THE UNITED STATES AND WESTERN EUROPE

Sutherland’s acculturation thesis remains relevant today and is supported in most studies. Although the immigration literature has pointed to a number of socioeconomic improvements that characterize second- and third-generation immigrants compared with the first generation (for example, higher educational levels, English

language proficiency, and better employment prospects) (Card, DiNardo, and Estes 2000; Rumbaut and Ewing 2007; Picot and Hou 2011; Harris, Trujillo, and Jamison 2008; Portes and Fernandez-Kelly 2008), these groups still tend to do worse than first-generation immigrants with respect to crime rates (and health status).

The contemporary findings on offending point to a pattern of increased criminality across immigrant generations. These findings also fall in line with the main tenets of the downward assimilation thesis (Portes and Zhou 1993; Portes and Rumbaut 2006), which argues that instead of succeeding generations of immigrants experiencing general improvements on a number of indicators, the opposite occurs—crime rates increase, while health, along with socioeconomic status, deteriorate, or at best, remain stagnant across generations.

Part of this downward trend among some individuals and immigrant groups has to do with the process of acculturation into a new society. At the individual level, this means that the longer an immigrant remains in the United States or Western Europe, the more likely he or she is to mimic the patterns of crime and the health status of the native-born population—who tend to do worse on a number of these important indicators. At the generational cohort level, the same trend is apparent—first-generation immigrants tend to do better on a number of important indicators than do subsequent generations of immigrants. Thus, individual- and group-level acculturation, coupled with the downward assimilation thesis, can help explain some of the general trends seen in the literature.

Rumbaut and Ewing (2007) describe a “paradox of assimilation” in which the second generation mimics the health status and crime rates of the native-born population. The health status of immigrants and their children “worsens the longer they live in the United States and with increasing acculturation” (Rumbaut and Ewing 2007, p. 2). Further, the second and third generations are more likely to experience higher rates of “family disintegration and drug and alcohol addiction, that increase the likelihood of criminal behavior” (Rumbaut and Ewing 2007, p. 2). They find the risk of incarceration is not only higher for the second generation in comparison with the first, but it also increases for the first generation the longer they have resided in the United States. They observe, however, that being an immigrant still has some protective factors against criminality—even first-generation immigrants who have resided in the United States for longer than 16 years are still “far less likely to be incarcerated than their native-born counterparts” (Rumbaut and Ewing 2007, p. 4).

We can draw on a number of studies with respect to generational status and criminal offending in the United States and some Western European countries, but much less is known about victimization and generational status, especially in Western Europe. Single country analyses are based only on self-report studies, if they exist at all, and cross-national analyses are essentially impossible to conduct due to a lack of comparative data.

A. Offending Patterns across Immigrant Generations

Various generations of immigrants differ in their patterns of offending beyond the general finding that the first generation is less criminal than subsequent generations.

Differences in patterns of offending arise when race and ethnicity are taken into consideration along with generational status. Some would argue that different offending patterns are a reflection of cultural traits (Sellin 1938). We believe that these patterns result from different experiences of inclusion and exclusion in the host society that different racial and ethnic groups face, despite immigrating into the same country. This, in turn, helps create the disparity in crime that is seen among different ethnic groups of immigrants of the same generation.

B. Generational Differences in Violent Offending

In a study of 180 Chicago neighborhoods from 1995 to 2002, Sampson, Morenoff, and Raudenbush (2005) analyzed a number of factors that might explain disparities in levels of violence across racial and ethnic groups (blacks, Hispanics, whites, and Latinos—including a subsample of Mexican-Americans). Adjusting for family and neighborhood background, for all racial and ethnic groups, first-generation immigrants were nearly 50 percent less likely to commit violent crimes than the third-generation comparison group. Despite being more likely to commit violent crime than the first generation, second-generation immigrants were still about 25 percent less likely to commit violent crime than the third generation.

Sampson and his colleagues found that blacks had a greater propensity toward violence than whites; however, when they controlled for generational status, the gap in violence between the two groups shrunk by 14 percent. They posited that part of the reason whites were less likely than blacks to commit violent crimes was that whites were more likely to be recent immigrants. Of all the groups, blacks were the least likely to be immigrants, thereby lacking the “immigrant protection factor” and partly explaining their elevated levels of violence relative to other racial groups. The lower propensity of Mexican-Americans to engage in violent crime compared with both whites and blacks could also be explained, at least partly, by immigrant status; almost a quarter of those of Mexican descent were born abroad and, thus, were members of the least crime-prone first generation. Finally, immigration was identified to be a protective factor against violence for all racial and ethnic groups in the study, except for Puerto Ricans (Sampson 2008).

Sorenson and Lew (2000) examined whether immigrants were more involved in homicides than their native-born people in Los Angeles County between 1990 and 1994. Despite serious shortcomings in the availability of data on homicide suspects,⁴ they found that the native-born were 1.29 times more likely to commit homicide than were first-generation immigrants. This is in line with the work of Martinez, Nielsen, and Lee (2003) who, studying homicide rates of Mariel Cubans, found no evidence that recent immigrants had higher rates of homicide offending than non-immigrants.

Sorenson and Lew (2000) investigated the homicide rates within each ethnic group, drawing distinctions between foreign-born and native-born individuals (i.e., the “second-plus generation”)⁵ of the same ethnic group. Quite surprisingly, they found that

the adjusted homicide rates for the two generational groups were nearly identical; the second-plus generation did not display higher rates of homicide when compared with their ethnic counterparts in the first generation.

The only exception to this pattern was in the Asian population, in which the second-plus generation was actually three times less likely than the foreign-born population to commit homicide, making this finding quite unusual—as it is the first generation, not the second-plus, that tends to enjoy lower offense rates. This might be related to the “Asian advantage” that Min Zhou and others (Zhou 2006; Zhou and Kim 2006; Min and Kim 2009) have pointed to when trying to explain why second-generation immigrants of Asian heritage outperform other immigrant groups (and the native-born) in terms of academic achievement. It has been suggested that an interplay between parental oversight, cultural norms, a communal governance of space, and structural forces account for at least some of the success achieved by successive generations of Asian immigrants in the United States. Sorenson and Lew (2000) concluded that, across racial groups, blacks and Hispanics had higher rates of homicide offending than Asians and whites, regardless of generational status.

Using segmented assimilation theory as a backdrop, Morenoff and Astor (2006) explored the self-reported involvement of Chicago youth in violent criminality and behavior. They discovered that most types of violent behaviors were more widespread among the second and subsequent generations than among the foreign-born—however, no significant differences across generations were found for the most serious acts of violence (e.g., attacking someone with a weapon, robbing someone with a weapon, or committing arson). First-generation immigrants “who immigrated to the United States at younger ages were more likely to engage in most acts of violence during adolescence than those who arrived at later ages” (Morenoff and Astor 2006, p. 46). More specifically, first-generation immigrants who arrived in the United States by age 10 or later were significantly less likely to engage in all types of violent behavior than were those who arrived in the country under the age of six, suggesting that they benefited more from the “immigrant advantage.”

Using data from the National Longitudinal Study of Adolescent Health, Harris (1999) and Bui and Thingniramol (2005) found that every first-generation racial and ethnic group included in the study was engaged in significantly fewer risky behaviors than was the native-born, non-Hispanic white population. However, second-generation immigrant youth were more likely to engage in delinquent and violent behavior than were their first-generation counterparts. Both findings are consistent with the majority of the literature on generational differences in crime.

The available data sources thus point to lower levels of violent behavior and offending among first-generation immigrants in comparison with the native-born and subsequent generations. This seems to hold true independent of ethnic background and may be a consequence of having consciously chosen to immigrate and with that to want to succeed in the new country in part by obeying its laws, and from a capacity of first-generation immigrants to defer gratifications for the long-term benefit of themselves and their children. At the same time, first-generation immigrants do not seem to

be as affected by experiences of “exclusion” and tend to interpret them as the actions of a few rude individuals, whereas members of the subsequent generations are less likely to interpret them as isolated incidents and rather to view them as “systemic discrimination” (Waldinger and Feliciano 2004; Viruell-Fuentes 2007; Bucerius 2011).

C. Arrest and Incarceration

Patterns of arrest and incarceration across immigrant generations in the United States are similar to those found for violent behavior and offending. Studies conducted on arrest and incarceration of immigrants fall into three broad categories. Some compare rates between immigrants (taken to be the first generation) and the native-born (could include the second generation as well as those of American parentage). Other studies break down the two categories by generational status (and sometimes, though not very often, distinguish and compare different races and ethnicities by their generational status). Others still focus exclusively on the first generation to understand better the relationship between length of time in the United States and arrest or incarceration patterns. The studies discussed next fall into one of these three broad categories. All speak to issues of “acculturation” (Sutherland 1924) or, in some cases, “downward assimilation.”

Butcher and Piehl (1998*b*, p. 654) analyzed data from the 1980 and 1990 Public Use Microdata Samples and concluded that, among 18 to 24-year-old men living in the United States, “immigrants were less likely than the native-born to be institutionalized (that is, in correctional facilities, mental hospitals, or other institutions) and much less likely to be institutionalized than native-born men with similar characteristics.” They also found that “the relative ranking of [institutionalization] rates by race and ethnicity was the same within the immigrant and native population” (Butcher and Piehl 1998*b*, p. 659). For both immigrant and native-born groups, blacks had the highest rates of institutionalization and Asians the lowest.

In a similar study with nearly identical findings, Butcher and Piehl (2006) analyzed three decades of U.S. Census data (1980, 1990, and 2000) and found that immigrants were less likely to be institutionalized (by approximately one-fifth the rate) than the native-born population. Hagan and Palloni (1999) found that immigrants from Cuba, Mexico, Dominican Republic, El Salvador, Jamaica, Columbia, and Guatemala had lower rates of incarceration in U.S. state prisons than did their American-born counterparts (once age and pretrial detention were controlled for).

Rumbaut et al. (2006), using 2000 U.S. Census data, compared the incarceration rates of foreign-born and U.S.-born men between the ages of 18–39. The incarceration rate of foreign-born residents was approximately one-fourth that of the native-born population. The incarceration rate for foreign-born men was one-half that for non-Hispanic white native-born men and only one-thirteenth that for native-born black men (Rumbaut et al. 2006). Differences across the two groups by national origin was also apparent; incarceration rates for almost all generations of Asian immigrants were lower than those of Latin Americans.

Rumbaut and Ewing (2007), again drawing upon 2000 U.S. Census, found that the incarceration rate of the foreign-born immigrant population was one-fifth that of the native-born population in 2000. Different ethnic groups had different rates of incarceration, but the foreign-born groups within every panethnic category, without exception, enjoyed lower incarceration rates than the native-born groups. For example, the incarceration rate of foreign-born Hispanic men was approximately one-seventh that of native-born Hispanic men, whereas the incarceration rate of foreign-born white men was nearly one-third that of native-born non-Hispanic white men. Again, this same pattern was found for all panethnic groups without exception. Variations in the rate of incarceration between native- and foreign-born men were also found within particular ethnic groups (e.g., Hispanics) depending on their national origin (e.g., Puerto Rican, Dominican, Cuban, Colombian/Ecuadorian/Peruvian, Mexican, and Salvadoran/Guatemalan) (see Rumbaut and Ewing 2007, figure 4).

Studies that compare “immigrant” and “native-born” populations provide helpful information on broad patterns of criminality and incarceration experiences, but are unable to isolate nuances that exist across different generations of immigrants. Understanding these critical distinctions, Ruben G. Rumbaut (2004, 2008) and his collaborators (Rumbaut et al. 2006; Rumbaut and Ewing 2007) apply them, whenever possible, in their research. For example, in a study examining arrest and incarceration rates across various generations of young people, Rumbaut (2004, 2008; see also Rumbaut et al. 2006) broke the sample down into four cohorts: 1.5-generation immigrants (foreign-born children who moved to the country between six and 12 years old), 1.75-generation immigrants (foreign-born children who arrived in the United States between the ages of zero and five), second-generation immigrants (U.S.-born individuals with two foreign-born parents), and the 2.5-generational cohort (individuals who, along with one parent, were born in the United States, while the other parent was foreign born).

Using this disaggregated data from the Children of Immigrants Longitudinal Study (CILS), Rumbaut (2004, p. 1198) discovered that outcomes worsened across generational cohorts with increased “Americanization” (or acculturation) of the foreign-born, with “1.5ers [being] the least likely to have been arrested (10.6 percent) or incarcerated (8.2 percent), whereas the 2.5ers were the most likely on both counts: 21.4 percent and 14 percent, respectively. The 1.75 and the 2.0 cohorts fell in between.” In a similar study merging the CILS with the Immigration and Intergenerational Mobility in Metropolitan Los Angeles data set, Rumbaut and Ewing (2007, p. 219), again, found that “outcomes worsened over time and across generations” so that the foreign-born 1.5-generation was much less likely to be arrested or incarcerated than the U.S.-born second and third-plus generations. Further, the second generation was much less likely to be arrested or incarcerated than the third generation, and so forth.

Butcher and Piehl (1998*b*) used 1980 and 1990 U.S. Census data to show that, among the first generation, more recent immigrants were less likely to be institutionalized than were those who had resided in the United States for a longer period of time. A decade later, they replicated the study using the most recent census data available and

found that the pattern of institutionalization was indistinguishable from that of their 1998 study—institutionalization rates increased with time spent in the United States. Rumbaut et al. (2006, p. 73) documented the exact same phenomenon, adding, however, that this pattern held true “for every [racial and ethnic] group, without exception.” All of these findings, thus, seem to suggest that immigrants and their children are assimilating to the criminal propensity of the native-born population. This is true at both the individual-level (i.e., among the first generation, depending on time spent in the United States) and the generational cohort-level (i.e., increasing criminality and institutionalization across succeeding generations).

D. Delinquency and Substance Abuse

The literature on immigrant involvement in delinquency and substance abuse in the United States is fairly limited. Of the relatively small number of studies on the subject, few consider generational differences. Fewer still examine how these differences play out within and across racial and ethnic groups even though many of these studies are based on self-report surveys, which could easily have asked about the respondent’s birthplace, those of their parents, and their parents’ country of origin. The studies presented next come closest to comparing generations with respect to delinquent behavior and substance abuse. The findings are fairly consistent with the research discussed thus far. First-generation immigrants are generally less involved in delinquency and drug use than the second-generation counterparts; however, this gap tends to diminish the longer immigrants reside in the United States.

Vega, Gil, and Zimmerman (1993) sought to identify group differences in lifetime and first use of alcohol and cigarettes in a sample of Cuban-American, black, and white non-Hispanic sixth and seventh graders in Miami, Florida. They found that, “foreign-born Cuban American students had significantly lower levels of lifetime alcohol use and lifetime cigarette use than did U.S.-born Cuban Americans” (Vega, Gil, and Zimmerman 1993, p. 257). However, among Cuban Americans (the only group to be disaggregated into native- and foreign-born), the foreign-born reported earlier first-use of alcohol than native-born Cuban Americans. The U.S.-born group was not broken down further, but the findings are significant: Despite reporting earlier first-use of alcohol, foreign-born Cuban immigrants exhibited less lifetime consumption of cigarettes and alcohol than did subsequent generations. This points once again to the power of downward assimilation and acculturation theories in understanding patterns of offending over immigrant generations.

Comparing delinquency data from two cohorts (1994 and 2003) of Vietnamese youth residing in an ethnic enclave in New Orleans, Zhou and Bankston (2006) found that major demographic differences existed between the two groups—for example, the 2003 cohort was composed of a larger percentage of U.S.-born Vietnamese youth and were more likely to have college educated parents and live in two-parent families than the 1994 cohort. Despite those advantages, the 2003 cohort engaged in all

types of delinquency (including drug use, alcohol use, and police contact) at a higher frequency than their 1994 counterparts. Native-born (i.e., second-plus generation) youth were more likely to engage in all three forms of delinquent activity than their foreign-born counterparts—a finding that held across both cohorts. *In toto*, delinquency was higher in the cohort that contained the greater number of native-born Vietnamese youth.

Bui (2009) assessed the delinquent behavior of nearly 13,000 schoolchildren in grades 7–12 in a nationally representative sample. She found that first-generation immigrants were less likely to self-report substance use, property delinquency, and violent delinquency than were their second- and third-plus-generation counterparts. Bui found that background characteristics, past delinquency, conflicts with parents, and trouble in school—all of which varied across immigrant generations—explained much of the generational differences in all three forms of delinquent behavior.

In a study of the impact of acculturation on immigrant youth, Blake et al. (2001) found a significant relationship between recency of immigration (i.e., living in the United States either “always,” “more than 6 years,” or “less than 6 years”) and substance use. Those who reported “always” living in the United States (i.e., the second-plus generation) were more likely to have used alcohol and marijuana in their lifetimes, in the past year, and in the past 30 days than either immigrant group. Furthermore, “U.S.-born adolescents, and immigrants who had lived in the United States longer, were significantly more likely than recent immigrants to use alcohol or marijuana” (Blake et al. 2001, p. 796). In line with the acculturation perspective, the longer immigrants spent in the United States, the greater their likelihood of using and abusing substances such as alcohol and marijuana.

In a similar study investigating the effects of acculturation on substance use, Gfroerer and Tan (2003) found that rates were lower among first-generation immigrants than U.S.-born (second-plus-generation) youth. This gap shrunk as the length of residence among the foreign born increased; the longer first-generation immigrants lived in the United States, the more their patterns of substance use resembled those of the native-born population. Recent immigrants (fewer than 5 years of residence) had lower rates of use than did the native-born population for all substances, but rates for immigrants who had lived in the United States for 10 or more years did not differ significantly from those of native-born Americans.

Finally, a recent nationally representative survey investigating differences in alcohol abuse between U.S.- and foreign-born adults across a number of racial and ethnic groups found lower rates among the foreign-born population (Szaflarski, Cubbins, and Ying 2011). First-generation Asians/Pacific Islanders had the lowest rates of alcohol abuse among all racial and ethnic groups, followed by first-generation immigrants of African origin. Foreign-born Mexicans had relatively low rates of alcohol abuse, whereas “foreign-born Puerto Ricans and ‘Other Hispanic/Latino’ (e.g., Cubans, South Americans) had alcohol-abuse rates similar to [those of] U.S. natives, suggesting that they may be at a higher risk of alcohol abuse vis-à-vis other foreign-born groups” (Szaflarski, Cubbins, and Ying 2011, p. 654).

Unlike the previous two studies, however, Szaflarski and colleagues (2011) found no association between length of residence in the United States and increased risk of alcohol abuse among first-generation immigrants. To attempt to explain this anomaly, the authors posited—quite reasonably—that ethnic-based enclaves that are common among some immigrant groups may serve as protective mechanisms that buffer the otherwise negative effects of acculturation.

E. Generational Differences in Crime in Western Europe

It would be fascinating to conduct cross-national comparisons of generational differences in crime rates in part to identify the more successful immigrant incorporation strategies of some countries, but such a task is nearly impossible. As Tonry (1997, p. 4) points out, “definitions of offenses vary between countries, as do traditions about reporting crimes to the authorities,” so it is not at all clear whether similar criminal behaviors are being compared. Furthermore, different countries have very different standards for who is categorized as native-born and who is categorized as immigrant. Generational data are often impossible to collect even within one country, let alone cross-nationally. In any case, different countries have very different research traditions and the questions being posed in each country (and the subsequent findings) vary greatly. Most importantly, comparisons between countries are often based on aggregate categories, such as nationality or race and aggregate levels of crime, so that “substantial and experiential differences” distinguishing subgroups and offending patterns are often impossible to examine (Tonry 1998, p. 11).

Most studies conducted in Western Europe are based on self-report data and, naturally, the findings are limited to only those populations that can be reached through such surveys (e.g., see Killias 2009 on Switzerland; Schmitt-Rodermund and Silbereisen 2008 and Pfeiffer and Wetzels 2000 on Germany; Svensson and Hagquist 2010 on Sweden). The research generally finds a clear pattern that first- and second-generation immigrants are disproportionally involved in crime and delinquency. This pattern, however, does not seem to hold true for Asian immigrants from South and East Asia who typically have low crime rates in both the first and subsequent generations (Tonry 1997, p. 22).

Sweden seems to be an outlier (although it is possible that other countries are also but have not been the subjects of research that is internationally known). Several studies have indicated that second-generation immigrants in Sweden are less crime-prone than the first generation (Ahlberg 1996; Martens 1997). Ahlberg suggests that the “social welfare policies targeted at improved assimilation of immigrants can reduce the criminality of immigrants’ children” (Ahlberg in Tonry 1998, p. 61), thereby reducing the crime rates to levels that are much lower than otherwise predicted. Ahlberg showed that the arrest rates in Sweden for every ethnic group were lower in the second generation than in the first; however, some ethnic groups have lower crime rates than others in both generations, suggesting that some members of some ethnic groups found it more difficult

than others to achieve crime-free lives in Sweden. Martens (1997) found that ethnic groups with high crime rates in the first generation also tended to have relatively high rates in the second generation. It is possible that Sweden, with a relatively recent immigration history (Sweden was largely homogenous 30 years ago) and one of the largest foreign-born populations in Western Europe (constituting 16 percent of the total population), was under pressure to develop smart social policies in their rapidly changing society—apparently, the policies worked out well for second-generation immigrants.

Studies in Germany and the Netherlands suggest that children of former guest-workers with Muslim backgrounds (i.e., Turkish and Moroccan second-generation immigrants whose parents were recruited between the 1960s and 1970s) are disproportionately involved in crime compared with other second-generation immigrants (Engbersen, van der Leun, and de Boom 2007; Baier and Pfeiffer 2009; Albrecht 2011). The German and Dutch guest-worker programs were intended to allow only for the temporary settlement of guest workers, but many stayed and settled. Because the intention was never to have these guest workers settle permanently, Germany—and to some extent also the Netherlands—were ill prepared to integrate the children of these immigrants. Essentially, the children of guest workers are part of a generation of perpetual “foreigners” who, as youth, met with unprepared nations and exclusionary laws and policies and, ironically, as adults, are now too old to benefit from recent integration efforts.

In Germany, this group is often labeled the “lost generation” (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration 2007) and their exclusion on political, economic, and social levels has been widely documented (Ostergaard Nielsen 2003; Blossfeld, Paulus, and Kleine 2009; Bucerius, forthcoming). The extent of social, economic, and political inclusion or exclusion, and other contextual factors in the receiving country are crucial factors for social integration, and weak social integration may, in turn, be an important contributing factor to criminal involvement (Bucerius 2011, p. 38). It should not be surprising that those who experience serious exclusion are also disproportionately involved in crime.

Although second-generation immigrant status puts individuals at a higher risk for criminal involvement in Germany and the Netherlands, being a second-generation immigrant of Muslim origin multiplies that risk. The negative image of Muslims in these countries is not so much associated with being “Arab,” which is often the case in other Western countries. Rather, Muslims are generally being seen as “nonassimilated Turks and Moroccans,” independent of ethnic background (in other words, anyone who “looks” Turkish in Germany is often automatically labeled as Turkish and thought of as being not assimilated—regardless of whether they are, in fact, Turkish or assimilated) (Bucerius, forthcoming).

Muslims are the least-liked immigrant group (Lynch and Simons 2002) and the discourse on Muslims is rather negative. As one example, in the Netherlands, the popular press refers to Moroccans as “Kut Marokkanen” (essentially “fucking Moroccan”). In Germany, Thilo Sarrazin (2010), a former board member of the Deutsche Bundesbank, sparked a nationwide debate when he claimed in a well-received book that Germany is becoming biologically and culturally inferior due to Muslim immigrants. Given

such exclusionary and often openly hostile environments, studies showing disproportional criminal involvement of second-generation Muslim immigrants should not be surprising.

Pfeiffer and Wetzels (2000), for example, have found second-generation Turkish immigrants in Germany to be the most criminal group in their study and Engbersen et al. (2007) shows that Moroccans in the Netherlands are disproportionately involved in crime. As an outlier to the general generational pattern, a German delinquency study by Schmitt-Rodermund and Silbereisen (2008), using cross-sectional data on 837 male adolescents, found that first-generation immigrants of Muslim background were more involved in crime than second-generation immigrants of Muslim background. This is the only European study that we are aware of (except concerning Sweden) in which the European generational patterns described above were not found.

The results showed that native Germans were significantly less delinquent than any other group in the sample while the first generation, mainly of Muslim origin, were most delinquent. The criminality of second-generation immigrants, again, mostly of Muslim origins, and ethnic Germans, that is, immigrants from the former Soviet Union, fell in between. The sample size was rather uneven, with the groups of first- and second-generation immigrants of mostly Muslim origins being very small (52 and 64, respectively) in comparison with the sample sizes of local and ethnic Germans (346 and 375, respectively). In explaining the disproportionate criminal involvement of immigrants in general, the study found strong relationships between predictors (e.g., school grade in the subject “German,” parental violence, delinquent beliefs, and depressive moods) and delinquency.

F. Victimization across Generations

Very little is actually known about immigrants as victims. Much of this, undoubtedly, has to do with the lack of available and reliable data sources on victimization; of course, it also has to do with the unwillingness of some individuals and immigrant groups to report crimes for a variety of complex reasons. This section, like the rest of the article, is not intended to provide an overview of “immigrant victimization” in a general sense (for such an analysis see Bucerius 2011), but to discuss, however limited, studies that examine generational differences in immigrant victimization. The vast majority of these studies use an “immigrant”/“native-born” dichotomy, and only a few break down victimization by generational status (and fewer still across racial and ethnic groups). We look at two types of victimization: nonfatal and fatal.

Nonfatal immigrant victimization studies often come in the form of self-report school surveys. Some ask youth about their lifetime, proximal, or recent victimization, whereas others ask about victimization “while at school.” Other studies use data from health surveys (e.g., the National Epidemiologic Survey on Alcohol and Related Conditions in the United States) to investigate different patterns of foreign- and native-born victimization, often, though not always, focusing primarily on violence. Findings on nonfatal

victimization of immigrants are mixed. Some studies suggest that the prevalence for violent victimization is similar for immigrants and the native born. Others find that victimization rates decrease across succeeding generations. Others still find nuanced generational patterns of victimization across different racial and ethnic groups.

Studies on the fatal victimization of immigrants rarely disaggregate data further than the “immigrant” and “foreign-born,” largely because information on immigrant generational status is not readily available on death certificates (the major data sources for homicide studies). As a result, defining general trends in fatal victimization patterns of immigrants and the native-born is quite difficult. Still, studies typically find that the foreign-born are at higher risk, and experience higher rates, of homicide victimization than do their native-born counterparts. This pattern, however, holds true only for some racial and ethnic groups.

The situation in Western Europe is very similar. Comprehensive and timely data on the victimization of immigrants in the European Union is almost nonexistent. Goodey (2009), thus, calls for enhanced data collection at EU and member-state levels; without such data, policy makers and stakeholders will not be able to glean a realistic impression of the extent of crime against immigrants (Goodey 2009, p. 147). Because comprehensive data are lacking, it is impossible to speak to intergenerational differences in victimization. The European Union Agency for Fundamental Rights (FRA) is trying to collect comparative EU-wide data on immigrants’ experiences as victims of crime. This, however, is difficult because each European country has its own criminal laws and mechanisms for counting both victimization and crime.

1. *Generational Differences in Nonfatal Victimization.* Wheeler et al. (2010), using an American national survey asking about respondents’ experiences with violent victimization, found that the prevalence of violent victimization was very similar between foreign- and native-born respondents (3.84 percent and 4.10 percent, respectively), across sex, race, ethnicity, and a number of other relevant factors. However, when the comparison was restricted to central city areas, which have some of the highest homicide rates in the United States, immigrants had statistically lower rates of victimization than did their U.S.-born counterparts (4.08 percent versus 5.36 percent, respectively). For first-generation immigrants who entered the United States as youth, “the victimization prevalence declined with greater years of residency,” suggesting that acculturation may have a positive impact on immigrants when it comes to lowering their non-fatal victimization rates (Wheeler et al. 2010, p. 439).

Peguero (2008, 2009) conducted two studies that examined victimization patterns by generational status for Latino, white, and Asian students. In the 2008 study, which focused exclusively on Latino students across generations, the foreign born were least likely to be the victims of property and violent crime while at school; the third generation was most likely with the second generation in between. Thus, the likelihood of school-based violent and property victimization increased with each succeeding generation—pointing, again, to a darker side of assimilation into American culture and society.

The 2009 study also included comparisons within and across racial and ethnic groups. Latino first- and second-generation immigrants, and first-, second-, and

third-generation Asian immigrants, were less likely to be the victims of violent or property crime than was the third-generation white comparison group. Within-group analyses revealed interesting generational differences across groups. For example, for all Latino generations, the third-plus-generation was the most likely to be victimized, but the opposite was true for Asians. Third-plus-generation Asian immigrants were the least likely among Asians to be victimized.

Goldsmith et al. (2009), examining the mistreatment of Latino barrio residents by U.S. immigration authorities, found, regardless of immigration status (i.e., legal, illegal, naturalized, etc.), that those who appeared to be Mexican were more likely to experience mistreatment than was the general U.S. population. Generational status—in this case, being a U.S.-born, second-plus-generation immigrant—did not offer any protection against maltreatments. This type of research is important because it illustrates how the state can become the “offender” as it victimizes residents who have a legal right to be in the United States. It does not discriminate by nativity or generational status—all persons of Mexican origin, or perceived Mexican origin, are equally susceptible to victimization (this is not unlike the experiences of people who appear to be Turkish in Germany or Moroccan in the Netherlands).

Clearly then, nonfatal victimization patterns are not as neat or concise as those found for immigrant offending. Patterns of victimization by generational status can differ greatly depending on the type of victimization being analyzed (e.g., violent, property, state-induced), how generational status is measured and implemented, and whether and how race and ethnicity are included.

2. *Generational Differences in Fatal Victimization.* Singh and Hiatt (2006) analyzed differences between immigrants and U.S. native-born people with respect to various causes of death including homicide. Using national mortality data from 1979 to 2003,⁶ they found that immigrant men were more likely to be the victims of homicide than were their native-born counterparts (second-plus-generation). The gap between the two groups shrunk from 57 percent in 1979–81 to 8 percent in 1999–2001. In contrast, foreign-born women had a lower homicide victimization rate than native-born women.

Singh and Hiatt (2006) discovered great disparities in fatal victimization when they compared the native- and foreign-born rates within particular racial and ethnic groups across time. Across both time periods (1979–81 and 1999–2001), foreign-born Asian and white men and women had higher rates of fatal victimization than did their respective native-born counterparts. By contrast, foreign-born black men and women had lower rates of homicide victimization than did their native-born counterparts across both time periods. The pattern of fatal victimization among Hispanics across time and generations was less clear. Between 1989 and 1991, foreign-born Hispanic men had a higher rate of fatal victimization than native-born Hispanic men. However, during the 1999–2001 time period, this pattern reversed, with the foreign-born having a slightly lower rate than their native-born counterparts.⁷ Unlike their male counterparts, foreign-born Hispanic women had a lower rate than native-born Hispanic women across both time periods.

Sorenson and Shen's (1996) California-based study compared homicide victimization rates and risk ratios between immigrants and the native-born population from 1970 to

1992—focusing exclusively on 15–23-year-olds. The rates of victimization were similar for the two groups over the entire study period; however, patterns differed by ethnicity. For example, foreign-born whites and Hispanics had higher rates of homicide victimization than did their native-born counterparts, whereas foreign-born blacks had a lower rate than did their native-born counterparts. Asian foreign- and native-born residents, by contrast, had very similar rates of fatal victimization.

Sorenson and Shen (1996) also examined the risk of homicide and found that the foreign born experienced consistently higher risks than did the native born. Risk also varied by ethnicity, and the patterns within ethnic groups mirrored those found for rates.

In a more recent study of homicide victimization in Los Angeles County from 1990 to 1994, Sorenson and Lew (2000, p. 172) found that “Age and gender adjusted homicide victimization rates for the foreign- and native-born . . . show that immigrants have a higher victimization rate than native-born persons (23.3 vs. 18.1 per 100,000).” There were racial group differences: blacks and Hispanics had the highest victimization rates regardless of where they were born. Within each racial group, homicide victimization rates were between 25 and 105 percent higher for the foreign born compared with their native-born counterparts. The calculated risk differentials showed a similar pattern—that is, immigrants were at a higher risk of victimization than were the native-born population, both overall (by approximately 4 percent) and within ethnic groups (with anywhere between 19 to 57 percent higher risk than those of the same ethnicity).

Immigrants thus seem to experience an increased risk, and higher rates, of homicide victimization than do U.S.-born residents. This appears to be true only for some racial and ethnic groups, shedding light, once again, on the importance of disaggregating data to tease out the subtleties that lurk in the shadows of massive data sets and broad, over-sweeping generalizations.

III. MEASUREMENT DIFFICULTIES

We have identified many topics that have not been adequately examined or for which adequate data sources are unavailable. One main difficulty is that we lack available official data on generational status. In addition, too few self-report studies take generational status into account. Moreover, different authors use different definitions regarding generational status which makes comparisons among studies difficult. Lastly, cross-national comparisons are almost impossible due to definitional differences.

A. Lack of Available Data on Generational Status

There is a lack of usable data (particularly at the national level) that distinguishes between the foreign born and their U.S.-born children.⁸ Currently, only three national data sets include questions on nativity; unfortunately, each is plagued with its own

unique problems, severely limiting the ability of researchers to conduct meaningful analyses on generational differences in immigrant crime and victimization.

The U.S. Census—introduced in 1850 and administered decennially ever since—first included a question on parental nativity in 1870. In 1970, the question was dropped. Consequently, although detailed information is provided on the foreign-born population, little is known about how their U.S.-born children have been fairing over the last 40 years (Rumbaut 2004).

To fill this gap, researchers interested in generational differences now use the decennial Public Use Microdata Samples (PUMS), which “construct child files for all children under 18 residing in households with at least one foreign-born parent” (Rumbaut 2004, p. 1165). There are limits to this data set as well. Although information is collected on the children of immigrants (including the illusive second generation that is missing from the U.S. Census data), once this group reaches 18, their information is no longer recorded (Rumbaut 2004).

Given these limitations, “the Current Population Survey (CPS) has since become the main national-level data set in the United States permitting more refined intergenerational analyses (from the first to the second and third-and-beyond generations)” (Rumbaut 2004, p. 1165). Rumbaut (2004, p. 1165), however, emphasizes that, although the sample size for a given year is quite substantial, “[it] is not large enough to provide reliable information on smaller immigrant populations or for comparative analyses by national origin and by generation cohorts defined by age-at-arrival and paternal nativity.” Many (though not all) of the measurement difficulties and study shortcomings discussed next have less to do with the failings of individual researchers and much more to do with the limitations of the data sets available to them.

The situation in Europe varies greatly, depending on national context and available data sources. In most European countries, data on generational status is nearly impossible to collect, as most countries collect data only on the nationality (i.e., citizenship status) of the population. Given the number of Western European countries and the unique circumstances in each, we restrict our discussion below to the United States.

B. Defining Immigrant and Native Born

How variables are operationalized is problematic for those interested in generational differences in crime and victimization. As the preceding sections illustrate, two broad types of studies can shed light on generational differences. The most useful, of course, go further than the “immigrant” versus “native-born” dichotomy and disaggregate the latter category into various generations (i.e., the second, second-and-a-half, third, and third-plus generations). Unfortunately, for a number of reasons including lack of available data, researchers often simply compare native-born and foreign-born groups in the broadest sense. These studies are useful for understanding broad trends, but lack the specificity needed to draw solid conclusions across generations (e.g., the first generation is less crime-prone than the second and third generation).

To complicate matters, terms used to describe study samples, such as “immigrant,” *foreign born*, and *native born*, are often not well defined or consistently applied—either within or across studies. With respect to the term *immigrant*, for example, some studies use the word interchangeably with *foreign born* to mean first-generation immigrants who were born abroad and subsequently immigrated to the United States. In other studies, however, the term is more fluid, and often includes second-generation immigrants as well.

Unfortunately, issues with the term *native born* are even more complex and pronounced in the literature. The term *native born* is meant to describe those individuals who were born in the United States. However, whether this group includes individuals of immigrant parentage, or solely those persons of American parentage, is often unclear. The “native-born” category is hardly ever operationalized or defined by researchers within a given study; consequently, the reader is often left in the lurch about the compositional make-up of the native-born category.

Further, there is little consistency across studies about who is to be included in the “native-born” group. In some studies, the term is used broadly to describe all those individuals born in the United States. This could include everyone except for the foreign-born population. In other cases, when comparisons are drawn between “immigrants” in the broader sense (i.e., first- and second-generation immigrants), the term *native born* is often employed to describe only those born of American parentage (i.e., the third generation or “native stock”).

Finally, studies that fail to disaggregate the “native-born” population leave the reader uncertain about the composition make-up of the group. The native-born group could be composed of all second-generation immigrants (or none), all third-plus-generation immigrants (or none), or some unquantifiable numerical combination of the two. Consequently, such studies are unable to provide much beyond indications of general disparities between the first- and second-plus-generation. Nothing can be learned about differences in crime and victimization among second- and third-generation immigrants or how these two groups compare to the first generation.

C. Disaggregating Data by Race/Ethnicity and Types of Crime

Studies on immigration and crime often fail to disaggregate data based on race and ethnicity and, at times, even by type of criminal behavior. This is not a problem with the general literature per se; it does, however, present problems for students and researchers interested in generational differences in crime and victimization—a topic that requires nuanced and disaggregated data.

Tonry (1997, p. 11) notes that most comparisons of immigrant offending and victimization are based on overaggregated categories; however, “substantial behavioral and experiential differences often distinguish subgroups.” Immigrants come from distinct racial, ethnic, and national backgrounds. They are composed of different generational groups with different legal statuses. They have unique migration histories and varied

experiences of inclusion and exclusion from the host country. Clearly, then, “immigrants” are not a homogenous group and should not be studied or treated as such (see Bucerius 2011, p. 389).

A number of researchers note that differences exist not only between groups (e.g., whites versus blacks), but also within groups (e.g., Hispanics of different ethnicities). As a result, “[r]esearch focusing on racial dichotomies of crime (i.e., between blacks and whites) no longer reflects the reality of the racial and ethnic/immigrant landscape of the United States” (Nielsen and Martinez 2011, p. 348). Rumbaut (2004, p. 1200) argues that

the continued reliance on ‘one-size-fits-all’ racial categories in the United States (an ‘ethno-racial’ pentagon of white, black, Asian, Hispanic/Latino, and American Indian/Alaska Native categories), in lieu of more refined classifications by national origin and ethnicity, is particularly pernicious to an understanding of the diversity and complexity of the new immigration and to the study of processes of acculturation, assimilation, and social mobility—indeed, to theory-building and policy making.

Another trend in some research on immigrants’ involvement in crime is the aggregation of very different types of offenses into a single “crime” index. This often hides and conceals more than it reveals and may skew findings. Take, for example, a study conducted by Brindis et al. (1995) on the association between immigrant status and risk-taking behavior among Latino youth. Using data from a school-based survey of almost 3,000 youth, the Latino sample was divided into native-born and foreign-born Latinos. Different risk-taking behaviors were identified, including alcohol, cigarette, marijuana, and illicit drug use, self-violence, drunk driving, unintended pregnancy, and violence. Instead of running separate analyses for each behavior, all the behaviors were combined into a single summary risk score. Brindis et al. (1995) found, contrary to the findings of the literature discussed above, that “the mean number of risk behaviors was highest for Latino (first-generation) immigrants, followed by native-born (second-plus-generation) Latinos, and native non-Hispanic whites” (Brindis et al. 1995, p. 100).

In a letter to the editor of the *Journal of Adolescent Health*, which published the study, Michaud, Ferron, and Narring (1996, p. 378) stated that although

an index is a convenient way of getting a general idea of risk taking behavior in relation to ethnicity and other socio-demographic data, in the context of Brindis et al’s study, mixing the different types of risk-taking behavior, each with its specific circumstances and implications, may be misleading. Separate indices should have been constructed for “substance use” (tobacco/alcohol/cannabis/illegal drugs), “violence” (whether self-inflicted or directed at others), and “sex life.” Although there is evidence that different risk taking behaviors may be interrelated, we do not think that they are equivalent and can be simply summed up in an index.

Clearly then, the disaggregation of data—concerning generational status, racial and ethnic groups, or types of offenses—is important for more thorough and more accurate

assessments of the relationship between immigration and crime. Lumping data together may be beneficial in understanding general trends and patterns (although this, too, can be misleading), but disaggregation of data is particularly important for those interested in generational differences in crime and victimization across generations and within and across racial and ethnic groups.

IV. FUTURE RESEARCH AND POLICY RECOMMENDATIONS

There is much more to be learned. The suggestions offered next hint at some of the larger gaps in the literature, but our coverage is by no means exhaustive. First, there is a dire need for future research to properly define and to distinguish between different generations. This will necessarily involve a shift away from studies that simply compare “immigrants” and the “native born.” Future studies should, whenever possible, draw clear-cut distinctions between various generations (i.e., first, second, third, etc.). Such a recommendation necessitates a general consensus about how generations should be defined and into what categories particular groups should be placed. Ruben G. Rumbaut presents the most concise and comprehensive breakdown of generational cohorts to date.

Rumbaut (2004) outlines the way most researchers studying immigration define the first and second generations. Scholars generally regard the first generation as including “persons born and socialized in another country who immigrate as adults, although the term technically includes the foreign-born regardless of their age of arrival” (Rumbaut 2004, p. 1165). The second generation often “refers to the U.S.-born and U.S.-socialized children of foreign-born parents, although under this rubric immigration scholars also often, if imprecisely, lump together foreign-born persons who immigrated as children as well as U.S.-born persons with one U.S.-born parent and one foreign-born parent, treating them together as a *de facto* second generation” (Rumbaut 2004, p. 1165). Many of the studies discussed in this article use such diverse and often imprecise definitions.

Rumbaut (2004) would redefine the first- and second-generation by disaggregating the groups with pointed precision. He suggests that the first generation be broken down into those who arrived in the United States as adults—further disaggregating this group into those in early adulthood (18–34), midadulthood (35–54), and older adulthood (55–plus)—and those who arrived as children. He would disaggregate first-generation children into the 1.75-generation (those who arrived in the United States between birth and age five), the 1.5-generation (who arrived between ages six and 12), and the 1.25-generation (who arrived between ages 13 and 17). He would place children who arrive earlier in life into a higher generational category, reflecting the reality that they are closer (in their socialization, education, values, etc.) to the second generation than to the first.

Rumbaut (2004) provides a similarly succinct breakdown of the second and third generation. Second-generation immigrants were born in the United States to two foreign-born parents. Those born in the United States to one foreign-born and one native-born parent are categorized as 2.5-generation immigrants. Finally, the third generation is composed of those born in the United States to parents who are both U.S.-born. We encourage scholars to be much more sensitive to generational status, and commend them to disaggregate their data as Rumbaut suggests. Doing so would contribute to a more subtle and granular understanding of generational differences, and confer some degree of consistency within and across studies, making for more accurate comparisons.

Of course, this rallying call is predicated on the availability of adequate data. It requires that data sets be available that provide full information about the birthplaces of respondents and their parents. Unfortunately, such data sets are not now readily available. We urge government departments and agencies to provide researchers with the tools needed to conduct more nuanced research. Findings that emerge may not support the “fairy-tale” stories that government representatives likely want to hear. Studies may show that immigrants and their children are often socially, politically, and economically excluded from their new country. However, to correct and ameliorate these detrimental patterns and trends, more research is needed.

Future research should disaggregate data on generational status, race and ethnicity, and gender to the greatest extent possible. The breakdown of generational status and national origin, for example, may be advantageous in understanding crime rates. When looking at non-crime-related measures, important differences come to light regarding second-generation immigrants of different ethnic backgrounds. For example, Rumbaut and Komaie (2010) found in a comparative study that nearly every South American immigrant group had a high-school dropout rate at least three times higher than East Asian groups from the second generation (Rumbaut and Komaie 2010, p. 53). Findings such as these exist in many different kinds of studies within the field (Kao and Tienda 1995; Hao and Bonstead-Bruns 1998; Schmid 2001, p. 72).

There is great need for future research to be sensitive about how racial and ethnic groups experience crime and victimization and how these experiences differ based on generational status. Broad patterns of offending and victimization often hold true for some, though not all, racial and ethnic groups. Failure to disaggregate generations further by racial and ethnic background will gloss over important differences between groups. Different groups have distinctive cultures, migration histories, and marginalization experiences—all of which influence crime and victimization patterns.

The literature on generational differences in crime and victimization tends to focus predominantly on men. A few studies discussed in this article, however, note that female patterns of offending and victimization are often quite different than those of men. Future research needs to distinguish between male and female criminality and victimization, as such patterns differ between the sexes (even within a given generation or racial and ethnic group).

Longitudinal studies on generational differences in crime and victimization are scarce. Cross-sectional studies are useful in presenting a “snapshot” or diagnostic of a particular group at a given moment, but they lack the continuity to gauge assimilation effectively (whether upward or downward) within and across generations over time.

Above and beyond quantitative and multimethod longitudinal studies, we are also calling for ethnographic research on the subject. In-depth, ethnographic research can shed much light on the day-to-day realities of immigrants and the broader structural forces that they encounter in their host countries (for example, Bourgois 2003; Kasinitz et al. 2008; Bucerius, forthcoming). To date, these studies have focused predominantly on the second generation and have largely ignored the migration histories of first-generation immigrants, the reception of immigrants into their host country, and if, how, and why these experiences may differ across generations.

There is a pressing need for victimization research—particularly work that outlines disparities across generations. Unfortunately, much of the research to date focuses only on offending patterns. Future research needs to build on current findings that show that different generations of immigrants experience dissimilar levels of fatal and non-fatal victimization. Part of the challenge is a lack of basic data. Studies on fatal victimization, for example, rely on death certificates as their primary sources of data; the generational status of homicide victims is not usually recorded. Consequently, researchers are limited to placing victims into the “immigrant” or the “native-born” category, with no further generational distinctions being possible.

Policy recommendations need to vary from country to country. Overall and on average—with the exception of Sweden—second-generation immigrants seem to fare worse in Western European countries than in the United States. However, because most studies provide no breakdown with respect to national origins, we cannot be certain whether all second-generation immigrants in the United States do better than their European counterparts or whether some groups of second-generation immigrants do particularly well, pushing up the average (it has been suggested that this may be true for some Asian immigrants [Tonry 1998]).

We urge that more funding be put into studies that try to understand what makes certain ethnic groups more resilient toward crime than others and whether particular immigrant integration/incorporation strategies work better. For example, if we could better understand why Turkish immigrants in the Netherlands have lower crime rates than Moroccan immigrants, despite sharing similar socioeconomic characteristics, policies could better address the specific needs and challenges of different ethnic groups. At the same time, policy makers need to pay particular attention to countries like Sweden, where the second-generation seems to fare better than both the native-born and the first-generation with respect to crime. Careful national assessments in each country should attempt to learn what immigrant integration strategies work for particular ethnic groups represented in that country. Likewise much more needs to be learned about whether and, if so, how the “immigrant advantage” can be preserved and carried over to the second generation. These are the only ways to counter higher crime rates in subsequent immigrant generations.

NOTES

1. Swiss prisons have an extraordinary high number of foreign inmates (71 percent)—however, it is unclear how many of those inmates are actually first-, second- or third-generation immigrants. In other words: in different national contexts, some of the 71 percent of “foreign” inmates would fall into the “native” category because many of them would be citizens.
2. Note, that victimization research, especially on immigrant populations, was nearly nonexistent at the turn of the twentieth century.
3. In an attempt to further understand this finding, Taft (1933, p. 72) notes: “In the Commission’s report, foreign-born are compared with native-born. Children of the foreign-born [i.e., second-generation immigrants] are included among the native-born. If the generally accepted view is correct, that the children of immigrants are peculiarly criminal, then the foreign-born would appear relatively stable by comparison.” Here, Taft brings to a light a problem that still plagues a large number of contemporary studies almost 80 years later—that is, a general lack of sensitivity toward, or an outright neglect of, the important impact that generational status has on crime rates and statistics. Considering what (albeit little) is known about generational differences in crime, lumping native-born individuals of immigrant parentage into the same category as native-born individuals of native parentage is preposterous, especially if said group is then, as was done in the Wickersham Commission, compared to an already relatively crime-retardant first generation.
4. The authors utilized data on the nativity of homicide offenders. The problem, of course, lies in the fact that police departments do not clear every homicide. Consequently, only in those cases for which an arrest was made are the demographic characteristics of offenders available. In this study, nativity and other demographic data were missing for approximately two-thirds of the total sample ($n = 9442$ total number homicides). As such, and as the authors themselves bring to light, “the findings on homicide offending must be viewed with caution” (Sorenson and Lew 2000, p. 173).
5. Sorenson and Lew call this group the “native born.” However, once the groups are broken down by ethnicity and compared to each other, this group actually becomes the “second-plus” generation. The native born, or “second-plus” generation, as we have dubbed them, once disaggregated by ethnic background, is actually composed of individuals born in the United States to parents of a particular ethnicity (thereby making them second-generation immigrants) or grandparents of a particular ethnicity (thereby making them third-generation immigrants). The problem, of course, is that the authors cannot break down the “native-born” group further than the second generation (as they likely lacked the data to make such distinctions). As such, all that can be said about this group is that it they are, at the very least, second-generation immigrants (because they were born in the United States and fall into one of the ethnic categories). There could, however, be members of the second-and-a-half generation or even the third generation in this group. Consequently, we have dubbed the “native-born” group, for the purpose of clarity and consistency, the “second-plus” generation to represent the aforementioned possibilities.
6. The sources used were: (a) the national mortality and census data from 1979 to 2003 and (b) National Health Interview Surveys from 1993 and 2003.
7. Although not at the national level, Eschbach et al. (2007) make a similar discovery in Texas and California during the same time period (1999–2001). They found that foreign-born

Hispanic men had a lower homicide victimization rate than their native-born Hispanic counterparts from 1999 to 2001. Also in line with Singh and Hiatt (2006), they found that foreign-born Hispanic women had a lower homicide victimization rate than U.S.-born Hispanic women.

8. For a well-detailed discussion on this issue see Rumbaut (2004).

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CHAPTER 21

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LATINO/HISPANIC
IMMIGRATION AND CRIME

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RAMIRO MARTINEZ Jr. AND
KIMBERLY MEHLMAN-OROZCO

POPULATION changes in the United States associated with immigration coincided with both the economic boom of the 1990s and the recent economic bust. When the economy skyrocketed, particularly the housing market and the associated construction jobs, immigrants were welcomed. When the housing boom collapsed and the economy contracted, work dissipated, the recession lingered, and the foreign-born population declined. Some left voluntarily; many others who stayed were eventually deported. Through all this, the United States became a more racially and ethnically diverse country. This has led some commentators to predict impending decay and others to forecast unprecedented revitalization (Unz 2010; Frey 2012). Regardless of the stance taken, there is no doubt that immigration has altered the nation's population.

Consider the extent and size of recent population changes.¹ The number of immigrants in the United States rose in the first decade of this century from 31.1 million (11 percent of the total population) to 40 million (13 percent of the total) nearing historically high levels. Immigration from South America, the Caribbean, and Central America including Mexico was especially high. Over half of the foreign born in 2010 were from Latin America and 29 percent were from Mexico. The number of Mexican immigrants is equivalent to the total number of Asians, the next largest immigrant group. Immigrants from Central and South America and the Caribbean are usually referred to as Latinos or Hispanics. In this article I use the term Latinos. This group is generally defined to refer to U.S. residents of Cuban, Mexican, Puerto Rican, South American, or Central American origin, regardless of race. It constitutes the largest racial or ethnic minority group and makes up 15 percent of the U.S. population. Nearly half of all Latinos live in just 10 metropolitan areas including Chicago, Los Angeles, New York, and Miami and growing Sunbelt areas such as Dallas, Houston, and San Antonio (Ennis, Ríos-Vargas, and Albert 2011). However, Latino populations have increased in urban, suburban, and rural areas throughout the country and largely due

to their growth, the nation has become increasingly diverse (Crowley and Lichter 2009; Saenz 2004).

What are the consequences for the nation? Claims by immigration opponents that link immigrants to a wide variety of social problems are largely unsubstantiated. These include fears about newcomers taking jobs away from the native born, engaging in voter fraud, and committing crimes and thereby wreaking havoc across the nation (Chavez 2008). These concerns are not new. They reflect long-simmering nativist fears that the “American way of life” is under attack, and they are reactions to stereotypes and fears about the role of immigration in contemporary society (Chavez 2008; Frey 2012).

This essay explores these concerns. A number of threshold matters warrant mention. With rare exceptions, most sources of statistical data do not distinguish among Latino national origin groups (Mexican, Puerto Rican, Cuban, Dominican, etc.), few record generational status (foreign-born compared with American-born children of immigrants) or time of entry (older and more established immigrants compared with recent arrivals). Legal immigration status (whether individuals are undocumented illegal or legal residents) is rarely known. Even the Census Bureau declines to ask questions related to legality when defining “foreign born,” so “illegal” population estimates are very broad estimates (Passel and Cohn 2010, 2011). The same holds for crime data. Official crime data or crimes reported to the police are widely used in part because self-report survey data seldom use immigrant status or Latino origin categories. Many measurement and methodological issues remain unresolved in studies of immigration policy or of the consequences of Latino immigration on crime.

Immigration and crime literature exists, however, and most of it centers on immigrant Latinos. A nascent literature on the consequences of immigration draws from immigration law enforcement and policing research. For the past 12 years, over 71 municipalities have endorsed legislation similar to 287(g) of the 1996 federal Illegal Immigration Reform and Immigrant Responsibility Act (IRCA), which enables local police officers to serve as deputized federal immigration officers. Police departments and correctional agencies enter into memoranda of agreement that allow them to question the immigration status of anyone they have reasonable suspicion to believe is in the United States illegally (Parrado 2012).

This suggests that immigration policy is targeted at preventing “crime prone immigrants” from entering the nation and at deporting “criminal aliens,” including those accused of minor offenses (Parrado 2012). Some conspicuous examples include Arizona SB 1070 legislation requiring local law enforcement officers to determine immigration status of individuals who they “reasonably” suspect to be “illegal aliens.” The recently enacted Alabama anti-immigration law HB 56 required public schools to verify the legal status of their pupils and provided for barring “illegals” from attending public schools and universities. The effects of these programs and strategies on immigrant crime, in general, and Latino immigrant crime, specifically, is unclear, but some studies provide clues central to future research in this area.

Section I of this essay discusses the impact of immigration on violent crime and recent findings suggesting that immigration does not increase violence. Studies on

the immigration and crime connection are highlighted in Section II in which we also examine the contributions of spatial and temporal research on immigration and crime. This is a relatively new area of research, as is work on immigration-group variations in crime. The final section examines recent research on the consequences of immigration and crime.

A number of conclusions stand out.

- Contrary to commonly held beliefs that increased immigration is associated with rising crime and disorder, immigration is associated with declining rates of crime. This is true of immigration in general and in particular reference to Latino immigration.
- This pattern of rising immigration and declining crime has been shown for Latinos in many cities across the United States.
- Rising levels of immigration—a large proportion involving Latinos—into the United States in the 1990s have been shown to be a contributing cause of the decline in American crime rates during the 1990s.
- Reasons why Hispanic immigration is associated with reduced aggregate crime rates include lower rates of divorce and single-parent households.

I. BACKGROUND

Cities in the United States with large Latino and immigrant populations have experienced some of the largest reductions in violent crime. Almost 40 percent of New York City residents are foreign-born and around one-third of the population is Latino—primarily Puerto Rican, Dominican, or Mexican. Violent crime consistently decreased during the period when the immigrant Latino population rose (NYC Planning 2011, 2012). Other cities with large and growing Latino/Mexican-origin populations such as Dallas, Houston, San Antonio, Phoenix, and Los Angeles have experienced dramatic drops in homicide rates since the late 1990s (Rubin 2012). This occurred even in the much maligned border cities of El Paso and San Diego (Martinez 2002). In Chicago, violent crime also dropped in the late 1990s as the immigration population rose (Sampson 2008).

Having more immigrants in or immigration into a city does not mean more crime. Cities with immigrant communities or census tracts with high levels of foreign-born individuals are now some of the safest urban areas in the country (Peterson and Krivo 2010, pp. 76–78). Immigrants moved into places with previously high levels of crime and high levels of economic disadvantage. This prevented population loss in the 1990s and rejuvenated many urban areas. However, high crime cities tend to have smaller immigrant populations. Sampson (2008) attributed the relatively recent homicide surge in cities like Baltimore, Philadelphia, Newark, and Boston to their relative lack of new immigrants—a “protective” factor many criminologists would not have expected until very recently (Sampson 2008).

Social scientists and policy makers need to reconsider the role of immigrants in crime and other social problems. A literature on the “immigration revitalization perspective” helps explain why immigration has reduced violent crime (Martinez, Stowell, and Lee 2010). According to this perspective, social control is strengthened through strong familial and neighborhood institutions that newcomers bring with them, and by enhanced job opportunities associated with growing immigrant economies. This perspective is supported by many research studies of immigration and crime.

Evidence suggesting that “immigration reduces crime” has become increasingly influential. John MacDonald and Robert Sampson (2012, p. 9) highlight how “cities in the United States have experienced some of the largest reductions in crime, exactly the opposite of widely voiced predictions.” Sampson’s (2008) argument suggests a causal relationship: that increased immigration deserves an important share of the credit for the dramatic U.S. crime drop since the early 1990s and that immigration reduces crime for nonimmigrant groups. They remind readers that “cities of concentrated immigration are some of the safest places around” (Sampson 2008, p. 30). Rumbaut and Ewing (2007, p. 3) note that the “misperception that the foreign-born, especially illegal immigrants, are responsible for higher crime rates is deeply rooted in American public opinion and is sustained by media anecdote and popular myth.”

II. CRIME AND IMMIGRATION

Until very recently there were few scholarly writings on the contemporary immigration–crime relationship generally or in relation to Latino immigration specifically. That is no longer true. A book on crime and immigrant youths (Waters 1999) appeared in 1999 and several other books with broader focuses were published more recently (Martinez 2002; Lee 2003; Martinez and Valenzuela 2006; Stowell 2007; McDonald 2009). The number of journal articles and book chapters rose rapidly. They are now so numerous as to challenge efforts at comprehensive review (Ousey and Kubrin 2009). In this essay, we draw selectively on the literature to illustrate some important points.

The best evidence that Latino immigration generally does not increase crime has been provided by multivariate analyses of neighborhoods within large cities that are major destination points for foreign-born newcomers. Much of this work uses census tracts as proxies for neighborhoods. This can be criticized since tract boundaries are not officially defined, but they are the smallest units for which complete population data is typically readily available. Researchers typically use victimization data or crimes reported to the police (for an exception, see Sampson, Raudenbush, and Earls 2005).

Lee, Martinez, and Rosenfeld (2001) examined the relationship between immigration and levels of homicide at the tract level in three heavily immigrant cities: El Paso, Miami, and San Diego. Two are on the U.S./Mexican border and the other is heavily Cuban and faces the Caribbean. El Paso and Miami are predominantly Latino cities.

Arrival of recent immigrants generally did not increase race and ethnic specific (black, white, Latino) homicide levels in these cities in the period 1985–95. Quite the reverse was true when other structural covariates of homicide—such as poverty, residential instability, and male joblessness—were controlled for, along with immigration. In two of six regression models (Latino homicides in El Paso and black killings in Miami), the recent immigration variable was a *negative* and statistically significant predictor of homicide, and it was nonsignificant or null in three other models. Only in the case of blacks in San Diego (a relatively small group in the border city) did immigration have a positive and significant influence on homicide.

Of course the “immigration” variable can be measured in a variety of ways, and the authors decided to focus on recent immigration rather than to create a measure of all foreign-born residents in the city. Stowell (2007, p. 37) notes that recent immigrants are the group that social disorganization predicts will have the “strongest” positive effect on violent crime levels.

Nielsen, Lee, and Martinez (2005) concentrated on two entry points, Miami and San Diego, and disaggregated homicides into situational subcategories: arguments that escalated into lethal violence, intimate-partner killings, robbery–murders, and drug-related homicides. The data were gathered directly from city police departments for the period 1985–95. The authors were able to construct measures of violence that are not typically available. The findings revealed important differences in the effects of census tract level variables and other predictors by situation-specific outcomes and also in outcomes across ethnic groups within cities and within ethnic groups across cities.

Recent immigration (measured by arrival between 1980 and 1990) was negatively or not associated with most outcomes. Recent immigration suppressed all four types of black homicide in Miami, was not statistically significant in 10 models, and was positively associated with two types of homicide: drug-related homicide for blacks in San Diego and intimate-partner homicide for Latinos in Miami. Contrary to traditional expectations that more immigrants would mean more violent crime in the two border cities, that result was rarely demonstrated.

Stowell (2007), employing dozens of multivariate models using several types of violence data over the period 1999–2001, found no direct effects in Houston, Texas, and Alexandria, Virginia, net of control variables. Stowell (2007, p. 137) concludes that, with rare exceptions, immigration had a negative direct effect on violent crime. African immigration (Ethiopia and Ghana) was associated with reduced violence in the Washington, D.C. suburb of Alexandria; this highlights the value of disaggregating by nationality. African immigrants, compared with their Latino counterparts (Salvadoran and Honduran), resided in areas that were “less economically distressed” (Stowell 2007, p. 67). This reminds us of the importance of examining local contexts and variations within immigrant communities.

Sampson and colleagues (2005) collected self-reports of violent offending (rather than homicide) for the period 1995 to 2003 at the neighborhood level in Chicago. Mexican Americans, by far the largest ethnic and immigrant group in Chicago, were involved in violence at a significantly lower rate than were blacks or whites. This finding

was especially pronounced for first-generation immigrants (i.e., those born abroad). Concentrated immigration at the neighborhood-level was associated with lower levels of violence after controlling for a host of other independent variables including poverty.

Their analysis also compared neighborhoods according to their level of risk for crime and discovered that the “average” male living in a “high risk” neighborhood without immigrants was 25 percent more likely to engage in violence than one living in a “high risk” immigrant neighborhood. Regardless of perspective the conclusion was clear: immigration was a protective factor against crime, including nonlethal violence.

This study also paradoxically found that the neighborhood concentration of Latinos “strongly predicted perceptions of disorder no matter the actual amount of disorder or rate of reported crimes” (Sampson 2008, p. 38). In other words, perceptions of crime were linked to ethnicity despite behavioral findings flying in the face of this logic. Stereotypes of immigration and crime persist in a period of heightened public and political rhetoric that claims that immigration causes crime.

Reid and colleagues conducted a multivariate test of the notion that urban areas across the nation have benefited from lower crime rates associated with immigration (Reid et al. 2005). They examined violent and property crime in roughly 140 U.S. metropolitan areas; these are much larger places than cities. They expanded the dependent variables to examine more common, routine types of crime than homicide. They concluded that recent immigration did not elevate levels of violent or property crime across these diverse urban areas (Reid et al. 2005). Recent immigration had a crime-reducing effect on homicides and thefts. This is consistent with Sampson’s (2008, p. 32) observation that there is “growing consensus” that immigration has revitalized American cities by adding to their previously stagnating populations and fostering economic growth.

A. Spatial and Temporal Examinations

Multivariate statistical modeling techniques used in the studies discussed so far have made important contributions to understanding the relationship between immigration and crime generally at the aggregate level and particularly in relation to Latino immigration. However, even when these models control statistically for “spatial dependencies” (geographically situated associations between variables), they have important shortcomings. They tend to obscure the location of the effects of immigration in specific neighborhoods.

Thus, although it is essential to establish that immigration generally does not increase levels of crime in urban neighborhoods, it is also important to identify the specific neighborhoods in which immigration affects crime rates positively or negatively. Because immigrants are more common in heavily Latino areas, spatial effects of immigration should influence levels of Latino crime. Lee, Martinez, and Stowell (2008) maintain that most people are more interested in local contexts than in citywide trends. As a result, scholars have used a variety of mapping techniques to provide more detailed information on individual neighborhoods. This is similar to the pioneering work of

social disorganization theorists such as Shaw and McKay (1942) who used such maps to great effect.

Lee and Martinez (2002) created crime maps to examine the connection between immigration and homicide during the period 1985–95 in two predominantly black Miami neighborhoods—one heavily Haitian and the other primarily African American. They qualitatively tested social disorganization theory using visual data. Consistent with the quantitative research, they found that recent immigration had not “disorganized” the communities in northern Miami. The visual evidence demonstrated quite clearly that homicide levels decreased as one moved west to east from the predominantly native-born African American neighborhood of Liberty City to the heavily immigrant Little Haiti community. The relationship of these two variables with poverty is less clear, as areas of both neighborhoods exhibit high poverty and other areas of both are less impoverished.

Lee, Martinez, and Stowell (2008) extended this work using more recent homicide data (1998–2002) for all census tracts in Miami–Dade County. They sought to uncover the multivariate statistical effects of immigration and other social structural covariates (residential instability and household income) on crime in a map-based context. They found once again that contrary to expectation, immigration did not increase homicide in neighborhoods in which immigrant Latinos typically settled. This research represented an advance on the simple spot maps or shaded maps of Shaw and McKay (1942) and others working within the ecological tradition (e.g., Lee and Martinez 2002) since maps not grounded in statistics are often cluttered and display trends that can be misleading. Statistically based maps display reliable patterns based on precise analytical techniques, rather than the guesswork of visual identification. In other words, potential clutter was removed from the visual presentations and only the statistically important relationships remained.

Lee, Martinez, and Stowell (2008) identified high immigration, low homicide census tracts they described as “revitalized” immigrant communities. These areas of Miami–Dade County are strategic locations for follow-up studies that might aid understanding of how the revitalization process unfolds over time; this is a key element in the story about immigration and crime that is missing from the mostly cross-sectional work.

Cross-sectional studies have dominated explorations of the immigration–violent crime linkage in part due to data limitations. Temporal changes, however, are best understood longitudinally. A handful of recent articles have used more advanced statistical techniques that permit analysis of the effects of immigration on crime over time. This strategy allows researchers to analyze the empirical effects of the percentage of immigrants, a concentrated immigration index (typically z-scores for the percent Latino and the percentage of the population who are foreign born) on violent crime or crimes reported to the police. Using time-series techniques and annual data, Stowell et al. (2009) analyzed concentrated Latino immigration in 103 metropolitan areas pooled over the period 1994–2004 and found, after controlling for a number of variables, including changes in police size and firearm availability, that homicide, robbery, rape, and aggravated assault “tended to decrease as metropolitan areas experienced

gains in their concentration of immigrants” (Stowell et al. 2009, p. 889). This finding was especially strong for robbery. They concluded that “broad reductions in violent crime during recent years are partially attributable to increases in immigration.”

A second national level study expanded the longitudinal immigration and crime literature in several ways. Ousey and Kubrin (2009) pooled data from the decennial census years 1980, 1990, and 2000, much longer than the period examined by Stowell and colleagues (2009). They also examined the effects of immigration on crime in 173 cities, a much smaller unit of analysis than metropolitan areas, but a level of analysis that has long been central to understanding the older and more established race and crime research agenda (Sampson 1987). They also expanded traditional measures of immigrant status (percent Latino and recent immigration) by adding linguistic isolation.

In line with previous research, Ousey and Kurbin (2009) report that within-city changes in immigration had a negative association with within-city changes in violent crime. More immigrants meant less total violent crime over the 1980 to 2000 period across U.S. cities. They also showed that changes in family structure were linked to changes in violent crime. Specifically, immigration was negatively associated with divorce and single-parent households, which, in turn, are both positively related to violent crime rates. This suggests that a reason for lower violent crime rates is that immigrants—in particular Latino immigrants—more often than black and white people live in stable two-parent families. Taken together, metropolitan- and city-level findings offer insights into the complex relationship between immigration and crime and strongly suggest that the immigration growth played a role in the American crime drop throughout the 1990s.

Finally, the results from a two-decade homicide study of San Diego communities found that “over time more immigrants in general means fewer overall homicides” (Martinez, Stowell, and Lee 2010). The stream of Mexican immigrants reshaping the United States typically cross the border in specific entry points; one routine destination has been San Diego. This study concluded that immigration, ethnic heterogeneity, and residential instability were often associated with reduced crime rates. Homicide data were aggregated into census tracts permitting the matching of the total number of homicides and racial/ethnic specific (non-Latino white, non-Latino black, and Latino) homicide to 1980, 1990, and 2000 census tract data. Disaggregating homicides into specific racial and ethnic counts is an improvement over use of total rates since immigration influxes influence Latino groups and communities more than they do other racial and ethnic groups.

Martinez and colleagues (2010) concluded that increases in immigration were associated with fewer non-Latino white and Latino homicides in San Diego communities. This study was the first neighborhood-level longitudinal test of the immigration–crime relationship in the modern era.

The relatively small spatial and longitudinal literature on Latino immigration and violent crime has used different statistical techniques, various methods to examine spatial and temporal effects, different measures of independent and dependent variables, various time periods, and a broad range of locations. Robust findings are in line with the bulk of literature concluding that Latino immigration generally has no effect or a negative effect on crime rates. That finding holds across time and place (Stowell et al. 2009).

B. Group Variations

Emphasis on the crime involvement of “immigrant Latinos” or the role of “immigration” as a social process can obscure important differences among Latino groups in terms of country of origin, generational status, time of entry, or even legal status (Sampson 2008). We know of no systematically collected crime data that compare and contrast undocumented and legal or native-born Latinos. An important focus of future research is to disaggregate crime data for immigrant subgroups or Latino subgroups.

Knowledge about the crime patterns of specific groups would be especially appropriate when groups have been the target of public or political stereotyping. This happened to Cubans who arrived in south Florida via the Mariel boatlift in the summer of 1980. The “Marielitos” were not only undocumented but were also commonly described as criminal predators by public commentators and in media stories on crimes attributed to Mariel Cubans (Card 1990; Martinez, Nielsen, and Lee 2003).

Several studies undermine the mythology of the crime-prone, hyperviolent Mariel. Martinez, Lee, and Nielsen (2001) reconsider these accounts on the basis of Miami homicide data; “Marielitos” were not disproportionately involved in homicides involving strangers or in particularly violent homicides. A follow-up study showed that the Mariel Cubans were not overinvolved in drug-related or robbery homicides. Multivariate analyses revealed few significant relationships between Mariel offenders and homicide motives, suggesting that the group had more in common with native groups’ experiences of criminal violence than was recognized. A more recent article shows that the unauthorized Mariel newcomers were killed at lower levels of intimate homicide but higher levels of killings that started as arguments, escalated, and turned deadly in the course of a gun-related homicide than the city average (Martinez and Stowell 2012). In other words, the Mariels were killed at slightly higher levels of routine homicides that escalated into lethal events, but usually by a fellow Mariel newcomer, not in violent street robberies or drug-related killings.

Most immigrant Latinos are of Mexican origin and are concentrated in the southwestern United States. There are some exceptions; Miami is one. Due in part to its proximity to the Caribbean Basin, Miami’s Latino residents are primarily foreign-born and heavily of Cuban origin amid Colombian, Nicaraguan, Puerto Rican, and other Latino groups. This diversity provides opportunity to examine immigrant Latino group differences.

DiPietros and Bursik (2012) reported results from The Children of Immigrants Longitudinal Survey (CILS) in a metropolitan Miami setting (Portes and Rumbaut 2001). A subsample of 1,444 immigrant youth self-identified as Cuban, Nicaraguan, Colombian, and Dominican. Children of Cuban immigrants fared better than most of the other Latino groups on several indicators of immigrant adaptation, including human capital, the context of reception, and family structure and dynamics (Martinez 2002). Dominican youth generally fared worst. They reported the lowest levels of human capital, highest attendance in inner-city schools, and the most perceived discrimination.

Nielsen and Martinez (2011) recently examined Miami robbery and aggravated assault arrest data and reported individual-level variations in serious violence across racial, ethnic, and immigrant groups, net of other predictors. The violent arrests are for the Index crimes of aggravated assault and armed robbery among immigrants from Cuba, Haiti, Honduras, Nicaragua, Dominican Republic, Colombia, and “Other” countries. Regardless of immigrant status, data were recorded on arrestees’ race and ethnicity—non-Latino white, Haitian, African American, and Latino (regardless of race). Importantly there was some but not complete overlap between measures of immigrant status and racial or ethnic group. Immigrants were less likely to be arrested for robbery relative to aggravated assault than were natives, after controlling for relevant variables. Almost without exception, immigrants were less involved in robbery than in assault, and immigrant status helped to account for some of the apparent differences in arrest likelihood for Latinos, Haitians, and African Americans. Except for Colombians, the lower likelihood of robbery arrest for immigrants versus natives was found for all the Latino groups. That immigrant Haitians were less likely to be arrested for robbery than native-born Americans, but that, net of immigrant status, Haitians and African Americans did not differ, suggests that downward assimilation among Haitians is occurring; this needs to be examined in future research. Regardless, this finding illustrates the importance of moving beyond racial dichotomies in studies of crime to examine variations within racial, ethnic, and immigrant groups.

Rumbaut et al. (2006), providing a final recent illustration of data disaggregation, examined institutionalization data comparing native-born to foreign-born groups (e.g., Mexicans, Koreans). Using incarceration as a proxy for crime, they reported that immigrants had lower rates of incarceration for every nationality group relative to a native-born comparison group but that incarceration rates increased with the amount of time in the United States. They concluded that a process of “Americanization” accounts for the rise over time in incarceration rates among immigrants. Although first-generation immigrants have comparatively low rates of incarceration, with a handful of exceptions, the incarceration rates of U.S.-born Latin American and Asian groups in the study were greater than that of the comparison group of non-Hispanic whites. Rumbaut et al. (2006, p. 85) conclude that disaggregation is required to overcome the “national bad habit of lumping individuals into a handful of one-size-fits-all racialized categories (black, white, Latino, Asian) that obliterate different migration and generational histories, cultures, frames of reference, and contexts of reception and incorporation.” National-origin data unfortunately are extremely rare in the criminal justice system and difficult to obtain. The notion, nonetheless, that there is one homogenous Latino population is not correct. Future research should acknowledge that diversity whenever possible

III. REACTIONS TO LATINO IMMIGRANT CRIME

Public policies attempting to address the perceived “immigrant crime problem” are proliferating. With the declining economy came increased enforcement of immigration

laws designed to reduce the immigrant Mexican population. These include state and local law-enforcement partnerships to discourage undocumented settlement, increased deportation in general, and removals of immigrants for noncriminal violations. Efforts to prevent illegal border crossings into the United States have been reemphasized. Systematic research on these developments is just emerging.

Emilio Parrado (2012) evaluated the effect of establishing a 287(g) program, in which local and federal enforcement agencies share responsibility for immigration control, on the subsequent size of the Mexican immigrant population in 161 metropolitan areas over the period 2005–09. (The 287(g) program is an Immigration and Customs Enforcement [ICE] initiative that trains state and local law enforcement to enforce federal immigration law.) He evaluated the relative effect of more stringent immigration-enforcement policies and employment change associated with the 2007 recession, on the sizes of local Mexican immigrant populations. He also investigated the extent to which immigration policies and economic conditions affected the unemployment rates of low-skilled non-Hispanic black and white natives.

Overall, the 287(g) program is not particularly effective at reducing the local Mexican population. Parrado (2012) found that counties or metropolitan areas with small Mexican immigrant populations that employed 287(g) did not experience significant or continuing declines in foreign-born populations. In areas with large immigrant concentrations, however, especially places that were traditional destination points, the 287(g) programs were associated with significant Mexican immigrant population declines, specifically in Los Angeles, Riverside, Phoenix, and Dallas. These cities experienced substantially larger drops in Mexican immigrant population than did other similarly situated areas participating in the 287(g) program such as Atlanta, Houston, and Las Vegas. However, the declines in the Mexican immigrant population were smaller than in Chicago, Denver, Fresno, New York, San Diego, San Francisco, and San Jose, none of which participated in the 287(g) program (Parrado 2012, p. 33). Aside from the handful of outliers, there is little evidence that 287(g) implementation reduced local Mexican immigrant populations.

The political push to implement punitive immigrant legislation inevitably disproportionately affects the Latino immigrant population. The consequences of the passage and enforcement of punitive immigration legislation such as Arizona SB 1070 remain unclear. What is clear is that coupling immigration enforcement to local police activities during a period of public sector retrenchment risks overburdening law-enforcement agencies already struggling to enforce routine criminal statutes.

The expansion of the mission of local law enforcement may have unintended complications, including changing attitudes toward the law, legal authority, and policing in heavily immigrant communities. Kirk and colleagues (2012) addressed these issues in a recent article. A consistent body of research shows that cooperation of the general public in detecting and sanctioning criminal behavior is critical to effective law enforcement and that both cooperation and compliance with the law are enhanced when local residents believe that laws are enforced fairly (Kirk et al. 2012). Residents are more likely to cooperate when they view the police as legitimate and just.

Cynicism of the law and legal institutions is provoked when residents are exposed to excessively harsh laws and legal procedures. In heavily immigrant communities, heightened policing combined with harsher methods and laws may be viewed as biased or excessive and reduce the willingness of immigrants to report crimes and cooperate with the police. This may undercut police ability to control crime. A paradox results: harsh immigration policies and enforcement are often framed as means to keep communities safe and prevent crime, but by decreasing cooperation with police, they may have the opposite effect.

Kirk et al. (2012), using New York City census tract data and recent surveys, report that cooperation with the police is significantly more likely in communities with more immigrants than elsewhere, especially in those with relatively homogenous immigrant populations. Immigrant communities were less cynical of the law than were native-born communities, and they were more cooperative with legal authorities. This is consistent with the immigration and crime literature that shows that immigration is a protective factor in relation to violence. Harsher immigration policies such as those represented by Arizona's SB 1070 are more likely to undermine public trust than to enhance or protect it.

IV. CONCLUSION

Several issues are particularly important for future research to examine. The evidence supporting the immigration revitalization perspective and showing that more immigrants means less violent crime is steadily accumulating and inevitably will undermine policies based on incompatible premises.

Political issues concerning illegal immigrants and violent crime have recently become prominent. Arizona Governor Jan Brewer, for example, recently made a host of unsubstantiated claims that "most illegals are drug mules," and about decapitated homicide victims in the desert, kidnapping increases in Phoenix, and rising violence along the Mexican border (Milbank 2010). Such false claims are not new. In 1980 the Mariel Cubans were linked to drug homicides in the public imagination in a way that resembles modern-day images of drug-packing Mexican immigrants crossing into Arizona to give birth to "anchor" babies.

Inevitably there have been times, places, and circumstances in which members of particular ethnic groups have been overrepresented among particular categories of offenders. Such situations are important to note but cannot justify casting aspersions on much broader groups. Martinez and colleagues (2003) found that Afro-Caribbean groups and Jamaicans were overinvolved in drug-related homicides in Miami compared with other ethnic groups in the early 1980s. There were particular situational reasons, including the age and gender composition of those groups, local links to a major drug market such as Miami, and economic and security conditions in the home country. Such considerations, however, are not inherent "immigrant" characteristics, illegal or

not (Tonry 1997). Instead they offer the reminder that local contexts matter and, in some cases, matter a great deal.

There is little systematic evidence that unauthorized immigrants or “illegals” (those who illegally crossed the border or overstayed temporary visas) are more involved in violent crime than are U.S. “legals” (green-card recipients, temporary visitors, refugees, or other authorized noncitizens) but that remains an issue worthy of cross-national study. Arjen Leerkes (2009), reporting research on illegal residence and public safety in the Netherlands, points out that comparing serious offenses in Europe to the United States is difficult. In part, this is because in the Netherlands violent crimes “among illegal migrants are extremely rare and that the level of U.S. violence has few, if any, counterparts in the industrialized world” (Leerkes 2009). In other words even in an American period of declining violence, homicide rates are high relative to those in other nations.

The overall immigration and crime narrative needs continuing clarification and elaboration. Most researchers have focused almost exclusively on the direct effects of immigration on crime. Stowell, however, noted that there is a distinct “possibility that immigration may be linked to crime through its impact on social structure” and that disentangling the indirect effects is important (Stowell 2007, p. 105). Examining violence in Miami, Houston, and Alexandria, Virginia, Stowell found evidence that immigration usually increases poverty and other structural influences of crime and that it may thereby indirectly expand violent-crime rates. This was particularly so in Houston but much less in Miami where the negative direct effects were quite strong.

The precise effects of immigration on crime through the indirect pathway of poverty need further sorting out, since immigrants are generally part of the working poor and are not typically concentrated in extremely disadvantaged communities. In other words, the effects of poverty on the propensity of immigrants to commit crime may be attenuated by the fact that they are poor but working rather than extremely poor and endemically jobless. Stowell (and others) cannot currently disentangle these interactions. Immigration may contribute to the poverty rate in a city, but it is difficult to know whether immigrant poverty in a particular city or community, rather than the poverty of other racial or ethnic groups, contributes to rising levels of crime.

More longitudinal studies at the city-level of the sort carried out by Ousey and Kubrin (2009) are a high priority but will require more specific immigrant data. Controlling for the percentage of immigrants at the city level is not the same as looking at immigrant cities across time, and treating all immigrant groups as equivalent potentially masks important variations by nationality or ethnicity (Stowell 2007).

The scholarly consensus is that first-generation immigrants are less involved in crime than are nonimmigrants, and that for many groups, second- and third-generation immigrants may be overrepresented. It is, therefore, reasonable to believe that the indirect effect of immigration on crime through variables such as poverty or working poor must be found outside the first generation. Attention to the assimilation patterns of immigrants reveals that first-generation immigrants tend to be positive about their conditions despite the fact that they are relatively poor (Stowell 2007). Almost no matter

how bad their situation may be in the United States, it is often better than circumstances in the country of origin. The second and third generation does not have this reference point. The relevant reference group for them is more likely to be the American middle and upper classes rather than impoverished groups in their countries of origin. Some scholars suggest that it is the “Americanization” of immigrants that shapes the involvement of the second and third generations in crime, not the essential qualities of the immigrants themselves (e.g., Rumbaut et al. 2006).

The images of the hyperviolent criminal immigrant and violence-prone immigrant communities survive in many circles. They persist among many politicians, pundits, policy makers, and segments of the general population despite the existence of strong, consistent evidence that more immigrants do not mean more violent crime. Americans need to move beyond these stereotypes and better understand the complicated immigration and crime linkage. Immigration is not a key cause of violence in the United States.

NOTE

1. Unless otherwise indicated, data in this paragraph are from Acosta and de la Cruz (2011).

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CHAPTER 22

CASE STUDY

Criminalizing Settlement: The Politics of Immigration in the American South

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As of this writing (April 2013), much about the politics of immigration in the U.S. is in flux. After several years of states and local communities working to pass legislation designed to restrict the life opportunities of immigrants, especially those who are undocumented, the 2012 presidential elections brought a shift in public discourse surrounding immigration. Federal lawmakers who previously had taken harsh stands against undocumented immigration and otherwise worked against immigration reform have changed their tunes, as have political pundits well known for anti-immigrant rhetoric. While the material outcomes of these political shifts remain to be seen and while early versions of the promised comprehensive immigration reform are only now being presented, it is clear that public sentiment surrounding immigration, at least as represented by federal lawmakers, changed dramatically after 2012.

Leading up to the 2012 presidential elections, however, political and legislative debates around immigration were much clearer, and harsher. In April 2010, Arizona's governor signed into effect Senate Bill 1070, the Support Our Law Enforcement and Safe Neighborhoods Act, a piece of legislation which, among other things, made it a state misdemeanor to be in Arizona without proper documentation. It also required law enforcement agents to attempt to determine an individual's legal status during a lawful stop, detention, or arrest when there was "reasonable suspicion" that the individual was undocumented. In its totality, SB 1070 was designed to make Arizona unattractive to undocumented residents and, thus, was part of a wider trend seen across the country in the late 2000s and early 2010s of states and local jurisdictions using legislation to make life unbearable for undocumented immigrants in the hopes that they would "self-deport" (Fahrenthold 2012).¹ For many states across the country, the

U.S. government's perceived failure to address immigration in the new millennium became justification for lawmakers to take matters into their own hands.

Upon its signing, SB 1070 was almost immediately challenged in federal court, perhaps most publicly in a class action lawsuit that included individuals, as well as a range of civil organizations (*Friendly House et al. vs. Whiting*). In July 2010, the U.S. Department of Justice sued Arizona as well (*United States v. Arizona*), and a day before SB 1070 was to go into effect in July 2010, a federal judge blocked most of its provisions. Although the law was tied up in a legal battle from its inception, it remained the center of controversy in Arizona and elsewhere. The focus of boycotts from groups around the country and the template for state legislation in a number of other states, Arizona's SB 1070 took the scalar devolution of immigration enforcement seen across the United States in recent years (Varsanyi 2010) to a new level and joined the politics of immigration and the local policing of communities in a volatile way. As its title implies, SB 1070 brought the idea of the United States as a nation of laws ("Support Our Law Enforcement") and of immigration as a threat to the intimate spaces of daily life ("Safe Neighborhoods") together to target undocumented immigrants as a criminal presence that made neighborhoods and, by extension, communities, states, and the nation unsafe. Although the U.S. Supreme Court ruled that three key provisions of SB 1070 were unconstitutional (that making it a state misdemeanor to be in Arizona without proper documentation, that allowing state law enforcement agents to make arrests without warrants in some cases, and that making it illegal for an individual to apply for work without proper documentation), the Court left intact SB 1070's most controversial part: its "show me your papers" provision that allowed state and local police officers to inquire about the immigration status of individuals detained or arrested if there was "reasonable suspicion" that the detained person was undocumented.

In many ways, SB 1070 can be seen as one point in a longer history of state and local efforts to control and limit the settlement of immigrants, especially those who are undocumented. In the absence of comprehensive federal immigration reform since the 1986 Immigration Reform and Control Act (IRCA) and in the face of a truly national geography of immigrant settlement since the 1990s (Bankston 2007; Lichter and Johnson 2009; Massey, Rugh, and Pren 2010), states and communities across the United States from the mid-2000s on increasingly turned to their own legislative arenas to address the changes brought about by the arrival and settlement of immigrants. In the process, they created a patchwork of state and local policies that collectively worked to restrict the social and spatial mobility of undocumented immigrants. On the one hand, these state and local efforts to address immigration's impacts are nothing new and can be seen as continuations of trends, such as California's Proposition 187 in 1994, that curtailed immigrant rights at the state level, or as extensions of federal programs, such as the 287(g) or Secure-Communities initiative (Coleman 2007, 2009; Nguyen and Gill 2010), that rescaled immigration enforcement to local agents. On the other hand, new state laws like the one in Arizona point to important changes in the early 2010s in the relationship between immigration and law, between where immigrant settlement in the United States is taking place and how it is legislatively addressed.

Although SB 1070 received extensive national attention, the most substantial state legislation related to immigration in this period came from the American South, a part of the country that, until the late 20th century, was literally off the map of immigrant settlement in the United States.² Admittedly, there were small immigrant communities in southern states in both the 19th and 20th centuries (Lovett 1999; Kyriakouides 2003; Weise 2008); and states such as Florida and Texas have long had substantial immigrant, especially Latino, populations (Foley 1997; Mato 2002; Stepick et al. 2003; Rodriguez 2011). Most other southern states, however, had no notable foreign-born populations until the 1990s and, even then, were not part of national dialogues about immigration. Although there was significant foreign investment in many southern states from the 1980s onward (Globalization Game 1998; Cobb and Stueck 2005), the South as a whole was all but invisible in discussions of immigration to the United States.

As a growing body of interdisciplinary work now demonstrates (Ciscel, Smith, and Mendoza 2003; Massey 2008; Fink 2009; Odem and Lacy 2009; Marrow 2011), that pattern changed dramatically at the end of the 20th century, when southern cities and towns began to see the rapid arrival and settlement of a foreign-born Latino population.³ Drawn by tight labor markets and cheaper living expenses in the South, withering job opportunities elsewhere in the country, and economic and political difficulties across parts of Latin America, Latino men and (later) women streamed to many southern states in the 1990s. Although this migration was, in many regards, economically driven, it also involved other factors, such as IRCA's amnesty program, which gave more than 2 million Mexican immigrants not only legal status but also the spatial mobility to leave the Southwest and its stiff intragroup job competition (Hernández-León and Zúñiga 2005). Equally important, the growth of the South's foreign-born population partially resulted from the region's growing image among immigrants as a tranquil and safe place to raise families (Cuadros 2006; Marrow 2011). Through these and other factors, Latino immigrants came to the South at the end of the 20th century from both other United States cities and Latin America, putting down roots and changing the cultural and social fabric of southern locales, big and small. In a decade, the South went from the spatial exception in the story of the United States as a nation of immigrants to the leading edge of a new geography (and politics) of immigrant settlement in the country (Winders and Smith 2012).

The settlement of foreign-born Latino men and women in southern cities and towns generated a range of responses from long-term residents and institutions. In the late 1990s, when this migration began, scholars of immigration to the South wrote of a new form of southern hospitality being extended to Latino immigrants and the possibility that immigrant integration in the South might take a different path from that seen in gateway locales like Los Angeles (Murphy, Blanchard, and Hill 2001). In a short time, however, that initial welcome became ambivalence toward increasingly settled immigrant communities across the region (Rich and Miranda 2005). By the late 2000s, ambivalence had turned to outright hostility toward immigrants in parts of the South (Deaton 2008; Bauer 2009; McKanders 2010; Nguyen and Gill 2010; Marrow 2011). As the first decade of the new millennium came to a close, a population that had been welcomed as

much-needed cheap labor in agriculture, construction, and other fields had become a settled immigrant community who sent children to local schools, used parks and social services, and lived their lives in ways that challenged long-standing views on how southern communities worked. In response, southern lawmakers, who previously had viewed immigration as an issue elsewhere in the country, began to use state and local legislation to intervene in the process of immigrant incorporation through a focus on undocumented immigrants, or “illegal immigration.”⁴

This essay explores some of these legislative trends surrounding immigration to the South in the early 2010s, with the goal of examining how southern lawmakers saw and responded to immigration as a local phenomenon and how key pieces of immigration-related state legislation were debated, enacted, and resisted by different actors.⁵ Through a discussion of laws passed in Georgia and Alabama in 2011 and the debates that ensued, it shows how an immigrant presence was criminalized in these states as southern legislators worked to identify and restrict points of contact between undocumented immigrants and state resources while accentuating the consequences of immigrant encounters with state and local law enforcement. In crucial ways, Georgia’s and Alabama’s laws built on Arizona’s SB 1070, as did proposed legislation in 18 other states in 2011 (Redmon 2011*e*). In Georgia and Alabama, however, this national trend of states attempting to take control of immigration enforcement not only was successful but also articulated with very local, and historically deep, racial and cultural politics to create a situation of both extreme immigrant exclusion, if not deprivation, and new coalitions around immigrant and civil rights.

As this essay suggests, Georgia and Alabama, although historically marginal in discussions of immigration, became central to the relationship among immigration, law, and crime in the United States in the late 2000s and early 2010s for a number of reasons. First, Georgia has one of the largest undocumented populations in the country, ranking seventh in 2011. According to the Pew Hispanic Center, 7 percent of Georgia’s work force was undocumented in 2011, and that number grew rapidly in the 1990s and 2000s (Redmon 2011*g*). Equally important, as the literature on new destinations shows, Georgia’s immigrant population, approximately 10 percent of the state’s population in 2010,⁶ is not only larger but also more established than in other new destinations (Murphy et al. 2001; Hernández-León and Zúñiga 2005). Because Georgia’s immigrant community began to grow earlier than elsewhere in the South, the state has been ahead of the curve, so to speak, in trends in new destinations. Thus, Georgia can be seen as a harbinger of where other new destinations may be headed demographically, politically, and legislatively.

Alabama, by contrast, has a relatively small undocumented immigrant population, although one that saw substantial growth in the 2000s. In 2010, just over 3 percent of Alabama’s population was foreign born, with estimates showing somewhere around 120,000 undocumented residents in the state as of 2010.⁷ Nonetheless, in 2012, Alabama was home to the nation’s strictest state legislation related to immigration, even if parts of it were held up by the Supreme Court. Building on Arizona’s legislation, but taking things further, Alabama pushed the policing of an undocumented

presence into new spheres of daily life and criminalized the behaviors of not only undocumented immigrants but also those who gave them aid. Thus, although demographically Alabama is not exceptional in the context of immigrant destinations, the vehemence with which its lawmakers addressed the presence of undocumented immigrants has made other states take notice and has made Alabama a national model for how to become unwelcoming to undocumented immigrants.⁸ For all these reasons, Georgia's and Alabama's legislative maneuvers merit attention from scholars interested in the intersections of immigration, ethnicity, and crime. When states with little experience with immigrant settlement and politicians with little knowledge of immigration set the national standard for state legislation concerning immigrant lives, it is time for scholars of immigration and law to pay close attention to new destinations. Equally important, *the southern* legislative trends examined here, helped lay the groundwork for the shifts in the *national* politics of immigration emerging from the 2012 presidential elections.

The remainder of this essay examines the debates around these 2011 immigration laws in Georgia and Alabama, by reviewing newspaper coverage at the local, state, and national level. As other scholars have noted, in new destinations, the proportion of Latino immigrants who are undocumented is higher than in gateway locales, in part because of the newness of this migration (Marrow 2011). Over time, the proportion of undocumented immigrants in the South's Latino population will fall, as the number of U.S.-born children of immigrants grows and migration from Mexico continues to level off, if not drop. In the period leading up to these bills, however, states like Georgia and Alabama had substantial undocumented populations that, as this essay shows, became the focus of public discourse around immigration more broadly.

It is important to stress up front that this essay does not offer an exhaustive account of how discussions of immigration, or even these laws, developed in either state. It does not, for example, consider political blogs, reader comments, or other avenues for public engagement with these pieces of legislation, nor does it offer an in-depth analysis of the laws, their wording, or design. It also does not engage the perspectives of immigrants impacted by these pieces of legislation—a necessary component of any discussion of this unfolding issue. Finally, this essay is not written by someone who studies crime. Although I have analyzed immigration legislation and the politics of immigration in the South (Smith and Winders 2008; Winders 2007, 2011), neither crime nor law is the focus of my research. Thus, this essay uses Georgia's and Alabama's laws, and the push to criminalize an undocumented immigrant presence in both states, to raise broader points about how immigrants, especially undocumented immigrants, were positioned as threats in these states and how lawmakers used state legislation to intervene in the process of immigrant incorporation.

In its main, the essay addresses the following themes:

- How the devolution of immigration legislation from federal to state government played out in Georgia and Alabama, two nontraditional immigrant destinations about which little is known

- How, throughout the 2000s, public sentiment toward immigrant settlement became increasingly negative in these states and in the South more broadly, eventually impacting the state legislative arena
- How opponents of these laws linked them to each state's racist past and made connections between the historic struggles of African Americans and the current struggles of Latino immigrants, while also highlighting these bills' unacknowledged financial costs and challenges to Christian beliefs
- How proponents framed the laws as ways to address both the economic costs of undocumented immigrants and the social and political threat that undocumented immigrants were understood to pose to local communities
- What new policy issues and research questions this discussion of Georgia and Alabama raise for those interested in the intersections of immigration, ethnicity, and crime and the wider immigration debate in the United States

To develop these points, the remainder of this essay is divided into five sections. The first reviews the brief history of immigrant settlement in the South and the emerging consensus across the 2000s that immigrant settlement could, and should, be addressed through state legislation. The second section lays out the key features of the 2011 laws in Georgia and Alabama and their efforts to restrict undocumented immigrants' spatial and social mobility. The third section discusses challenges to these laws in both states, as well as the problems that arose as each state tried to implement its law. As it shows, opponents drew on three discourses to counter these laws: the resonance between the treatment of immigrants now and the treatment of African Americans under Jim Crow, these laws' unacknowledged financial costs, and the contradiction between their targeting of undocumented immigrants' daily lives and widely accepted Christian mandates to be welcoming. The fourth section looks at what Georgia's and Alabama's laws tell us about the national immigration debate in the early 2010s, especially the framing of immigrants as both an economic and a social or cultural threat. In particular, it highlights the ways that the laws framed immigrant claims to place as a threat to a local and national sense of community and identity and undocumented immigrants themselves as illegitimate recipients of state resources. To conclude, the essay reflects on the implications of Georgia and Alabama as epicenters in the U.S. immigration debate. When immigrants are legislatively placed outside the "public" served and represented by state governments, key questions surface concerning who is seen to belong to local communities, both in the present and in the future.

I. IMMIGRATION LEGISLATION, SOUTHERN STYLE

When immigration became a noticeable phenomenon across southern states in the late 1990s and early 2000s, it was not initially addressed by local or state legislation.

Although the notion of “illegal immigration” was circulating within national discourse in this time period and although some southern communities did attempt to pass ordinances directed at immigrants, across the South, the arrival of foreign-born Latino men and women did not at first draw the attention of state lawmakers. Within a short period, however, that situation changed, in part through the rapid settling of immigrants in southern locales and in part through the articulation of the local politics of immigrant settlement in southern communities, the emerging state consensus on the perceived costs of immigrant settlement, and the (inter)national politics of border insecurities. As I have argued elsewhere (Winders 2007), immigrant settlement in the South became visible as a local phenomenon through and in the wake of the terrorist attacks of September 11, 2001 (9/11). Thus, the politics of immigration and the politics of national security were intimately connected in public discourse on immigration in the South. This post-9/11 lens provided the framework through which southern locales came to understand immigrant settlement in the early 2000s and helped drive the about-face in immigrant reception that many southern communities subsequently saw.

This rapid change in public sentiment toward immigration surfaced across the South around 2005, when cities like Nashville began to see anti-immigrant rallies, when anti-immigrant rhetoric began to grow in volume, and when, not unrelatedly, immigrant workers began to become local community residents.⁹ In 2006, Georgia’s SB 529, the Georgia Security and Immigration Compliance Act, was one of the earliest indications that immigration to the South was becoming an issue that states could address legislatively. Among other things, SB 529 ruled that undocumented immigrants were not eligible for taxpayer-funded state benefits, that contractors hiring undocumented workers could not count their wages as tax write-offs, and that undocumented students were not eligible for in-state college tuition (Winders 2007). As the 2000s progressed, southern state after southern state followed Georgia’s lead, attempting, sometimes successfully, to pass both individual laws and comprehensive legislation to restrict the movement of undocumented immigrants (through driver’s license legislation), their settlement (through laws that made it illegal to rent to undocumented residents), and their general life chances.

These maneuvers laid the groundwork for what became a fierce debate across the South concerning immigration and its local impacts. A few examples from legislative proposals directed at immigrants in this period will show the ways that southern elected officials drew on and drove wider discourses around immigration, law, and crime. In November 2010, a Tennessee state lawmaker remarked that residents in the state “illegally” “can go out there like rats and multiply, then, I guess,” in response to a state administrator’s explanation that a Tennessee healthcare program offered assistance to the unborn children of undocumented immigrants. When pushed to explain his comment, he admitted that he was wrong and should have said “anchor babies,” a pejorative term that signaled the same sense that undocumented immigrants used children to unfairly and irresponsibly access state resources (Edwards 2010). In Alabama, in February 2011, a state Republican senator who cosponsored the legislation discussed later in this essay called on party members to “empty the clip and do what has to be done” to address

undocumented immigration, which, if not checked, could “destroy” local communities (Wing 2011). In Georgia, around the same time, lawmakers attempted to ban undocumented immigrants from attending state colleges or collecting workers’ compensation and jobless benefits (Redmon 2011*h*). This latter stipulation was particularly potent because immigrants in the South were overrepresented in dangerous jobs like construction and because Hispanics were hardest hit by the economic recession.

As these examples indicate, 2011, like the years leading up to it, saw a spate of anti-immigrant legislation in southern states and increasing vitriolic rhetoric toward undocumented immigrants as undeserving and dangerous threats. In January 2011, the Mississippi House of Representatives passed a law allowing police officers to check the immigration status of persons stopped for any reason and suspected of lacking proper documentation. Those who could not produce such documents could be jailed and released to Immigration and Customs Enforcement officials for eventual deportation (Fox News Latino 2011*b*). In Kentucky, a proposed 2011 Senate bill would have made it a state crime for undocumented immigrants to enter the state or for anyone to harbor, transport, or encourage their residency. This Kentucky law would also have authorized police to approach people in public and ask about immigration status (Cheves 2011). In debates over this legislation, its sponsoring senator framed the bill as a way to keep Kentucky from becoming “a sanctuary state for illegal aliens,” tapping fears that southern states would be overrun with undocumented immigrants (Roxas 2011). As the next section discusses, this desire to keep undocumented immigrants away was also the driving force behind legislation in Georgia and Alabama.

II. REFORMING GEORGIA AND ALABAMA

In 2011, riding the wave of anti-immigrant rhetoric described in the previous section, Georgia and Alabama passed state laws that mimicked, yet surpassed, Arizona’s SB 1070. Explicitly designed to make life difficult for undocumented immigrants, both laws targeted key aspects of daily life for immigrants and their families. As the sponsor of Alabama’s law explained, “This is a very strong bill. It addresses every aspect of life. Therefore, it will make it difficult for them [undocumented immigrants] to live in Alabama” (Kitchen 2011). In Georgia, HB 87, the Illegal Immigration Reform and Enforcement Act, was passed by both houses in Spring 2011 and was set to go into effect in July 2011. Among other things, it authorized law enforcement agents to check the immigration status of individuals detained and suspected of being undocumented. It also potentially charged people with a felony who “willfully and fraudulently” used fake identification to get a job and punished certain individuals who knowingly transported or harbored undocumented immigrants (Redmon 2011*b*). Under HB 87, many private employers would have to verify that new employees were legally eligible to work in the United States through the federal E-Verify system, starting in 2012 (Redmon 2011*e*).

Equally important, the law allowed Georgia residents to sue local and state officials who did not enforce state laws addressing immigration (Redmon 2011*b*).

Through this last factor, Georgia's HB 87 went a step further than had other states and created the Immigration Enforcement Review Board, a panel of state-approved volunteers who investigated complaints submitted by registered Georgia voters about failures to comply with the 2011 law (Newkirk 2011*a*). Although Alabama's 2011 law also allowed state residents to sue government agencies for failing to enforce its provisions, Georgia's Review Board was the first of its kind in the nation (Lockette 2011). Once in place, the board could subpoena witnesses and remove funding for public agencies that violated HB 87 (Newkirk 2011*a*). It is important to note here how the board was created and how it worked. From the beginning, it included people predisposed to support efforts to target undocumented immigrants. As a spokesperson for the governor explained, "It was important that we appoint advocates for the law because we need people who want to enforce it. It would make no sense to appoint people who hate the law and want to undermine it" (Redmon 2011*f*). In this way, the board was not a space for debate about the law and its application but a site for reproducing an understanding of immigration as a problem to be monitored. For similar reasons, the Review Board was criticized for its composition. When questioned about why the board included only white men, a member appointed by the governor explained it as a "coincidence." "You have three different people who had to pick three [members]. You wouldn't want one of them to be forced to pick a minority for one of their spots" (Epstein 2011*b*). Thus, the board was structured not to represent Georgia's political or demographic diversity, but to maintain a stance toward immigration as an enforcement issue that not even the state government could be trusted to handle on its own.

The Review Board was set to begin work in January 2012, but was embroiled in controversy before it began, when Phil Kent, a national spokesperson for Americans for Immigration Control and advocate for curbing "illegal" and legal immigration, was named to it (Epstein 2011*b*; Richards 2011). An opponent of refugee resettlement from developing countries, Kent had publicly described African asylum seekers as "primitive peoples" and spoken out against multiculturalism. He also represented an organization identified as a hate group by the Southern Poverty Law Center (SPLC) (Epstein 2011*b*). Beyond Kent's polarizing presence, the board was criticized for its members' lack of qualifications. As one member admitted, "I know a little about immigration. I'm a farmer. I don't know if I have any other qualifications. There might not be anyone on the board that can call themselves qualified, it's just something new" (Epstein 2011*b*). Although its members may not have been familiar with HB 87, or with immigration, they were empowered to hold the state's feet to the fire in the fight against "illegal immigration" and, thus, to reproduce an image of immigration as something to be controlled at the state level.

In Alabama, equally strong measures were taken. With a state legislature controlled by Republicans for the first time in nearly 140 years and a faltering state and national economy, 2011 provided the perfect storm for Alabama's Republican legislators to go after "illegal immigration" (Stevenson 2011). In March 2011, they did so through HB

56, the Hammon-Beason Alabama Taxpayer and Citizen Protection Act. This act made undocumented immigrants in Alabama guilty of trespassing and made it a state crime to be in Alabama without proper documentation on one's person (White 2011a).¹⁰ In April 2011, HB 56 passed the Alabama House by a large margin, and, in June 2011, the governor signed it into effect (Cook 2011; Kitchen 2011). Modeled after Arizona's SB 1070, HB 56 allowed police officers to check a person's immigration status after he or she was stopped or arrested for any state or local violation if "reasonable suspicion exists that person is an unauthorized alien" (White 2011a). Once convicted, any detained undocumented immigrant could be immediately transferred to immigration officials for deportation (Banaszak 2011). As was the case for Georgia's HB 87, Alabama's HB 56 also made it a crime to knowingly transport, house, rent to, or employ undocumented immigrants and punished businesses that hired undocumented workers (White 2011a). Under HB 56 as well, undocumented immigrants could neither attend college nor apply for or solicit work (Gray 2011).

As its title suggests, Alabama's HB 56 framed undocumented immigration as a threat from which taxpayers and citizens needed "protection." This focus on protecting citizens and taxpayers was more explicit in Alabama than in Georgia, where HB 87 was framed, at least in name, through a language of enforcing laws rather than protecting citizens. The Alabama bill, for example, identified public schools as a site where taxpayers and citizens' resources were unfairly drained by undocumented immigrants. In an unprecedented move, it required Alabama school districts to report the number of students born outside the United States or to undocumented parents (White 2011b),¹¹ to forward to the state the names of children whose legal status could not be confirmed, and to track the legal status of their parents (Hardison 2011).¹² There was almost immediate uproar over and legal challenge to this portion of the bill, which was set to go into effect September 1, 2011. Because most Alabama schools started before September 1, the full effects of these stipulations were never felt, since this portion of the law was removed before September 1, 2012. Nonetheless, HB 56's targeting of the children of undocumented residents as part of the problem from which Alabama "citizens" needed protection is indicative of how the state saw undocumented immigrants and the threat they posed. It is also safe to presume that Alabama lawmakers did not include undocumented immigrants as the "taxpayers" the act protected, despite the fact that undocumented immigrants contributed to state coffers through sales tax and other avenues.

III. CHALLENGING THE LAW

Alabama's HB 56 and Georgia's HB 87 had significant support among state legislators and were readily passed. Nonetheless, both laws also faced strong opposition. In July 2011, for example, more than 10,000 protesters marched in Georgia's capital on the day HB 87 took effect (Newkirk 2011b). The Alabama Coalition Against Domestic Violence came out against HB 56, which, they pointed out, would criminalize them for transporting or

housing undocumented abuse victims and, thus, violate the terms of their federal funding (Ellington 2011). Groups in both states accused the laws of creating opportunities for racial profiling. Although supporters consistently denied that claim, opponents argued that racial profiling was built into the laws' provisions that law enforcement agents could inquire about legal status when they had "reasonable suspicion" that a person detained was undocumented (Kitchen 2011). "Reasonable suspicion," opponents stressed, would translate into being Hispanic. In Georgia, some state lawmakers, especially Democrats, expressed concerns that HB 87 could create, as described by one representative, a situation like South Africa's pass system (Redmon 2011e). As U.S. Representative John Lewis explained, Georgia's HB 87 was "a recipe for discrimination. We've come too far to return to the dark past" (Shearer 2011).

As this statement from Lewis indicates, one of the most prominent, and powerful, ways that groups challenged these laws was to link contemporary efforts to exclude undocumented immigrants to past efforts to discriminate against African Americans. This connection between immigrant and civil rights, between the treatment of Latinos and the treatment of African Americans is not a new trend, even in the South. Across southern locales, at least talk of black-brown coalitions and of similar treatment of both groups has circulated for some time (Alvarado and Jaret 2009; Stuesse 2009). Nonetheless, the situations in Georgia and Alabama took this comparison to a new level and mobilized new groups in the South's debate over immigration. In both states, coalitions of black and Latino civil rights groups, as well as labor unions and national organizations like the American Civil Liberties Union (ACLU), organized around black-brown, past-present connections in protests in which they argued that HB 87 and HG 56 were reminiscent of slavery and Jim Crow.

A senior pastor at a historically black church in Georgia, for example, argued that if HB 87 was not vetoed, "we might as well go back to the back of the bus," linking the passage of HB 87 to the return to a Jim Crow South (Redmon 2011e). In Alabama, the executive director of a state Hispanic coalition spoke out against HB 56 at a location just blocks from key sites in 1960s civil rights protests, claiming those spaces as central to not only the civil rights movement but also the South's emerging immigrant rights movement. She stressed, "We cannot go back to that time" (Lyman 2011). A black pastor in Birmingham made the same point, when he described HB 56 as "bringing back the shameful and ugly past of our state" (Constable 2011). In March 2012, organizers in Alabama went so far to lead the "second" Selma-to-Montgomery march to protest HB 56, bringing national attention to Alabama as "ground zero" for the nation's immigration debates and bringing immigrant rights of the present and civil rights of the past together in a new way in the South (Associated Press 2012).

Another way opponents challenged these laws was through recourse to their financial costs. In Georgia, HB 87 had support from the governor, who had made campaign promises both to address undocumented immigration to the state and to pass an Arizona-style law (Redmon 2011b). Nonetheless, as the bill moved through both state houses, even the governor recognized the economic burden that it could place on employers expected to ensure that all employees were eligible to work in the United

States and on state industries like agriculture and construction that were dependent on immigrant labor (Redmon 2011*b*). Bill opponents took this cost argument a step further, stressing that HB 87 would create a “fiscal nightmare” for government agencies that would face new, more stringent enforcement mandates without additional funding for training or personnel (Redmon 2011*b*). This unfunded mandate, they argued, was a recipe for disaster. In Alabama, several Democrats opposing HB 56 noted the high costs of legal defenses of the bill, which, like Arizona’s SB 1070, was likely to (and did) get tied up in the courts. In a short time, the U.S. Department of Justice (*United States v. Alabama*), religious organizations (*Parsley v. Bentley*), and civil rights groups (*Hispanic Interest Coalition of Alabama v. Bentley*) had filed lawsuits against Alabama. Even Alabama law enforcement agents raised concerns over the law as an unfunded mandate to local jails expected to house suspected undocumented immigrants (King 2011). This fear became reality in October 2011, when the U.S. Homeland Security Secretary announced that federal agents would not help Alabama enforce its law (Roop 2011).

Similarly, as HB 87 was debated in Georgia, a group of farmers and agricultural leaders wrote to state lawmakers about their failure to consider its financial impacts, as was standard practice for such bills (Crist 2011). The potential economic costs of HB 87 for Georgia’s agricultural, landscaping, and commercial industries were substantial, Democrats and industry leaders pointed out, because of these sectors’ dependence on immigrant labor (Redmon 2011*e*). Agriculture, Georgia’s largest industry, generated nearly \$69 billion dollars each year (Redmon 2011*d*). Because many of the state’s leading agricultural products were highly perishable and not amenable to mechanized harvesting, many farmers, as well as groups like the Georgia Farm Bureau, argued that any legislation that jeopardized immigrant labor jeopardized the state economy. Even in Atlanta, the City Council came out against HB 87 over fears of its economic impact on the city’s tourism and convention business (Suggs 2011).

Finally, some religious groups joined the debate over and fight against HB 87 and HB 56. This trend of religious organizations publicly speaking out against such legislation was new in the South, where, until this round of anti-immigrant legislation, faith-based organizations, especially mainstream Christian denominations, had been largely absent from the immigration debate. Although many Protestant and Catholic southern churches ran Hispanic ministries, and although churches played important early roles in service provision for immigrants, they had avoided political debates related to immigration until 2011. Because the proposed legislation in Georgia and Alabama targeted not only undocumented immigrants but also those who provided them with various kinds of support, however, faith-based organizations came out against these bills in large numbers in both states. As an Atlanta councilman explained, “In a Christian mind, who is legal and who is not? We are all God’s children” (Suggs 2011). Southern faith-based groups’ stances on immigration are complex and beyond the scope of this essay (see, for example, the Southern Baptist Convention’s position on “Christ-like compassion, but not amnesty” [Associated Press 2011*a*]). Churches in both states, however, played key roles in protesting these laws in the streets and in the courtrooms. Whether because churches saw these bills as running counter to Christian tenets of welcoming

strangers or their ministries of outreach or because some denominations, such as the Southern Baptists, faced declining numbers that the presence of Hispanic members helped reverse, Alabama's and Georgia's anti-immigrant legislation brought southern religious organizations to the center of the fray, beginning an involvement that only gained momentum throughout 2013 (Fox News Latino 2011a).¹³

In both states, protests against these laws eventually led to lawsuits, which slowed the bills' implementation and stopped their full execution. In Alabama, the federal government sued the state, as did the ACLU, SPLC, a coalition of state religious leaders, and 16 Latin American countries (Epstein 2011a; Doyle 2011). Although in September 2011, Federal District Judge Sharon Blackburn upheld most of Alabama's law in *the United States of America v. the State of Alabama and Governor Robert J. Bentley*, the multiple lawsuits at play in these states delayed their implementation and created a public relations nightmare for Alabama, especially as the federal government and other plaintiffs appealed Blackburn's ruling (Constable 2011). In Georgia, portions of HB 87 were also halted in June 2011 by a federal judge, when the ACLU and other plaintiffs successfully sued the state (Redmon 2011i).

HB 56 and HB 87, however, faced opposition not only in the courts but also on the ground as they were put in place in piecemeal fashion throughout 2011. In Alabama, HB 56 made it a crime for undocumented residents to have any transaction with the state—registering a car, paying a utility bill in some municipalities, and so on. The problems associated with this provision quickly became clear, as municipality after municipality struggled to determine what constituted a transaction with the state and, thus, what constituted a violation of the law (Constable 2011). Across Alabama, implementation of this rule was also geographically uneven, with some locales refusing to turn on the water supply for undocumented residents, others refusing public services to only new undocumented customers, some refusing permits to undocumented mobile home owners, and others singling out Hispanic schoolchildren with letters to parents about HB 56 (Pilkington 2011; Roop 2011).

This geographically uneven implementation of HB 56 was not without precedent in the South's engagement with immigration. When Tennessee changed its driver's license legislation in the mid-2000s, for example, undocumented immigrants faced a similar situation when different counties accepted different documents as valid identification and when local and state law enforcement applied different rules altogether about identification documents (Winders 2007). Likewise, the implementation of 287(g) programs across some North Carolina counties created a legal landscape where crossing city or county lines meant different vulnerabilities for undocumented immigrants. Finally, in 2011, the North Carolina House of Representatives passed a bill that would bar local and state officials from accepting the *matricula consular*, a primary form of identification for Mexicans living in the United States without documentation (McClatchy News Service 2011). They did so after the city of Durham voted to allow its police department to accept the identification cards, thus highlighting not only the geographically uneven nature of political responses to immigration in states like North Carolina but also the scalar contradictions these differences can create (McClatchy News Service 2011). Going

from town to town, city to county, and even traveling in the same place at different times meant different, sometimes conflicting, rules for immigrants and made encounters with law enforcement, especially for undocumented residents, inherently risky.

In November 2011, a U.S. District Judge brought some clarity to confusion over state transactions in Alabama, ordering the state to stop denying mobile home permits to those who could not provide proof of citizenship (*Central Alabama Fair Housing Center v. Magee*, Case No. 2:11-cv-00982-MHT-CSC) (Treadwell 2011). By December 2011, Alabama's Revenue Department had redefined what constituted a business transaction with the state to exclude, among other things, registering and issuing decals for mobile homes (Associated Press 2011b). In March 2012, the 11th U.S. Circuit Court of Appeals struck down portions of HB 56 banning residents from knowingly doing business with undocumented residents and banning undocumented residents from entering into transactions with state and local government (Brownfield 2012). This ruling brought a close to this portion of the bill, but not before much time and many resources had been devoted to sorting it out.

In Alabama, such headaches over HB 56, and especially the inconveniences it caused long-term residents who had to prove legal residency to obtain public services or driver's licenses, raised fears for local elected officials that they would bear the brunt of voter reactions to these new requirements (Roop 2011). With growing lines at state agencies and growing confusion about how to comply with the law, complaints about HB 56 increased throughout 2011, even as supporters continued to tout its success. By late 2011, a German manager at Alabama's Mercedes-Benz plant had been arrested for not having his driver's license with him in a rental car, and this high-profile incident involving a key sector of Alabama's economy added fuel to calls to reform HB 56. A citation issued to a Japanese worker at Honda Manufacturing of Alabama did the same, and state lawmakers struggled with how to handle the impediments HB 56 seemed to create for international investors (Reeves 2011b).¹⁴ Shortly after these events, the Alabama governor reached out to foreign executives in the state, explaining that Alabama was "not anti-foreign companies," even as it was against undocumented immigrants (Associated Press 2011c). By December 2011, Alabama's Republican leaders were openly suggesting "tweaks" to HB 56 in light of confusion over it and in response to the growing image problem it created for Alabama in an international and national context (Rawls 2011a).

In the spring 2012 session of Alabama's legislature, Republicans introduced a new bill, HB 658, that revised portions of HB 56. With legal challenges to HB 56 from the U.S. Justice Department and 30 other organizations, the new bill removed the section prohibiting undocumented residents from attending college in Alabama and requiring public schools to check the legal status of new students (*News Courier* 2012). It also reconfigured the rules for police detention, stipulating that law enforcement agents could detain someone on "reasonable suspicion" of being undocumented only if that person had been arrested or issued a traffic ticket (*News Courier* 2012). Under the new provisions, however, police officers could now also check the legal status of passengers in stopped cars, although that stipulation was later dropped (*Montgomery Advertiser* 2012; United Press International 2012). Among other things, HB 658 exempted religious

organizations from having to verify the legal status of individuals they served, thus partially quieting their concerns over HB 56 (*News Courier* 2012). In May 2012, HB 658 passed both houses and was sent to the Alabama governor to sign. He did so reluctantly, calling first for more attention to the bill's possible consequences. When state lawmakers responded by adding new provisions requiring the state to publish the names, and then photographs, of undocumented immigrants who appeared in court for violating state law, the governor relented and signed the bill (Robertson 2012).

IV. UNDERSTANDING IMMIGRATION LAWS IN THE SOUTH

What can Georgia's and Alabama's 2011 laws tell us about the tenor of national immigration debates and the ways that discourses of immigration, threat, and crime have driven these trends? Elsewhere, Barbara Ellen Smith and I (2008) have argued that tensions surrounding the politics of immigration in the South are intimately bound up with claims to place at a number of scales—the nation, the community, the neighborhood, and so on. As immigrant settlement reconfigures local neighborhoods and other social institutions, and as it transforms local meanings and practices of community in southern locales, concerns about local change and questions about national identity entangle for many long-term residents (Brettell and Nibbs 2011). A closer look at the debates over these laws in Alabama and Georgia shows that although they may have been presented as ways to address the costs of undocumented immigration, they were also, if not mainly, about intervening in immigrant efforts to claim place in the South and its local communities.

To illustrate this point, let me return to the driving force behind HB 56 and HB 87. As HB 56 was implemented in Alabama, its Republican sponsor explained that “we want to discourage illegal immigrants from coming to Alabama and prevent those that are already here from putting down roots” (White 2011*b*). In this way, he, like other politicians, explicitly framed the bill as a way to work against immigrants’—especially undocumented immigrants’—attempts to make and claim a place in Alabama. Given the mixed legal status of many immigrant households and given the broad-brush definition of what, in Georgia and Alabama, would be “reasonable suspicion” of being undocumented (i.e., being Hispanic), efforts to make undocumented immigrants unwelcome became efforts to dislodge immigrant communities altogether. In Georgia, a Tea Party activist who drove to the Capitol to watch the debate and pressure lawmakers to pass HB 87 in March 2011 explained that she supported the bill as “a symbol of what the heart of America is feeling about immigration” (Redmon 2011*e*). In this way, she placed Georgia at the center of American nationalism and linked its efforts to halt the *local* settlement of undocumented immigrants to the pulse of *national* opinion on immigration. For her, passing HB 87 meant respecting America's views of immigration,

making the local policing of immigrant lives an expression and defense of a national identity and will.

In other cases, the sense of these laws as a defense of place worked more symbolically. In Alabama, the U.S. Justice Department's suit claimed that HB 56 violated the U.S. Constitution's plenary power to regulate immigration (Lawson 2011). In response, a group of Republican state lawmakers accused the U.S. Justice Department of threatening Alabama's state sovereignty, thus tapping a deep discourse of state's rights in Alabama and elsewhere in the South and shifting the focus from the federal government's failure to address immigration to its attempts to do so in opposition to Alabama's laws (Associated Press 2011*d*). As the governor later explained, HG 56 was not "a hard-hearted policy" but "a trespassing issue" in which both undocumented immigrants and the federal government were unwanted intrusions (Trotta and Bassing 2012). Alabama, it seemed, had a right to defend its place from both "illegal immigration" and the U.S. government.

A second theme mobilized to support these laws was a language of economics read as entitlement. A Republican sponsor of Georgia's HB 87, for example, described the bill as a way to address the unfair use of taxpayer-funded state resources, such as public schools and jails, by undocumented immigrants (Redmon 2011*c*). When faced with a rally of more than 6,000 people protesting HB 87 in March 2011, lawmakers supporting the bill issued the following statement:

There are millions of Georgia citizens working and raising their families who no longer are willing to accept the loss of job opportunities to the nearly 500,000 illegal aliens in our state or to subsidize their presence with their hard-earned tax dollars. (Nelson 2011)

In this statement, bill supporters drew a line between Georgia "citizens" who worked hard and raised families and "illegal aliens" who took job opportunities and siphoned off "hard-earned" tax dollars. In doing so, they made the bill a question of economic entitlement to which only Georgia "citizens," rescaled here from the national to the state level, could rightfully make a claim. Again tapping notions of state sovereignty by describing Georgia legal residents as citizens, they framed the economic argument for HB 87 through the lens of rightful entitlement to collective state resources.

In similar fashion, when HB 87 was signed in May 2011, its sponsor described it as "not just an immigration issue. It's a school issue. It's a transportation issue. It's a health care issue," identifying each sphere as one in which immigrants unfairly made claims to state resources (Lohr 2011). In the face of lawsuits against HB 56, the House GOP majority leader explained, "Now, they want to block our efforts to secure Alabama's borders and prevent our jobs and taxpayer dollars from disappearing into the abyss that illegal immigration causes" (Seper 2011). In the words of one of the law's sponsors, immigrants "were coming in here like thieves in the night and taking our jobs and tax revenue" (Rawls 2011*b*). In both cases, immigration's economic aspects entangled with, and were read through, the broader question of who could rightfully make claims to state resources

and territory, both materially and metaphorically. In the process, undocumented immigrants became a threat to Alabama's territory and sovereignty by claiming place in local communities and a danger to state resources by trying to steal them.

V. FUTURE RESEARCH

The epicenter of the fight over the patchwork of immigration laws in the United States is not Arizona. . . . Nor was it any of the four states that were next to pass their own crackdowns. No, the case that's likely to be the first sorted out by the U.S. Supreme Court comes from the Deep South state of Alabama, where the nation's strictest immigration law has resurrected ugly images from the state's days as the nation's battleground for civil rights a half-century ago. (Rawls 2011*b*)

What are the implications of Alabama as the epicenter of the United States' fight over immigration? What does it mean for understandings of immigration and law when Alabama and Georgia, which have little experience with immigration, set national legislative standards? Although the journalist penning these lines guessed incorrectly that the Supreme Court would take up Alabama's law first, he raised a key point about the unexpected overlap of Alabama as the current battleground over immigration and the historic battleground over civil rights. What this overlap means in the long run is not clear, especially in the context of the political shifts in immigration politics that emerged in late 2012. As of this writing, it is not known whether these laws will stand in their current forms or how they will fare in the face of possible comprehensive immigration reform. What is evident, however, is that the recent legislative maneuvers in Georgia and Alabama merit attention from scholars of immigration and crime. Throughout 2011, states across the country tried to pass legislation similar to Arizona and failed. Georgia and Alabama succeeded, however; and understanding how and why can shed light on this devolution of immigration authority to states.

How did these laws that criminalized an (undocumented) immigrant presence impact both states? Just after the laws were passed, reports of immigrants fleeing both states surfaced, resulting in substantial financial costs in states dependent on immigrant labor (Redmon and Guevara 2011). In February 2012, an economist at the University of Alabama estimated that HB 56 cost the state nearly \$11 billion annually, as 40,000 to 80,000 undocumented workers left Alabama and 70,000 to 140,000 jobs were lost (Lee 2012). In Alabama, this loss of immigrant labor was acutely felt in construction, since portions of the state were still reeling from and rebuilding after their 2010 tornadoes (Rawls 2011*c*). The same was true for Georgia's agricultural industry, which suffered large financial losses because immigrant workers left the state or went underground. With a state survey identifying more than 11,000 unfilled agricultural jobs in summer 2011 and reports of a 30 percent labor shortage in agriculture across the state, Georgia reached late 2011 with an almost \$75 million loss in fruit and vegetable crops (Redmon 2011*j*; Harris 2011; Redmon and Quinn 2012). Although later reports indicated that

immigrants returned to both states, in the summer of 2012, labor shortages continued, as did reports that some farmers were switching to less labor-intensive crops or getting out of farming altogether—heavy losses for states reliant on agriculture (Peterson 2012; Reeves 2012).

In response to these labor shortages, Georgia's governor drew another connection between immigration and crime, sending people on criminal probation to fill vacant jobs (Epstein 2011c). His plan backfired, however, when most parolees left these agricultural jobs within hours, describing them as too difficult (Epstein 2011b). Alabama considered the same solution, except with actual prisoners, as did Georgia in 2012 (Reeves 2011a; Bonner 2012). In both cases, state lawmakers saw prisoners of the state and undocumented immigrants in the state as interchangeable sources of expendable labor. In similar fashion, when religious leaders challenged Alabama's HB 87 in federal court, the governor, attorney general, and district attorney explained in a court filing that the constitutional right to assemble to worship did not apply to undocumented residents. In their words, "A person asserting the right to assemble with an illegal alien stands in the same shoes as one asserting a right to assemble with someone confined to a nearby prison" (Johnson 2011). In both cases, the person in question—an "illegal alien" or a prisoner—lacked constitutional rights, such as the freedom to assemble.

As this last point suggests, these bills raise questions about who is understood to constitute "the public" represented by state government and who is seen to be beyond the boundaries of representation and rights in these states. This distinction between "the public" and undocumented immigrants can be seen in the words of Alabama's governor. When asked to respond to critics who compared HB 56 to Jim Crow, Governor Bentley explained, "What took place in the civil rights era was a series of unlawful actions against lawful residents. It was a shameful chapter in our state's history. The immigration issue of today is entirely different. The government is not persecuting people" (Trotta and Bassing 2012). Here, Bentley equated personhood with legal status. Jim Crow, he argued, was a series of unlawful actions against lawful residents. HB 56, by contrast, was a series of lawful actions against unlawful residents, who, by lacking documentation, also lacked the attributes of and membership as "people." In Bentley's words, the Alabama government was not persecuting "people," only unlawful residents.

Even in the midst of such discursive and institutional violence, however, on a more intimate, everyday level, the situations in Alabama and Georgia may create possibilities for more humane approaches. In a small Alabama town, for example, long-term residents watching the exodus of Latino families after HB 56 experienced conflicting feelings. As one woman explained while browsing at a yard sale of two Mexican families leaving Alabama, "I don't know what to think. The law is supposed to be doing one thing, but it seems to be doing the opposite. It just feels very personal now" (Constable 2011). This personalization of HB 56 from an anonymous act to the intimate disruption of local communities can play a key role in the struggle for more just policies. As efforts in other southern states have shown (Winders 2011), humanizing the figure of the immigrant, documented or otherwise, is a necessary step in breaking down barriers and creating coalitions around

immigrant rights. At the same time, and as was particularly clear in Alabama, national and international bad press can have an equally powerful effect in driving change.

POLICY SUGGESTIONS

What are the broader policy implications of this discussion of Georgia's and Alabama's laws? To what future research priorities does it point? First, from a policy perspective, these laws highlight the challenges new immigrant destinations face as they try to create legislation to address immigration with only limited experience with immigrant settlement. In both states, immigration is a new phenomenon, and, until very recently, state lawmakers have not been expected to address it as a local issue. California and New York have decades, if not centuries, of experience with immigration, and their elected officials come into office understanding its effects and anticipating having to deal with them. The situations in Georgia and Alabama, however, are different. In both states, lawmakers are in uncharted legislative territory, especially vis-à-vis their understandings of the unintended consequences of state laws on local industries or long-term populations. For this reason, policy makers should pay close attention to debates in states like Georgia and Alabama and find ways to bring existing knowledge of immigration as a policy issue to these states. When states with the shortest histories of immigrant settlement set national standards, the stakes in and out of the legislative arena are high.

Second, Georgia's and Alabama's laws demonstrate the importance of paying close attention to the ways that local histories, especially local racial histories, are mobilized in debates over such legislation. As this essay made clear, groups opposing these laws found a powerful mobilizing discourse in comparing them to Jim Crow and in highlighting the resonance between the present treatment of Latino immigrants and the past treatment of African Americans. A number of works on this theme have shown the progressive possibilities of such black-brown coalitions among organizations, residents, and workers in the South (Alvarado and Jaret 2009; Smith 2009; Stuesse 2009). At the same time, however, some of these same studies show the dangers of conflating the experiences and treatment of Latinos and African Americans and point to emerging evidence of, for instance, racial distancing of Latinos from African Americans (McClain et al. 2006; Marrow 2011). Thus, in pushing for or thinking through cross-racial alliances in the South and elsewhere, we cannot lose sight of the specificity of each group's oppression or of the differences between a politics of race and of immigration in the United States. Although the two populations are clearly related, Latinos and African Americans do not face the same kinds of racializations or maintain the same relationship with notions of whiteness and white privilege (Foley 1997). As a result, neither policies nor academic research can position Latinos and African Americans interchangeably, even as both groups often face shared discriminations.

Third, although elements of both Georgia's and Alabama's laws positioned undocumented immigrants as either economic or cultural threats (or both) to the state, the

situation in these locales cannot be understood simply as questions of economics or xenophobia. Instead, as the essay showed, such legislation is driven by a complex mix of economic scarcity, cultural change, and local and national political discourses, as well as historically deep understandings of sovereignty and territoriality thrown in for good measure. These laws were as much about defense of local places as of nation, as much questions of community change as economic competition. Any attempt to intervene in them must begin by recognizing the multiple factors driving such legislation. Since these laws are being implemented in states that lack institutional histories of addressing immigration, finding ways to acknowledge these complex driving factors within policy discussions is one of the most pressing needs to emerge from this study.

Finally, Alabama's and Georgia's dealings with anti-immigrant legislation raise questions about the future of immigration politics in these states and beyond. In both states, churches entered the immigration debate in a new way over these pieces of legislation. Although there is not yet consensus on various denominations' take on the immigration debate, the active presence of mainstream religious organizations in immigration politics and the mobilization of Christian ideologies on both sides of the debate prompt new policy and research questions—ones that are especially pressing in the current struggle over immigration reform. How, for example, will Protestant and Catholic churches' involvement in the fight for immigrant rights compare to their historic involvement in the fight for civil rights? How will the line between religion and politics change in the context of immigration, as compared to other social issues? A related question involves the immigrant second generation coming of age in Georgia and Alabama. These children have watched their parents face various opportunities and exclusions in the South. As they become adults who can vote, how will local political landscapes change? Will these children become part of “the public” to be protected from the social and economic costs of undocumented immigrants (who are often their parents)? Or will they continue to be seen, like their parents, as unwelcome intrusions?

Perhaps the clearest sign of what lies ahead in this debate can be seen in states like Mississippi, which, after watching Alabama's experience with HB 56, decided against similar legislation (Trotta and Bassing 2012). Across the United States, the number of state and local legislative proposals directed at immigration was down significantly in 2012, halting what had been a steady increase for several years (Lam et al. 2012). It is not clear whether this downturn was a response to states awaiting the Supreme Court's decision on Arizona's SB 1070 in summer 2012, a reaction to widely reported decreases in the number of immigrants coming to the United States from places like Mexico, or a result of more pressing budgetary issues in many states. What is clear is that even in the face of this dip, the *motivation* for laws like Alabama's and Georgia's remain in states across the country and is not likely to disappear any time soon. Thus, these laws and their impacts merit attention from scholars and policy makers interested in immigration, crime, and law, even—and especially—when they pop up in new places like Alabama.

NOTES

1. Any discussion of the success or failure of such legislation must acknowledge the significant decrease in the number of Mexicans coming to the United States over the second half of the 2000s (Passel and Cohn 2010). Driven by the United States' faltering economy, Mexico's own changing demographics, especially family size, and the decreasing relative gains that Mexican workers experienced in the United States, the number of Mexicans coming to the United States reached its lowest point since the 1950s by the late 2000s. In Arizona, the number of undocumented residents also fell at the beginning of the 2010s. By 2011, the estimated number of undocumented residents in Arizona (360,000) was the lowest in a decade. How much of this decrease is attributable to SB 1070, rather than to a weak U.S. economy, is hard to assess, although most experts cite the economy over restrictive legislation (Gonzalez 2012).
2. The boundaries of the American South have been the subject of debate since the United States itself emerged as an independent nation state. For the purposes of this essay and for most work on new immigrant destinations, the South is defined as Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia—states that, with the exception of Kentucky, were part of the Confederacy during the American Civil War and that have only recently experienced immigrant settlement. For discussions of this designation, see Winders and Smith (2012).
3. It is important to note the presence of other foreign-born groups in many southern states, especially refugees from various global hotspots (Duchon 1997; Winders 2006).
4. A clear exception here is Arkansas. Amid a national trend of states trying to limit an undocumented presence, Arkansas saw almost no legislative movement on immigration in 2011.
5. There is an equally strong trend in the South of creating local ordinances to address the settlement of undocumented immigrants. Discussing these local pieces of legislation, however, is beyond the scope of this essay, although I discuss it elsewhere (Winders 2007).
6. <http://quickfacts.census.gov/qfd/states/01000.html>.
7. <http://quickfacts.census.gov/qfd/states/01000.html>; Trotta and Bassing (2012).
8. In 2011 and 2012, several states including South Carolina attempted to pass laws similar to Arizona's SB 1070. In North Carolina, SB 179 would have made it a crime for a person not to carry immigration documents. Other proposed legislation in North Carolina would have required government agencies to share information about undocumented parents requesting benefits for U.S.-born children. In 2011, both Mississippi and Louisiana attempted to pass an Arizona-style set of state laws.
9. As Paul Cuadros (2006) notes, some places, like the small North Carolina town he studied, saw anti-immigrant demonstrations as early as the 1990s.
10. This latter portion was temporarily blocked by the courts in October 2011 (Jervis and Gomez 2011).
11. This portion of the law was halted by the courts in October 2011 (Lyman 2011; Redmon 2011a). An unsuccessful Georgia law would have required local schools and hospital officials to count undocumented immigrants served each year (Redmon 2011h).
12. This portion of Alabama's law was crafted by the general counsel for the Immigration Reform Law Institute as a first step in bringing down the 1982 Supreme Court decision (*Plyler v. Doe*) that required school districts to provide public education to all students regardless of legal status (Robertson 2011). In North Carolina, in June 2011, the "Safe Students Act" was proposed, requiring school principals to ask parents about their children's citizenship

and immigration status when they were enrolled and potentially placing school officials in violation of the 1982 Supreme Court ruling on public education to all children regardless of legal status (Stancill 2011).

13. A Christian rationale for these laws was mobilized by supporters as well. Alabama Governor, Robert Bentley, for example, explained in an interview that “As Christians we are taught to obey the law. There is nothing unkind or unjust about asking people to obey the law” (Trotta and Bassing 2012).
14. This incident led Mississippi to specify that “an international business executive of an international corporation authorized to transact business in the state” would be exempt from their version of Alabama’s law (Fox News Latino 2012).

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CHAPTER 23

THE LAW OF IMMIGRATION AND CRIME

MARY FAN

THE laws on immigration and crime in the United States are increasingly entangled. The growing thicket is due to three major reasons: (1) surging criminalization and prosecution of immigration violations; (2) expanding crime-related bases for exclusion and deportation; and (3) broader powers to detain and investigate in the immigration context that also may serve criminal law enforcement and national security-related ends.

First, although immigration is traditionally viewed as a civil regulatory regime, federal criminal law is increasingly used to enforce immigration restrictions. Felony prosecutions for violations of immigration laws skyrocketed by 989 percent between 1994 and 2009.¹ The most common immigration-related criminal charges are for violations of laws regulating entry into the United States—illegal entry, illegal reentry after deportation, and alien-smuggling (8 U.S.C. §§ 1324–1326; U.S. Sentencing Commission 2011). Undocumented migration into the United States also surged in the mid-1990s but has dropped significantly since 2006 (Passel and Cohn 2010). Prosecution numbers have continued to rise although unauthorized migration has declined. Between 2006 and 2010, immigration prosecutions rose 71.5 percent although unauthorized migration was two-thirds less in the period between March 2007–2009 compared to March 2000–2005 (Passel and Cohn 2010, p. *i*; Administrative Office of the U.S. Courts 2011, p. 223, table D-2). Fierce politics and inflamed perceptions conflating immigration with social ills and security threats powerfully drove surges in immigration prosecution (see, e.g., Fan 2007*a*, 2007*b*, 2008; Bucierius 2011).

Recently, some states and localities have attempted to muscle into the federal domain of immigration enforcement by passing criminal laws and expanding investigative powers. In the United States, the states do the bulk of garden-variety criminal law enforcement, but the federal government has supremacy over immigration enforcement (see, e.g., *Henderson v. Mayor of New York*, 92 U.S. 259, 271–272 [1875]; Chin and Miller 2011; Fan 2011*a*). The federal government's exclusive power over immigration stems from the U.S. Constitution, which reposes in the national government the power to regulate

foreign commerce, establish uniform national rules, and conduct foreign affairs—all interests impacted by immigration restrictions (U.S. Constitution art. I, § 8, cl. 1, 3, 4, art. VI, cl. 6). For more than a century, scarcely any state or locality dared interject competing immigration enforcement policy in a domain that the Supreme Court emphatically ruled was exclusive to the federal power. Beginning with the 2010 passage of the internationally controversial Arizona Senate Bill 1070, however, some state and local legislatures have begun enacting immigration control and criminalization laws. To avoid preemption based on conflict with national laws, the states have seized on the “mirror theory” popularized by Kobach (2008a, 2008b) that posits that, as long as state immigration regulation formally mirrors the constraints and duties imposed on regulated people and entities by federal law, there is no conflict. The goal of such “mirror image” laws is to force out suspected undocumented individuals through a multifront effort to create a hostile environment—for example, by making it difficult for suspected undocumented individuals to find housing, seek a job, get a ride, or simply walk on the street without being stopped (Fan 2012).

Second, the crime-related bases for exclusion or deportation of noncitizens have proliferated and broadened. A wide and open-textured range of crimes—such as an “aggravated felony,” “crime of moral turpitude,” or controlled substances offense—can carry the immigration consequence of deportation (8 U.S.C. § 1227(a)(2)(A)-(F)). Congress has dramatically expanded the formerly limited range of deportable offenses so that the once “‘drastic measure’ of deportation or removal” is “now virtually inevitable for a vast number of noncitizens convicted of crimes” (*Padilla v. Kentucky*, 130 S. Ct. 1473, 1478 [2010]). Deportees—sometimes long-standing or nearly life-long residents of the United States—have been removed for a wide range of offenses, from grave crimes to more commonplace offenses such as marijuana possession, shoplifting, or repeatedly driving while intoxicated (e.g., Ngai 2004; Kanstroom 2007). With the ballooning of crime-related bases of inadmissibility and deportability, the jurisprudence of what crimes constitute grounds for deportation has proliferated in complexity. Mastering the intricacies of immigration consequences for criminal convictions is increasingly becoming both a burden and an imperative for the conscientious criminal defense lawyer because of the enormous potential impact on the noncitizen defendant (e.g., Roberts 2009; Wright 2011).

Third, controversies surround the use of broader investigative and detention powers in the immigration context to pursue criminal law enforcement ends and inflict punishment-like prolonged detention (e.g., Cole 2002; Demleitner 2002; Chacón 2010; Eagly 2010; Inter-American Commission on Human Rights 2010). Criminal cases are typically regulated by a phalanx of protections, such as the Fourth Amendment's limits on the power to search and seize, backed by the exclusionary rule for wrongfully obtained evidence, the Fifth Amendment prohibition against compelled self-incrimination, the *Miranda* advisal of the rights to remain silent and to counsel, and the Sixth Amendment rights to counsel and to jury trial. In contrast, the insulated domain of immigration remains an arena in which governmental power is at a zenith and individual rights are relatively stunted and murky (e.g., Schuck 1984; Motomura 1992). These gradients in

protection enable law enforcement to use broader immigration-related powers in investigations that may also serve criminal law enforcement and national security-related objectives. Moreover, the government has broad powers to detain noncitizens under provisions of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 and U.S. PATRIOT Act of 2001 (see 8 U.S.C. § 1226[c], 1226[a][1]). Because of the swelling number of people in immigration detention, the largest detention and supervised release program in the nation operates in the immigration realm, run by Immigration and Customs Enforcement (ICE) (Schriro 2009).

This increasingly broad confluence of criminal and immigration laws is emerging as a discrete and odd legal beast, dubbed “cimmigration law” (Stumpf 2006, 2011). Traditional conceptual boundaries between civil immigration and criminal law are blurred in this murky domain. Immigration law is about regulating entry and expulsion at the boundaries of the polity and borders of the nation, where the power of the sovereign is at its zenith (*Kleindienst v. Mandel*, 408 U.S. 753 [1972]; *United States v. Flores-Montano*, 541 U.S. 149 [2004]). In contrast, criminal law is about policing minimum baselines of conduct within the nation using law’s heaviest artillery, criminal punishment, meted out with countervailing procedural protections. But what happens when a nominally civil sanction such as deportation resembles criminal punishment in severity and is imposed on someone with strong roots in the nation, someone with a shadowy identity that Bosniak (2006) terms an “alien citizen.” What happens when the main staple of contemporary federal prosecution—immigration prosecution—starts to resemble the abbreviated fast-track mass-processing of civil immigration proceedings? What happens when officials draw on the broader investigative powers in the immigration context to pursue people, resulting in both criminal and immigration consequences? A growing body of scholarship has illuminated how the harshest aspects of criminal and immigration laws combine in crimmigration enforcement while countervailing protections are missing or diluted (e.g., Stumpf 2006; Kanstroom 2007; Legomsky 2007; Chacón 2010; Eagly 2010; Koulisch 2010).

The growth of crimmigration law and enforcement powerfully impacts communities of color, especially Hispanic communities. There are two major forms of impact: (1) on the demographics of who is prosecuted and incarcerated in the federal prison system and (2) in terms of heightened policing power when it comes to people of color. First, because the vast majority of immigration defendants are Hispanic—for example 86.9 percent in 2010—the surge in immigration prosecutions means increasing numbers of Hispanics are prosecuted and incarcerated in the federal criminal system (Fan 2007a, p. 74, table 8; U.S. Sentencing Commission 2011, p. 35). Second, people of color are potentially subject to heightened policing and surveillance because the Supreme Court has indicated that race may be a relevant, albeit not sole, basis for establishing reasonable suspicion justifying an investigative stop in crimmigration enforcement (*United States v. Brignoni-Ponce*, 422 U.S. 873, 885–887 [1975]). Carbado and Harris (2011) have traced how the tolerance for racial profiling in criminal procedure cases stems from the seepage of immigration exceptionalism into the interior of criminal procedure doctrine and law enforcement.

This essay explores the growing thicket of U.S. immigration law and its raced consequences in the past and present. Section I discusses the rise and racial impact of federal immigration criminalization and the recent attempts of states to muscle into the federal domain. Section II focuses on the expanding crime-based grounds for deportation. Section III discusses controversies over the broader powers to investigate and detain in the immigration context and the impact on civil liberties. The conclusion in Section IV offers future research directions. In summary, this article advances the following points:

- The laws regulating immigration and defining crime intersect in three major contexts: (1) the rise in criminalization and prosecutions of immigration violations, (2) criteria regulating the admission and exclusion of noncitizens, and (3) broader investigation and detention powers in the immigration context that may implicate criminal law enforcement interests.
- Immigration criminalization has toughened and prosecutions have surged, fueled by fierce political campaigns. The advent of federal immigration-related criminalization has roots in campaigns against shifting bogeymen defined by national origin, race, and ethnicity. The number of immigration crimes has increased and penalties have grown more severe since the 1980s. Although formally race-neutral, today the intensification of penalties and prosecutions has had a foreseeable racial impact, disproportionately affecting Hispanics.²
- The severity surge at the federal level has not sated some states seized by moral panic over immigration in a time of economic and political turmoil. Recently, a new breed of state and local immigration laws has emerged, premised on forcing out suspected aliens through a multifront attack aimed at creating a hostile environment in which to live, work, or walk down the street.
- Conversely, criminal law has powerfully influenced immigration law. Over the past two and a half decades, the number and breadth of crime-based reasons for deportation based on post-entry conduct has proliferated. Older bases for deportation such as crimes of moral turpitude or drug trafficking offenses have billowed while new categories—including a broad and amorphous sea of aggravated felonies—have emerged. Complex webs of jurisprudence have emerged parsing crime definitions because the stakes are so high—deportation without possibility of relief.
- The powers to investigate and detain are broader in the immigration contest than in ordinary criminal law enforcement. The permeability and gradients in protections between criminal and immigration law enforcement give law enforcement officials incentive to blur the boundaries and pursue mixed purposes. Controversies surround the use of broader immigration investigation and detention powers, billowing numbers of immigration detainees, and punitive conditions of detention.
- In recent cases, such as *Padilla v. Kentucky* and *Flores-Figueroa v. United States*, the Supreme Court has offered some checks against the severity surge in the

crimmigration context. Ultimately, however, the political branches are crucial to the future course of crimmigration. Yet reform measures introduced in the political branches have been stymied by fierce divides in worldviews over immigration. Research is needed to address concerns shared across partisan divides, such as quantifying the fiscal as well as human costs of surging immigration prosecutions compared to benefits.

I. THE RISE OF IMMIGRATION CRIMINALIZATION

For more than a century after the founding of the United States, the national government scarcely regulated immigration, concerned instead with attracting workers to lay the tracks, work the land, and populate the vast young nation (Hutchison 1981). In the vacuum of national law, states and localities generated a patchwork of weakly enforced migration regulations that Neuman (1996) categorized by five major policy objectives: (1) keeping out criminals, (2) public health protection, (3) restricting entry of the poor, (4) slavery regulation, and (5) other race-based policies of exclusion and subordination. In the late 1800s, however, fierce anti-immigrant sentiment, especially against the Chinese in California, spurred the enactment of stronger state and federal immigration criminalization laws.

A. The Racially Charged Origins of Immigration Criminalization

The roots of immigration criminalization reach back to the nation's earliest days, to the 1798 Alien Friends Act (Act Concerning Aliens, ch.58, 1 Stat. 570 [1798]). The act was aimed at the bogeymen of the day, “the French apostles of sedition” and “hordes of wild Irishmen” (Zinn 2003). The legislation permitted the President to deport “aliens as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government” (Act Concerning Aliens, ch.58, 1 Stat. 570 [1798]). The act prescribed imprisonment of deported aliens later found in the United States or who returned to the United States without permission. Controversy beset the law, which was decried by such notables as then-Vice-President Thomas Jefferson (Kanstroom 2007). Ultimately, President John Adams would defend himself, writing that he did not apply the law even once (Smith 1954). Adams did not have to wield the law for the threatening legislation to serve its purpose. As Jefferson reported, “the Alien Bills have so alarmed the French who are among us, that they are going off” (Jefferson 1798, p. 396).

Another early federal law levying criminal penalties for unauthorized presence was explicitly aimed at the racial and cultural undesirable of the period—the Chinese. In 1892, Congress singled out Chinese nationals unlawfully present in the United States for criminal punishment, providing:

Any such Chinese person, or person of Chinese descent, convicted and adjudged to be not lawfully entitled to be or remain in the United States, shall be imprisoned at hard labor for a period not exceeding 1 year, and thereafter removed from the United States. (Geary Act of 1892, ch. 60, § 4, 27 Stat. 25 [1892])

The federal legislation was part of a spate of federal laws successfully secured by anti-Chinese activists, many from California, who had been experimenting with myriad laws to drive the Chinese out (see McClain 1994; Fan 2011a, 2012). The laws were fueled by accusations, particularly furious during the severe recession of the 1870s, that work “would be plenty” if not for the Chinese degrading labor, displacing white workers, serving as “voluntary slaves,” and subsisting and living cheaply “like vermin” (see Sargent 1876, pp. 1, 6; Committee of Senate of California 1877, pp. 7, 41; Kinley 1877, pp. 1, 3–5, 11; Davis 1878, p. 20).

As often arises during the moral panics and cycles of intolerance that surround harshening policies, the vilified “Chinaman” was associated with crime—accused of being unwanted criminals, dumped from China, who continued their criminal ways in the United States through practices such as buying and selling their women, gambling, prostitution, thievery, and general violence (see Winn 1871; Committee of Senate of California 1877). In another practice with echoes of the present, anti-Chinese advocates pointed to disproportionate incarceration statistics to back their claims of a racialized propensity toward crime. For example, a report by the California Senate to the U.S. Congress seeking anti-Chinese legislation stated that the inference that “a large proportion of criminals” were among the Chinese was “abundantly sustained” by the fact that “of five hundred and forty-five of the foreign criminals in our State Prison, one hundred and ninety-eight are Chinese—nearly two-fifths of the whole—while our jails and reformatories swarm with the lower grade of malefactors” (Committee of Senate of California 1877, p. 4).

In a third striking parallel with our present situation, fractious political groups campaigned against the presidential administration tenuously in power by whipping up anti-immigrant sentiment. Moral panics, to which polities are prone during times of larger social insecurity, can open “windows of opportunity” for major changes in legal regulation (Tonry 2004, p. 86). The last quarter of the 19th century was a time of political as well as economic instability and insecurity. National politics was closely divided. Control of the presidency and Congress frequently shifted between the two national political parties. The races were so close and contested that two “minority presidents”—Rutherford B. Hayes in 1876 and Benjamin Harrison in 1888—entered office with a minority of the popular vote. In a rallying call that continues to echo in our times—albeit with a new racialized bogeyman—anti-Chinese advocates decried the president

and national government for “wantonly den[ying] to the people of the Pacific . . . relief from a scourge that menaces their very existence—the invasion of the subjects of the Mongolian empire” (Committee of Fifty n.d., p. 1). The California-based activists castigated Republican presidents for ignoring their “pleading for deliverance” and urged the government to purge the Chinese by law (Committee of Fifty n.d., pp. 2–3).

In this fomentation of racialized fear and loathing, the first major forays into federal immigration regulation—and criminalization—arose. The first federal law directly regulating immigration, the Immigration Act of 1875, was also the first statute to create the categorization of Asians (Chin 2002). The law responded to concern that Asian women were being imported against their will for “shameful purposes” such as prostitution by requiring U.S. consulates managing immigration from “China, Japan, or any Oriental country” to guard against admitting individuals under contract “for lewd and immoral purposes” (Act of Mar. 3, 1875, ch. 141, §§ 1–2, 4, 18 Stat. 477 [1875] [repealed 1974]). Legislation in 1875 also created bans on immigration of people convicted of “crimes of moral turpitude” and prostitutes—a provision directed at Asian women (Ngai 2003). The legislation involved more than civil regulation—criminal sanctions attached to those who imported “any subject of China, Japan, or any Oriental country, without their free and voluntary consent” (Act of Mar. 3, 1875, ch. 141, § 1 Stat. 477 [1875] [repealed 1974]). Soon the United States enacted the first explicitly racial ban on immigration, the Chinese Exclusion Act (22 Stat. 58 [1882]). The Chinese Exclusion Act also carried criminal penalties of up to 1 year for the master of any vessel who knowingly transported a Chinese laborer (22 Stat. 58 [1882], § 2). The criminalization of the status offense of being Chinese and unlawfully present came a decade later, with the 1892 Geary Act.

The criminalization of the Chinese unauthorized immigrant was an important precursor to contemporary offenses that constitute the main staple of immigration prosecutions. The more circumscribed 1875 foray into immigration-related criminalization by the federal government was focused on *conduct* that inflicted externalities, including potential victimization—importing the Asian sex slaves and prostitutes that engorged the popular imagination. In contrast, the gravamen of the 1892 crime was defined entirely in terms of the status of being Chinese and unauthorized under the burgeoning body of immigration restrictions present in the United States. The ancestor to the most prevalent forms of contemporary immigration criminalization and prosecution provided for abbreviated procedures—criminal punishment attached upon a finding by a justice, judge, or commissioner, in a summary hearing, that the defendant was unauthorized to be in the United States. Thus, one of the earliest federal crimmigration standards combined the abbreviated process of immigration with the heavy hammer of criminal punishment.

In *Wong Wing v. United States*, the Supreme Court held that Congress went too far in this delivery of infamous criminal punishment without criminal process—even if merely visited on “aliens whose race or habits render them undesirable as citizens” (163 U.S. 228, 236 [1896]). Imprisonment at hard labor was an “infamous punishment,” triggering the protection of a criminal trial to establish guilt (*Wong Wing v. United States*, 163 U.S. 228, 237 [1896]). For two decades after *Wong Wing*, the national government mainly enforced immigration as a civil matter (Ngai 2003).

In 1917 came a paradigm shift—back, that is—toward immigration criminalization. The United States was entering World War I, and the unauthorized alien took on a sinister cast as the nation was seized by fears of seditious enemies trying to penetrate the country. The Act of February 5, 1917 (Pub. L. 64-301, 39 Stat. 874 [1917]) made it a crime for a previously deported alien to “return to or enter the United States or attempt to return to or to enter the United States.” The racial anxieties behind the toughening laws is evident in the Immigration Act of 1924, also known as the National Origins Act, which set racial quotas that effectively blocked Asian and Eastern European immigration to maintain a white national ideal (Pub. L. No. 68-139, ch. 90, 43 Stat. 153 [May 26, 1924] [repealed 1952]; see also Motomura 2007).

By 1929, another ancestor to contemporary immigration criminalization, the Act of March 4, 1929 (ch. 690, 45 Stat. 1551 [1929]), defined two forms of immigration crimes: (1) unlawful entry into the United States, a misdemeanor punishable by up to 1 year in prison; and (2) entry or attempted entry back into the United States after deportation, a felony punishable by up to 2 years in prison. Although the notion of entry creates the atmosphere of a conduct crime, the gravamen of the crime turns on the status as alien, defined by immigration law. The backbone structure created by this criminalization scheme is found in the two major bases for immigration prosecutions today—8 U.S.C. §§ 1325, prohibiting unlawful entry, and 8 U.S.C. § 1326, making unlawful entry after deportation a felony (Act of June 27, 1952, Pub. L. 82-414, 66 Stat. 229 [1952], *amending* Act of Mar. 24, 1929, Pub. L. 70-1018, 45 Stat. 1551 [1929]). The thinness of the guise between these crimes and unadorned status offenses is even clearer on the text of 8 U.S.C. § 1326 because 1952 amendments added as an alternative basis for the crime being an alien “found in the United States” (for amendment history, see *U.S. v. Garcia*, 2008 WL 2856753, at *13 [M.D. Fla. 2008] [unreported]).

Today, just three types of criminal offenses account for the vast majority of immigration prosecutions today. All three bear resemblance to earlier precursors discussed here that were forged in a history of racialized animosity. The three categories that accounted for 95.6 percent of all immigration prosecutions in 2010 were improper reentry by an alien, alien-smuggling, and improper entry by an alien.³ Criminalizing the bringing into the United States of aliens dates back to the earliest immigration criminalization efforts. By far, the most prevalent form of prosecution is based on unauthorized entry or reentry of an alien to the United States. In contemporary times, of course, the most prevalent bases for immigration prosecutions are not explicitly racially defined. As the next section discusses, however, the impact of the modern surge in immigration prosecutions nonetheless concentrates its impact on Hispanics, particularly Mexican nationals, the bogeyman of modern-day U.S. immigration restriction advocates.

B. The Contemporary Surge in Immigration Prosecutions

Since the 1980s, laws criminalizing immigration and prosecutions for immigration crimes have grown tougher and more numerous as the nation transitioned from a cycle

of tolerance to intolerance. The largely prosperous post–World War II era of the 1950s and 1960s was a time of relative immigration liberalism as restrictions of previous eras eased (Lemay 1987; DeLaet 2000). Beginning in the 1970s and through the early 1980s, however, the nation experienced economic malaise and rising unemployment, stirring the anxieties and instabilities that foment moral panics. Political conservatives rose in power and launched the “war on drugs,” which drew attention to the seeming inability of the government to police its borders against drugs, aliens, and drug-courier aliens (Miller 2003).

Fears of loss of control intensified as the economic collapse brought on by the Mexican debt crisis in 1983 led to an increased number of Mexicans entering the United States (Simcox 1988). The declining Mexican economy, combined with a decrease in grants of visas to Mexicans since the late 1960s, meant a sharp spike in unauthorized Mexican migration (Massey, Durand, and Malone 2002, p. 44, fig. 3.4). Anti-immigration sentiment was further fanned by rampant “stereotypes about Mexicans as criminals” and popular opinion associating rising immigration with the surging crime rates seizing the nation (Johnson 1997, p. 171; Miller 2003).

This confluence of conditions brewed a toughening mix of laws creating more immigration-related crimes or enlarging existing ones, including, for example:

- The Immigration Reform and Control Act (IRCA) of 1986 (Pub. L. No. 99-603, 100 Stat. 3359 [1986]), which tried to disable the migration magnet of jobs by requiring employers to make a good-faith attempt to verify legal status to work and imposing criminal penalties for a pattern or practice of hiring illegal workers. Although focused mainly on employer sanctions, IRCA also criminalized the use of false documents by aliens to circumvent the employer verification requirements.
- The Immigration Marriage Fraud Amendments (Pub. L. No. 99-639, 100 Stat. 3537 [1986]), enacted a few months later, which criminalized knowingly entering a marriage for the purpose of evading the immigration laws.
- The Anti-Drug Abuse Act of 1988 (Pub. L. No. 100-690, 102 Stat. 4181 [1988]), which increased the sentences for illegal reentry after deportation if the removal followed a conviction for a felony—in which case a 5-year maximum imprisonment sentence attaches—or an aggravated felony—in which case a 15-year maximum applies.
- The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. No. 103-322, 108 Stat. 1796 [1994]), which amended the crime of illegal reentry to add that an alien previously removed following a conviction for three or more misdemeanors involving either drugs, crimes against the person, or both, also was subject to the enhanced penalties for previously deported felons. The statute also raised the maximum penalty for illegal reentry after deportation following a felony conviction to 10 years and raised the maximum for previously deported aggravated felons to 20 years. The legislation similarly raised maximum penalties for other immigration offenses, including passport or visa fraud, and assisting noncitizens to unlawfully enter the United States.

- The IIRIRA of 1996 (Pub. L. No. 104-208, 110 Stat. 3009 [1996]), which criminalized myriad immigration-related conduct such as high-speed flight from an immigration checkpoint, presenting an immigration application with no “reasonable basis in law or fact,” voting in federal elections if one is an alien, or failure to cooperate in the execution of a removal order against oneself. IIRIRA also increased the penalties for the crime of alien-smuggling and listed alien-smuggling as the predicate for a possible federal racketeering charge.

The increase in laws on the books imposing criminal penalties for immigration violations is only part of the story. Enforcement policy is what animates criminal law and delivers the law lived in reality. Enforcement policy also toughened as federal authorities increasingly sought criminal penalties for immigration-related violations (for example, see Fan 2007a; Eagly 2010). Despite the growing arsenal of laws levying criminal penalties for immigration violations, the most prevalently prosecuted charges are a combination of illegal entry and reentry after deportation, targeting the alien. In contrast, despite all the sound and fury over IRCA's employer criminalization, in reality it is “exceptionally rare for employers to face any kind of prosecution, let alone jail time,” according to leading prosecutors (Chertoff, Myers, and Suddaby 2006). For example, in 2009, of the 91,899 criminal immigration-related prosecutions, there were only eight cases involving 13 employers (Transactional Access Records Clearinghouse 2009). In contrast, in 2004, for example, 81.2 percent of all immigration cases filed were either for the crime of illegal entry (47.1 percent) or for reentry after deportation (34.1 percent) (Transactional Records Access Clearinghouse 2005b). By 2010, one charge alone—reentry after deportation, 8 U.S.C. §1326—accounted for 83 percent of immigration cases (Administrative Office of the U.S. Courts 2011, p. 23). The increasing predominance of illegal reentry cases compared to illegal entry cases reflects an increasing focus on “criminal alien” prosecutions—aliens with a criminal record, thus netting stiffer penalties under 8 U.S.C. §1326(b) and pursuing felony reentry charges, rather than illegal entry charges, which carry lesser penalties and constitute a misdemeanor on first commission.

The number of immigration prosecutions has continued to climb even though unauthorized migration has sharply decreased since 2007, when the declining economy and prolonged recession did what IRCA had not—dampened the draw of jobs (see Fan 2012b, 2011a). The nonpartisan Pew Hispanic Center (2011) estimates that annual unauthorized migrant flow into the United States has declined by nearly two-thirds in the period from March 2007–2009 compared to the period from March 2000–2005. Yet, between 2005 and 2010, the number of immigration cases prosecuted in district courts saw a substantial increase of 72 percent (Administrative Office of the U.S. Courts 2011, p. 26). The pace of proliferating prosecution numbers may have begun to slow a bit—but this merely means that, between 2009 and 2010, the number of immigration cases rose 9 percent compared to a 21 percent increase between 2008 and 2009 (Administrative Office of the U.S. Courts 2011, p. 23). Immigration prosecutions continue to dominate as the biggest category of federal prosecutions, rising from a share of 25 percent of all federal cases in 2006 to 34 percent in 2009 and further climbing to 36 percent in 2010

(Administrative Office of the U.S. Courts 2011, p. 22). By early 2011, felony illegal reentry after deportation was the most frequently filed lead charge among all federal prosecutions (Transactional Records Access Clearinghouse 2011, fig. 1).

In a federal criminal justice system that has increasingly turned to measuring performance by the “number of criminal cases favorably resolved” (U.S. Department of Justice 2007, pp. 16–18, 21), immigration prosecutions of noncitizens offer immense political advantages (Fan 2007a). Immigration offenses typically take significantly less time to prosecute than other offenses (Administrative Office of the U.S. Courts 2011, p. 22). In 2004, for example, the median number of days to dispose of an immigration case was the shortest for all case categories, at just 37 days (Transactional Records Access Clearinghouse 2005c). In contrast, the next shortest time category of case to process was narcotics cases—which took substantially longer at a median of 300 days (Transactional Records Access Clearinghouse 2005c). In addition to short processing times, immigration cases involve a high rate of guilty pleas—often under fast-track programs in the border districts in which a defendant must rapidly agree to waive constitutional rights and plead guilty in exchange for a recommendation of a sentence discount (Bersin and Feigin 1998; Fan 2007a). In 2010, for example, the guilty plea rate in immigration cases was 99.4 percent (U.S. Sentencing Commission 2011, table 11). Immigration cases thus are a method of racking up conviction statistics—a major measure of prosecutorial performance—rapidly and cheaply.

Since the passage of major laws toughening sentences for immigration offenders, the probability of receiving imprisonment on conviction and a longer prison term has shifted. Between 1985 and 2000, immigration offender incarceration rates rose from 57 percent to 91 percent (Scalia and Litras 2003, p. 2). Over the same period, average sentences for immigration offenders substantially increased, from 3.6 months to 20.6 months (Scalia and Litras 2003, p. 2). Amendments to the U.S. Sentencing Guidelines reflecting sentence enhancements for illegal reentry defendants with prior criminal records and constraints on judges inhibiting departure from the Guidelines sentence contributed to the substantial increase in prison time (Scalia and Litras 2003, pp. 2, 5). Here again, however, changes in the laws on the books cannot tell the full story. Enforcement policies and prosecutorial incentives matter. After the massive surge in immigration prosecutions speeded along by fast-track plea deals between 2003 and 2004, immigration sentences slumped while prosecutors' conviction statistics soared (Transactional Records Access Clearinghouse 2005a). Average immigration case sentences lengthened again, however, as prosecutors turned toward a greater emphasis on Section 1326 felony illegal reentry cases in recent years. In 2010, for example, the mean prison time in immigration cases was 16.8 months (U.S. Sentencing Commission 2011, table 13).

Prioritizing certain crimes can produce formally race-neutral policy with foreseeable racially or ethnically disproportionate impact. For example, Tonry (1995) has shown how the war on drugs has concentrated its consequences on disadvantaged black communities, leading to a foreseeable rise in investigations, prosecutions, and incarceration of black men. In the context of immigration prosecutions, toughening criminal laws

and enforcement policy has a foreseeable impact on Hispanics because the vast majority of apprehended border crossers are Hispanics, predominantly from Mexico (Pew Hispanic Center 2006, p. 4; 2011, p. 2). In 1994, the proportion of Hispanics in the federal prison population was 26.7 percent, and the proportion of Mexican citizens was 8.9 percent (Fan 2007a, p. 74, table 8). By 2011, the proportion of incarcerated Hispanics had steadily climbed to 34.5 percent and the proportion of incarcerated Mexican citizens rose to 18.5 percent (U.S. Bureau of Prisons 2011). Between 1991 and 2007, the number of all federal defendants sentenced rose by 118 percent, but the number of Hispanics sentenced rose at a substantially greater rate of 270 percent, accounting for more than half—54 percent—of the increase in the number of people sentenced (Lopez and Light 2009, p. 2). By 2010, nearly half—48.1 percent of offenders in the federal criminal system were Hispanic (U.S. Sentencing Commission 2011, table 4). The disproportionality in Hispanics prosecuted is striking when contrasted with the U.S. Census Bureau's (2011) projection of the proportion of Hispanics in the U.S. population of 15.5 percent. In sum, the federal criminal justice system's war on illegal immigration, like the war on drugs, has taken a disproportionate toll. Immigration law has shaped the racial and ethnic profile of the predominant federal defendant.

C. State and Local Immigration Intervention Laws

The severity surge at the federal level apparently has not sated the appetite for immigration criminalization and deportation in some regions of the United States. Until recently, however, dissident states heeded the Supreme Court's warnings to keep out of immigration policy delivered in *Chy Lung v. Freeman* (92 U.S. 274 [1875]) and *Henderson v. Mayor of New York* (92 U.S. 259, 271-272 [1875]). Inundated with undocumented immigrants beginning in the 1980s and 1990s, states such as Arizona, California, Florida, New Jersey, New York, and Texas took the indirect path of suing the United States for reimbursement of expenditures for services to the undocumented. The spate of state suits alleged that the national government owed the states because of its “fail[ure] to enforce the immigration laws” (see *Chiles v. United States*, 69 F.3d 1094, 1096 [11th Cir.1995]; *cert. denied*, 517 U.S. 1188 (1996); *New Jersey v. United States*, 91 F.3d 463, 469 [3d Cir.1996]; *Padavan v. United States*, 82 F.3d 23, 29 [2d Cir.1996]; *Arizona v. United States*, 104 F.3d 1095, 1096 [9th Cir.1997]; *California v. United States*, 104 F.3d 1086, 1092, 1095 [9th Cir.1997]; *Texas v. United States*, 106 F.3d 661, 665, 667 [5th Cir. 1997]). Although fiercely disagreeing with the level of federal enforcement, the suits stopped short of trying to seize the reins of enforcement from the federal government.

Courts dismissed the wave of state suits seeking federal reimbursement for alleged costs of illegal aliens for failure to state a colorable claim and as nonjusticiable political questions. Cases dismissing the suits explained that no constitutional or statutory provision creates a duty on the national government to enforce immigration at a level to the various states' liking or pay money damages. Moreover, the Supreme Court has “long recognized that the power to expel or exclude aliens as a fundamental sovereign

attribute exercised by the Government's political departments largely immune from judicial control" (*Fiallo v. Bell*, 430 U.S. 787, 792 [1977]). Whether the national government was adequately performing in this task was a nonjusticiable political question (e.g., *Chiles*, 69 F.3d at 1097; *New Jersey*, 91 F.3d at 470; *Padavan*, 82 F.3d at 27; *California*, 104 F.3d at 1091; *Texas*, 106 F.3d at 665, 667).

Recently, however, the "mirror theory" and "attrition through enforcement" model of immigration legislation have emboldened dissident states to wade into immigration enforcement—whether the national government welcomes it or not. As explained by legislator Russell Pearce—sponsor of the 2010 Arizona template law that sparked a surge of emulator bills—the goal of "attrition through enforcement" is to create an "unfriendly" environment with the hope that illegal aliens "will pick up and leave" (Myers 2007, p. 10A). State laws aimed at ejecting suspected undocumented migrants seem to be on a collision course with national supremacy over immigration. After all, in the heyday of California's campaign against the Chinese, state attempts to keep the Chinese out through prohibitively high bonds on landing Chinese foundered because of interference in immigration regulation entrusted to the federal government (*Chy Lung v. Freeman*, 92 U.S. 274, 280 [1875]; *Henderson v. Mayor of New York*, 92 U.S. 259, 271-272 [1875]; Fan 2012, 2011a). The mirror theory proposes an end-run around the long-standing rule that states may not interfere with immigration enforcement entrusted to the national government. The notion is that if states and localities enact laws that mirror the duties and standards in federal laws, there is no conflict with federal law (see Kobach 2008a, 2008b; Chin 2011).

Arizona took the attrition-through-enforcement approach to a new level of toughness with its internationally controversial Arizona Senate Bill 1070, passed in 2010 (49th Leg., 2d Reg. Sess., *codified at* Ariz. Rev. Stat. § 11-1051[A]). The provisions in the Arizona law are mirror images—in some instances imperfectly so—of federal immigration crimes to conscript state and local police into immigration enforcement. The state law criminalizes failure to carry alien registration documents, transporting aliens, inducing aliens to enter Arizona, and employing illegal aliens, among other acts. The Act also goes further than federal law in criminalizing the act of applying for work, soliciting work, or performing work by an undocumented person. Perhaps most controversially, the Arizona law allows state and local police to make warrantless arrests based on probable cause of civil removability (Arizona Senate Bill 1070, § 6). The law also requires that law enforcement officers in any lawful stop, detention, or arrest attempt determine immigration status if "reasonable suspicion exists that the person is an alien who is unlawfully present," unless "the determination may hinder or obstruct an investigation" (Arizona Senate Bill 1070, § 2b).

The Arizona statute was partially preliminarily enjoined by the Ninth Circuit based on the likelihood of unconstitutionality of several of its provisions, including the authorization to initiate warrantless arrests based on an officer's belief there is probable cause to believe someone is civilly removable (*United States v. Arizona*, 641 F.3d 339 [9th Cir. 2011]). The Supreme Court has granted certiorari to review Arizona's appeal (*Arizona v. United States*, 132 S.Ct. 845 [Dec. 12, 2011]). Nonetheless, states such as

Alabama, Georgia, Indiana, South Carolina, and Utah have rushed to enact similar state immigration regulations.

Alabama's House Bill 56 has taken the toughness title from Arizona because of additional broadly worded provisions that could criminalize, for example, renting to a potential unauthorized alien if a jury finds one acted in "reckless disregard" of potential illegal alien status (Beason-Hammon Alabama Taxpayer and Citizen Protection Act of 2011, HB 56, [Ala.], §§ 4–5, 13–18 [2011]). The result is to render suspected aliens an untouchable caste on pain of potential criminal prosecution (Fan 2012). The Eleventh Circuit has temporarily enjoined portions of the state law that create a criminal misdemeanor of willful failure to complete or carry alien registration documents by unlawfully present aliens and require every public elementary and secondary school to determine if each child was born outside the United States or if the child of an unlawfully present alien (*United States v. Alabama*, 443 Fed. Appx. 411 [11th Cir. 2011]).

The new breed of state laws is rousing concern about racial targeting and profiling (Johnson 2012). The laws generally provide that officials may not consider race, color, or national origin "except to the extent permitted by" the U.S. or state constitution. This is a clever way of attempting to obscure that race *can* be a factor (Fan 2011a). Under the Supreme Court's 1975 decision in *United States v. Brignoni-Ponce* (422 U.S. 873 [1975]) race can be a relevant—albeit not sole—factor in establishing reasonable suspicion of alienage. In the amorphous zone of suspicion—or adjudication of reckless disregard—regarding unlawful alien status, race is likely to be a major, if not sole factor in practice. Although the oft-voiced alarm over the spate of laws is racialized harms, the legal claim making the most headway is about structure, not individual rights—preemption because of conflict with the national power over immigration (*United States v. Arizona*, 641 F.3d 339 [9th Cir. 2011]; *United States v. Alabama*, 2011 WL 4863957 [11th Cir. 2011]) (unpublished); *Georgia Latino Alliance for Human Rights v. Deal*, 793 F. Supp. 2d 1317 [N.D. Ga. 2011]).

How far states may go in intervening in immigration enforcement is murky. The Supreme Court recently upheld the Legal Arizona Workers Act of 2007, which makes it a state law offense to "knowingly" or "intentionally" employ "an unauthorized alien" on pain of licensing revocation for repeated violations (*Chamber of Commerce v. Whiting*, 131 S.Ct. 1968, 1981, 1984 [May 26, 2011]). The Court held that the state law was saved from preemption by the federal employer sanctions law under IRCA's savings clause for state licensing and similar laws.

The new breed of attrition-through-enforcement laws are distinct from the more modest state regulation of employers hiring unauthorized workers through licensing laws because of their multifront attack to carve an untouchable caste. Even scholars who envision a role for states and localities in integrating and managing undocumented immigrants note the need for strong federal leadership to curb externalities wreaked from some states on others and the nation (e.g. Rodríguez 2008). The laws aimed at inducing self-deportation by intimidation have generated foreign policy externalities and conflicted with federal enforcement policy, prompting the Department of Justice to seek injunctions, and rousing international protest (Fan 2012). Moreover, the new

breed of laws contain distorted reflections of federal law that belie the claim of merely mirror-image cooperative enforcement (Chin and Miller 2011). Unless cut back by the Supreme Court, the rash of new state and local immigration legislation will further ensnarl, enlarge, and balkanize the thicket of crimmigration law.

In *Arizona v. United States* (132 S. Ct. 2492, 2509 [2012]), the Supreme Court invalidated three of the four state immigration provisions challenged by the United States. Writing for the Court, Justice Kennedy reminded the dissenting states of the “broad, undoubted power” of the national government over immigration policy (*Arizona v. United States*, 132 S. Ct. 2492, 2498 [2012]). Required for the effective conduct of international relations, this uniformity benefits “trade, investment, tourism and diplomatic relations for the entire Nation, as well as the perceptions and expectations of aliens in this country who seek the full protection of its laws” (*Arizona v. United States*, 132 S. Ct. 2492, 2498 [2012], Fan 2012). The Court ruled that state-law imposition of penalties inconsistent with federal law for failure to carry alien registration documents posed an impermissible conflict and was preempted. State-law creation of new criminal sanctions for solicitation of work also was preempted. The grant of power to state and local officers to make warrantless arrests of suspected removable aliens also posed an impermissible conflict with federal law.

Arizona v. United States thus reined back some of the problems roused by dissenting states seeking to create an even more complicated patchwork of immigration criminalization. Left standing, however, was one of the most controversial of immigration criminalization provisions—requiring state officers to make a “reasonable attempt . . . to determine the immigration status” of any person stopped, detained or arrested if “reasonable suspicion exists that the person is an alien and is unlawfully present in the United States” (*Arizona v. United States*, 132 S. Ct. 2492, 2504 [2012], Ariz. Rev. Stat. Ann. § 11-1051(B)). This provision has roused intense controversy over the risk of racial and ethnic targeting. Rather than entering the fray, the Court gave Arizona a nudge toward addressing concerns. Justice Kennedy’s opinion declined to invalidate the law before Arizona courts had an opportunity to narrow it. The opinion left open the possibility, however, of future constitutional challenges to the law as interpreted and enforced (*Arizona v. United States*, 132 S. Ct. 2492, 2507-2510 [2012]). The life of the law is enforcement. Further battles may loom over enforcement of this controversial template provision for states attempting to extend the reach of immigration criminalization.

II. BROADENING CRIME-BASED GROUNDS FOR DEPORTATION

Conversely, criminal law has powerfully shaped the civil immigration system. Within the formal civil system of immigration regulation, criminal law matters immensely because of the widening array of crime-based grounds for the ultimate immigration

sanction of deportation. Ramp-ups in immigration enforcement, increasingly focused on removing criminal aliens, have further intensified the import of criminal law in the immigration realm.

Even in its infancy, immigration regulation used criminal conduct as an important basis for defining and excluding undesirables. The concern was particularly acute because Britain had a controversial practice of sentencing her felons to transportation to America. After the American Revolution, states concerned with Britain and other nations exporting their convicts to the fledgling nation passed a patchwork of laws prohibiting importing, transporting, or bringing in convicts to the states (for a history, see Neuman 1996; Stumpf 2008). A 1787 Georgia statute, for example, mandated the arrest and removal of felons transported or banished from another state or nation and threatened the death penalty for removed felons who tried to return (Act of Feb. 10, 1787, 1787 Ga. Acts 40 [1787]). More states were prompted to act by a 1788 resolution of Congress “recommend[ing] to the several States to pass laws for preventing the transportation of convicted malefactors from foreign countries into the United States” (13 Journal of Congress 105-06 [Sept. 16, 1788]). States such as Massachusetts, Pennsylvania, and Virginia responded by prohibiting importation of convicts for any crime (Act of Nov. 14, 1788, 1788 Va. Acts 9 [1788]; Act of Feb. 14, 1789, 1789 Mass. Acts 98, 100-01 [1789]; Act of Mar. 27, 1789, 1788-89 Pa. Acts 692 [1789]).⁴ Among the first immigration legislation that Congress passed, the Act of March 3, 1875 (18 Stat. 470 [1875]) barred from admission “persons who are undergoing a sentence for conviction in their own country of felonious crimes, other than political offenses . . . or whose sentence has been remitted on condition of their emigration.” Such laws policed the boundaries of the polity from the entry of undesirables defined by their criminal convictions.

Beginning in the 19th century and intensifying over the past two and a half decades, immigration law has moved beyond “entry control to post-entry social control” using deportation to cull people based on post-entry criminal conduct (Kanstroom 2000, p. 1,911). Before the mid-1980s, the three major bases for noncitizen removal were (1) crimes of moral turpitude, (2) drug trafficking, and (3) prescribed weapons offenses (Stumpf 2009). These grounds of removability have billowed, and new categories have arisen. For example, under the Antiterrorism and Effective Death Penalty Act (AEDPA) (Pub. L. No. 104-132, 110 Stat. 1214 [1996]), an alien may be removed if convicted of a crime of moral turpitude committed within 5 years of admission for which a sentence of 1 year or more may be imposed (8 U.S.C. § 1227[a][2][A][i]). A broad and complex jurisprudence has arisen construing what constitutes a crime of moral turpitude. A notion with “deep roots in the law” (*Jordan v. DeGeorge*, 341 U.S. 223, 226 [1951]), moral turpitude signifies an offense that is intrinsically wrong in itself rather than merely wrong because so defined by law; that is, *malum in se*, rather than *malum prohibitum* (*Garcia-Maldonado v. Gonzales*, 491 F.3d 284, 288 [5th Cir. 2007]). Assessments regarding whether a crime is one of moral turpitude involve amorphous judgment calls regarding moral blameworthiness and whether the crime involves the kind of “evil intent” typically associated with turpitude (*Uppal v. Holder*, 605 F.3d 712, 717 [9th Cir. 2010]). The low sentence threshold combined with the broad notion of what might constitute

a crime of moral turpitude means a wider universe of offenses—perhaps even jumping a turnstile in New York, according to Morawetz (2000)—may constitute a basis for deportability.

In 1988, Congress introduced a new open-textured category of crimes with massive potential for expansion called “aggravated felonies” (Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 [1988]). Initially, the 1988 definition was cabined to murder, drug trafficking crimes, and illicit trafficking in firearms or other destructive devices. Over the years, however, the list of aggravated felonies has bloated as Congress added more offenses, even misdemeanors, so that the category is no longer limited to felonies nor always “aggravated” circumstances. Subcategories within the category of aggravated felonies also have open-textured definitions that embrace more than the label might suggest. For example, a crime of violence that can constitute an aggravated felony is (1) any offense “that has as an element of the use, attempted use, or threatened use of physical force against the person or property of another” or (2) any felony “that, by its nature, involves a substantial risk that physical force against the person or property of another may be used” (8 U.S.C. § 1101[a][43][F]; 18 U.S.C. § 16).

The biggest expansion of the concept of an aggravated felony came in the IIRIRA of 1996 (Pub. L. No. 104-208, 110 Stat. 3009 [1996]). In addition to enlarging the list of aggravated felonies, IIRIRA § 321 expanded the definition of existing predicate offenses such as a “theft offense,” “burglary offense,” “crimes of violence,” or gambling offenses by lowering the former requirement that the sentence for the offense must have been 5 years to 1 year. A complicated jurisprudence has arisen interpreting what constitutes an aggravated felony in part because the stakes are acute. The law tersely provides that “[a]ny alien convicted of any aggravated felony at any time after admission is deportable” (8 U.S.C. § 1227[a][2][A][3]).

Formerly, the attorney general had discretion to grant relief from deportation under § 212(c) of the Immigration and Nationality Act for legal permanent residents who have had 7 years or more of uninterrupted domicile (*Matter of Silva*, 16 I & N Dec. 26 [BIA 1976]). This discretion was important and widely used because of the broad grounds for deportability. Between 1989 and 1995, for example, more than 10,000 aliens received § 212(c) relief (Rannik 1996, p. 150, n. 80). IIRIRA § 304(b) eliminated this discretion to grant relief from removal for aggravated felons. Under the new provision introduced by IIRIRA, conviction of an aggravated felony is a threshold bar to eligibility for a lawful permanent resident to apply for cancellation of removal (8 U.S.C. § 1229b [a][3]). Thus, deportation is mandatory for any alien convicted of an aggravated felony without possibility for relief, regardless of the strength of ties or other equities, unless the alien entered a plea agreement under pre-IIRIRA law with the expectation of eligibility for § 212(c) relief (*I.N.S. v. St. Cyr*, 533 U.S. 289 [2001]).

In tandem with the broadening of aggravated felonies has been the broadening of narcotics-related bases for deportation. The 1988 Anti-Drug Abuse Act made any conviction for a controlled substances offense a basis for deportation unless the conviction is for a single offense involving possessing 30 grams or less of marijuana for personal use (8 U.S.C. § 1227[a][2][B][i]). Many narcotics-related convictions also constitute an

aggravated felony, for which convicts are precluded from cancellation of removal (8 U.S.C. § 1101[a][43][B][U]; Morawetz 2000). Some data suggest that noncitizens represent a substantial proportion of individuals convicted of narcotics offenses (Schuck 1998, p. 341). For example, in 2010, noncitizens represented 30.7 percent of people prosecuted under federal drug trafficking laws and 47.5 percent of people prosecuted for simple narcotics possession in the federal system (U.S. Sentencing Commission 2011, table 9). Disadvantaged communities with higher concentrations of communities of color tend to be the subject of heightened narcotics policing, contributing to the disproportionality (see Demleitner 2002; Tonry 2011). Narcotics-related convictions thus constitute another important and growing ground for deportation.

In immigration as well as criminal law, the laws on the books only tell part of the story. Enforcement policy is what animates the law and visits the consequences experienced in reality. Before 1986, deportation proceedings were rarely deployed for criminal aliens despite laws on the books allowing for deportation for crimes of moral turpitude, drug trafficking crimes, and prescribed weapons offenses (Miller 2003). The rarity stemmed from practical resource limitations—generally, the Immigration and Nationality Act forbade deportation until released from prison, and authorities lacked the resources and infrastructure to hunt deportable aliens (Miller 2003). Some of the most vehement critiques of the federal government's immigration enforcement policy have focused on the failure to expel criminal aliens (e.g., Schuck 1998, p. 342).

Prodded by both law and politics, immigration authorities have ramped up efforts to remove criminal aliens. For example, to spur greater focus on removing criminal aliens, Congress in 1990 required the attorney general to prepare a “Criminal Alien Removal Plan” and report efforts to “identify, apprehend, detain, and remove from the United States aliens who have been convicted of crimes in the United States” (Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 [1990]). IIRIRA § 326 directed the Commissioner of Immigration and Naturalization to operate a “criminal alien identification system” to help federal, local, and state authorities find aliens who are subject to removal because of aggravated felonies or for other reasons. The legislation required use of automated fingerprint identification systems to more readily identify aliens who have been previously arrested and removed.

Immigration authorities have responded by prioritizing the removal of criminal aliens through specialized task forces, raids, and jail sweeps. ICE launched the Criminal Alien Program to identify aliens incarcerated in federal, state, and local prisons for removal after they have served their sentences (U.S. Immigration and Customs Enforcement 2011*a*). Responding to Congressional prompting to remove “at large” criminal aliens in the United States, ICE officials also launched large-scale sweeps in the nation's interior that have netted thousands of aliens (U.S. Immigration and Customs Enforcement 2011*b*). These immigration raids have taken officials into workplaces—and homes without warrants—across the nation in places such as Postville, Iowa; Grand Island, Nebraska; and Stillmore, Georgia (see Hing 2009; Treadwell 2011). Although little publicized, immigration officials also conduct immigration checks on modes of public transportation such as Greyhound buses and Amtrak trains in the nation's interior

(Gonzalez 2011). The seepage of criminal and immigration law deeper into the interior of the nation and everyday life calls to mind Simon's (2007) concept of governing through crime—extending the reach of regulatory control under the cloak of combating crime or hunting criminal aliens.

III. BROADER INVESTIGATION AND DETENTION POWERS AND INCENTIVE TO BLUR BOUNDARIES

With the rise in immigration prosecutions and campaigns to deport criminal aliens, the line between criminal law enforcement and immigration enforcement is indistinct. The difference matters because, in immigration enforcement, the government enjoys vast power and individual rights are stunted. In contrast, in criminal law enforcement, there are substantially more constraints on government power to protect individual rights against overreaching in the “competitive enterprise of ferreting out crime” (*Johnson v. United States*, 333 U.S. 10, 13–14 [1948]). A number of critics have expressed dismay that, in this murky zone of crimmigration enforcement, immigration is aggressively combated like a crime, but without concomitant protections for individual rights (e.g., Legomsky 2007; Aldaña 2008; Chacón 2010).

Concerns stem from the permeability between criminal and immigration law enforcement and the gradient in protections between the criminal and civil regulatory regimes. Permeability comes from the possibility of pursuing either criminal or civil sanctions or both in cases involving undocumented aliens and the increased use of cross-designated personnel. Federal agencies such as ICE, which has launched several large-scale immigration raids, are involved in both criminal and civil immigration enforcement. Typically, criminal cases are referred by immigration law enforcement to federal prosecutors. But there are even a few examples of Border Patrol agents serving dual roles as immigration law enforcement and criminal prosecutors—apprehending the alien, swearing out the complaint, and offering plea deals (Eagly 2010).

Moreover, to encourage greater involvement of traditional criminal law enforcers—state and local police—in immigration enforcement, IIRIRA added § 287(g) to the Immigration and Nationality Act, authorizing the attorney general to enter into cooperative agreements to designate and train state and local police. State and local police, unsurprisingly, initially had little interest in using their resources to help the federal government do its job. Experienced officers expressed concern that cooperative agreements would undermine delicate trust with immigrant communities (Coleman and Kocher 2011). Cooperative agreements gained in popularity, however, after the 2001 terrorist attacks reignited fears of criminal aliens, particularly in the “*nuevo* New South”—areas of the U.S. South that experienced surges in Latinos moving in, thus rousing unrelated but conflated fears (Coleman and Kocher 2011). By 2009, the 287(g) program was the second biggest basis for alien apprehensions (12 percent), after the Criminal

Alien Program (48 percent) (Schriro 2009 p. 12). Such cross-designations allow many more law enforcement agents to strategically slip between criminal and immigration law enforcement to maximize power (e.g., Legomsky 2007; Eagly 2010).

A. Investigation Controversies

Investigators may draw from a broader palette of powers in the murky zone of criminal migration enforcement because of differences in protection for individual rights in the immigration arena. Immigration has remained a zone of curious exceptionalism, largely untransformed by the civil rights revolutions that dramatically reshaped other areas such as criminal procedure (Schuck 1984, cf. Rodríguez 2010). Unlawful immigrants are in a particularly awkward position to assert substantive entitlements. Where claims have succeeded, they are generally grounded in the interests of others or larger structural principles such as preemption (Motomura 2010). Gradients in protection and permeability between zones create a rich environment for police gamesmanship that pushes or plays on blurry or weak spots in individual protections or remedial gaps (Fan 2011*b*). For example, immigration authorities have vast power to hold immigration detainees without charge subject to limited due process protections against indefinite detention for aliens who have successfully entered the country (*Zadvydas v. Davis*, 533 U.S. 678, 692–693 [2001]). Investigators have leveraged this immigration power to hold noncitizens without charge in furtherance of criminal investigations or while trying to gather sufficient evidence to pursue a criminal case (see Cole 2004; Legomsky 2007; Eagly 2010).

Police operating in a civil regulatory immigration enforcement capacity also have broader powers to stop and search people. In the context of stops, for example, cross-designated state and local law enforcement officials may stop suspected unauthorized immigrants using race as a factor for reasonable suspicion (see Chacón 2010; Carbado and Harris 2011). In the contexts of searches and seizures, the Supreme Court has explained that law enforcement officers pursuing “special needs” searches other than ordinary criminal law enforcement have broader powers and are subject to fewer restrictions (*United States v. Martinez-Fuerte*, 428 U.S. 543 [1976]). For example, police may obtain “administrative warrants” without showing the particularized probable required for criminal warrants or conduct “administrative arrests” for immigration reasons even though they lack probable cause for a criminal arrest (*Abel v. United States*, 362 U.S. 217 [1959]). Authorities have used administrative warrants in factory raids to net aliens who are later criminally prosecuted (Eagly 2010). Moreover, the Supreme Court has held that even when agents are stationed at factory doors during a raid pursuant to an administrative warrant, questioning of workers about immigration status by agents are “consensual encounters” unregulated by the Constitution (*INS v. Delgado*, 466 U.S. 210, 215 [1984]).

Even when immigration violators are in custody, the famous *Miranda v. Arizona* (384 U.S. 436 [1966]) rights and advisal do not apply in civil immigration

investigations—even though admissions may later be used in a criminal prosecution. ICE agents in jail sweeps for criminal aliens have questioned prisoners about immigration status without a *Miranda* advisal, and prosecutors have later successfully used the statements in a criminal prosecution (see *United States v. Lopez-Garcia*, 565 F.3d 1306 [11th Cir. 2009]; *United States v. Lugo*, 289 F. Supp. 2d 790 [S.D. Tex. 2003]). Border Patrol and ICE agents have used a two-step approach of first conducting a field immigration interview without a *Miranda* advisal, then deciding to refer a case for prosecution and administering a *Miranda* advisal before eliciting admissions again for use in prosecution (see *United States v. Hernandez-Hernandez*, 384 F.3d 562 [8th Cir. 2004]; *United States v. Garcia-Hernandez*, 550 F. Supp. 2d 1228 [S.D. Cal. 2008]). The accepting stance of courts has led to widespread and broad authority to question people regarding their immigration status (Kalhan 2008).

Even if constitutional rights violations occur—despite all the room to maneuver and sidestep protections—authorities can avoid remedies in three major ways. First, the primary remedy against police for rights violations—the exclusionary rule forbidding use of illegally obtained evidence—does not apply in civil deportation proceedings unless the alien shows “widespread” or “egregious” violations “that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained” (*I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1050–1051 [1984]). Since the earliest days of federal legislation authorizing deportation, the Supreme Court has staunchly held to the position that deportation proceedings are civil rather than criminal proceedings and not subject to the phalanx of protections in the criminal context (*Fong Yue Ting v. United States*, 149 U.S. 698, 730 [1898]). This remedial gap means that rights violations may go unredressed—and potentially underdefined—if enforcement authorities pursue civil deportation rather than criminal prosecution (Chacón 2010).

The second and third ways to avoid scrutiny for rights violations are related—both entail a form of plea bargaining. In the criminal context, prosecutors may offer lower sentence recommendations or charge bargains—for example substituting lesser illegal entry charges for illegal reentry charges—in exchange for guilty pleas that include a waiver of appeal, collateral attack, and a stipulated order of removal. A stipulated order of removal waives any of the alien's grounds for seeking review or relief from deportation (Bersin and Feigin 1998). Guilty pleas may be secured in mass-processing that in practice resemble the less protective procedures of the civil immigration context. For example, after the 2008 Postville, Iowa, raid netted 302 detainees in one swoop, federal authorities set up a makeshift court on cattle grounds and rapidly secured 297 guilty pleas and stipulated removal in exchange for dropping charges of aggravated identity theft, which carries a 2-year mandatory minimum (Peterson 2009, p. 334). Conversely, on the civil immigration side, authorities can offer an expedited “voluntary departure” rather than a formal deportation in exchange for the alien waiving all claims (Eagly 2010). Thus, authorities may pick and choose from a broad palette of powers to rapidly dispose of aliens—and potentially problematic cases—leaving the question of individual protections murky and underdeveloped in crimmigration enforcement.

B. Detention Controversies

Controversies also surround U.S. immigration detention practices (e.g., Cole 2002; Priest and Goldstein 2008; Bernstein 2009*b*; Heeren 2010; Hing 2010; Sayed 2011; Preston 2012). The concerns are threefold: (1) increased use of mandatory and discretionary detention in overburdened facilities, (2) limited protections against erroneous designations and prolonged detention to enable criminal investigation, and (3) poor detention conditions in a scandal-plagued network of facilities.

Immigration detention is not a new phenomenon—indeed, New York Harbor's Ellis Island infamously detained arriving immigrants in the early decades of the 1900s in deplorable conditions for weeks and sometimes years in wartime (Guzda 1986). In 1952, Congress enacted the Immigration and Nationality Act, which generally required removal of deportable aliens within 6 months, effectively limiting the length of immigration detention, although the period could be extended under certain conditions (see *Johns v. Department of Justice*, 653 F.2d 884, 890 [5th Cir. 1981]). The Immigration and Nationality Service (INS) turned to initiating deportation proceedings by issuing an Order to Show Cause rather than arresting the immigrant, unless the public interest required incarceration or there were substantial grounds to believe the alien posed a flight risk (see *Johns v. Department of Justice*, 653 F.2d 884, 890 [5th Cir. 1981], p. 889, n.7). The executive retained vast power to detain excludable aliens, however. Indeed, the Supreme Court in *Shaughnessy v. United States ex rel. Mezei* upheld the indefinite detention of an excludable alien for lack of a country willing to take him (345 U.S. 206 [1953]). The Court distinguished between deportable aliens in the country who may be entitled to constitutional due process and excludable aliens subject to whatever process Congress prescribes because under an “entry fiction” they are deemed never to have entered the country (345 U.S. 206[1953], pp. 212–13).

Mandatory deportation law and policy toughened because of two waves of fear in the 1980s and 1990s. In the 1980s, scores of Cubans, Haitians, and Central Americans landing on American shores stirred public alarm (Silverman 2010; Sayed 2011). President Ronald Reagan used mandatory detention policies to deter would-be Haitian immigrants from setting sail (Dow 2004). Congress entered the fray by mandating detention for aggravated felons awaiting deportation in the Anti-Drug Abuse Act of 1988 (Pub. L. No. 100–690, §7343[a][4] 102 Stat. 4181, 4470 [1988]).

In 1995, the Oklahoma City bombing sparked further national panic. Although a U.S. citizen perpetrated the bombing, Congress tackled fears of criminal aliens in the AEDPA and the IIRIRA, which broadened the mandatory detention power (Developments 2002; Heeren 2010; Silverman 2010). Congress was concerned about deportable aliens committing crimes and the ineffectiveness of the INS in identifying, much less removing, deportable criminal aliens (see discussion of legislative history in *Demore v. Kim*, 538 U.S. 510, 518 [2003]).

IIRIRA requires mandatory detention for persons rendered inadmissible or deportable because of conviction for a broad range of major and minor crimes, including

simple drug possession (8 U.S.C. § 1226[c][1]). Review of Department of Homeland Security determinations that an alien is subject to mandatory detention is constricted. Under the Board of Immigration Appeals decision in *Matter of Joseph*, an alien is only entitled to challenge the detention before an immigration judge on showing that “he was not convicted of the predicate crime or the government is otherwise substantially unlikely to establish that he is in fact subject to mandatory detention” (22 I. & N. Dec. 799 [BIA 1999]; *Demore*, 538 U.S. at 514 n.3). Lawyers have observed that the prospect of mandatory detention has led legal permanent residents, potentially eligible for relief, to give up on going through the lengthy legal process and stipulate to removal (Morawetz 2000).

The shock of the terrorist attacks of September 11, 2001 has spurred a further broadening and lengthening of the mandatory detention power. The U.S. PATRIOT Act of 2001 authorizes mandatory detention of noncitizens who the attorney general has reasonable grounds to believe are engaged in terrorist activity or “any other activity that endangers the national security of the United States” (8 U.S.C. § 1226A[a][1]). Within 7 days of the detention, the attorney general must begin removal or criminal proceedings (8 U.S.C. § 1226A[a][5]). Particularly in the years shortly after the September 2001 attacks, investigators used the broad grounds for discretionary and mandatory immigration detention as a means of holding suspects without charges or the protections afforded in the criminal justice system (Cole 2002; Office of the Inspector General 2003). Detention of noncitizens deemed security risks may persist even when further investigation determines that criminal charges should not be brought. For example, members of a Muslim minority of China, Uighurs found in Afghanistan, were held for more than half a decade in Guantanamo while the U.S. government searched for a country willing and suitable to receive them (Roberts 2010).

The power to detain for a prolonged period is subject to some broad limits, however. The Supreme Court has construed the immigration laws to authorize the government to hold inadmissible or removable aliens for a period reasonably necessary to effectuate removal and not indefinitely and potentially permanently (*Zadvydas v. Davis*, 533 U.S. 678, 699-700 [2001]; *Clark v. Martinez*, 543 U.S. 371, 385 [2005]). The average length of detention is 30 days (Schriro 2009, p. 6). Although 95 percent of detainees are released within 4 months, about 1 percent—amounting to 2,100 people—were detained for 1 year or more as of 2009 (Schriro 2009).

Between 1994 and 2008, the total yearly number of people in immigration detention soared by 369 percent, from about 81,000 to approximately 380,000 (Kalhan 2010, pp. 44-45). Moreover, because of increased sweeps following political controversies over immigration, the number of people in immigration detention with *no* criminal conviction doubled between 2005 and 2009 (Kalhan 2010, p. 46). Overseeing the nation's largest detention and supervised release program, ICE relies on a network of more than 300 facilities, including private contractors (Schriro 2009).

Scandals and stories of needless suffering and even death have plagued the overburdened immigration incarceration system. Inmates have endured filthy conditions and excruciating pain awaiting medical treatment because of delays from backlogged

officials (Dow 2004; Priest and Goldstein 2008; Bernstein 2009*b*; Heeren 2010). Since 2003, more than 100 immigration detainees have died in custody, many of them young (Bernstein 2009*b*). Reviews have found avoidable deaths—in one case, of a 34-year-old who doctors believe may have been saved by something as simple as aspirin (Priest and Goldstein 2008).

A host of commentators—and the Inter-American Commission on Human Rights—have deplored the punitive realities of nominally civil immigration detention (e.g., Dow 2007; Inter-American Commission on Human Rights 2010; Kalhan 2010). Writing for the Supreme Court on immigration detention in *Zadvydas v. Davis*, Justice Breyer wrote, “[t]he proceedings at issue here are civil, not criminal, and we assume that they are nonpunitive in purpose and effect” (533 U.S. 678, 690 [2001]). Yet the lived experience of immigration detention is incarceration in the harsh conditions used as punishment for criminals—and detainees are often mixed with prisoners serving jail time (Dow 2007; Schiro 2009; Inter-American Commission on Human Rights 2010). In 2009, the Obama administration announced plans to reform immigration detention into a “truly civil system” using more humane practices rather than strategies used for criminals serving time (Bernstein 2009*a*, p. A1). The administration’s reform efforts have been bedeviled, however, by politically partisan mockery and accusations of coddling lawbreakers at taxpayers’ expense and giving illegal aliens a “Holiday on ICE” (Bennett 2012, p. 14).

IV. CONCLUSION: A FUTURE IN FLUX

The virtues of laws and policies that democratically reflect the sensibilities of the polity are justly celebrated. But a downside of democracy, about which the framers of the U.S. system worried, is the risk of distortion by the popular passions of the moment. James Madison famously wrote, “when a majority is included in a faction, the form of popular government . . . enables it to sacrifice to its ruling passion or interest, both the public good, and the rights of other citizens” (Hamilton, Madison, and Jay 1842, p. 45). The insight is all the more acute when it comes to popular legislation regarding noncitizens. Like harsh crime policies, tough crimmigration laws are fueled by cycles of intolerance and moral panics that inflame perceptions and generate fierce reactions to social challenges. Just as the political risks of looking soft on crime makes it difficult to find legislators willing to dial down criminal law’s severity (e.g., Stuntz 2001; Chemerinsky 2008; Tonry 2009), so the political risk of looking soft on illegal aliens makes it difficult to cut back on the severity surge in crimmigration law.

Cross-branch checks were an important design mechanism to protect the nation against the pathologies of popular passions (Calabresi 1991). In the immigration context, however, the judiciary historically has been particularly reluctant to intervene. Recently, however, there have been seeds of change. The Supreme Court ruled in *Padilla v. Kentucky* (130 S. Ct. 1473, 1478 [2010]) that a lawyer’s misadvisal about the deportation

consequences of a guilty plea constitutes ineffective assistance of counsel. The ruling in *Padilla* was a landmark step toward collapsing the civil–criminal distinction between deportation and criminal punishment. A host of judicial decisions had held that because deportation is a civil collateral consequence, advisal regarding potential deportation is outside the purview of a defense counsel’s duty to deliver effective assistance in the criminal case. Justice Stevens, writing for the Court, wrote regarding the “unique” nature of deportation, which although “not in a strict sense, a criminal sanction” is a “particularly severe ‘penalty’” and “intimately related to the criminal process” (130 S. Ct. 1473, 1478 [2010], p. 1481).

Another recent notable Supreme Court decision that has received less publicity than *Padilla* is *Flores-Figueroa v. United States* (556 U.S. 646 [2009]). The case arises from the controversial Postville raid, involving one of the few defendants who did not take a guilty plea to avoid the 2-year mandatory minimum for aggravated identity theft (Morales 2009). As discussed in Section III, Postville prosecutors had used the threat of aggravated identity theft’s mandatory minimum to extract rapid guilty pleas and waiver of rights. In immigration prosecutions, authorities often may readily add criminal charges related to identity document misuse because unauthorized workers need false documents to navigate everyday life and find work. When Congress enacted the aggravated identity theft statute in 2004 to address worries over identity thieves, immigration prosecutors seized on the new law as leverage to secure guilty pleas in a different context. *Flores-Figueroa* shut down a lot of the leverage of immigration prosecutors to use this tactic by construing the aggravated identity theft statute to require knowledge that the form of identification belongs to another person. Although this is easy to prove in the case of a true identity thief who goes through someone’s garbage or files to steal information, it is hard to prove in the case of an alien who buys a fake document to find a job. *Flores-Figueroa* thus used statutory interpretation to shut down a harsh crimmigration tactic.

A third example of reining back the products of popular passions is *Arizona v. United States*, discussed in Section I.C. The Court cut back three of the four provisions of Arizona’s template law for inducing self-deportation by intimidation and left open the possibility of future challenges to a controversial provision left standing in the first round of battle. Yet, as discussed in Section I.C., even as Arizona’s template remained in question, other states have joined the fray in enacting dissident immigration criminalization provisions. Competing for the toughness title, Alabama has enacted even harsher provisions.

For now, the ameliorative impact of *Padilla*, *Flores-Figueroa* and *Arizona v. United States* is likely modest and on the margins. For example, defense attorneys may respond to *Padilla* by adding a standard advisal that criminal convictions may carry immigration consequences, including deportation. This is certainly far better than affirmatively inaccurate advice regarding immigration consequences or no advice at all—but a standard disclaimer may not offer much guidance. Moreover, in light of the broadness of criminal and immigration law, the defendant’s fate is likely not going to change. There are other reasons, such as a potential sentence benefit, to plead guilty. Even if defendants opt not

to plead guilty, they may be convicted at trial. Also offering improvement at the margins, *Flores-Figueroa* ameliorates one potentially coercive tactic to secure guilty pleas in immigration cases. As detailed in the previous sections, however, there are many other routes to the same goal. Nonetheless, the decisions are salutary in trying to clean up the messy, murky domain of crimmigration by improving the assistance of defense counsel, ameliorating aggressive charging, and showing that the Court will police against the externalities posed by dissident states intervening in immigration criminalization.

Although judicial checks on the margins are important, ultimately, the political branches are central to the future of crimmigration law. Inability to reach political consensus on how best to define the criteria for desirable and undesirable immigrants has contributed to the rise of expanding criminal and immigration laws that give law enforcement vast power to cull people after entry (see Cox and Posner 2007; Kanstroom 2007; Cox and Rodríguez 2009; Eagly 2010). As discussed in the foregoing sections, there is a rich and increasingly abundant literature on all the ways that people perceived as alien are harmed by the growth of crimmigration law. But fierce politics targeting the demonized “other” are not likely to be moved by arguments about all the ways the other is hurt (Fan 2011a). After all, that was the point.

What bears more study is whether and how voters with the power to unite for change may bear the costs of heightened crimmigration enforcement. Future research could inform and influence political decision making by quantifying and comparing the costs and benefits of surges in crimmigration enforcement and examining whether there is interest convergence between citizens and noncitizens in ameliorating the entanglement between criminal and immigration law. Future research could also explore potential checks such as codifying crimmigration procedure to limit police gamesmanship of gradients in protection. Another intriguing avenue for further exploration is the role of the executive in wielding enforcement discretion to help shape the crimmigration law and policy operationalized in reality. One of the themes of this essay and the lessons of experience is that the laws on the books are only part of the story—enforcement policy and political consensus-building give the law its force and can help steer its future.

NOTES

1. The 2009 figure of 26,731 felony immigration prosecutions is from the Administrative Office of the U.S. Courts, AOUSC Criminal Master Data File, FY 2009, available at <http://bjs.ojp.usdoj.gov/fjsrc/> (last visited June 6, 2012). The 1994 figure of 2,453 prosecutions is from Motivans (2006, p. 48, tbl. A.7). Note that although the table with the 1994 figure does not specify that it refers to felony immigration prosecutions, the figures in subsequent years match the felony figures from the Criminal Master Data File, which carries data beginning in 1998.
2. Hispanics are sometimes formally categorized as an ethnic variant of the white race, just as Mexican formally refers to a national origin. But as Gómez (2007) demonstrates, Hispanics in general and Mexicans in particular are socially constructed in the United States as a racial group based on perception, history, and treatment. I therefore use the simpler shorthand of racial disparity rather than ethnic or racial disparity.

3. The percentage is calculated from case filing figures provided by the Administrative Office of the United States Courts (2011, p. 224, tbl. D-2). The data are denominated by fiscal year. In fiscal year 2010, the number of immigration defendants prosecuted in district court was 16,353. Of that total, 11,827 defendants were prosecuted for improper reentry by an alien; 2,714 defendants were prosecuted for alien-smuggling; and 1,100 defendants were prosecuted for improper entry.
4. All but the Georgia statute were crafted to visit sanctions on the importer, transporter, or other person responsible for bringing in the convict, rather than on the convict (Neuman 1996).

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PART IV

.....
ETHNICITY, CRIME, AND
IMMIGRATION IN OTHER
DEVELOPED COUNTRIES
.....

CHAPTER 24

SEARCHING (WITH
MINIMAL SUCCESS)
FOR LINKS BETWEEN
IMMIGRATION AND
IMPRISONMENT

JENNIFER L. HOCHSCHILD
AND COLIN M. BROWN

Once I thought to write a history of the immigrants in America. Then I discovered that the immigrants *were* American history.

—Oscar Handlin, 1951

They still are.

—Cato Institute, 1995

Germany is not a country of immigration.

—Udo Nagel, Hamburg State Interior Minister, 2005

Immigration has happened, even if we have for a long time not defined ourselves as a country of immigration.

—Christian Wulff, President of Germany, 2010

Europeans are welcoming and tolerant, it's in their nature and in their culture. But they don't want the nature of their way of life, their mode of thinking and social makeup, to be distorted.

—Nicholas Sarkozy, President of France, 2009

THE American exchange in the first two epigraphs is not quite right; it leaves out the indigenous populations, Mexicans who inadvertently joined the United States when

their homelands were acquired, and enslaved Africans or contract labor Chinese who were not immigrants as that term is commonly used.¹ Nevertheless, the exchange captures the essential truth that most residents of the United States and Canada are either migrants or descendants of migrants. That fact is globally unusual, as the comments from the German minister and French president suggest. Nevertheless, “immigration has happened.” To what effect?

The issues of immigrants’ crime and punishment are an unusual window through which to compare how states engage with immigration. But, carefully handled, they can be revealing not only because crime is itself so important but also because certain features of crime are analytically very tractable. First, its basic normative valence is clear: unlike multiculturalism, ethnic identity, or immigration itself, almost everyone agrees that the less crime, the better. Second, key components of the concept “crime” are uncontested: most people include at least homicide, rape, armed violence, and robbery or burglary. Third, every polity commits itself to preventing, controlling, and punishing crime; indeed, to strong libertarians, crime control is almost the only justification for a state’s existence (Nozick 1974). Fourth, one public action usually assumed to be closely associated with crime—imprisonment—is, at least in theory, readily measured on a clear scale.

We note immediately, and address this point in more detail later, that other features of immigrants’ crime and punishment are not analytically tractable. First, the kinds of people identified in official data as immigrants or foreigners vary across countries, across time within a given country, and sometimes across groups or countries of origin. That this is a problem for all types of cross-national analysis, not only criminal justice, does not make it any less frustrating. Second, beyond the uncontested actions just described, what counts as a crime varies across countries and time. Third, the link between crime and punishment varies across countries (or regions within them), time, and perhaps groups; as Michael Tonry puts it, “any assumption . . . that there is a simple, common, or invariant relationship between the crime patterns that befall a country and the number of people it confines is wrong. Faced with similar crime trends, different countries react in different ways” (Tonry 2007, p. 3).

There are several possible responses to this mix of benefits and costs in using the lens of crime and punishment to compare countries’ engagement with immigration. One might simply eschew comparative breadth in favor of substantive depth. That is the choice of many essays in this *Handbook*; they examine links among crime, ethnicity or race, and immigration within particular countries, groups, types of crime, or analytic frameworks. Doing so is, of course, essential. But it is incomplete, since full comparison requires the kind of overview that can emerge only from examining highly aggregated evidence across many states. Thus we offer a second response—to seek as much comparative leverage as possible from the not fully comparable data, with caveats and cautions sprinkled throughout as needed. (A third possibility is to develop fully comparable data across many countries—but that is a task for a book or a lifetime, not a single essay.)

We avoid one problem in the link between crime and punishment by focusing on incarceration, not crime; our reason for this choice is the availability of data across

countries on foreign prisoners. A new puzzle immediately arises: huge variation across host countries in the involvement of immigrants in criminal justice systems (Solivetti 2012). The proportion of the incarcerated population who are foreign ranges from over 70 percent in Switzerland and almost 60 percent in Greece to less than 1 percent in Mexico, Brazil, China, or Poland (among others).² The first column (in boldface) of Table 24.1 provides the evidence for 32 Westernized developed states; they are sorted into clusters of high, moderate, and low proportions of foreigners among the imprisoned.

We begin by noting that proportions of foreigner imprisonment bear little relationship to a country's level of overall imprisonment. Comparing columns 1 and 2 shows that the three countries with the highest rates of imprisonment—the United States, Russia, and South Africa—have among the lowest share of foreigners in their prison

Table 24.1 Foreign-born composition of the prison population and of the population, selected countries, c. 2011

	1. Foreigners as Percent of Prison Population, 2011 or Last Year Available	2. Prison Population: Rate per 100,000 People. 2011 or Last Year Available	3. Foreign-born as Percent of Population, 2008*, or 2009	4. Foreign-born Population, 2009 or Last Year Available
	<i>35% +</i>			
Switzerland	71	76	26*	1,570,000 (2001)
Luxembourg	69	124	37*	140,000 (2001)
Greece	57	111	10*	1,100,000 (2001)
Israel	52	236	27*	3,060,000
Austria	46	104	15	1,300,000
Belgium	41	100	13*	1,400,000
Estonia	40	252	15*	N.A.
Italy	36	109	4 (2001)	2,240,000 (2001)
	<i>15–34%</i>			
Spain	34	153	14	6,600,000
Norway	32	73	11	527,000
Sweden	28	70	14	1,300,000
Germany	27	83	13	10,600,000
Netherlands	26	87	11	1,800,000
Denmark	22	74	8	410,000
Australia	21	129	27	5,800,000
Portugal	20	126	6*	650,000 (2001)
New Zealand	20	190	22*	880,000
France	18	101	8*	7,000,000

(Continued)

Table 24.1 *Continued*

	1. Foreigners as Percent of Prison Population, 2011 or Last Year Available	2. Prison Population: Rate per 100,000 People, 2011 or Last Year Available	3. Foreign-born as Percent of Population, 2008*, or 2009	4. Foreign-born Population, 2009 or Last Year Available
	<i>< 15%</i>			
Ireland	14	98	17*	602,000
Finland	13	59	4	230,000
United Kingdom	13 #	155#	11	6,900,000
Canada	12 (1993)	117	20*	6,200,000
Czech Republic	7	225	7*	450,000 (2001)
Japan	7	55	N.A.	N.A.
United States	6	730	13	39,000,000
South Africa	5	310	N.A.	N.A.
Russian Federation	4	516	8 (2002)*	N.A.
Chile	4	296	<1	350,000
Hungary	3	173	4	410,000
Slovak Republic	2	203	8*	210,000 (2004)
Mexico	1	201	<1	850,000
Poland	1	222	2*	780,000 (2002)

For column 1: According to the International Centre for Prison Studies, "the standard definition of foreign prisoners, used by almost all countries and in international surveys, is *foreign nationals*. The World Prison Brief uses official figures wherever possible (i.e., almost always) and only uses other figures where they appear reliable. As a general rule, the variation across countries in levels of foreign prisoners is not affected by differences in definition" (communication from Roy Walmsley to authors, June 18, 2012).

#: for columns 1 and 2, Great Britain (England and Wales only).

Sources: columns 1 and 2: International Centre for Prison Studies (2011). Column 3: If no *, calculated from column 4 and OECD (2011a). If *, from OECD (2010c). Column 4: OECD (2010b). Population for Chile in 2009, available at Index Mundi (2012). Data for Canada are from Aiken (1999), p. 8. Japan is not included in columns 3 and 4, since the OECD reports data only for the foreign rather than the foreign-born.

population. Conversely, several countries with the highest share of foreigners in their prison population (Switzerland, Belgium, and Austria) have only moderate rates of overall imprisonment.

We must look harder for plausible explanations of the range in column 1 of Table 24.1; that is one motivation for this essay. The other, related, purpose is to explore the politics around perceptions of links between immigration and crime. However unwarranted (Sampson 2008; Graif and Sampson 2009; Wang 2012), since at least the 1920s, many criminologists or native-born residents of immigrant-receiving countries

have believed that immigrants cause crime (Park and Burgess 1925; see bibliography in Wang 2012). These views are linked more closely to values than to circumstances. At the level of individuals, across 21 European nations, “perceptions about immigrants’ impact [on crime] are unaffected by personal experience with crime and by contextual measures such as the homicide rate, prison population rate, and ratio of foreign inmate to non-European foreign population. . . . Perceived immigrants’ impact on crime is [instead] sensitive to having friends among immigrants, residing in an ethnic neighborhood, having affinity with right-wing ideologies, as well as several socio-demographic characteristics” (Ceobanu 2011, p. 114). At the level of countries, “perceptions that immigrants worsen crime problems are more evident in societies harboring larger stocks of non-European immigrants, but such views are not affected by economic circumstances” (Ceobanu 2011, p. 114). Looked at from the opposite direction, views of immigration rest more on concern about crime than on economic worries and “objective regional conditions” (Fitzgerald, Curtis, and Corliss 2012, p. 478). In short, the fear that immigrants are engaged in crime is closely related to a fear of immigrants.

The concept of incorporation connects our twin goals of explaining variation in foreigners’ imprisonment and making sense of native-borns’ fear of immigrant criminals. The core intuition is that immigrants who are successfully incorporated into schools, jobs, political participation, and cultural engagement are less likely to be caught up in the criminal justice system *and* will present less of an object of fear to the native-born. That intuition implies a question: How and why do states vary in their immigration policies and practices, their commitment to incorporating the resulting immigrants, and their success in actually including the newcomers?³ By analyzing policy choices and political practices that address that question, we hope to find mechanisms to explain actual and perceived levels of crime among newcomers.

Our findings can be summarized thus:

- Countries vary greatly in the share of their population that is incarcerated and in the share of the incarcerated population who are foreigners. Across all countries, the foreigner proportion of prisoners ranges from less than 1 to more than 90 percent.
- International migration is increasing, albeit with wide variation among countries and over time in the size of immigrant or emigrant populations. Stocks and flows of migration do little to explain variation in levels of foreigner incarceration.
- One can identify clusters of countries with regard to policies for admission and inclusion, or to economic opportunities for migrants. Variations in economic structure are quite strongly associated with shares of foreigners among the incarcerated.
- Countries with the highest shares of foreigners among the imprisoned tend to be countries with high shares of European migrants; one cannot, however, infer that European migrants are disproportionately imprisoned.
- Countries with high proportions of workers or workers’ families among immigrants tend to have low shares of foreigners among the incarcerated.

- We know too little about the number or situation of undocumented migrants to link them systematically to shares of foreigners among the imprisoned population.
- Public opinion in most countries is wary about but not always hostile to immigration and immigrants; most publics fear a link between immigration and crime.
- Countries vary in policies to incorporate immigrants and to promote general social justice. Some policies are loosely related to shares of foreigners among the imprisoned; in most cases, stronger policies are correlated with higher shares of foreigners among the incarcerated. Here is a clear instance in which one must beware equating correlation with causation and must consider issues of reverse causation or endogeneity among variables.
- Host countries vary in citizenship laws from unrestricted birthright citizenship to detailed restrictions and high barriers. European countries may be converging on more restrictive admissions and citizenship policies and more substantive conditions for naturalization. Countries with unrestricted birthright citizenship have low shares of foreigners among the imprisoned population.
- Variation in foreigner shares of the incarcerated remains a puzzle, largely unexplained. It warrants further research and policy experimentation.

After exploring the twin motivations for this essay in more detail, we present information on stocks and flows of migrants into Western developed countries. The essay then reviews scholarship that organizes countries into clusters or along typologies, focusing on possible links between varieties of capitalism and foreigner shares of incarceration. Next we examine immigration policies, migrants' region of origin, migrants' legal status, public opinion about immigration and crime, indices of policies to incorporate immigrants or to provide social justice for all of a country's population, and, finally, citizenship laws. These characteristics of immigration or immigrant incorporation vary in the tightness of the link to levels of foreigner incarceration, but none is dispositive. We conclude by pointing to features of immigration that seem promising as explanations for foreigner incarceration, associations that are politically discomfiting to both left and right, and topics that call for further scholarship. The puzzle of huge variation in shares of foreigners among the incarcerated is not close to being resolved.

We remind readers that data on the incarceration of immigrants are problematic, since the meaning of "foreigner" depends on the nature of citizenship policies in a given country—and those policies are also, in our case (as in others), a potential causal variable. That is, compare a country with an unusually restrictive citizenship policy such as Switzerland to a country with an unusually generous citizenship policy such as the United States: a larger share of people will be classified as foreigners in Switzerland than in the United States, and thus some part of the difference between the two countries' proportion of incarcerated foreigners will be a function of classification rather than of activity by individuals or the criminal justice system. In addition, however, because of the restrictive policy, immigrants into Switzerland may be less incorporated and more likely to be caught up in the criminal justice system than immigrants into the more generous

United States. Therefore, some part of the difference between the two countries' proportion of incarcerated foreigners will be a genuine result of citizenship policies.

To avoid this confusion between classification and causation as much as possible, we try to use data on the foreign-born rather than on "foreigners." Where necessary, we note the blurred distinction between foreigners and foreign-born in a given data-set, and we hedge our conclusions.

I. MIGRANT STOCKS AND FLOWS

Established populations are more likely to feel threatened when there are either a large absolute number or a high proportion of newcomers, or if many newcomers come from lower status groups (Key 1984 [1949]; Lubbers, Gijsberts, and Scheepers 2002; Golder 2003; Sides and Citrin 2007). A sense of threat may be heightened when the proportion of the population who are newcomers is rising fast (Green, Strolovitch, and Wong 1998; Hopkins 2010).⁴ It is also plausible that immigrants feel and act differently depending on whether they see themselves as part of a large group, a growing group, both, or neither.

A. The Number of Immigrants

Columns 3 and 4 of Table 24.1 thus begin our consideration of national models of adaptation and inclusion by showing the number of newcomers and their share of the population in most countries for which we have incarceration evidence. As column 3 shows, the foreign-born share of a country's population ranges from almost two-fifths to essentially none; foreign-born share is not related to a country's population size (see column 4). Large states have relatively small (Italy, France), moderate (Germany, the United States), or large (Australia) proportions of immigrants. Looked at from the other side, countries with large shares of immigrants may have large (Australia), moderate (Israel), or small (Luxembourg, New Zealand) populations.

The proportion of foreigner imprisonment bears some relationship to a country's proportion of foreigners *tout court*. In five of the six countries with relatively low rates of foreigner incarceration (the bottom panel of Table 24.1), proportionally fewer foreigners are incarcerated than are in the population as a whole. Conversely, in all but two of the 18 countries with moderate or high rates of foreigner incarceration (the middle and top panels), proportionally twice as many foreigners, or more, are incarcerated as are in the overall population.

This empirical regularity, however, is more another way of describing high or low rates of foreigner imprisonment than a possible explanation for them. In addition, it has important exceptions. Two countries with small proportions of foreign born (Italy and Greece) are among those with the highest proportion of foreigners in the prison population; two countries with relatively many foreign born (Australia and New Zealand)

have moderate proportions of foreigners in prison. Looked at from the other side, countries with moderate shares of foreigners in prison have high (Australia), low (Portugal, Denmark, France), or middle-range (Norway, Netherlands, Germany) proportions of foreigners in the overall population. Demography, in short, is not carceral destiny.

B. The Flow of Immigrants

Perhaps the change in the number of newcomers over time is more closely linked to the proportion of foreigners among the imprisoned than is the share of newcomers in the population at a given time. Figure 24.1 shows immigrant flows for the countries in Table 24.1, beginning with the year in which the Organization for Economic Cooperation and Development (OECD) first collected data on the foreign-born in that country. Again, we report results for three clusters, this time in separate graphs depicting states with considerable, moderate, or low increases in immigration flows.

Note, to begin with, that worldwide migration has been slowly but steadily increasing since the 1990s, from less than 3 percent of the world's population in 1990 to 3.1 percent in 2010 (United Nations Population Division [UNPD] 2011). That may seem a small increase, but it represents 214,000,000 movers in 2010, an increase of about 6.9 million people annually since a decade earlier.

Thus, it is no surprise that only two countries (Israel and Estonia) show a decrease in the proportion of foreign-born in their populations over the past decade. Most of the countries in panel C of Figure 24.1 saw a small rise. For our purposes, the crucial comparisons are between column 1 of Table 24.1 and Figure 24.1: Does the flow of migrants map onto the share of the prison population who are foreigners?

Not very directly. On the one hand, six of the nine countries with sharp rises in the immigrant population share show relatively low proportions of foreigners among the imprisoned population, whereas three show a moderate proportion. That suggests some relationship—but the opposite one from the academic literature's usual suggestion that increasing inflows lead to increasing perceived threat or anti-immigrant activity. On the other hand, the seven countries in which the foreign-born share of the population stayed stable or declined range from almost the highest (Luxembourg, Israel) to almost the lowest (Russia) proportion of prisoners who are foreigners. The 11 countries in the middle range of foreign-born flows also range from the highest (Switzerland) to almost the lowest (Hungary, South Africa) proportion of foreigners among the incarcerated.

In short, flows appear to be no more successful than stocks in explaining why foreigners' incarceration levels are so much higher in some countries than in others.

II. ANALYZING COUNTRIES AS A WHOLE

We turn next to the opposite end of the analytic spectrum from the demography of migrant stocks and flows—that is, to scholarship identifying groups of countries that resemble one another on strategies for incorporating immigrants. The question here

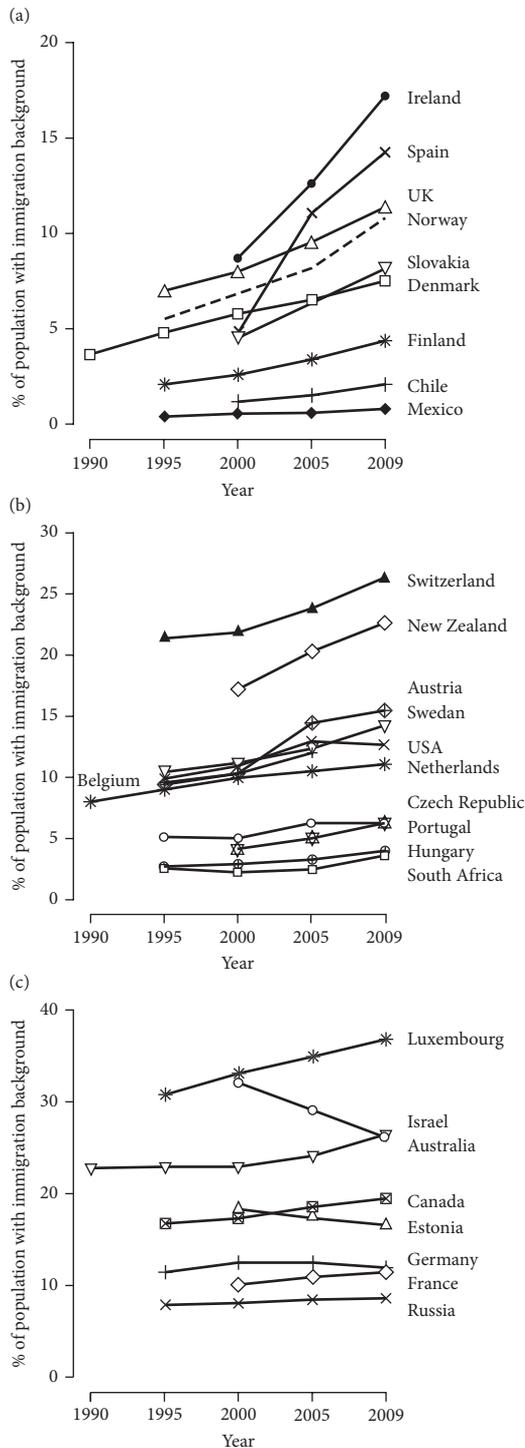


FIGURE 24.1 Change in the foreign-born share of the total population in selected countries, 1990–2009. (a): countries with large proportional increases in the foreign-born population. (b): countries with moderate proportional increases in the foreign-born population. (c): countries with small proportional increases, or decreases, in the foreign-born population.

Japan is not included in this table, since the OECD reports data only for the foreign rather than the foreign-born. Sources: 1990: OECD (2005, p. 17); 1995–2009: OECD (2010a, p. 41).

is whether these theoretically sophisticated, empirically integrated clusters can better explain the vast variation in immigrants' involvement with the criminal justice system.

A. Clustering Countries

Stephen Castles and Mark Miller (Castles and Miller 1993) generated the first widely accepted typology by distinguishing among exclusionary, assimilationist, and multicultural approaches to immigrant incorporation. Rogers Brubaker (Brubaker 1992) developed the typology by depicting France as a model of assimilationism and Germany as a model of exclusion. In the French model, outsiders may be brought into the state fairly easily, although becoming part of the nation is more difficult and requires incorporation into its culture. The German model, in contrast, looks to ethnic ties to define and delimit the unified nation state; inclusion is easy for those deemed already part of the community but difficult for any person or group seeking to join the state from outside the ethnic heritage. The typological literature added another model, pluralist or multiculturalist, when confronted by actions of Canada and the Netherlands in the 1990s. This approach to immigrant incorporation provides relatively easy access to citizenship, and incoming citizens face few linguistic, behavioral, or cultural demands (Kymlicka 1996; Parekh 2006; Modood 2007; Bloemraad, Korteweg, and Yurdakul 2008; Koopmans 2010. See also Karapin 1999).⁵

Ruud Koopmans and Paul Statham (2000) took the next conceptual step by locating states along two dimensions, civic-ethnic and pluralist-monist. The initial typological categories thus became ideal types, with assimilationist states corresponding to civic monism, exclusionary states corresponding to ethnic pluralism, and multicultural states corresponding to civic pluralism. Although the fourth ideal type is uncommon, some instances, such as German policy toward the *Aussiedler*, approach a sort of ethnic assimilationism (p. 29). A dimensional approach is more flexible than a typology, so Koopmans and Statham's model did a better job with mixed systems.

At that point in the development of country clusters, both circumstances and scholarship changed direction. The pluralist model retreated, both theoretically (Joppke 2004) and as a working policy, especially in the Netherlands, where it had been most fully adopted (Vasta 2007, but see Duyvendak, Pels, and Rijkschroeff [2009] for a counterargument). So did the whole enterprise of developing typologies and ideal types, as scholars shifted to building clusters of countries up from analyses of data rather than down from ideological frameworks. Analysts' goal at present is to find more natural or flexible groupings of adaptation, assimilation, or exclusion than were permitted by an ideal typical or even a dimensional approach.

The new framework has proven fruitful. Using Eurobarometer data, Marc Morjé Howard pointed to convergence on high levels of anti-immigrant sentiment across European states often considered distinct from one another (Howard 2009, p. 57). Eva Green developed this point through a cluster analysis of European Social Survey data, finding three distinct sets of attitudes within the European Union. Survey respondents in Eastern and Southern Europe show high levels of support for excluding immigrants

based on both categorical and individual traits. Respondents in Scandinavia show little support for exclusion for either reason. In the rest of Western Europe, categorical reasons for exclusion, such as race or nationality, are unpopular whereas individual traits, such as levels of education and social class, are seen as valid reasons for exclusion (Green 2007, pp. 373–75). Christopher Bail used the same dataset to examine perceptions of threat from immigrants. He found divisions among Western, Southern, and Eastern European countries, with religious, economic, and ethnic threat seen, respectively, as most important (Bail 2008). Jennifer Hochschild and Charles Lang used the 2003 International Social Survey Programme (ISSP) in 10 Western countries to compare attitudes toward immigrant inclusion with the respondent's own sense of inclusion in his or her country. They found surprising mismatches:

A strong sense of being included is often coupled with a desire to exclude others. Countries with extreme public views are not always the countries with political controversy over inclusion. Views of citizens or members of the mainstream religion or race often differ from views of relative outsiders. Countries often cluster in ways that violate standard assumptions about geographic, cultural, or political affinities. Enjoying high status does not guarantee feeling included or seeking to include others. (Hochschild and Lang 2011, p. 78)

Not all of the work that builds country clusters from the ground up is based in survey research. Examining links between immigration and education policies in eight Western countries, Hochschild and Porsha Cropper found several clusters. First are the relatively easy successes; Australia, the United Kingdom, and Canada seek immigrants with many resources, “and their young newcomers do in fact achieve at a high level.” Contrasted with them are the predictable failures: Swiss and German policies “encourage migrants with few resources . . . and their newcomer students are struggling in school.” Belgium has the greatest gap; “its immigration regime is designed to admit migrants with fairly high levels of relevant resources, but newcomer students are not achieving at a commensurate level.” Finally, France and the United States provide the greatest value-added; their policies “permit or encourage immigrants with few resources useful in the host country, but both are producing newcomer students with relatively high levels of achievement” (Hochschild and Cropper 2010, pp. 45–46).

Other works have used the logic of political opportunity structures to explore clusters of incorporation and conflict. A key example is the work of Rafaela Dancygier (2010). She argues that, once economic scarcity precipitates immigrant-related conflict (including riots or organized violence), the level of immigrant political incorporation and effectiveness determine its instigators and targets. Where newcomers have been kept from power, scarcity-induced conflict finds immigrant groups targeting the state; where newcomers enjoy high levels of political incorporation, scarcity-induced conflict finds natives targeting immigrants. So far as we know, the logic of political opportunity structures has not been applied to the issue of immigrant involvement in crime or the targeting of immigrants by the criminal justice system, but the parallels with societal conflict suggest promising avenues for both research and policy making.

The most recent round of scholarship links the purportedly competing typological and empirical approaches. Asaf Levanon and Noah Lewin-Epstein find a correspondence between Castles and Miller's canonical three policy types and public attitudes toward incorporative mechanisms, especially in assimilationist and pluralist states (Levanon and Lewin-Epstein 2010). The typological clusters also roughly correspond to the political economic regimes theorized on different grounds by Peter Hall and David Soskice as varieties of capitalism (Hall and Soskice 2001; for an earlier version, see Esping-Andersen [1990]).

B. Economic Bases of Immigrant Incorporation

Inspired by the varieties of capitalism logic, some scholars have turned in a new direction—to a country's economic practices, rather than its opinions, policies, or ideology, to predict a regime's incorporative activity for immigrants. Economic models begin from an assumption that employers in particular economic regimes seek particular types of workers, some of whom are disproportionately immigrants, and therefore they seek particular immigration policies. Countries with free market, relatively unfettered economies are likely to promulgate one set of policies for admission, whereas countries with coordinated economies are likely to promulgate a different set (Menz 2009, 2011).

Furthermore, a country's economic policies are generally linked to its labor policies, which in turn have a big impact on incorporative processes and outcomes (Crul and Vermeulen 2003). Germany, with its strong tradition of vocational training, takes many disadvantaged second-generation immigrants through an apprenticeship track; this practice prevents almost all immigrant descendants from falling through the cracks but also keeps most from rising above the working class. The Netherlands (and perhaps the United States), with its more liberal educational model, puts few barriers in the path of upward mobility, so some immigrants and their descendants rise—but a polity whose markets are relatively uncoordinated also does little to prevent the bottom segment of this group from falling into poverty and exclusion. Camilla Devitt offers a variant of this argument: free market or Southern European economies provide greater opportunities for low-skilled migrants because they create a lot of low-wage jobs without having the capacity to direct domestic labor into them. In contrast, countries with more formal coordinated economies are less likely to shunt newcomers into undesirable jobs—but then they offer fewer jobs at all to low-skilled migrants, who often end up in the illegal job market (Devitt 2011).

In short, the path of foreigners' inclusion in a polity, or movement into contact with the criminal justice system, may run through economic structures and opportunities rather than through the society or polity (Palidda 1994, cited in Melossi 2003, p. 379). These are highly fruitful ideas, well worth empirical development. They also contribute—arguably more than any other potential explanatory factor in this essay—to making sense of the variation in levels of foreigner incarceration shown in Table 24.1. With one exception (Australia), all countries in the top two clusters (with the highest share of

foreigners among the incarcerated) are coordinated economies. Conversely, only two countries (Finland and Russia) in the bottom cluster are coordinated economies; the rest in that cluster have liberal market economies.

The relationship is not airtight, since the most liberal of the coordinated economies (the Netherlands) has a relatively high level of foreigner incarceration. And those countries with the most centralized economies have among the smallest populations, which could complicate the relationship between economic structure and imprisonment. Nonetheless, the evidence shows quite persuasively that liberal market economies are less likely than coordinated economies to have a disproportionate share of foreign-born among their prisoners.

C. Changing Immigration Policies

Typologies and dimensions organized around the political or economic treatment of immigrants obviously require the admission of immigrants, over which countries seek to exert strong control. The nature of admissions policy and the kinds of people encouraged or permitted to enter presumably affects levels of crime and treatment of newcomers by the criminal justice system, as along with incorporation and adaptation more generally. The details of migration policy could fill journals and books, and have done so. (See, among many others, Joppke and Morawska 2003; Joppke 2005, 2010; Koopmans et al. 2005; Castles and Miller 2009; Boucher and Gest 2013.) The most important point for our purposes is the shifting trajectories of immigration policy. Most Western developed countries ended guest worker programs in the 1970s and limited postcolonial migrations. They developed more expansive policies for the succeeding two decades, but have recently moved in the opposite direction toward more restrictive admissions policies.

Reflecting the period of expansion, by the late 1990s, a scholarly consensus converged around the importance of James Hollifield's (1992) "liberal paradox," particularly as developed by Gary Freeman (Freeman 1995, 2006; Fetzer 2000; Sides and Citrin 2007; see also Meyers [2002] and Boswell [2007] for useful literature reviews.) The core question was why, apparently against popular will, most Western developed countries were maintaining or even expanding labor-based migration policies, and some were encouraging immigration of high-skilled workers.⁶ Freeman explained the paradox by pointing to the imbalance of power between organized pro-immigration forces, such as employers, and relatively weak anti-immigration interest groups. Others (Givens and Luedtke 2005) argued that the low salience of immigration politics contributed most strongly to the ability of pro-immigration political forces to shape the policy. Increasing globalization in economic and cultural realms also contributed to keeping migration policy fairly liberal (Sassen 1996).

Whatever its causes, the European liberal paradox may turn out to have been short-lived. As immigration became more politically contested in the late 20th century, European migration policies began to contract. Policies permitting family reunification

tightened, as did the numerically small but politically salient policies regarding asylum or refugee status. Beginning with the Dublin Convention of 1990, European states moved to restrict asylum seekers to the first “safe” country in which they arrived and to limit the ability of asylum seekers to move to the state with the most open policy before applying to stay. Later in the decade, countries tried to harmonize their policies into a Common European Asylum System. This system set what were intended to be minimum standards for when countries could refuse asylum seekers, but few countries were willing to raise these standards lest they again become refugees’ targeted destination—a situation described by Roger Noll (2000) as a “race to the bottom” (see also Givens and Luedtke 2005; Hatton 2005). In general, EU institutions set up to coordinate and harmonize policies have done better at reaching agreements on restrictive border control measures than on actual admissions policies (Schain 2009).

The liberal paradox remains more salient in the United States. Despite political mobilization by anti-immigrant forces similar to that in Europe, the Canadian and American federal governments promulgated relatively few restrictions through the first decade of the 2000s. However, deportations of illegal immigrants in the United States increased under a Republican administration, and then further increased under a Democratic president (Lopez, Gonzalez-Barerra, and Motel 2011). And some states and cities in the United States have approved laws or ordinances intended to severely control undocumented immigrants, without a great deal of apparent concern about their spillover effects on legal immigrants (Varsanyi 2010; Boushey and Luedtke 2011). Pressure for a more restrictive national migration policy rose in the United States during the 2000s and is salient in presidential and Congressional politics. Resources for (and especially rhetoric about) border control increased considerably.

Trajectories of migration policy are further complicated by the fact that Europe was eliminating its internal borders and expanding eastward at the same time that it was tightening its exterior borders. Cause and effect here are totally unclear. Some scholars see the opening of the European Union as a source of new pressure to restrict immigration from outside Europe (Martiniello 1995; de Hart and van Oers 2006), whereas others argue that the growth of the European Union simply provided a means for national leaders to evade public opinion in favor of employers’ preferences to maintain non-European migration (Guiraudon and Lahav 2000; Guiraudon 2002). Alternatively, the opening of internal borders may have led to *de facto* coordination by EU member states; as more and more member states complied with and faced the impact of the new supranational treaty, all developed a common incentive to move immigration policy outward to the external borders of the European Union (or beyond) in order to minimize its potential internal impact (Lavenex 2006a, 2006b).

In short, through fits and starts and with different timing and different treatment of particular groups, most European countries have moved toward fewer restrictions on Europeans and greater restrictions on non-European migrants—the populations wooed in the decades after World War II. States’ economies and politics have changed, and migration policy is slowly following suit (Freeman 2011). These policy shifts have enormous impact on would-be and actual immigrants’ lives and capacity to be included

in their new country. But have they affected crime and the criminal justice system? The answer remains unknown. We need a careful analysis of how the foreigner share of the incarcerated population has changed over the past four decades in comparison to the foreigner share of the overall population in order to determine whether changes in immigration policy and practice are related to immigrants' involvement with the criminal justice system. Here, too, is a rich arena for further investigation.

III. CHARACTERISTICS OF IMMIGRANTS

Demographic analyses set the context for studying immigrant inclusion and involvement with the criminal justice system; differences in states' economic structures accord quite well with differences across states in immigrants' rate of imprisonment; and zig-zags in immigration policy and practice may, or may not, be related to patterns of foreigner incarceration. But neither demography, economy, or policy analysis provides much information about immigrants themselves and their reception—the reasons for people to enter a new country, how they are treated and how they feel about that treatment, whether they can move toward citizenship and a sense of full belonging or are, in contrast, denigrated and excluded. We turn now from demography, economy, and policy context to phenomena directly linked to inclusion and adaptation, or their lack. We begin with the migrants.

A. Countries of Origin

Newcomers behave differently depending on whether they are unusual in their setting or part of a larger contingent of others like themselves (Kanter 1977; Portes and Manning 1986; Waldinger 1993; Kasinitz, Mollenkopf, and Waters 2010; Marrow 2011) and on whether their cultural and economic background resembles or differs from that of host country residents. How immigrants are treated also depends partly on how exotic or threatening they seem to the native-born (on cultural threat, see Fetzer 2000; Sniderman, Hagendoorn, and Prior 2004; Sides and Citrin 2007). It is essential, therefore, to know where migrants came from in order to understand where they might go.

Table 24.2 shows the proportion of immigrants to a given country from various regions of the world. It also includes a category of "former colonial subject," which overlaps the regional categories and differs for each host country (i.e., migrants from Suriname to the Netherlands are counted as both "Southeast Asia" and "former colonial subject"; the same can be said, *mutatis mutandis*, for migrants from Jamaica to Great Britain).

Table 24.2 is organized to match column 1 of Table 24.1, so that we can discern any link between regions of origin and the proportion of foreigners among the incarcerated. A weak pattern emerges. Half or more of immigrants to all but one (Italy) of the eight

Table 24.2 In-flows of foreign population, by region of nationality, 2009, in percent

	1. EU	2. Non-EU Europe	3. North Africa/ Middle East	4. East/ Southeast Asia	5. South Asia	6. Sub-Saharan African	7. Latin America/ Caribbean	8. Non-EU Advanced Industrial Democracies	9. Current or Former Colonial Subjects*
Switzerland	49	21	-	-	1	-	-	1	-
Luxembourg	77	6	-	1	-	2	-	-	-
Greece	14	63	3	-	-	-	-	2	-
Israel	13	36	12	-	-	4	2	-	-
Austria	36	43	-	1	-	-	-	-	-
Belgium	46	5	12	-	-	5	-	-	5
Estonia	26	32	-	-	-	-	-	-	-
Italy	-	25	14	10	10	-	3	3	-
Spain	30	-	11	2	-	-	28	-	13
Norway	30	5	6	8	3	3	-	3	-
Sweden	28	13	15	4	-	2	-	-	-
Germany	20	42	-	-	-	-	-	-	-
Netherlands	15	16	13	2	2	-	10	1	10
Denmark	25	12	11	2	5	2	-	-	4
Australia	30	-	2	18	5	3	-	9	-
Portugal	22	2	27	-	-	52	-	2	58
New Zealand	30	-	-	21	5	7	-	9	2
France	27	5	37	2	-	3	-	-	40

Ireland	67	–	–	2	2	4	–	5	–
Finland	18	37	4	8	–	3	–	2	–
United Kingdom	65	–	–	6	60	20	6	8	–
Canada	24	–	–	19	11	–	2	–	–
Czech Republic	9	52	–	7	–	–	–	6	–
Japan	5	–	–	68	2	–	–	9	–
United States	4	–	–	10	5	–	43	2	–
South Africa	–	–	–	–	–	–	–	–	–
Russia	1	96	–	–	–	–	–	–	96
Chile	2	–	–	1	–	–	70	3	–
Hungary	64	25	–	1	–	–	–	–	–
Slovak Republic	23	64	–	–	–	–	–	–	–
Mexico	6	–	–	–	–	–	11	71	–
Poland	17	62	–	–	–	–	–	1	–

Ordered in the same way as column 1, table 1.

*Colonial subjects are also included in the appropriate region in columns 1–8. Data do not sum to 100 percent due to exclusion of "other countries," as reported in the OECD database.

Source: OECD (2011c), table B.1.1. A Statistical Annex of Metadata explains the "types of migrant reported in the data." In all cases, so far as we can tell, migrants are temporary or permanent legal newcomers—not the undocumented and not people who were born in the host country but do not have citizenship status there (OECD 2011c, pp. 360–63).

COUNTRIES BY REGION:

EU (EU-15 + Non-EU Schengen and New Members): Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

Table 24.2 *Continued*

Non-EU Europe + Russia: Albania, Andorra, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Former Yugoslav Republic, Georgia, Iceland, Liechtenstein, Moldova, Monaco, Montenegro, Norway, Russia, San Marino, Serbia, Switzerland, Turkey, Ukraine, Vatican City.

(Continued)

North Africa/Middle East: Algeria, Bahrain, Djibouti, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Occupied Palestinian Territory, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, Yemen.

East/Southeast Asia: Brunei, Burma, Cambodia, China, East Timor, Indonesia, Laos, Malaysia, Mongolia, North Korea, Philippines, Singapore, South Korea, Taiwan, Thailand, Vietnam.

South Asia: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka.

Sub-Saharan Africa: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo (Zaire), Cote d'Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Reunion, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, Zimbabwe.

Latin America/Caribbean: Antigua and Barbuda, Argentina, Aruba, Bahamas, Barbados, Belize, Bolivia, Brazil, Cayman Islands, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, French Guiana, Grenada, Guadeloupe, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Mexico, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Saint Barthélemy, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Turks and Caicos Islands, Uruguay, Venezuela, Virgin Islands.

Non-EU advanced industrial democracies: Australia, Canada, Japan, New Zealand, United States.

FORMER OR CURRENT (WITH *) COLONIAL SUBJECTS:

Dutch colonies: Antilles*, Indonesia, Suriname.

French colonies: Algeria, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Djibouti, French Overseas Departments*, Gabon, Guinea, Ivory Coast, Madagascar, Mali, Mauritania, Morocco, Niger, Republic of Congo, Senegal, Togo, Tunisia.

United Kingdom's colonies: Anguilla, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Dominica, Fiji, Gambia, Ghana, Grenada, Guyana, Hong Kong, India, Jamaica, Kenya, Kiribati, Malawi, Malaysia, Maldives, Mauritius, Myanmar/Burma, Nigeria, Pakistan, St. Vincent and the Grenadines, St. Lucia, St. Kitts and Nevis, Seychelles, Sierra Leone, Solomon Islands, Sudan, Tanzania, Tonga, Trinidad and Tobago, Uganda, UK Overseas Territories*, Zambia, Zimbabwe.

Portuguese colonies: Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Sao Tome and Principe, Timor-Leste.

Spanish colonies: Argentina, Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, El Salvador, Equatorial Guinea, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Philippines, Uruguay, Venezuela.

countries in the top cluster of foreigner shares among prisoners come from Europe. Although these seven states vary as to whether more migrants are from the European Union or from non-EU Europe (see the key to Table 24.2 for specific countries of origin), it remains the case that the highest disproportionality with regard to foreigner incarceration occurs where most migrants are Europeans. Conversely, five (Canada, the United States, Chile, Japan, and Mexico) of the 13 states for which we have evidence in the bottom cluster have low shares of European migrants, for perhaps obvious geographic reasons. Those five vary in the regions of origin of most newcomers. Finally, in all but one (Germany) of the 10 states in the moderate range of foreigner incarceration, a majority of immigrants do not come from Europe; their regions of origin are widely scattered.

As with the other aggregated data about immigrants to be presented below, one must beware the ecological fallacy. The association in many countries between a high proportion of European immigrants and a high proportion of foreigners in the imprisoned population does not imply that imprisoned foreigners come from Europe. In fact, it may be that precisely because most immigrants to Switzerland, Luxembourg, Greece, and so on are Europeans; non-European immigrants have a harder time becoming incorporated into the host society and are therefore more likely to get caught up in the criminal justice system. Unfortunately, standardized data are not available for the origin of incarcerated foreigners across countries, so all we can say from data aggregated at this level is that countries with high shares of European immigrants are also countries with high shares of foreigners among the incarcerated. Once again, an explanation awaits further research.

B. Migrants' Legal Status

The legal terms under which a person enters a country affect his or her chances for employment, political engagement, social status, and almost any other feature of incorporation. It is also likely, therefore, to affect whether a person engages in crime or otherwise gets tangled up with the criminal justice system. Figure 24.2 provides a standardized display of five key statuses under which an immigrant can legally enter a country. It includes all of the countries in Table 24.1 for which data are available. Again, for ease of exposition, we divide the countries into three clusters, those in which fewer than 10 percent, 11 to 20 percent, and more than 20 percent of newcomers enter as workers.

Roughly speaking, we can separate immigrant statuses into three categories: those intended mainly to benefit the native-borns and host country through admission of workers (and perhaps their families), those intended primarily to benefit immigrants themselves through family reunification, and those mainly responsive to international imperatives, as in humanitarian or free movement slots. If involvement with crime is assumed to be least likely for those with jobs or with employed family members—and if involvement with crime is related to imprisonment—we would expect the worker-oriented cluster of countries to have the lowest share of foreign-born among their incarcerated population. That expectation is reinforced if we also assume that a

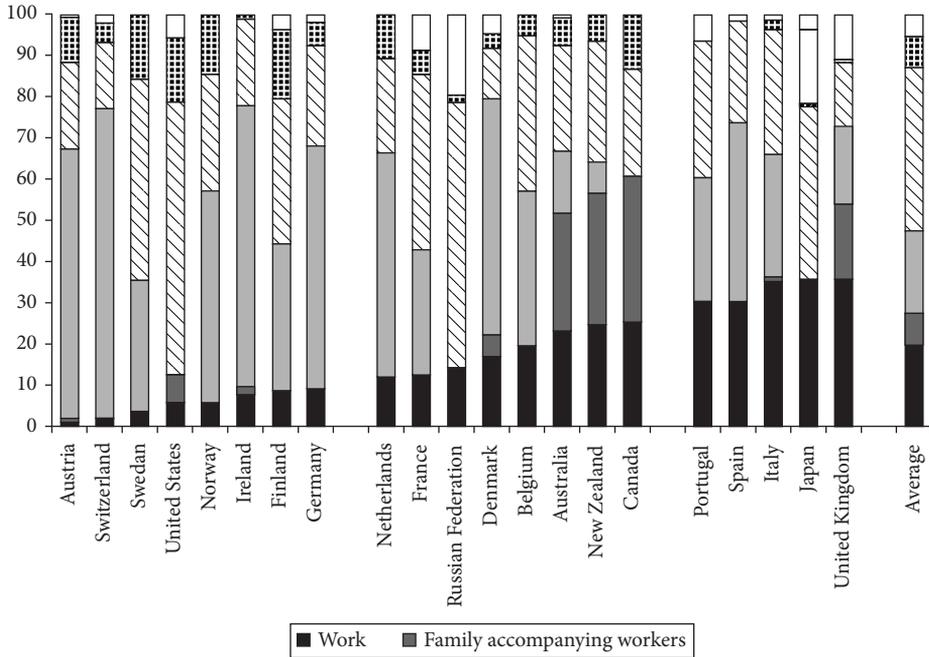


FIGURE 24.2 Migration by legal status into selected countries, as proportion of total legal migration, 2009. Light gray indicates free movement; diagonal stripe indicates family reunification; checkered lines indicates humanitarian; clear indicates other.

Source: OECD (2011b).

country admitting immigrants with desired labor skills is relatively willing to take steps to incorporate its newcomers.⁷

A comparison of Figure 24.2 and column 1 of Table 24.1 gives some support to those assumptions. Countries in the cluster with the largest share of immigrants admitted as workers or workers' families all have moderate or low shares of foreigners in their imprisoned population. Conversely, countries in the cluster in which most immigrants come through free movement or family reunification programs range from very low (United States) to extremely high (Switzerland) shares of foreigners among the incarcerated. As always, the pattern is noisy, but it reinforces the tentative conclusion reached earlier that the structure of economic opportunities is linked, at least in the aggregate, to the share of foreigners in the imprisoned population. (Again, wary of the ecological fallacy, we make no claims about the legal status of imprisoned foreigners.)

Legal immigrants are not, of course, the only newcomers, and, in some countries, they are not even a large majority of them. Unsurprisingly, data are poor within a given state and not readily comparable across states on the share of migrants who are undocumented because countries vary widely in how and how well they count those who seek official invisibility. Furthermore, countries differ from one another and over time in whether they treat the unauthorized as criminals, administrative offenders, or

shamefacedly welcome workers. Roughly speaking, it appears that policies about border control, criminalization, deportation, or regularization do not map well onto the variation in foreigner shares of the imprisoned population. The United States, for example, is strongly committed to controlling entry (at least in its official policy), and some states are criminalizing residence without documents, yet it has a small share of foreigners among its imprisoned population. Italy has also enacted increasingly stringent measures to prevent undocumented migration and to criminalize or deport those found illegally in the country, and it has a much higher share of foreigners among the incarcerated. Conversely, Belgium and France have recently instituted policies to regularize the status of the unauthorized case by case—yet Belgium has a high share and France a moderate share of foreigners among the imprisoned population (see reports from Migration Policy Institute, such as Baldwin-Edwards 2004; Papademetriou 2005; Hanson 2009; Kerwin, Bick, and Kilberg 2012; see also Samers 2004; Passel and Cohn 2011).

In sum, the relationship between the share of immigrants who are unauthorized or between policies and practices with regard to the unauthorized, on the one hand, and variation in the share of prisoners who are foreigners, on the other hand, remains unknown. This is another area ripe for more systematic documentation, analysis, and policy design.

IV. CONTEXTS OF RECEPTION

Arriving immigrants encounter people already living in a host country. We cannot address the myriad types of interactions that shape trajectories of inclusion, racialization, or exclusion; instead, public opinion surveys and stated government policies must serve as shorthand to compare contexts of reception across countries. As always, we seek to understand both general dynamics of incorporation and accommodation and particular variation in relation to involvement with the criminal justice system.

A. Public Opinion

The 2010 Transatlantic Trends survey provides the most recent extensive survey about immigration for eight large, populous countries.⁸ Table 24.3 provides topline results for the questions most relevant to this *Handbook*. Countries are arrayed from the most to the least positive about immigrants in general (row 1).

As with many policy issues, public preferences do not map directly onto policy choices or political action; for example, we have already discussed the liberal paradox. But, even if it does not set policy directions, public opinion matters for setting the public tone with regard to the reception of immigrants, and it is a reasonable shorthand for understanding what immigrants are likely to perceive among their new neighbors.

Table 24.3 Public attitudes toward immigrants and immigration in percent

	United Kingdom	Italy	Spain	United States	France	Germany	Nether lands	Canada
1. The number of people living in (Country) who were not born in (Country) is								
–too many	59	53	41	37	33	27	27	17
2. Most immigrants in (Country) are here								
–illegally	38	65	50	58	26	11	15	13
3. "Worried" about								
–legal immigration	35	26	22	17	18	28	26	22
–illegal immigration	71	82	74	58	59	57	60	52
4 Strongly + somewhat agree that								
–legal immigrants	33	56	29	32	40	46	46	26
–illegal immigrants	63	57	70	58	55	63	65	43
increase crime in our society.								
5. Legal immigrants should be								
–only admitted temporarily and then required to return to their country of origin, OR	37	21	29	27	21	25	30	14
–given the opportunity to stay permanently	52	62	62	67	66	67	58	80

6. Most effective in reducing illegal immigration?								
–increase development aid to poorer countries	15	45	42	13	39	23	22	16
–reinforce (Country) border controls	53	29	24	36	22	17	20	28
–impose tougher penalties on employers	21	16	17	26	26	41	40	28
–make it easier for immigrants to legally enter (Country) to work and study	9	9	14	21	12	17	15	23
7. The government has been doing a XX job in taking steps to integrate immigrants into (Nationality) society.								
–very good + good	29	26	43	34	31	38	19	51
8 XX are integrating into (Nationality) society very well + well								
–immigrants	43	37	54	59	44	41	36	65
–Hispanic immigrants	–	–	–	65	–	–	–	–
–Muslim immigrants	37	37	21	45	45	25	36	45
9. Children of XX who were born in (Country) are integrating very well + well								
–immigrants	68	65	78	79	54	50	66	87
–Hispanic immigrants	–	–	–	78	–	–	–	–
–Muslim immigrants	59	60	42	62	50	36	56	66

Source: Transatlantic Trends (2010).

As Table 24.3 shows, residents of these eight states hold inconsistent views of immigrants. Many (in some cases a majority) see too many foreigners living among them, believe that most migrants entered their country illegally, and worry about unauthorized immigration. Many think legal immigrants increase crime levels, and substantial majorities in all countries except Canada are concerned about crime among unauthorized immigrants. In most states, more respondents endorse border tightening and employer sanctions than development aid or lowering barriers to entry as a way to deal with unauthorized immigration. This is a profile of a fearful and somewhat punitive public.

Surveys in the United States illustrate citizens' association of immigrants with crime. The strength of the association varies with year and survey organization, but never disappears. For example, a 2007 Gallup Organization poll found 58 percent agreeing that "immigrants to the United States are making the crime situation in the country worse" (Newport 2007), and, in the 2008 Transatlantic Trends survey, 47 percent of Americans concurred. Even 22 percent of Hispanics agreed in 2008 that "immigrants increase crime in... [their] community." Americans are especially likely to associate unauthorized newcomers with crime; three surveys in 2006 showed about three-quarters to be concerned that illegal immigration would increase crime.⁹

Nevertheless, like most other careful and extensive surveys (for a summary of U.S. views, see Hochschild, Weaver, and Burch 2012, chapters 2 and 6), the 2010 Transatlantic Trends survey shows another face of public opinion. Large majorities think legal immigrants should be able to remain permanently in the host country, and pluralities in France, Italy, and Spain support development aid for sending countries. Although few praise government policies for inclusion, most think that the children of immigrants are nonetheless being incorporated into their country. They are less sanguine about the particular case of second-generation Muslims, but a majority in most countries see favorable outcomes even for this difficult case. This is a profile of a public that is cautious but wants immigrants to be incorporated.

B. Public Policies to Incorporate Immigrants

Not surprisingly, policy makers respond in multiple ways to complex demographic and social circumstances, distinct political and economic structures, and constituents' mixed signals.

Column 1 of Table 24.4 shows the results of a Migrant Integration Policy Index (MIPEX) analysis of incorporative policies in OECD countries.¹⁰ MIPEX overall scores are calculated from an analysis by country experts of 148 policy indicators; the goal is to present a "picture of migrants' opportunities to participate in society by assessing governments' commitment to integration. By measuring policies and their implementation it reveals whether all residents are guaranteed equal rights, responsibilities, and opportunities" (Migrant Integration Policy Index [MIPEX] 2012).

Table 24.4 MIPEX overall scores, 2010 and *Social Justice* overall scores, 2008–2010

	1. Overall Score, MIPEX (Scores from 0 to 100)	2. Overall <i>Social Justice</i> Rating (Scores from 0 to 100)
<i>Top third</i>		
Sweden	83	82
Portugal	79	60
Canada	72	73
Finland	69	81
Australia	68	61
Netherlands	68	77
Belgium	67	67
Norway	66	83
<i>Middle third</i>		
Spain	63	58
United States	62	57
Italy	60	63
Luxembourg	59	73
Germany	57	70
United Kingdom	57	68
Denmark	53	82
France	51	73
Greece	49	54
Ireland	49	64
<i>Bottom third</i>		
Estonia	46	N.A.
Czech Republic	46	72
Hungary	45	64
Switzerland	43	74
Poland	42	62
Austria	42	71
Japan	38	N.A.
Slovak Republic	36	60

Countries are ordered from highest to lowest overall MIPEX score.

Source, column 1: Migrant Integration Policy Index (2012). Column 2: Schraad-Tischler (2011).

MIPEX disaggregates the overall score into seven ostensibly separate indices, covering labor market mobility, family reunion, education, political participation, long-term residence, access to nationality, and antidiscrimination measures. (After examining the statistical properties of the indices, Didier Ruedin [2011] found them not sharply distinguished from one another.) The average overall score for all 37 MIPEX countries is notably higher than the average scores for education, political incorporation, or access to nationality and notably lower than the average scores for family reunification and long-term residence. This suggests that immigrant-receiving countries find it easier or preferable to bring immigrants in than to grant them political power or access to social capital.

Variation across countries is greater and arguably more important than intrastate variation across indices. The least incorporative states score roughly half as well as the most welcoming, with a fairly even spread between the extremes for the rest. Of particular interest here is the relationship between incorporative policies and foreigners' involvement in the criminal justice system. The starting intuition seems clear; the more a country's policies promote integration, the less one would expect foreigners to turn to crime or for actors in the criminal justice system to imprison them disproportionately.

But, once again, intuition is only partly borne out. Seven of the eight states in the top MIPEX cluster do indeed have moderate to low proportions of foreigners among their prisoners; this indicates an association (although not necessarily causation) between welcoming policies and relative lack of immigrants' criminal justice involvement. However, in the eight states with the least welcoming policies, the proportion of foreigners among the incarcerated ranges from the highest group (Switzerland, Austria, Estonia) to the lowest (Poland, the Slovak Republic, and Hungary)—with almost none in between. So, even if welcoming policies protect against incarceration, unwelcoming policies are not predictive. Looking at the same data from the opposite direction is no more informative: countries with the highest proportion of foreign prisoners range across all three MIPEX integration clusters.

Correlational analysis shows more systematically the association between MIPEX scores and foreigner imprisonment; it raises a new set of puzzles. The correlation between the overall integrative policy index and the rate of foreigners among the imprisoned is an unimpressive 0.08. Four of the seven specific indices are equally unrelated to the foreigner rate of imprisonment: labor market mobility ($r = 0.09$), family reunion ($r = -0.11$), long-term residence ($r = 0.06$), and access to nationality ($r = 0.03$). The remaining three do show suggestive relationships. Antidiscrimination policies are moderately associated with lower rates of foreigner incarceration ($r = -0.30$), as one would hope and expect. But better access to education and more political participation are moderately associated with *higher* rates of foreigner incarceration ($r = 0.27$ and $r = 0.36$, respectively). Perhaps this set of outcomes points to a sense of relative deprivation among newcomers that impels them into crime or to a sense of threat from native-borns that impels them to treat newcomers as criminals. Once again, more research is needed.

C. Public Policies for Social Justice

Perhaps immigrant inclusion depends on a country's social policies for all residents, rather than on its specific treatment of immigrants. Analogous to MIPEX, *Social Justice in the OECD*¹¹ develops an overall social justice rating from six more focused indices, themselves derived from specific indicators. We show the summary rating in column 2 of Table 24.4.¹² Although countries differ internally across the six indices,¹³ what matters more here is interstate variation; countries at the bottom of the overall social justice rating do a little more than half as well as those at the top. The overall indices for MIPEX policies and *Social Justice* policies are somewhat related; a simple correlation between the average scores shows an r of 0.30.

The starting intuition about linking criminal activity or incarceration to social justice is the same as that about criminal activity or incarceration and immigrant integration: the more robust are policies for social justice, the less immigrants (like others) will be involved in the criminal justice system. But looking at specific countries gives one little confidence in the starting intuition. Only two countries with high social justice rankings (Finland and Canada) are in the lowest cluster of column 1, Table 24.1, whereas one with high social justice ratings (Switzerland) has the highest proportion of foreigners in the imprisoned population among all OECD countries. Conversely, six countries with weak systems of social justice have relatively few foreigners among the incarcerated. Looking at these data from the other direction, we see that several countries in which foreigners comprise a large share of the imprisoned population are in the top half of the social justice rankings, and half of the countries in which foreigners comprise a small share of the imprisoned population are in the bottom third of the social justice rankings.

As with MIPEX indices, correlational analysis raises more questions than it answers. The overall social justice rating correlates with the foreigner share of imprisonment at a level of 0.25. Two specific indices are not related to foreigner share of imprisonment: poverty prevention ($r = 0.10$) and access to education ($r = -0.03$). Three have a weak relationship: labor market inclusion ($r = 0.27$), social cohesion and nondiscrimination ($r = 0.20$), and intergenerational justice ($r = 0.25$). One has a strong relationship—health ($r = 0.58$). But all of these relationships are *positive*, which means that the more a country seeks to improve its residents' health, or perhaps to ensure labor market inclusion, social cohesion, and intergenerational justice among all residents, the higher the proportion of foreigners among the imprisoned population.

This disconcerting outcome needs much more careful attention. If it holds up under more fully developed statistical analyses, it may point to the difficulty of extending social resources and services to people perceived as outsiders or even interlopers (Alesina and Glaeser 2006; Putnam 2007; Palier and Thelen 2010). As Robert Putnam puts it, bonding social capital may come at the expense of bridging social capital (Putnam 2000).

V. CITIZENSHIP LAWS

Despite the lack of relationship between the MIPEX index for access to nationality and the share of foreigners among the imprisoned, access to citizenship seems essential for the broader point of enabling newcomers to be included in and have an impact on their new society. Perhaps the key point is change over time; MIPEX scores are cross-sectional, after all, and the move from migration to citizenship to political involvement to policy impact to policy outcome surely takes years, if not decades. Citizenship is no guarantee of protection from involvement with the criminal justice system, as the extraordinarily high rate of incarceration among African Americans makes painfully clear. But even if not sufficient, it is arguably necessary for full incorporation.

At the same time that Europe's migration policies are converging, unevenly, on greater restrictiveness for non-Europeans, citizenship laws are converging—also unevenly—on greater expansiveness. Citizenship can be understood in many ways. The richest understanding is the idea of *citoyen* that arose in the French Revolution and centers around loyalty to the Republic and active participation in society (e.g., Bloemraad 2006; Wong 2006; Ramakrishnan and Bloemraad 2008). Our focus is thinner—citizenship as a political and legal status. However, that form of citizenship is not thin; it gives one protection by the state, access to a passport, and full rights of political participation. In some polities, only citizens may hold certain jobs and obtain social welfare benefits. Unlike non-naturalized residents, a citizen cannot be deported if he or she becomes involved in the criminal justice system. Thus, legal citizenship can make a huge difference in a person's economic and political trajectory and in his or her rights and standing when associated with a crime.

One of three legal processes generates most grants of citizenship in a given polity: birthright citizenship by *jus soli*, birthright citizenship by *jus sanguinis*, and naturalization. Table 24.5 shows the general shape of these three processes across many OECD countries; it is roughly ordered from the least to the most restrictive citizenship laws.

Unconditional *jus soli* is the most open citizenship policy; everyone born on the state's territory (except for diplomats' children) is a citizen at birth regardless of their parents' legal status. This has traditionally been the policy in settler states, where constant immigration required rapid political incorporation of newcomers. As of 2012, all Western hemisphere states except Haiti practice a strong form of *jus soli*. In contrast, it is rare in other countries; all but two Eastern hemisphere states do not (Foner 2000; Office of Personnel Management 2001; Lucassen 2005; Lucassen, forthcoming 2014).

The United States is the prime example. Unconditional *jus soli* citizenship has been the practice de facto for whites since colonial times (Jacobson 1998; Zolberg 2006); the Fourteenth Amendment of 1868 guaranteed birthright citizenship for blacks, and eventually, the Supreme Court extended *jus soli* to U.S.-born children of all immigrants: "The fact, therefore, that acts of Congress or treaties have not permitted Chinese persons born out of this country to become citizens by naturalization, cannot exclude Chinese persons

Table 24.5 Laws for attaining citizenship, from least to most restrictive, in OECD countries, 2011

	<i>Jus soli</i> : Birthright Citizenship	Double <i>jus soli</i> : Third-Generation Citizenship	<i>Jus sanguinis</i> for Citizens	Ethnic <i>jus sanguinis</i>	Years of Residence before Naturalization
<i>Mexico</i>	Yes	—	Yes	No	5, some exemptions
<i>United States</i>	Yes	—	Yes, if parent or grandparent was resident citizen for at least 5 years	No	5; 3 if in military or married to citizen
<i>Canada</i>	Yes	—	Yes; if resident abroad, applies to 1st generation only	No	3 of last 4
<i>Chile</i>	Yes	—	Yes, child must be resident at some point before age 21	No	5
<i>Ireland</i>	Until 2005; now, if parent is permanent resident or resident for 3 of last 4 years	Yes	Yes, by registration if non-resident	All co-ethnics, with residency requirement; right to naturalize	4 of last 8
<i>Australia</i>	Until 1986; now only if at least one parent is permanent resident or citizen	No	Yes; if child and parent born abroad, parent must have resided in AU for 2 years at some point	No	4

(Continued)

Table 24.5 Continued

	<i>Jus soli</i> : Birthright Citizenship	Double <i>jus soli</i> : Third-Generation Citizenship	<i>Jus sanguinis</i> for Citizens	Ethnic <i>jus sanguinis</i>	Years of Residence before Naturalization
<i>UK</i>	Until 1981; now, if parent is unrestricted resident OR if child is resident through age 10	No	Yes	No	5
<i>Austria</i>	If parents are resident for 6 years	No	Yes, wedlock exception*	No	10
<i>Czech Republic</i>	If parents are permanent residents	No	Yes	No	5
<i>Slovakia</i>	If parents are residents for 3 years and has permanent resident status	No	Yes	All co-ethnics, with residency requirement; right to naturalize	8
<i>Germany</i>	If 1 parent is resident for 8 years; child must confirm by age 23	No	By registration if non-resident	Ethnic Germans in East Europe, in German-speaking countries, or if displaced by WWII—some have automatic citizenship	8
<i>Greece</i>	If child and both parents are permanent residents for 5 years	Yes	Yes	All co-ethnics; right to naturalize	7
<i>Portugal</i>	By declaration, if 1 parent is resident for 5 years or if child is resident for 10 years (legally or illegally)	Yes	By registration if non-resident	All co-ethnics; right to naturalize	6

<i>Finland</i>	If 1 parent has refugee status, if child is age 18-23, and if child is resident for 6 years	No	Yes, wedlock exception	No	6
<i>Belgium</i>	By declaration if both parents are resident for 10 years and at least one parent is permanent resident	Yes	Yes, by declaration if child and parent both born abroad	No	3; 2 if refugee or stateless
<i>France</i>	If native-born child of non-French parents is resident for 5 years after age 11, or by declaration if the child has lived in France for 5 years total	Yes	Yes	From Francophone countries, right to naturalize	5
<i>Spain</i>	May naturalize if child is resident for 1 year	Yes	Yes	Sephardic Jews, with residency requirement; right to naturalize	10
<i>Italy</i>	May naturalize if child is resident for 3 years or since birth	No	Yes	No	10
<i>Luxembourg</i>	No	Yes	Yes	No	7
<i>Estonia</i>	No	No	Yes	No	8

(Continued)

Table 24.5 Continued

	<i>Jus soli</i> : Birthright Citizenship	Double <i>jus soli</i> : Third-Generation Citizenship	<i>Jus sanguinis</i> for Citizens	Ethnic <i>jus sanguinis</i>	Years of Residence before Naturalization
<i>Norway</i>	No	No	Yes	Only from specific parts of Russia; right to naturalize	7 of last 10
<i>Japan</i>	No	No	Yes	No	5
<i>Denmark</i>	No	No	Yes, wedlock exception	From South Schleswig; right to naturalize	9
<i>Iceland</i>	No	No	Yes, wedlock exception	No	7
<i>Sweden</i>	No	No	Yes, wedlock exception if non-resident	No	5
<i>Poland</i>	No	No	Yes, unless other citizenship declared at birth	Only from Asian parts of former USSR; automatic citizenship	10
<i>Switzerland</i>	No	No	Yes, wedlock exception	No	12, + (varying) minimum residence in canton of naturalization, and other local requirements

* Wedlock exception: (with minor variations) citizenship is always passed by mother, but only by father if married to mother at time of birth.

Sources: Australian Department of Immigration and Citizenship (n.d.); Office of Personnel Management (OPM) (2001); Japanese Ministry of Justice (2006); Belgian Ministry of Foreign Affairs (2010); Swiss Federal Office for Migration (2011); Vink, de Groot, and Goodman (2012a).

born in this country from the operation of the broad and clear words of the Constitution, ‘All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States’” (*U.S. v. Wong Kim Ark*, 169 U.S. 704 [1898]). This remains a bright line rule, even for American territories that lack political representation.

The United Kingdom also practiced *jus soli* citizenship and applied it to most overseas colonies, although for the 19th and much of the 20th century this policy protected the status of British emigrants more than it opened the British door to colonized peoples. Australia, Canada, New Zealand, and other colonies initially adopted the same rule. But as immigration from the (former) colonies increased after World War II, the grant of British nationality to Commonwealth residents contracted, first in the U.K. and later in former colonies (Honohan 2010).

As Table 24.5 shows, conditional *jus soli* is more common in the European Union than is unrestricted birthright citizenship. Conditions vary, but usually the parents must reside legally in the country for some years before their children are citizens at birth. Citizenship for these newborns is automatic in some countries whereas, in others, the parents must apply for it or register the birth. The child must in some cases renounce any other citizenship to which he or she is entitled.¹⁴ (France has an unusual residence requirement, imposed on the child rather than the parents.) An important form of conditional *jus soli* is “double *jus soli*.” With minor variations across countries, this practice allows newborns of two noncitizen parents to be citizens if one or both parents were also born in the country. That rule guarantees citizenship to the third generation, rather than to the second generation, as with unrestricted *jus soli* (Vink, de Groot, and Goodman 2012a).

Another restrictive route to citizenship at birth is *jus sanguinis*, whereby citizens’ children are granted membership in the polity regardless of their birthplace. Despite the apparent contrast, *jus sanguinis* may occur in the same state as *jus soli*, as in the United States. Most countries offer *jus sanguinis* citizenship to the children of active citizens; many, particularly in Europe, also offer it to descendants of certain citizens who have lost or given up citizenship or who share ethnic ties with the state.

Pure *jus sanguinis* laws have been especially prominent in states delineated along ethnic lines, whether traditional or newly formed. Until the immigration reforms of 1999 and 2004, Germany relied almost exclusively on ethnically transmitted citizenship, as reflected in the parallel difficulty of naturalization for non-coethnics and the “right of return” for co-ethnics (Brubaker 1992, p. 123). Nordic countries have also adopted strong, exclusive forms of *jus sanguinis* citizenship, along with increasing variation in place of the coordinated policies they had in the past (Howard 2009; Ersbøll 2010). Some states extend *jus sanguinis* laws to co-ethnics even beyond the state’s borders, typically granting an entitlement to naturalize. Until recently, Germany granted citizenship once a claim was verified as valid, leading to the need to integrate around 3 million “repatriates” after 1988 (Bundesministerium des Innern 2012).¹⁵ In other countries, co-ethnic preference ranges from Poland’s narrow, historically rooted partiality for particular subgroups to Greece’s strong continuing preference for all co-ethnics (Vink, de Groot, and Goodman 2012b).

The distinction between *jus soli* and *jus sanguinis* need not be linked to the ease of naturalization, but the former has usually corresponded to easier naturalization

requirements than the latter. When Germany made naturalization more accessible in the early 2000s, it also expanded citizenship at birth (Hailbronner 2010, pp. 9–10). Settler states with unconditional *jus soli* also have less demanding residence requirements and cultural tests for naturalization than do other states. Restricted naturalization in these states has usually been aimed at particular classes of migrants (Chinese and other Asians in the United States, non-Europeans in Australia) (Palfreeman 1967; Tichenor 2002; Ngai 2004; Zolberg 2006). Conversely, states with the most restrictive rules for naturalization, such as Denmark, tend to have the weakest *jus soli* laws. France's joint ease of naturalization and absence (in modern times) of *jus soli* makes it the only major exception (Vink, de Groot, and Goodman 2012b).

Finally, due to humanitarian concerns, a sense of obligation to former subjects, or complications of administrative rules, former European colonial powers either have or have had weaker restrictions on admission, citizenship, and naturalization for people from their former colonies. As noted above, the United Kingdom, the Netherlands, and Portugal no longer have such a policy, but large groups were able to take advantage of shared citizenship status well into the decolonizing period.¹⁶ France used to treat birth in the former colonies as a privileged status for double *jus soli*; Algerians still retain this right (Bertossi 2010). Residents of former Spanish colonies have unusually brief waiting periods for naturalization in Spain, although no privileged migration access.

Citizenship laws can be surprisingly fluid, at least at certain moments of history. Eleven of the EU-15 countries liberalized their citizenship policies in the 1990s and 2000s (Howard 2009)—but the growth of populist radical right parties in Europe in the first decade of the 2000s led to reversal in some places (de Hart and van Oers 2006; Meguid 2008; Minkenberg 2009; Art 2011).¹⁷ Germany's consolidation of liberalizing reforms is an important exception to the trend toward reversal, but, even here, liberalization has been paired with language tests and other new requirements. And the contentious normative debate within the country's governing Christian Democratic Party suggests that change may not be complete.

The German case points to another trend: citizenship is becoming more substantive, as European countries increasingly treat naturalization as the “crowning of a completed integration process” (Bauböck 2006, p. 24). Under such a policy, migrants must attain considerable cultural knowledge to become a full member of the receiving community; naturalization acknowledges and rewards active citizenship rather than promoting it. This move may be part of a broader effort to reestablish national spaces and identities in response to Europeanization (Kostakopoulou, Carerra, and Jesse 2009) or an adjunct to neo-liberal pressures to restrict admission (van Houtd, Suvarierol, and Schinkel 2011). Whether using citizenship as a reward for rather than encouragement to active integration can succeed is unclear; Evelyn Ersanilli and Ruud Koopmans (2010) find that Turkish immigrants are much better integrated in countries where citizenship is more accessible.¹⁸

Citizenship laws, in sum, are complex, historically contingent, unstable—and crucially important as simultaneous indicator, effect, and cause of states' adaptation to and inclusion of immigrants. (See generally Weil 2001; Messina 2002; Bauböck 2006). They substantially shape immigrants' options for economic mobility, social assimilation, psychological engagement, and political influence.

But variations in citizenship laws have little direct relationship to foreigners' share of the incarcerated population in a given country. Four of the five states for which we have evidence in the top category of foreigner rates of imprisonment in Table 24.1 are in the middle category (*jus soli* laws with restrictions) with regard to citizenship laws in Table 24.5 (the exception is Switzerland, with very stringent citizenship laws; see D'Amato 2009; Hainmueller and Hangartner 2013). Looked at from the other direction, of the 12 countries in Table 24.5 with restricted *jus soli* policy, four have high, five have moderate, and three have low proportions of foreigners among the incarcerated. One association does seem strong enough to warrant further investigation: in all four cases of unconditional *jus soli*, the proportion of the prison population that is foreign born is very low. The causal links are surely complex and need careful examination—but, at least based on these cases, a history of generous citizenship laws is strongly linked to relatively low contemporary foreigner involvement in the criminal justice system.

VI. CONCLUSION

As scholars so often conclude, “more research is needed.” This essay has made several points, all of which raise new questions. First, despite the fact that many native-borns in almost all countries believe that immigrants bring or cause crime, states vary enormously in the share of prisoners who are foreigners. Even limiting ourselves to westernized, developed states, between 1 and 70 percent of the incarcerated are foreigners. Second, we have found no thoroughly compelling reason for that variation. Scholars, advocates, crime control professionals, and policy makers would all do well to seek further for explanations of this range in the hopes of fostering incorporation of newcomers and reducing levels of crime and/or imprisonment.

Several plausible-seeming associations show no consistent pattern. The share of foreigners among the imprisoned is not related to a country's overall rate of imprisonment. It is at most loosely linked to the share of foreign-born in the overall population. Access to education may (MIPEX) or may not (*Social Justice*) be associated with higher shares of foreigners among prisoners. Comparing the MIPEX and *Social Justice* indices also reveals that antidiscrimination policy and labor market policy show contradictory associations with foreigner shares of the imprisoned.

Other plausible relationships offer more promise for making sense of the variation in foreigner share of the incarcerated. Countries with a relatively large rise in the share of immigrants tend to have low shares of foreigner imprisonment. Countries with liberal market economies or those in which proportionally large shares of migrants are workers or workers' families, have relatively small shares of foreigners among the incarcerated. With due allowance for the ecological fallacy, we note that countries with high shares of European newcomers tend to have high shares of foreigners among the imprisoned. Countries with birthright citizenship have low levels of foreigner imprisonment.

These candidates for explanation will discomfit both the left and the right. Social democrats will be dismayed by the fact that countries with some of the strongest policies

for incorporating immigrants and for providing social justice to all residents have high shares of foreigners among the imprisoned. Proponents of the right will be dismayed by the fact that countries with the most generous citizenship laws—unconditional *jus soli*—have the lowest share of foreigners among the imprisoned.

Our findings may also discomfit scholars. After all, the two conclusions just noted—that *jus soli* citizenship is associated with low shares of foreigner imprisonment, whereas incorporative policies are associated with high shares—could be interpreted as contradictory. In addition, the fact that countries with relatively sharp rises in immigrant flows are also countries with low shares of foreigner imprisonment contradicts most research on the impact of rising proportions of newcomers in a community or polity. Scholars often argue that liberal market economies impose more penalties on low-skilled workers than do coordinated economies; that may be the case in general, but it does not accord with the fact that liberal market economies have much lower shares of foreigners among the imprisoned than do coordinated economies. And why are so many foreigners incarcerated in countries with high levels of intra-European migration?

There is too little information to warrant any assertion about associations between undocumented status and foreigner involvement with the criminal justice system. Are unauthorized immigrants the most likely to become involved with crime, as public opinion asserts, perhaps because they have few work opportunities? Or are they the least likely to become involved with crime, as advocates assert, perhaps because they are especially fearful of public visibility? We do not know.¹⁹

Another crucial question is how change over time differs from the cross-sectional analyses that comprise most of this essay. Perhaps policies to incorporate immigrants or to provide social justice to all residents of a country have the short-term effect of increasing the foreigner share of prisoners (through dynamics of relative deprivation, bonding social capital, or something else) but have the opposite effect over the long term. Perhaps policies to simultaneously tighten citizenship laws and heighten substantive requirements for citizenship will make newcomers who overcome these obstacles feel more incorporated—or less welcome. On all of these issues, and more, additional research and policy analysis is sorely needed.

Finally, some unknown share of the patterns we have been parsing are due to uninteresting but important issues of countries' definitions of foreigners, rather than to substantively meaningful issues of incorporation or exclusion. Absent fully comparable data, even basic patterns are indeterminate. More research is needed.

NOTES

1. Our thanks to Medha Gargeya for excellent research assistance, Justin Gest, Peter Hall, and Julia Teschlade for important insights, and the *Handbook* editors for extremely helpful suggestions.
2. These results appear in both of the most extensive datasets, the International Centre for Prison Studies' *World Prison Brief* (International Centre for Prison Studies 2011) and the Council of Europe's *Annual Penal Statistics SPACE I, Survey 2010*, Table 3.2 (Council of Europe 2012). This essay relies more on the former because it includes the United States and additional countries outside Europe.

3. Unless it is in a quotation or paraphrase, we avoid the more politically charged terms “integration” and “assimilation” in favor of the terms “incorporation” and “inclusion” (used interchangeably). We address only individual, not group, incorporation, by which we mean a newcomer’s capacity to live a reasonably effective and satisfying life in a host country for a long period of time. That includes most if not all of the following: a job or some other legal means of attaining income that permits economic independence; the ability to meld home country and host country norms of family life and gender roles into a viable set of practices; schooling for one’s children; acquisition of enough of the host country language and social practices to be able to negotiate daily life; development or maintenance of a sustainable ethnic, national, or religious identity; and access to political participation and, eventually, a reasonable share of influence and power (see Hochschild and Mollenkopf 2009; Hochschild, Weaver, and Burch 2012; Hochschild, Chattopadhyay, Gay, and Jones-Correa 2013). Unless otherwise noted, we use “migrant,” “immigrant,” and “foreign-born” interchangeably.
4. Nevertheless, the size of an immigrant population is not a sufficient condition for a sense of threat or for political behavior associated with threat. Several sets of scholars find an inconclusive effect of the number of immigrants on the success of anti-immigrant political parties (Lubbers and Scheepers 2000; Van Der Brug, Fennema, and Tillie 2005). Others find that the effect of the number of immigrants may depend on where immigrants are located at a given time in the migration cycle (Semyonov, Raijman, and Gorodzeisky 2006).
5. No standard typologies include non-Western countries except at the margins. Despite Freeman’s (1995, p. 882) optimism about the growth of regionally focused studies, we see little progress in integrating regional studies with the rest of the migration literature. Research extending standard typologies beyond the core of developed Western countries is beginning (e.g., Dumbravă 2007; Boucher and Gest 2013), but remains limited by the lack of systematic, reliable, comparable data (Ratha and Shaw 2007).
6. See, for example, Gallup 2012 for the United States. Across the 27 countries of the 2003 ISSP, anywhere from one-third of respondents (in Canada) to more than four-fifths (in the Russian Federation) wanted to reduce the number of immigrants. In 21 of the 27 countries, that was the view of at least half of the respondents (Organization for Economic Cooperation and Development [OECD] 2010c, Part III).
7. In some countries, especially Canada, “family reunification” and “family accompanying workers” follow on a history of encouraging only high-skilled workers for many decades. In such a case, family has very different socioeconomic implications than it does in countries such as the United States or Germany, in which most families are accompanying or reuniting with a very low-skilled worker.
8. *Transatlantic Trends: Immigration* is “a project of the German Marshall Fund of the United States (www.gmfus.org), the Compagnia di San Paolo (www.compagnia.torino.it), and the Barrow Cadbury Trust (www.bctrust.org.uk), with additional support from the Fundación BBVA (www.fbbva.es).” It has been conducted annually since 2008. Sample size is about 1,000 respondents in each country and is representative of the adult population over age 18 (Transatlantic Trends 2010).
9. Unless otherwise noted, all survey results in this paragraph are from the Roper Center for Public Opinion Research, iPoll (www.ropercenter.uconn.edu). The 1996, 2000, and 2004 General Social Surveys found a range from just over a quarter to almost three quarters blaming rises in crime largely or somewhat on immigrants.
10. “The MIPEX project is led by the British Council and the Migration Policy Group. Thirty-seven national-level organizations, including think-tanks, non-governmental

organizations, foundations, universities, research institutes, and equality bodies are affiliated with the MIPEX project alongside the British Council offices in 31 countries across Europe, Canada, and the USA. ... The MIPEX III is produced as part of the project: Outcomes for Policy Change, co-financed by the European Fund for the Integration of Third-Country Nationals" (MIPEX 2012).

11. *Social Justice in the OECD* "encompasses those areas of policy that are particularly important for developing individual capabilities and opportunities for participation in society. ... The Justice Index is based on quantitative and qualitative data collected by the Bertelsmann Stiftung within the framework of its Sustainable Governance Indicators (SGI) project (www.sgi-network.org). The SGI survey ... offers a systematic comparison of sustainable governance in 31 OECD member states. Some of the 150 indicators used in the SGI survey have been selected and aggregated for use in the Justice Index following a tested procedure for measuring social justice" (Schraad-Tischler 2011, p. 13).
12. The specific indices are (1) poverty prevention (double weighting), (2) access to education (double weighting), (3) labor market inclusion (double weighting), (4) social cohesion and nondiscrimination, (5) health, and (6) intergenerational justice. Each index includes three to eight indicators, for a total of 29.
13. For example, Australia rates 4.2 on poverty prevention and 8.1 on labor market inclusion, whereas Hungary is the reverse, with 9.1 on poverty prevention and 4.8 on labor market inclusion.
14. Exceptions are often made for countries (such as Morocco, de facto) that do not allow citizenship to be given up. However, receiving countries have pressured sending countries with "perpetual allegiance," such as Turkey, to change this policy. Turkey retained it into the 1990s (Perrin 2011).
15. Demand has dropped significantly, with fewer than 5,000 applicants per year in the last few years (Bundesverwaltungsamt 2012).
16. Sometimes with dramatic results: over 180,000 first-generation Surinamese immigrants live in the Netherlands, most of whom arrived in the first 5 years after independence. That compared with only 380,000 residents of the colony in 1972 (Choenni and Harmsen 2007; Centraal Bureau voor de Statistiek 2012).
17. The European Convention on Nationality, reinforced by an increasingly globalized rights discourse (Soysal 1994; Joppke 2010), may limit restrictions on citizenship (de Hart and van Oers 2006, p. 345). For counterarguments focusing on each country's continuity of incorporation across earlier and later waves of migrants, see Foner (2000); Lucassen (2005); Lucassen (forthcoming 2014).
18. They see the French model of easy naturalization combined with strong linguistic and cultural demands as the most effective strategy for immigrant incorporation.
19. Another question is specific to the United States: Why does one of the most liberal market economies, with very low shares of foreigners among the imprisoned, have such a high rate of overall incarceration? The answer, of course, involves the unique history of African Americans, but how immigrants get sorted into the American racial dynamic remains an open issue. This unique history also does not explain the similar pattern in Russia, of high rates of incarceration overall but low shares of foreigners among the incarcerated.

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CHAPTER 25

ETHNICITY, CRIME, AND IMMIGRATION IN FRANCE

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MEMBERS of some minority groups are overrepresented among crime victims, arrestees, pretrial detainees, convicted offenders, and inmates in every Western country (Tonry 1997, p. 1). This is true of France, where the affected group are young men of North African and African origin, with variations that change with their status as foreigners or as French citizens with immigrant parents and with the region in which they live.

In 2012, 2,945,000 documented foreigners live in France, 4.6 percent of the total population of 65 million (Leclerc 2012). In January 2012, the Minister of Interior denounced an “over-representation of foreign offenders,” amounting to three more times than their relative share of the population (foreign adults constituting 13.2 percent of total convictions). He announced that 32,912 undocumented immigrants had been deported in 2011, and expressed hopes to reach 35,000 in 2012. He added that the number of naturalized people had decreased by 30 percent (from 94,500 in 2010 to 66,000 in 2012) (Vincent 2012).

This essay provides an overview of ethnicity, crime, and immigration in France. Section I focuses on political and cultural controversies regarding aliens’ crimes and institutional discrimination and provides a demographic overview of the *immigré* population. Sections II-IV examine data sources and their limitations, group differences in offending and victimization; and knowledge about disparities within the criminal justice system. Section V discusses the particular problems of the police in dealing with disorder and with marginalized offenders. Section VI, the conclusion, discusses a range of important major issues, including the politicization of these issues, the criminalization of certain types of offenders, and police profiling of visible minorities.

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In writing this article I draw on fieldwork in neighborhoods, experience as a member of the National Police Complaints Authority (Commission nationale de déontologie sur la sécurité-CNDS),¹ support from the Center for Sociological Research on Law and Penal Institutions (CESDIP), and surveys of published sources and official data.

A number of conclusions stand out:

- The French state does not recognize race, ethnicity, or religion as fundamental characteristics of people. There are citizens and several categories—foreigners, immigrants, people of foreign origin—of noncitizens. As a result, official data systems contain no references to race or ethnicity, only nationality.
- Disadvantaged young people tend to identify primarily with other young people from public housing projects in the outskirts rather than with ethnic or racial groups.
- Youth in “high risk” urban zones in France see police discrimination and brutality as a fundamental problem of their relationship to the state.
- Foreigners are significantly overrepresented among criminal suspects, though the degree of overrepresentation varies by offense and is obscured by inability to distinguish between offense between resident and transient foreigners.
- France has a modern history of xenophobia and hate crime dating from Algerian independence. It is kept alive by right-wing parties and xenophobic groups and produces a sense of alienation in many young people, especially among those from North African and Muslim backgrounds.
- Foreigners and immigrants are overrepresented among those sent to prison and tend to receive more severe punishments than French suspects. Research on this subject is, however, exiguous, and it is unclear whether disparities represent invidious bias or are the results of disadvantaged social backgrounds that make community penalties less likely or of differences in records of past criminality.
- Overrepresentation of foreigners and immigrants in French prisons, overall, and especially among people of North African origin, has declined since the early 1990s. Overrepresentation of prisoners from Eastern Europe and among the Roma has increased.
- Xenophobia among the broad French public, as measured by a variety of surveys, is declining.

I. BACKGROUND

Two distinct concepts—*étranger* (foreigner) and *immigré* (immigrant)—frequently overlap in discussions of fear of crime, urban violence, and antisocial behaviors. Legal and statistical definitions distinguish the two concepts: a foreigner is someone who does not hold French citizenship. *Étrangers* born in France are not *immigrés* and *immigrés* who become French citizens are no longer *étrangers*. An *immigré* is someone born a foreigner

abroad who came to France and generally resides there continuously (in contrast to short-term migrants or tourists).² A third sociological (but not legal) category is *people of foreign origin*—those born in France with a parent or grandparent who was an *immigré*.

Sociologically, *immigrés* and *people of foreign origin* are equivalent to racial minorities in some countries. In France, the idea of race is nonessential. In political theory, individuals are seen first and foremost as citizens of the French state. When people become citizens, whether by birth or naturalization, they become part of the nation. Individuals in France cannot claim for themselves or for their ethnic group, religion, or national origin any distinctive recognition or treatment that would loosen the links of the implicit contract they have, as individuals, with the French state. Attempts to assert ethnic pressures generally lead into blind alleys.³ The state, in short, does not actively participate in creation or recognition of racial or ethnic groups (Body-Gendrot 1995, p. 247).

Nonetheless, since the middle of the nineteenth century, France has been a country of immigration (Noiriel 1992, p. 69). It currently has the largest Muslim and Jewish communities in Europe. Yet the state in France and its institutions remain the major agents of unification of a society increasingly composed of multicultural individuals of diverse origins and ethnic and religious backgrounds. That is why the French speak of “immigration”—as a social and political problem—and not of “ethnicity.”⁴

A. The Ethnicity Issue

The French Constitution asserts that French citizens are not to be differentiated by race, origin, or religion. The French promote the ethnicization of individuals into a fictitious ancestry (“our ancestors, the Gauls”) (Balibar and Wallerstein 1988; Haut Conseil à l’Intégration 1991; Body-Gendrot 1995). When more than a century ago, foreigners from neighboring countries settled in France, they were not perceived as foreigners. They were recruited as workers, engineers, and soldiers (Weber 1976). Their migration to cities was incorporated within the larger migration of the French peasantry and they became marginalized just like other components of the working class. The boundaries were established along class lines and marginality was not linked to nationality. The working class (the “dangerous class”) was marginalized then, much as the contemporary working class of postcolonial origin is marginalized today. The two processes, however, are similar in that they essentialize the outsider groups (Body-Gendrot 2004, p. 152).

The long process of homogenization of society into French men and women assigned exaggerated importance to judicial criteria for nationality and citizenship as the fundamental principles of social classification (Noiriel 1992, pp. 70–72). From the beginning of France, official administrative classifications have been based on occupational categories and on nationality. All census questions regarding religion, language, and race were banned at the end of the nineteenth century by the Third Republic.⁵ Foreigners disappear from the historical scene at the moment they or their children become legally French. Few pay attention to the “posthumous prosperity” that they brought (Sayad 1999).

Tools like systematic, large-scale, quantitative ethnic surveys that are used to document and fight ethnic, religious, and racial discriminations in other countries are banned

in France and social scientists and public authorities are themselves divided regarding this practice. Some claim that ignoring ethnicity and race offers protection from the kind of persecution that occurred to Jews during the Vichy Regime. They argue that such concepts are not scientific and that giving official recognition to concepts of differences (minority, community, race) will encourage the formation of organized groups and open the door to competition among them for recognition of the injustices they suffer and for funding (and to an increase in social separation that would “tear France apart”). They also point out that concepts and terms such as “race” and “ethnicity” do not have the same meanings in different countries, due to different social histories, and that such classifications are not clear, coherent, or comprehensive. Other scholars note that ethnic and religious identity have played increasingly important roles in peoples’ lives in the last 30 years, and that people mark their differences through clothing, behavior, and patterns of association, whether with a xenophobic bias or with a sense of pride and cultural assertion. Police officers and judges are not immune from the recognition of difference. Discrimination based on race and ethnicity exists and cannot be redressed without knowledge of its nature and their effects. The official silence surrounding such issues and an official culture of denial are distinctively French (Body-Gendrot and de Wenden 2007).

B. Demographic Profile

As Table 25.1 shows, in 2008 there were 3,715,000 foreigners (5.8 percent of the population) and 5,342,000 *immigrés* (8.4 percent) in France. These data have been stable since 2000.

One-third of *immigrés* have French citizenship. Eleven percent of 18- to 50-year-olds born in metropolitan France are *immigrés*’ children. Half have two *immigré* parents, 20 percent have an *immigré* mother, and 30 percent an *immigré* father. Half these children had *immigré* parents born in Europe and 40 percent had parents born in Africa (mostly North Africa).

Table 25.2 presents data on *immigrés*’ countries of birth. Half the 18–30-year-old age group have one African parent (Borrel, Lhommeau 2010; Prioux, Mazuy, and Barbier 2010). There are as many *immigré* women as men. Sixty percent of *immigré* households in 1999 were concentrated in the three major industrial regions: 37 percent in Île-de-France (the Parisian region), 11 percent in Rhône-Alpes (around Lyon), and 10 percent in Provence-Alpes-Côte d’Azur. Nine of 10 live in cities and half at the periphery of cities (Borrel, Lhommeau 2010; Prioux, Mazuy, and Barbier 2010). These aggregate statistics leave much unknown that needs to be known if the overrepresentation of foreigners and *immigrés* in the criminal justice system is to be understood. They provide no information about the social, economic, and political contexts. Pager (2008, p. 378) observed that, given that they are more likely “to be unemployed, to be young, and to live in precarious conditions, it is difficult to discern the degree to which their overrepresentation is the result of citizenship status itself as opposed to an array of contextual factors that may be correlated with both nationality and criminal involvement.”

Table 25.1 Structure by age of the foreign and *immigré* population in France

Population	Foreigners	<i>Immigrés</i>
Men	51%	49%
Population Share		
<i>Under 15 years old</i>	17%	5%
15–24	10%	9%
25–54	49%	55%
55 or more	25%	31%
Number (in k's)	3,715	5,342
Percentage of the population	5.80%	8.40%

Source: INSEE, RP2008 main results.

Table 25.2 *Immigrés* in France by country of birth in 2006, in thousands

Country of origin	2006
Algeria	691
Morocco	634
Portugal	569
Italy	330
Spain	269
Turkey	229
Tunisia	227
United Kingdom	134
Germany	128
Belgium	102
China	69

Source: INSEE, census of population.

II. SOURCES AND THEIR LIMITATIONS

How many young people are stopped and searched by the police because they look African rather than Indian? How many foreigners spend more than one year or a lifetime in prison? What do we know about group differences in offending, victimization,

and case processing, and the reasons for these differences? Only age, gender, and alien status are used to measure crime in France. Compared with the “racial-relations industry” abroad, quantitative studies on criminal justice system institutions, especially in the judicial process, are scarce.

However, we know much more than we used to. Jobard and Levy (2011) have examined decades of research that I briefly summarize next. In the 1970s, French scholars interested in the criminal justice process described an 80 percent overrepresentation of foreigners in pretrial detention in the Seine department in 1969 and in juvenile detention centers. This was explained by a delinquency of “maladjustment” and by the violence of Algerian delinquents (Desdevises 1980, p. 76; Fize 1981). These foreigners’ structural conditions of deprivation (poor housing, precarious jobs, family crises) were reported by social workers to the judges who accordingly believed that detention was called for because of a lack of social supports. Foreigners made up 21.4 percent of those indicted, but 78.9 percent of those detained. Native born were 73.4 percent of the indicted and 54.4 percent of the detained (Fize 1981, pp. 18–19).

During the next decade, studies on the police addressed their attitudes and occupational culture, and discriminatory behavior toward members of specific groups. It is well known that offenders and police officers share circular and reciprocal negative attitudes and stereotypes that feed antagonisms. Wieviorka and his team (1992) found that the police had difficulties dealing with people of foreign origin, that they resented being called racists, and that they held negative views of such “clients.” “In the police, we are not racist, we become racist,” one officer remarked (Wieviorka et al. 1992, p. 162).

Many young males in marginalized neighborhoods are hostile to the police, but this is less because of the color of their skin or their national origin than because of the social exclusion from mainstream society they experience and which is symbolized by the police. In return, young police officers resent being harassed by male youths. Monjardet and Gorgeon (2005) observed cohorts of police students at the entry of the police academy over the 10 years 1992–2002 and noted that their attitudes changed in a conservative, right wing direction. Rather than reflecting any consensus on social values, their professional culture reflected a common social space (Anderson 2011, p. 203). If there was racism, it was functional and acquired through work circumstances and specific situations. Another large survey of 5,221 police officers in 2003, however, revealed a decrease in attitudes hostile to foreigners but growing tensions with young people from problem neighborhoods (Pruvost and Nevanen 2009). Levy (1987) had previously reached similar conclusions when he analyzed police officers’ attitudes.

Young people’s self-identities may differ from the characterizations of police, politicians, and the media. Body-Gendrot (2005, 2007), conducting interviews at the request of the Ministry of the Interior and the National Police Complaints Authority, found that young people tended to identify primarily with other young people from public housing projects in the outskirts rather than with ethnic or racial groups. Their identities and loyalties were territorially based. Such territories may contain people from 30 or 40 nationalities, French native born included. The latter may be part of a multicultural *bande*, forming and splitting rapidly. Intersecting factors of location, age, gender, and

socioeconomic disparities and inequalities are crucial in the production of social and political cleavages and in the formation of *bandes*. The constant process of interactions between majority and minority groups (meeting daily in the case of youth and police and influencing each other continuously) explains why “ethnicity is no more fixed than the situations in which it is produced and reproduced. At certain moments, a salience of ethnicity may occur but its occurrence is discontinuous” (Body-Gendrot 2010b, p. 662).

However, for residents living near alleged or real offenders who act collectively, ethnicity as an attribute can make sense when disturbance seems to come from particular groups. “The inconspicuousness of incidents, taken separately, is more than compensated for by their repetition, which makes life unbearable for the victims. Suppose that someone is threatened or insulted by a group of youth every evening when he or she comes home. In itself, the fact is not dramatic, but if it goes on repeatedly, by the end of a month, the victim will dread its repetition, and after three months, the victim will frantically try to move to a more peaceful environment” (Robert 2007, p. 103).

Victimization is most resented in poor areas, since it is tied to an environment to which one is relegated for lack of exit options. These are places where actors and victims live side by side. Frequently, they are the same people, at different times both violent actors and victims of violence. The demonization of “the Other” is expressed by Mirko Andrijevic, a 60-year-old worker at Creil, in the Parisian region. He became French 15 years ago, and he voted for the far right in 2002. “It is not a problem of race but of attitude. How can you integrate someone who does not want to be like you and who does nothing like you? I am an immigrant and I always considered that, as a foreigner, I had to keep a low profile. Youth today could not care less.” A 50-year-old bus driver, also living in Creil, more recently added: “One day, they [the youth] will come down from the hill [where the housing projects are] and will break everything. Voting for Le Pen [the far right candidate] here, is first of all the vote of those who do not like the hill and are afraid of it” (Bronner 2007, p. 1).

Police officers are not immune from such opinions. Body-Gendrot and de Wenden (2003) conducted interviews in police academies and examined records of calls made to toll-free numbers available to anyone who wanted to report being the target of discrimination on ethnic, religious, or sexual grounds. In the first 2 years, less than 8 percent (797) of calls complained about police attitudes or behavior. People complained about discriminatory stops and frisks, the length and conditions of police custody, abuse, violence and battery requiring medical examination, police refusals to record citizens’ complaints, and disputed charges of insulting or resisting a police official. Despite the uncertain reliability of these calls, the findings indicate patterns of police abuse and discrimination, which were confirmed by hearings Body-Gendrot held at the Police Complaints Authority (CNDS); these are summarized in yearly reports (Body-Gendrot and de Wenden 2003, p. 25; Anderson 2011, p. 204; CNDS annual reports). Such misconduct is unusual but when it occurs, it harms the victims who have far fewer resources to make their cases than do the police officers they complain about.

A 2009 Soros Foundation-sponsored study of French police profiling in two central railway locations in Paris illustrates the difficulty in isolating ethnicity as an element in police profiling. Between October 2007 and February 2008, trained monitors observed

how police checked identities. Some of the people stopped were subsequently interviewed. People dressed in “youth culture” mode made up 47 percent of 525 stops, but only 10 percent of the people available to be stopped. Arabs were 7.6 times and blacks six times more likely to be stopped than people of European appearance; of those two minority groups two-thirds were dressed in “youth-culture” style. The researchers point out that clothing is a racialized variable, adding that a young white male in hip-hop clothing was more likely to be stopped than a black male wearing a business suit. Blacks formed 43 percent of the sample but only 14.5 percent of them wore youth culture clothes. This minority of a minority was almost always stopped. Only 3 percent of those stopped complained of racist or disrespectful treatment by the police (Open Society Justice Initiative 2009).

The Council of Europe has insisted that police develop a more accurate, respectful, and sensitive vision of various ethnic and racial groups (Conseil de l'Europe 1994, pp. 15, 19). Nonetheless, and despite a directive of the French Ministry of the Interior in 1999 that police forces should better reflect the populations they serve, national police institutions have been reluctant to open their ranks to second- and third-generation people of *immigré* origin. This challenge has been assigned to private security agencies and municipal police forces.

A 2009 study showed that only 20 percent of the five thousand people working at the Ministry of Interior (three-fourths being police officers) were *immigrés* (born abroad or in overseas French departments or having parents who were *immigrés*). People of African descent made up 3.4 percent. A tiny minority (1.4 percent) had been born abroad (Meurs and Heran 2009). In 2006, 7 percent of rank and file police were unofficially estimated to be from minority groups, up from 4.4 percent five years earlier (Smolar 2006).

There is, thus, a slow opening to diversity, but among 1,800 police chiefs, only five are of North African origin, according to a police respondent at CNDS (2010). Special training sessions were launched in 2006 to recruit more minority candidates, but cuts in the number of public servants since 2007 have undermined achievement of that goal.

In more decentralized countries, change is frequently triggered by pressures exerted by organized minority groups exercising political pressure and acting from the bottom up and by antidiscrimination organizations that find political allies. In France, the national police are insulated from advocacy group pressures unless the issues are taken up by mainstream political parties. Except for the League of Human Rights and, in former years, the CNDS yearly reports, there are no channels through which these issues can be politically acknowledged. The status quo persists.

Youth in “high risk” urban zones in France see police discrimination and brutality as a fundamental problem of their relationship to the state. The scant attention paid to these issues in state and reform discourses makes France an anomaly in international comparisons. At first glance, both delinquent police officers and juveniles appear to share the indifference of mainstream French society and its political ideology to racial and ethnic dimensions of violence in marginalized minority neighborhoods. At second glance, the strength of entrenched institutions and police unions explains the denial of institutional

misbehavior. This lack of accountability within French political culture helps explain why the French national police are so reluctant to embrace community policing or to acknowledge the histories and geographies of intersecting racial, postcolonial, and class hierarchies.

III. OFFENDING AND VICTIMIZATION

Offenses are divided into three categories: *crimes* or major offenses tried by a popular jury;⁶ *délits* or moderately serious offenses tried by a criminal court; and *contraventions*, infractions or minor offenses judged by police courts (Tournier 1997). The general English word *crime* in French would translate as *délits* or *contraventions* (whereas the use of the French term *crime* is correlated with prison sentences). Since 1972, the Ministry of the Interior has published yearly reports on “delinquency.” After 2012, these imprecise reports will stop; in them, the theft of a sweater counts for one and a murder for one and the total number of all criminal events is used to establish curves of increase or decrease in delinquency. From 2012 onward, only numbers and trends by types of crimes will be published. Such data, in any case, refer only to police initiatives and to police reports to the public prosecutor’s office. However, only certain crimes are counted; some types of offenses, such as motoring offenses and white-collar crimes, are handled by other agencies.

Offenders in France are referred to as *suspects* because, for the police, they are “under suspicion.” Suspects (*mis en cause*) are people believed to be the perpetrators or accomplices of crimes. Official statistics reveal that 2,146,479 property crimes and 346,741 crimes against the person were recorded in 2011. These figures reveal a 16.47 percent decline (less 678,000 crimes) in the last 10 years (see Table 25.3).

In the 2011 report, housebreaking was up 17.1 percent, whereas vandalism was down 10 percent. Sexual violence was up 10 percent, whereas aggravated thefts were down 7 percent. Clearance of crimes, owing to the use of DNA and other forensic tools used, averaged 38 percent (compared with 26 percent in 2002). Offenses that have been cleared are reported, not those for which no report was filed (Tournier 1997, pp. 527–29).

Table 25.3 Evolution of property crimes and against the persons, in percent

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Property crimes	51.7	51.3	47.9	44.8	43.2	41.3	38.2	36.1	35.7	34.8	34
Crimes against the persons	6.1	6.4	6.5	6.5	6.7	7.1	7	7.1	7.3	7.4	7.4

Source: National Observatory of Delinquency 2012.

As in the rest of the Western world, police statistics are criticized as partial, depending on police orientations and on local police management, but they are the most comprehensive of all sources, going back to the 1950s. They are most revealing concerning trends for particular types of crime. For instance, as Table 25.3 shows, there is a marked contrast between property crimes and violent crimes. Crimes against the person have slowly but steadily risen, from 6.1 percent of the total in 2001 to 7.4 percent in 2011. Property crimes dropped in the same period: car thefts (−7.1 percent), aggravated thefts (−0.1 percent), burglaries of commercial or industrial properties with arms (−19.1 percent).

The Minister of the Interior suggested that a 17.1 percent increase in housebreaking involving second homes in 2011 was due to foreign offenders and to “raids” by “malefactors from abroad” moving rapidly from one country to another. Burglaries by foreigners increased by 40 percent, he said, on the basis of a report on foreign delinquency (Borredon 2012).

Targeting foreigners is nothing new in politics, especially when the 2012 national elections loomed. In August 2011, Romas were said by the Minister of the Interior to be responsible for 2 percent of the delinquency in France, half of the Roma offenders being juveniles. France was condemned by the Council of Europe for “discrimination and measures contrary to human dignity” after the deportation of Romas during summer 2011.

A. Foreign Suspects

Why, Mucchielli (2003) asks, are foreigners overrepresented among suspects? Part of the answer is that police pay more attention to members of visible minority groups than to old ladies. Another part is that certain offenses they disproportionately commit are more easily cleared by the police: in 2000, minority suspects for homicide (291 suspected), were cleared in 78 percent of the cases; for rape (703 suspected), 75 percent were cleared; for drug trafficking (1,992 suspected), 117 percent were cleared; for unauthorized firearms (2,025 suspected), 100 percent were cleared; for violence and rebellion toward an authority (3,744 suspected), 97 percent were cleared; for shoplifting (10,737 suspected), 87 percent were cleared; and for nonlethal blows and wounds (11,747 suspected), 72 percent were cleared.

In 2011, regarding property crime, the number of foreign suspects reached 52,751 (out of 305,708 suspects). Tables 25.4 and 25.5 provide relevant data. This share—around 11.5 percent—decreased slightly after 2006. According to Tournier and Robert (1991, p. 67), these property offenses concern categories of foreigners who do not have the same profile as those categorized in the general population. For instance, many Romas are not counted in the census because they are nomadic, but if they are stopped and suspected, they enter the police statistics as foreigners. Mucchielli (2003, pp. 39–40) observes that foreigners are overrepresented in petty crimes, car thefts, arson, vandalism, and domestic and parental offenses, and are slightly overrepresented in burglaries,

Table 25.4 French and foreign suspects. Crimes against property in 2005

	Total		French		Foreigners	
	Number	%	Number	%	Number	%
CRIMES AGAINST PROPERTY	318,203	100	274,593	100	43,610	100
THEFTS	232,475	73.1	195,499	71.2	36,976	84.8
Non violent thefts	209,926	66	176,066	64.1	33,860	77.6
Specific thefts	81,793	25.7	73,261	26.7	8,532	19.6
Thefts linked to motor vehicles	45,139	14.2	41,070	15	4,069	9.3
Burglaries	36,654	11.5	32,191	11.7	4,463	10.2
Simple thefts	128,133	40.3	102,805	37.4	25,328	58.1
Simple thefts against persons (excluding thefts in vehicles)	48,462	15.2	41,452	15.1	7,010	16.1
Including pickpocketing	4,277	1.3	2,038	0.7	2,239	5.1
Simple thefts against other victims (vehicles excluded)	79,671	25	61,353	22.3	1,818	42
Including shoplifting	57,385	18	41,680	15.2	15,705	36
Aggravated thefts	22,549	7.1	19,433	7.1	3,116	7.1
Thefts with firearms	2,506	0.8	2,254	0.8	252	0.6
Thefts with non-firearms	3,034	1	2,581	0.9	453	1
Thefts without arms	17,009	5.3	14,598	5.3	2,411	5.5
DESTRUCTION AND VANDALISM	85,728	26.9	79,954	28.8	6,634	25.2
Destructions and vandalism of public goods (except arsons)	16,275	5.1	15,368	5.6	907	2.1
Destructions and vandalism of private goods (except arsons and private vehicles)	33,438	10.5	30,233	11	3,205	7.3
Destructions and vandalism of private vehicles	26,842	8.4	24,770	9	2,072	4.8

Source: National Observatory of Delinquency. 2006, Table 2.

thefts inside cars, swindling, forgery and use of stolen checks, and sexual crimes (except rapes). They are heavily involved in drug and human trafficking, pickpocketing, and pimping. In 2011, around 27 percent of foreign suspects were shoplifters and pickpockets; 10.8 percent committed aggravated thefts on women in public spaces (without arms); and 20.3 percent burglarized homes, a statistical increase compared with 2006 (16.6 percent).

Table 25.5 Crimes involving the largest numbers of foreign suspects in property offenses

	Foreigners	French	Total	% of Foreigners
Pickpocketing	4,005	1,835	5,840	68.6
Shoplifting	16,657	14,657	61,924	26.9
House burglaries without arms	66	638	704	9.4
Thefts of women in public spaces (without arms)	724	4,941	5,665	
Aggravated thefts in homes	38	373	411	9.2
Thefts with nonfirearms	44,150	173,056	217,206	20.3

Source: General yearly tables on suspects from 2006 to 2011, National Observatory of Delinquency. (2012, pp. 10, 21, 24, 28, 33).

Between 1996 and 2005, the number of foreign suspects for crimes against the person (not including aggravated crimes) rose by 75 percent from 16 thousand to 28 thousand to a 14 percent share of the total. However there was a higher (83 percent) increase among the general population (National Observatory of Delinquency 2006). This percentage had been stable for over 25 years. In 2011, over 240,000 people were suspected for crimes against the person, including 29,798 foreigners, that is, 12.4 percent of the total (versus 14.2 percent in 2006). The difference is explained by the growth of French suspects (+12 percent between 2006 and 2008), whereas the number of foreign suspects remained stable (National Observatory of Delinquency 2012, p. 19). See Tables 25.6 and 25.7.

Foreigners are overrepresented among suspects in homicide, manslaughter, and pimping, but these offenses are quantitatively scarce in France. Over a quarter of drug trafficking suspects are foreign, but it is not known what proportions of those who do not live in France or are permanent residents are caught in the act of selling drugs for French criminal groups.

Data on juvenile delinquency provide no information of the respective behaviors of second and third immigrant generations; however, there is a strong association in the public of being young, male, minority, nonwhite, and being delinquent in particular urban locations. Official data for 2010 showed that 46 percent of solved aggravated thefts between 2005 and 2009 were committed by juveniles but also that juveniles were especially likely to be the victims of such acts. These data concern only offenders caught by the police (14 percent) and aggravated thefts often involve new consumer products like cell phones. Many of these offenses occur in school areas, something that, since 2005, has been treated by the police as an aggravating circumstance.

In 2004, 42 percent of foreign suspects involved in crimes against the person in the Paris area were between 19 and 30 years old, and 46 percent of them over 30 (National Observatory of Delinquency 2006). Eighty-seven percent of those foreign suspects were males.

Table 25.6 Evolution of french and foreign suspects. Crimes against the persons 1996–2011

	Suspects in crimes against the persons		French		Foreigners		% of Foreign Suspects
	Number	Evolution	Number	Evolution	Number	Evolution	
1996	108,213	–	92,187	–	16,026	–	14.8
1997	117,555	8.6	99,889	8.4	17,666	10.2	15
1998	122,910	4.6	103,861	4	19,049	7.8	15.5
1999	129,653	5.5	110,236	6.1	19,417	1.9	15
2000	138,284	6.7	118,901	7.9	19,383	-0.2	14
2001	145,224	5	125,275	5.4	19,949	2.9	13.7
2002	160,564	10.6	138,510	10.6	22,054	10.6	13.7
2003	173,074	7.8	148,908	7.5	24,166	9.6	14
2004	185,993	7.5	159,781	7.3	26,212	8.5	14.1
2005	197,010	5.9	168,995	5.8	28,015	6.9	14.2
2006	213,993	8.6	183,623	8.7	30,369	8.4	14.2
2007	227,258	6.2	196,834	7.2	30,434	0.2	13.4
2008	237,156	4.4	206,836	5.1	30,320	0.4	12.8
2009	245,236	3.4	213,865	3.4	31,371	3.5	12.8
2010	239,948	2.2	209,739	-1.9	30,209	3.7	12.6
2011	240,505	0.2	210,707	0.5	29,798	1.4	12.4

Source: National Observatory of Delinquency 2006, Table 3.

Table 25.7 Crimes involving the largest numbers of foreign suspects in offenses against the person in 2011

	Foreigners	French	Total	% of Foreigners
Rapes on adults	601	2,579	3,170	19.0
Sexual harassments and other sexual crimes against adults	519	2,046	2,565	20.2
Nonlethal intentional blows and violent acts	19,034	133,125	152,159	12.5

Source: General Annual Tables on suspects, National Observatory of Delinquency, 2012, pp. 49, 53.

B. Racial and Ethnic Victimization

“Racism” is generally understood in France to be “any form of violence exerted against another human group, from prejudice and/or contempt to discrimination, from segregation to random or organized murder” or more generally “any form of hostility toward a designated group” (Guillaumin 1994, pp. 67–68). Elements of racism and racist victimization in the recent past in France were fueled by the trauma of the Algerian war of 1954.⁷ The process of decolonization had an impact on the ex-colonies and on metropolitan France. The more the Algerian war recedes into the past, the more this repressed history haunts French society (Stora 2002). It took a half-century and a dark 1961 episode, when 100 or more peaceful Algerian demonstrators drowned in the Seine or were killed by the police, to be fully recognized (Body-Gendrot 2008a). The plight of white colons (*pieds-noirs*), *harkis* (Algerians loyal to France and then neglected by the French), and *immigrés* and their children keeps the painful issue of colonization alive. With its refusal to analyze the war and draw consequences from it, the Republic was unable to fight the extreme right, which interpreted the colonial war within a racial paradigm and, therefore, violently rejected multiculturalism (Stora 2002, p. 20). In Algeria, colonization was based on a hierarchical ranking, with the French colonists at the top of the social order and the “unmeltable” Arabs at the bottom. The same differentialist racism, racial paradigms, and racial hierarchies are kept alive in contemporary politicized debates on this issue organized by the National Front.

The 1970s were characterized by a dramatic wave of racist violence. Hostility toward the “Dangerous Other” grew. An estimated 52 Algerians (with or without French citizenship) were killed or badly wounded, frequently during hunts for Arabs in their workplaces or homes (Guidice 1992). There was little response from the government, which was reluctant to recognize the racist character of the violence except to ban a violent extreme right group.

Xenophobia characterized not only right-wing politicians. Municipalities governed by the Left in the 1970s and early 1980s took action against the disproportionate number of immigrant families who had settled in their locality. In Vénissieux, a suburb of Lyon, exclusion of immigrant families from a public housing project was supported by authorities on the basis of a tipping-point theory. Immigrant children were excluded from municipal summer camps and winter ski schools. The category “immigrant” was interpreted to include French citizens born in overseas *départements* (Body-Gendrot and Schain 1992). On Christmas Eve 1980, the communist mayor of Vitry-sur-Seine in the Paris region led a demonstration against the transfer of 300 Malian workers to a hostel in his locality. A bulldozer was driven into the hostel (Body-Gendrot and Schain 1992). A disproportionate number of racially motivated victims were youths. In 1983, xenophobic propaganda reached unprecedented heights when the extreme right party accused North Africans of being responsible for unemployment and crime.

These ideas linked to the “immigration issue” remain on the political agenda and have fuelled political campaigns for decades. Conversely, sporadic urban disorders—confrontations between young French males (many of *immigré* origin) and the police,

plaguing poor localities, frequently at the periphery of large cities—can be explained by the resentment of these youths who experience police profiling, unequal treatment, and disrespect, and have few prospects of upward social mobility. These incidents, as in the 2005 disorders, are usually triggered by the perception of police abuse or by a lethal episode involving youths of North African or African origin (Body-Gendrot 2012, ch. 5).

Racist and xenophobic acts against North Africans ebb and flow. Anti-Semitic acts against Jews (1 percent of the population) also result in injuries and deaths. However, a new social pathology has developed due to confusions among *immigrés*, North Africans, Muslims, and Islamists—in other words, between culture and religion. Such confusion is partly responsible for hostility toward Arabs and Muslims who are also seen as *immigrés*. Wistrich (1999, p. 12) notes that North Africans to some extent have replaced Jews as the feared “Other” in a multicultural Europe. Romas are another feared group in the public imagination.

According to some researchers, perpetrators of racist crimes often live at the periphery of large cities (i.e., in banlieues). They describe themselves as the victims of anti-Arab or anti-Muslim racism (Trigano 2002). One third of the “new” French, that is, those of African and Turkish origin, can be characterized as anti-Semitic, and 5 percent of these approve damaging property as a form of political expression (Brouard and Tiberj 2005, p. 16). Many young Arab-Muslim French see similarities between their own marginalization in France and the fate of Palestinians under Israeli domination. A small minority verbally attack Jews, out of resentment for the latter’s supposed wealth or because of commitments to the Palestinian cause that help them transcend their own marginalization. A police officer observed that the perpetrators of anti-Semitic acts are “predominantly delinquents without ideology, motivated by a diffuse hostility to Israel, exacerbated by the media representation of the Middle East conflict, a conflict which, for them reproduces the picture of exclusion and failure of which they feel they are victims in France” (Chebel d’Appolonia 2005, p. 2). However, with each new generation born in France, the incidence of prejudiced interactions is abating. The “new” French are becoming less and less prejudiced (Brouard and Tiberj 2005).

Even in problem neighborhoods in France, however, signs of social efficacy supported by a culture of trust toward public agents and organizations do exist, but it is slower to take hold in minority, immigrant, and newcomers’ communities. Disenfranchised minority youth do not believe that social change can reach them, even if they mobilize. Thus, they retain fatalistic attitudes along with feelings of injustice. Under such conditions, why should they adopt the norms of those by whom they feel rejected? Why should they resist the temptation of violence?

C. Immigration Violations

Since 1981, police forces have been expected to repress undocumented *immigrés* and foreigners when they enter French territory or overstay their visas. In 2007, 103,356 foreigners were stopped by the police, 77,176 were held in police custody, and 2,616 were

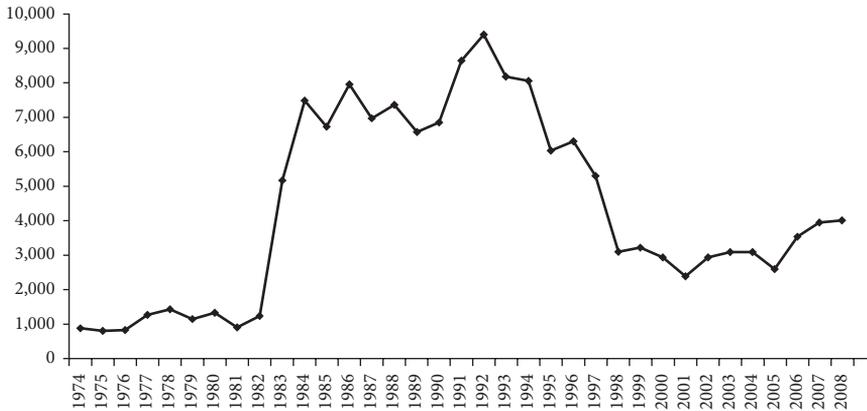


FIGURE 25.1 Violations of immigration laws. Number of suspects detained after procedure (1974–2008)

Source: Ministère of Interior. Profiles of crimes and delinquency in France. Aubusson de Carvalay 2009, p. 265

detained. A slightly larger immigrant group was prosecuted for violating immigration laws and 5,786 were convicted (Aubusson de Carvalay 2009, p. 272).

A slight decrease of police repression against foreigners was observed between 1992 and 1998, with a rise after 2004. For instance, in 2007–2008 there was an increase of 80 thousand foreign suspects, representing one out of seven suspects held by the police. At the same time, after a 46 percent decrease in the number of detained suspects for immigration offenses (from 26,948 in 1993 to 14,664 in 2006), the number of police detentions increased by more than one thousand from 2004 to 2008 (Aubusson de Carvalay 2009, pp. 263–65).⁸ Figure 25.1 shows the data.

IV. CASE PROCESSING

Immigrés and foreigners are in a more precarious situation concerning criminal justice institutions than are the native-born. They offer fewer “guarantees” of good behavior to judges in terms of jobs, residence, and family links. For similar crimes or offenses, they are more often subject to summary procedures (*comparution immédiate*) that lead to temporary confinement. Pretrial confinement also weighs against them when judges make their decisions, because they incorporate time already spent in prison into incarceration sentencing. Foreigners’ social and economic vulnerability also explains why they less often receive community service orders than do the native-born.

A. Sentencing

During the 2000s, French researchers displayed renewed interest in qualitative research on criminal justice procedures and possible biases against foreigners and *immigrés*

(Jobard and Levy 2011, pp. 185–87). Devah Pager (2008) demonstrated a link between severer sentencing in regional criminal courts and local concentrations of young men of North African origin, suggesting that this influenced the local judges' punitive orientation. Her research did not control for other factors such as the seriousness of the offense, which could influence judicial decisions.

A study in the Southern city of Montpellier, which included observations of local court hearings, found an overrepresentation (one out of four) of foreigners (a large number of them undocumented). Among repeat offenders, 30 percent of the native-born were convicted of an offense punishable by prison sentence compared with 43 percent of the foreigners. Forty-seven percent of foreigners were sent to prison compared with 35 percent of the native-born. Fifty-one percent of foreigners were submitted to summary procedures compared with 39 percent of the French. Most were jobless (Jobard and Levy 2010, p. 186). A recent study by Leonard (2010) in two large and two smaller courts in the Parisian region showed that 67 percent of the native-born and 77 percent of foreigners were given prison time in the large courts and 86 percent and 90 percent in the small courts. Few differences distinguished the two groups, reflecting the prosecutors' influence: First-offender native-born suspects were spared summary procedures, but foreigners never were, even those who had not been previously convicted. The difference disappeared, however, when subsequent convictions were analyzed (Leonard 2010, p. 9). In other words, the criminal justice system needs social information on offenders that will assure judges that offenders will not abscond.

Jobard and Nevanen (2007) examined differences in the processing of cases and not only following summary procedures. They looked at the names of 864 indicted people convicted for offenses against a police officer in a criminal court in the Parisian region between 1965 and 2005. They found that sentences for blacks and North Africans were twice as severe as for Europeans.

How can such gaps be explained? Is it legitimate differentiation or is it bias? Jobard and Nevanen (2007) found that variables such as age, gender, type of offense, summary procedure, family status, and residence are additive when minorities are concerned. In the four types of offenses examined—outrage, rebellion, both outrage and rebellion, and violence against an authority—Europeans seemed to benefit from more mitigating circumstances. For instance, they more often attended hearings when summoned, and their offenses less often involved violence against an authority. Ethnic identity was much less a predictor than were combinations of other factors.

Hodgson (2002, p. 250), after interviewing public magistrates, pointed out that prosecutors and judges enjoy high levels of discretion in the handling of cases. Decisions to pursue or dismiss charges, to detain suspects, to invoke mediation, or to pursue criminal prosecution vary widely between jurisdictions. "The fact that evidence must all be in writing does not prevent us from having a significant amount of leeway," a prosecutor remarked. Another respondent acknowledged that observation: "He was an Arab. Of course I asked for a prison sentence" (Hodgson 2002, p. 251). Concluding that there are xenophobic attitudes among judges is a charge, however, that should not be made hastily (Tournier 1997, p. 548).

B. Incarceration

The regulation of undocumented immigrants and of migratory flux has been a major issue for French governments in the last 18 years. Demographer Hazard (2008) showed that incarcerated foreigners' share in detention for violations of immigration laws has considerably decreased, particularly of those from North Africa. At the same time, the general rate of incarceration rose between 1960 and 2010 (Bourgoin 2012) due to severer sentences, increased prison admissions, and longer prison sentences. In 2011, the incarcerated population rose 10 percent (Bourgoin 2012). Figure 25.2 shows the long-term pattern.

Terrorists given life detention and repeat offenders are specifically targeted by judges at the demand of Parliament members, putting back in prison former inmates or maintaining them longer, not to mention the administrative retention for security based on the concept of "social danger." Yet, as table 25.8 shows, the average number of native-born prisoners rose from 33,880 in 1993 to 46,742 in 2007 (+26.7 percent), whereas the average number of incarcerated foreigners dropped from 15,332 to 11,140 (-40.6 percent).

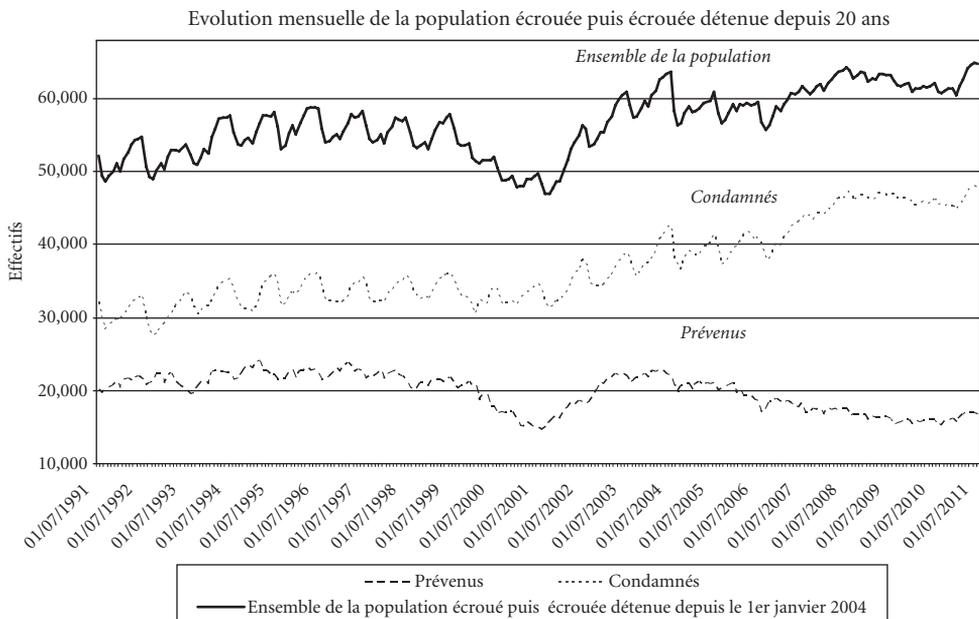


FIGURE 25.2 Evolution of detained, indicted, and incarcerated population in the last 20 years in France

Source: French Minister of Justice and Liberties. Direction: Penitentiary Administration. Monthly statistics of the imprisoned and detained population in France. Jan 1, 2012, Table 3-A, p.6 (www.justice.gouv.fr)

Table 25.8 Incarcerated populations, according to nationality (1993–2007)

	Stock			Flux of entries		
	Yearly average population			Yearly incarcerations		
	French	Foreigners	% of Foreigners	French	Foreigners	% of Foreigners
1993	33,880	15,322	31.10	55,253	26,948	32.80
1994	35,683	15,249	29.90	57,644	27,040	31.90
1995	37,001	15,140	29.00	57,110	24,288	29.80
1996	37,115	15,035	28.80	56,063	22,715	28.80
1997	37,217	13,975	27.30	54,878	20,220	26.90
1998	37,536	12,673	25.20	54,577	17,191	24.00
1999	37,252	11,609	23.80	55,565	16,607	23.00
2000	35,928	10,406	22.50	49,145	15,152	23.60
2001	35,098	9,871	22.00	47,987	14,664	23.40
<i>Evolution 2001/1993</i>	<i>+3.6%</i>	<i>-35.60%</i>		<i>-13.20%</i>	<i>-45.60%</i>	
2002	37,960	10,614	21.90	56,585	18,402	24.50
<i>Evolution 2002/2001</i>	<i>+8.2%</i>	<i>+7.5%</i>		<i>+17.9%</i>	<i>+25.5%</i>	
2003	41,820	11,772	22.00	-	-	-
2004	43,248	12,052	21.80	-	-	-
2005	43,860	11,579	20.90	63,698	17,939	22.00
2006	44,780	11,184	20.00	64,561	17,405	21.20
2007	46,742	11,140	19.20	68,016	17,232	20.20
<i>Evolution 2007/2002</i>	<i>+23.1%</i>	<i>+5%</i>		<i>+20.2%</i>	<i>-6.40%</i>	

Source: Hazard 2008, Table 1.

Is this decrease explained by a drop in the number of foreigners in France? Between 1993 and 2005, the number of foreign residents remained almost the same (from 6.1 percent of the population to 5.8 percent), according to national statistics. The rate of foreign incarceration decreased from 440 per 100,000 foreign population to 332 in 2005, Hazard (2008) points out. Half the entrants in 1993 were of North African origin, but only one-third in 2007. At the same time, entrants from the EU increased, due to the incorporation of new countries from Eastern Europe in 2004 and in 2007. Their share grew from 4.9 percent in 1993 to 24.3 percent in 2007. The share of incarcerated foreigners from Romania tripled, reaching 8.2 percent in 2007. Table 25.9 reveals, however, that the share of North Africans in French prisons remains significant. A majority of them (96 percent) are men; they are slightly older (33-years-old) than in 1993 (29-years-old).

Table 25.9 Evolution of incarcerations according to nationality in 1993, 2001, and 2007

	1993		2001		2007	
	Number	%	Number	%	Number	%
Total	26,948	100%	14,664	100%	17,232	100%
European Union	2,557	9.50	1522,00	10.40	3848,00	22.30
Outside European Union	1,313	4.90	2,041	13.90	2,036	11.80
North Africa	15,250	56.60	6,519	44.50	6,280	36.40
Africa	5,538	20.60	2,715	18.50	3,070	17.80
America	262	1.00	375	2.60	424	2.50
Asia - Oceania	1,971	7.30	1,306	8.90	1,480	8.60
Undeclared	18	0.10	132	0.90	50	0.30
Stateless	39	0.10	54	0.40	46	0.30

Source: Hazard 2008, Table 3.

The share of foreigners over 40 has risen from 9 percent in 1993 to 24 percent in 2007; over one-third of them are married.

Hazard observes that in 1993 foreigners were overrepresented for violations of immigration laws (35 percent), narcotics (17 percent), and thefts. In 2007, these shares had, respectively, dropped to 18 percent, 8 percent, and 4 percent. Violations of immigration laws are distributed in offenses regarding entries and residence (57 percent), deportation measures (33 percent), and aiding entry and residence (10 percent). Aggravated thefts are the first cause of incarceration for European foreigners (22 percent) and especially Romas (37 percent).

As Table 25.10 shows, lengths of incarceration are longer for French than for foreign prisoners (8.2 months versus 7.8 months). Incarceration length has ebbed and flowed over time and between types of crime. Currently, sentences are longer for rapes and serious crimes and shorter for narcotics and simple thefts.

Hazard also examined the trajectories of foreigners once they were conditionally released. They benefit less than the French from sentences to community service orders and other prison alternatives. In 2007, only 12 percent of these dispositions, such as probation and electronic monitoring, were used for foreigners (see Table 25.11). However, two-thirds of North Africans and Europeans benefited from parole. This status facilitates enforcement of deportation orders in which the foreigner is ordered to leave French territory or taken to the border. Some commentators denounce this as “double punishment” (*la double peine*). Foreigners were forced to leave France three times more often in 2011 than in 2002 (Vincent 2012). A law enacted in 2011 makes it more difficult for supportive organizations to oppose deportations.

Table 25.10 Monthly lengths of detention for main offenders for those condemned for only one offense (1993–1999)

	1993		2007		% Evolution 2007/1993	
	French	Foreigners	French	Foreigners	French	Foreigners
One offense convictions (total)	7.90	7.00	6.00	6.00	-1.60	-0.90
Violation of immigration laws	3.90	3.40	3.30	3.20	-0.50	-0.20
Fraudulent documents	6.90	5.70	4.80	6.20	-2.10	+0.50
Narcotics	10.20	16.60	5.70	10.00	-4.50	-6.60
Driving offenses	2.30	2.50	2.50	2.60	+0.20	+0.10
Break of rules	4.90	4.30	4.30	9.10	-0.70	+4.80
Crimes (except rapes)	25.10	22.10	36.60	33.00	+11.45	+10.90
Aggravated assault against persons	4.90	5.00	4.80	4.70	0.00	-0.30
Rapes	34.70	29.70	59.90	47.30	+25.20	+17.70
Sexual crimes	10.40	10.50	7.40	15.10	-3.00	+4.70
Others offenses against persons	5.90	6.00	3.50	4.30	-2.30	-1.70
Aggravated thefts	7.00	7.40	3.70	3.40	-3.30	-4.00
Simple thefts	4.10	4.50	2.80	2.50	-1.40	-2.00
Receiving and concealing	5.10	6.00	3.60	5.20	-1.50	-0.80
Other properties crimes	5.10	0.00	5.10	5.50	0.00	+5.50

Source: Hazard 2008, table 6.

Table 25.11 Types of enforcement in 2007 according to nationality

	French		Foreigners	
	Number	%	Number	%
Open accommodation	1,929	10.40	171	6.50
Electronic monitoring	7,087	38.20	615	23.20
Half-freedom	4,599	24.80	590	22.30
Parole	4,947	26.70	1,275	48.10
Total	18,562	100	2,651	100

Source: Hazard 2008, Table 7.

Placement of foreign families in detention centers is a major controversy. In a 2010 report, the CNDS denounced the enforcement of orders that did not allow families any time to pack or which put parents and children in centers filled with serious offenders, thereby violating the UN Convention on the Rights of the Child. The number of undocumented migrants taken to the border increased by 80 percent in 2008, and 62 percent of the departures translated in deportations (Hazard 2008; see also Aubusson de Carvalho 2009, pp. 269–72).

V. ISSUES AND POLICIES

The media and politicians, especially at election time, continuously discuss the politicization of immigration and social integration, issues of fairness and equal treatment, and the behaviors of the disorderly in the outskirts. Binary us-versus-them discourses, however, do not necessarily influence public opinion.

In recent national surveys, anti-immigrant sentiments have tended to decrease and, depending on how questions are asked, it appears that the French hold less hostile views toward *immigrés*, Muslims, and foreigners than do other Europeans (Body-Gendrot 2008b). The yearly barometer of the French National Consultative Commission on Human Rights (CNCDDH 2013) reveals, for instance, that the French are more aware of the consequences of racism and that their prejudices are diminishing. The proportion of respondents who say that “there are too many *immigrés* in France” has grown, however, to 69 percent, a 22 percent increase since 2009 as a consequence of their economic insecurity. On the whole, *immigrés* seem to be better accepted and intolerant attitudes and ethnocentrism to be less pronounced among young generations.

Are *immigrés* and foreigners in France more delinquent? There have been strong increases in arrests and in people held in detention in the last two decades in old and new countries of immigration in Europe and in other Western countries (Palidda 2008).

Is there a “criminalization” of Otherness that comes less from delinquency and more from difficult adjustments between poor sending and rich receiving countries at times of global crises, social unrest, and rapid mutations? Fears and feelings of insecurity felt by native-born populations could focus on outsiders and translate into more restrictive immigration policies, more police repression, and more severe sentencing, but they affect both foreigners and *immigrés* and the native-born as well (Sayad 1999; Body-Gendrot 2012). In other words, what happens to outsiders may simply anticipate punitive trends that later affect nationals.

Changes occurring in the “European project” need to be taken into account. The incorporation of new countries into the EU in 2005 and 2009 yielded an influx of migrants from richer countries, some of them undocumented or involved in illegal traffics or committing crimes similar to those of the native born. The percentage of foreigners in police custody grew from 40 percent of suspects in 1974, to 77.1 percent in 1994, and to 68.5 percent in 2008 (respectively, 2,644; 37,389; and 82,084) (Aubusson de Carvalho 2009, p. 240).

Table 25.12 Criminalization and victimization of migrants in Europe

	Total Detained	% of Pretrial	Total Detained Foreign	% of Foreign out of Total Detained	% Pretrial Foreign out of Total Foreign	Foreigners Rate x 100,000 Foreigners	Rate of Foreign vs. Rate of nation
England and Wales	77,982	17.0	10,879	14.0	11.7	14.0	2.0
France	57,876	32.0	11,436	19.8	–	–	3.0
Germany	79,146	18.0	21,263	26.9	44.3	30.0	3.0
Netherlands	16,331	34.0	5,339	32.7	23.3	24.0	8.0
Belgium	9,971	32.0	4,148	41.6	53.3	40.0	5.0
Switzerland	5,888	40.0	4,062	69.0	61.6	35.0	7.0
Austria	8,780	23.0	3,768	42.9	59.2	32.0	5.0

Source: Palidda 2008.

Administrative classifications can also explain such fluctuations. In the north region of France, for instance, the number of suspects for violation of immigration laws increased by 27 percent in 2008 (a trend continuing from the previous 2 years), but it hardly varied elsewhere. The reason is that undocumented migrants tried to reach England where they had family ties or thought they could get jobs more easily. The percentage of foreign suspects in the north region decreased by 38 percent after the border patrol decided to stop registering 13,000 people held in the suspect category in 2008–2009 (National Observatory of Delinquency 2011).

France is not the European country with the highest number of incarcerated foreigners, as Table 25.12 shows. Among old countries of immigration, it is the only country in which the number of incarcerated foreigners has dropped. In European countries of “new immigration,” the percentage of detained adult foreigners reached 33.3 percent in Italy, 31.2 percent in Spain, and 58.4 percent in Greece (Palidda 2008). Everywhere, more populist trends express xenophobic hostility (for instance against Romas). Police, prosecutors, and judges are under pressure to prove their efficiency at reducing outsiders’ crime and delinquency. The precautionary principle influences politicians.

Two other considerations need to be considered. The decrease of foreigners in penitentiaries hides the rising number of foreigners in immigration detention centers. Members of second and third generations of immigrants of postcolonial origin fill detention centers and are counted as French (Palidda 2008; Aubusson de Carvalho 2009). Managers, however, partition prison quarters into Algerian, Moroccan, Corsican, and other blocks to alleviate tensions.

Are institutional reforms that might alleviate discrimination problems possible in France? In most Western countries, issues of police brutality or abuse and the deportation of foreign families trigger minority mobilizations. In a number of police

departments abroad, reforms have been implemented. Better awareness of cultural diversity is important in helping officers understand how race can play a subtle and insidious role in their actions, and how they can become better officers by moving away from profiling. More professional and egalitarian treatment of minorities and immigrants results from this increased awareness (Lewis and Ramakrishnan 2007), but this reform is not yet happening in France. Would the recording of ethnicity in police arrest files make a difference? It is against the French law to do so. Could change take place after elections, for instance? It is too early to say. Institutional practices and race-neutral attitudes prevent more informed treatment of racial profiling in France.

In the last 25 years, the French national police have been subjected to continuous reforms. Hiring young police officers was seen by the Ministry of the Interior as an opportunity to effect change, but this was seen as unwise policing because it might mean loss of the know-how accumulated by more experienced officers and their networks of contacts. Replacing experienced officers with younger ones increases police feelings of vulnerability. Moreover, numerous officers feel “harassed” by people, the media, politicians, or their own hierarchy and are reluctant to embrace changes that implicitly challenge their behavior. Officers resent that the state does not grant them adequate recognition and pays them poorly. They resent Parliament for passing laws they see as too lenient. They resent magistrates and judges they accuse of being “soft.” They resent youths they think to be increasingly violent, and less and less law-abiding (Ceaux and Smolar 2003).

Police officers feel instrumentalized by the political sphere. The French police are a public sector under pressure, due to lack of resources and a loss of confidence in assigned missions, values, and identity. Too much priority seems to be given to internal management rather than to the missions of public service, too much pressure is put on young police officers, which contributes to the exacerbation of tensions, especially concerning use of public space in problem neighborhoods. Confronted by residents who reproach them for being invisible or too visible, inefficient or too bothersome, under surveillance and suspected by poor foreign families for diverse reasons, police respond with suspicion and bitterness (Direction Nationale de la Police Nationale 1983; Body-Gendrot 2012).

The political and media rhetoric concerning fear of crime tends to turn police officers into the wardens of Republican order. It raises disproportionate expectations by citizens relative to police resources and training. The youngest police officers, assigned to the most difficult neighborhoods, are not prepared for unexpected problems. This may explain misunderstandings between them (aiming to restore order, arrest troublemakers, and be respected) and residents (who have diverse attitudes, some encouraging police officers when they stop troublemakers, others expressing outrage, most remaining indifferent) (Body-Gendrot 2010b.)

The issues of authority, governance, and control in such areas could be summarized by the formula “low-status police officers end up dealing with low-status ‘clients’ with a large level of personal discretion.” Some of these rank-and-file officers mark their distinction by resorting to a “confined violence,” which is made possible by its covert

nature and because it occurs in places where there are no witnesses (Jobard 2003). Were there witnesses, would they come forward and denounce racist practices? As “usual suspects” themselves, would not it be impossible for them to file legal complaints in the absence of third parties (such as prosecutors) or antidiscrimination organizations that monitor abuse?

Both delinquent police officers and delinquent youths may be leftovers of an indifferent mainstream society, of political representatives, and of institutions that do not much care what goes on at their margins and do not openly discuss discriminatory practices (Ocqueteau 2002, p. 210). Rank-and-file police often feel that they are enforcing the “dirty work” of control, surveillance, and arrests in marginalized urban areas because other integrative institutions (family, educational, social, occupational) have neglected their missions. A demonstration of this neglect can be seen not only in the 3 weeks of disturbances in November 2005 but by the remarkable silence of the state, months after they took place. Even now, 7 years later, no answers have been provided to questions about the triggering incident (Body-Gendrot 2010*b*).

As for justice, the trends in France are similar to those in other Western countries. The judges’ decisions weigh less than the procedures they come after: police suspicion and action, police custody, indictment after a summary procedure, etc. (Jobard and Levy 2011, p. 189). These accumulated dimensions result in biases observed in the treatment of foreigners and *immigrés*. However, the significance of the French government’s policies aimed at limiting the number of undocumented migrants and deporting those caught in delinquent acts and violations of immigration laws should not be underestimated.

State officials do not know what to do with marginalized populations and the territories where they live. State authorities act on the long term, even though the media impose more and more short-term visions. State agencies know how to act technocratically (e.g., risk management) and mechanically even though local à la carte solutions could alleviate the sense of marginalization and provide better legal protections. The police, acting solo and embodying the state, are expected to impose order in places where disorders and clashes over codes of honor abound because life is more difficult there than anywhere else and because respect is frequently the claim these youth make to construct themselves.

VI. CONCLUSION

Policies of repression and social control receive strong support from elected officials, the administration, the media, and numerous voters. Politicians address punitive passions for political gains. The media take advantage of simplistic and binary visions. The criminalization of the Other is an easier way to think about crime. These trends have been observed in all Western countries and reflect the importance of nonstate actors in influencing decisions and policies (Body-Gendrot 2010*a*).

There is no universal way to implement law and order. There are still many “unknown unknowns.” Ten people can accumulate as many as 860 different identities and 2500 SIM cards. Ian Blair, a former commissioner of the Metropolitan Police in London, understood that sensitive information might trickle upward only by cooperating with Muslim communities and especially with women and moderate young people. Police action is triggered by police leadership, public opinion, and police initiatives (Body-Gendrot 2011). The choices made result from institutional arrangements, acceptance of democratic supervision, distribution of power in the state apparatus, and public expectations relative to safety, tranquillity, police ethics, and tolerance of differences.

How interests, ideas, and institutions interplay matters. The rise of an ill-defined, unmeltable Otherness, times of rapid changes and threats, and economic insecurity feed fears. Local know-how and choices emanating from democratic bodies can alleviate them. A courageous political option would be to enlighten people about the sources of their fears, and about the dangers of catastrophism, withdrawal, intolerance, and punitive populism. Minorities designated as expiatory victims “by the diffuse anger of the uninformed should be accorded the full benefit of the procedural rights that constitute one of the major foundations of democracy” (Zolberg 2006, p. 459). The populations that panic because of precariousness and that, because they are concerned with urban violence, point at pariahs as the sources of their trouble, should be educated about the noxious effects of amalgamating unrelated fears. Most Muslim young people from derelict neighborhoods will not become the recruits of Al Qaida. They are far too fragmented and unstable (Body-Gendrot 2008a). But thinking that those “who are not us” are social threats allows decision makers and those influencing opinion to avoid further analysis.

NOTES

1. Cases were examined by CNDS only following referral by a parliamentary member or an institution (the Children’s Defense Ombudsman, for instance). The number of cases per year averaged 170. Although the commission had no power to redress harm, it had investigative and hearing powers and issued statements and recommendations, thus giving visibility to cases of police abuse and border patrol or prison guard misconduct. Opposition by conservative groups and entrenched interests led to CNDS’s termination in 2011 and replacement by a general organization, The Defender of Rights.
2. A French person born abroad is not an *immigré*. Some *immigrés* remain foreigners while others become French by naturalization but legally remain *immigrés*, because the status refers to the place of birth over the course of a lifetime. The French law of naturalization mixes *jus sanguinis* (born out of one French parent) and *jus soli* (if at least one parent is French when they are born in France, they are French). Since 1993, formal acquiescence at 18 is required from *immigrés*’ children to become French citizens.
3. During World War II, French Jews were required to mark their difference with a yellow star. This ethnic distinction allowed their persecution, leading to massive deaths, and that treatment can be held up as an object lesson of the dangers of state recognition of ethnic or religious identity of individuals.
4. In 1914, 14 languages or dialects including German, Alsatian, Breton, Basque, Occitan, Catalan, and Corsican were spoken in various regions of France. This diversity was

bulldozed by public school curricula. By 1950 vernacular languages had fallen into disuse with only a few exceptions.

5. There is also an historic wariness on the part of public officials about deploying racial categories, especially when fighting ethnic and racial discrimination. This mode of thinking was expressed by former French President, George Pompidou, “merely mentioning a term like race calls for the idea of racism and then makes it a reality” (*Le Monde*, Sep 1, 1973).
6. Three judges sit with the jury members who also participate in the decision on sentencing.
7. This part borrows from Body-Gendrot (2008a).
8. There is a problem in establishing curves regarding indicted foreigners incarcerated after detention, due to amnesties provided by the presidents of the French Republic; these allowed many of those incarcerated to be freed on July 14th every year. President Sarkozy terminated this presidential practice.

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CHAPTER 26

THE CONVERGENCE OF CONTROL

Immigration and Crime in Contemporary Japan

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JAPAN has long considered itself an ethnically homogeneous country with little immigration, but that perception is being challenged by an influx of migrants since the late 1980s and by the prospect of more migration in the years to come, which could help the country cope with its population decline. Japan's population of 127 million in 2010 might be halved by 2080 (Kaneko et al. 2008), and more than 40 percent of the country's population could be older than 65 by 2045 (Kaneko et al. 2008). Since these population predictions were first reported in the 1990s, Japan has slowly and reluctantly been turning to immigration as one possible solution to its demographic crisis.

It is in this context that crimes by foreigners came into the political spotlight. Since 2000, a series of political initiatives were started to address Japan's alleged foreigner crime crisis. In October 2003, the Tokyo Metropolitan Government led the Immigration Control Bureau, the Metropolitan Police Department, and the Japanese Ministry of Justice in issuing a joint statement declaring that they would remove unauthorized foreign residents in Tokyo. The statement said that "illegal residents have become a hotbed of frequently occurring foreigner-perpetrated crimes," and it warned that "the resolution of the illegal resident problem is an issue that requires immediate action for the security governance of this country" (Hōmushō Nyūkoku Kanri Kyoku, Tōkyō Nyūkoku Kanri Kyoku, Tōkyōto and Keishichō 2003). The statement also made it an official goal of government to reduce the number of unauthorized foreign residents by 50 percent in the subsequent 5 years (Keisatsuchō 2005, p. 36).¹ By the end of 2003, the national government had joined Tokyo in the battle against unauthorized foreigners by making the aggressive policing of unauthorized residents a national policy (Hanzai Taisaku Kakuyō Kaigi 2003). The same year, the

National Police Agency (NPA) created an Emergency Program for Security Measures that specified three groups as crime control priorities: juveniles, organized criminals (*yakuza*), and *rainichi* (Japan-visiting) foreigners. The Emergency Program stressed that an increase in serious crimes by foreigners was a key cause of Japan's worsening crime problem, and it proposed collaborative projects with the Immigration Control Bureau to crack down on locations frequented by foreigners (Keisatsuchō 2003, p. 5).

Japanese discourse typically uses the nationally and ethnically undifferentiated term *rainichi gaikokujin hanzai* ("crimes by Japan-visiting foreign nationals"), with occasional reference to *Chūgokujin hanzai* ("crimes by Chinese nationals"), and there is widespread agreement that the most criminally problematic foreigners are not white-collar expats from the affluent West but rather visitors and migrants from the less affluent countries of Asia, the Middle East, and Latin America. Keeping criminals and potential criminals offshore is believed to be one solution to this problem.

Discourse about foreign criminality in Japan also tends to conflate immigration control and crime control (Yamamoto 2004, 2007, 2010). In police documents, political discussions, and media analysis, unauthorized migrants are often portrayed as the most criminal of migrants. Similarly, the strict policing of unauthorized migration and the selective admission and close monitoring of foreign national residents are considered keys to effective crime control.

Who are these "foreign criminals"? How have they become villains in Japanese political consciousness? And how does Japan's criminal justice system treat foreign offenders? This article engages these questions, and here is a summary of our main points:

- Japan experienced a "crime crisis" at the turn of the 21st century, and crimes by foreign criminals became a major target of police even though they comprise a small percentage of all penal code offenses. One main focus of policing is *rainichi* (visiting) foreigners who stay in Japan on temporary status.
- Crime control and immigration control have been converging in Japan. Strict immigration control is seen as a method of controlling crime, the police participate in immigration control, and the range of deportable offenses has expanded considerably in recent years.
- Overall, arrest rates for temporary visa holders are a little higher than those for Japanese nationals, but the youthfulness of migrant populations probably contributes to this difference.
- Japan's government does not release case-level crime and immigration data, and this makes it difficult to arrive at confident conclusions about the relationship between crime and nationality. Nonetheless, there do appear to be nationality gaps in prosecution and sentencing. On the one hand, *rainichi* suspects seem more likely to be prosecuted than Japanese nationals, and, if a foreigner receives an unsuspended sentence, it is likely to be longer than the sentence for a Japanese national. On the other hand, *rainichi* suspects seem less likely to receive an unsuspended sentence than do Japanese nationals, perhaps because deportation is available as an alternative sanction for foreigners.

The next two sections of this article provide context for our subsequent analyses by presenting a brief history of Japan's immigration policy and a description of Japanese crime statistics. After that, we examine arrest patterns for *rainichi* foreigners and disparities by nationality in criminal prosecution and sentencing. Our analysis of official statistics, political pronouncements, and recent policy changes suggests that crime control and immigration control have converged in contemporary Japan. This is part of a more general shift towards punitive policy in Japan's crime control field (Johnson 2007), and it is also hamstringing efforts to deal constructively with the country's demographic crisis (Yamamoto 2008).

I. IMMIGRATION POLICIES

After the loss of the Pacific War forced Japan to abandon its imperialistic pursuits, the country maintained an official no immigration policy. In principle, Japan offers no visas for low-skilled labor immigrants. Permanent residency and naturalization are regarded as consequential rather than intentional; there is no path for a foreign national to enter Japan as a permanent resident, although one can become eligible to apply for permanent residency after establishing a record as a long-term resident with good conduct.

Contrary to claims that Japan is an ethnically homogenous nation, the country does have a significant history of immigration—and emigration (Chung 2010; Morris-Suzuki 2010). From the Meiji Restoration of 1868 until 1910, Japan was primarily an emigration nation, whereas the following decades were characterized by large flows of people moving in and out of the country (Sellek 2001). Many Japanese emigrated to Brazil, Peru, and other South American countries in addition to North America and Hawaii. Government-assisted emigration to Latin American countries was temporarily halted during World War II, but it was restarted in the 1950s and continued into the 1960s.

International migration was also part of Japan's imperial expansion. During the first few decades of the 20th century, Imperial Japan sent migrants to Korea, Northeast China, and islands in the Pacific as part of its colonial project. Conversely, Japan's annexation of Korea prompted a large flow of Koreans to come to Japan. By the end of World War II, approximately 2 million Koreans had moved to Japan, and some were coerced or deceived into coming to work in mines and construction sites under very hazardous conditions (Sellek 2001; Chapman 2004; Chung 2010). After Japan's surrender to the Allied Powers, many Koreans went back to their home country, although some 600,000 remained in Japan (Chapman 2004). When the 1952 San Francisco Peace Treaty renounced Japan's rights to former colonies, these Koreans lost their Japanese nationality and became foreign national residents. Today, they are commonly referred to as *zainichi* or persons "living in Japan."

Immigrants continued to come to Japan throughout the postwar period (Sellek 2001; Morris-Suzuki 2006), but it was only in the late 1980s that the country experienced a sharp increase in the number of migrants (see Figure 26.1). Japan's rapid economic growth during the 1980s, combined with political and economic crises elsewhere in the

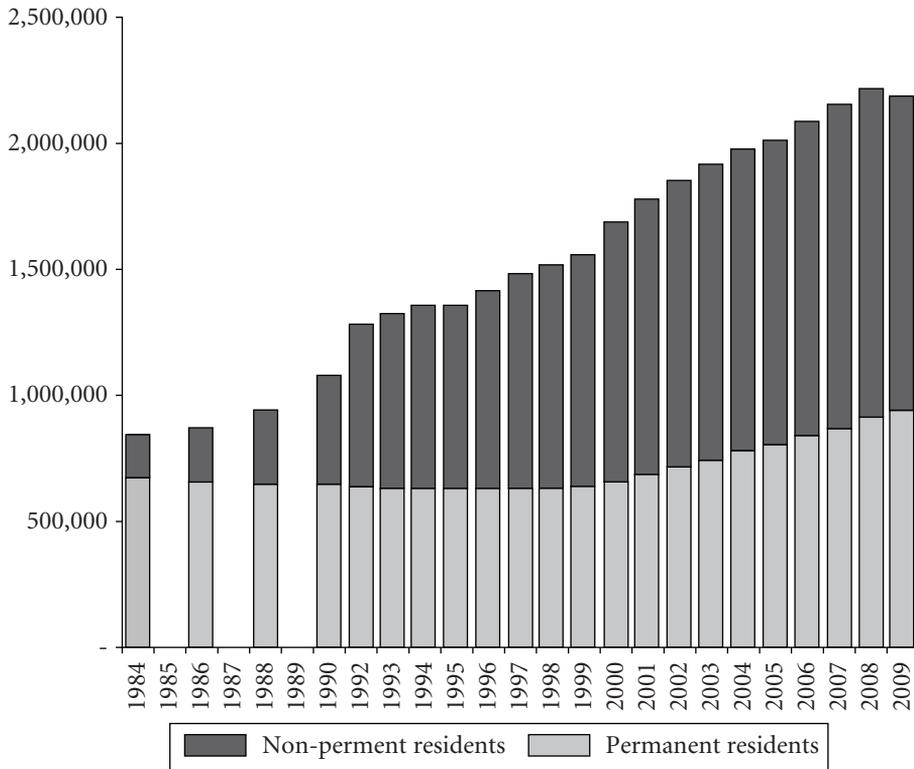


FIGURE 26.1 Temporary versus permanent foreign national residents, 1984–2009

Registered Foreign National Residents in Japan, Permanent and Non-permanent Residents, 1984–2009

Source: Judicial System and Research Department, Minister's Secretariat and Immigration Bureau, Ministry of Justice.

world, occasioned major new migration from Asia, the Middle East, and Latin America. By the end of the 1990s, a majority of foreign residents in Japan were on temporary residential status, a population the NPA calls *rainichi* (Japan-visiting) foreigners, to be contrasted with the traditional *zainichi* population explained in the previous paragraph. From 1980 to 2001, the number of newly incoming foreign nationals increased from 1 million to 4 million, and the number of registered foreign national residents grew from 1.28 million in 1992 to 1.78 million in 2001 (Hōmushō Nyūkoku Kanri Kyoku 2005).

Japan's government responded to the demand for migrant labor from Japanese business and the growing number of cross-national job seekers with a dualistic policy of *tatemae* (façade) and *honne* (reality). That is, it maintained a principle of no labor migration while creating paths through which employers could hire migrant workers in a different guise. The 1990 revision of the Immigration Control and Refugee Recognition Act increased the number of residency categories from six to 27, including several non-labor categories that served as de facto working visas (Iguchi 2001). A trainee (*kenshū*) visa is officially for the purpose of technology transfer and professional training, but, in reality, a substantial number of "trainees" in Japan are hired to do manual labor as

workers outside the protection of labor laws.² International students were also given work permits and came to constitute a substantial portion of migrant labor in Japan. Furthermore, the settler visa (*teijusha*), commonly known as a *Nikkeijin* visa, was created to facilitate the “return” migration of descendants of Japanese emigrants.

The 1990 revision institutionalized backdoor labor migration, and the flow of de facto migrant workers increased for the next two decades. The number of unauthorized migrants also increased from the late 1980s to the early 1990s, before declining thereafter. Despite a long economic recession that started in the early 1990s, the number of labor immigrants to Japan has continued to increase, although the composition of nationalities has changed. Migrants from Bangladesh, Pakistan, and Iran were substantial in the late 1980s, but their numbers dropped when the Japanese government terminated visa exemption treaties with those countries in 1989 and 1992. The number of migrants from Brazil and the Philippines grew substantially during the 1990s before stabilizing after 2000. And migration from China rapidly increased in the 1990s and continued to grow throughout the 2000s, making it at present the largest sending country to Japan.

In 2010, approximately 2 million foreign national residents were registered in Japan. Chinese nationals comprised 32 percent of the total, and Korean nationals constituted another 27 percent. Brazil—the country that hosts the largest number of ethnic Japanese outside Japan—is the third largest nationality group with 11 percent, followed by the Philippines with 10 percent (Hōmushō Nyūkoku Kanri Kyoku 2011).

The earlier migrations laid the foundation for contemporary immigration to Japan in three ways. First, the strong presence of Korean nationals and the frequent distinction of *zainichi* from other migrants in Japan’s immigration politics are direct consequences of Japan’s imperial history. Because Japan takes the principle of *jus sanguinis* (nationality by lineage) as its rule for nationality succession, the Japan-born children and grandchildren of Korean national parents do not obtain Japanese nationality as a birth right. A majority of the current *zainichi* population were born and raised in Japan and speak only Japanese. Thus, *zainichi* can be considered an ethnic minority group without citizenship rights. The combination of colonial past, secure immigration status, and long-term residency made *zainichi* some of the keenest critics of nationality-based discrimination. Indeed, the *zainichi* population gradually became politically vocal, and, in the 1980s, it played a central role in an antifingerprinting movement that demanded the abolition of the fingerprint registration requirement for foreign national residents (Nakamura 2004; Lie 2008).

Second, migration from geographically distant Brazil and other Latin American countries is a result of Japanese emigration. About half a million Japanese emigrants and their descendants in the Americas became the source of ethnic return migration at the end of the 20th century. Japanese emigrants headed to Latin America, believing it would be their land of opportunity. The flow was reversed in the 1980s, when Latin American economies declined and Japan entered the prosperous era of its bubble economy. Japanese descendants in Brazil, Peru, and Bolivia took advantage of family unification visas to seek work in Japan.

Third, Japanese colonization of Northeast China during World War II influenced the contemporary flow of migrants from China. At the end of World War II, many Japanese civilian families were unable to flee from the deadly chaos of Russia’s invasion of

Manchuria, but thousands of Japanese children and women were saved by local Chinese families and managed to survive in their custody. Some of those children and women, commonly known as *zanryu koji* (left-behind orphans) or *zanryu fujin* (left-behind women) started returning to Japan in the 1970s, after China and Japan reestablished a diplomatic relationship. Several thousand of these returnees migrated back to Japan, bringing tens of thousands of Chinese relatives with them. Because of the colonial legacy, residents of this region also tend to have strong personal and business ties to Japan. Although city dwellers and residents of Fujian Province comprised the bulk of the earlier movement to Japan, as China's economy grew, migrants from Northeastern China came to dominate the Chinese flow to Japan. In the late 2000s, a majority of Chinese national residents in Japan are from the three Northeastern Provinces (Liaoning, Jilin, and Heilongjiang) that used to be under Japan's colonial rule (Tajima 2009).

As is often the case for migrant populations, foreign national residents in Japan are younger than Japanese nationals (see Table 26.1). As of 2010, some 69 percent of registered foreign nationals are between ages 20 and 49, which is substantially higher than the 38 percent of Japanese nationals in the same age range. The percentage of the age group between the 20s and 40s is particularly high among Chinese nationals (81 percent) and Filipino nationals (80 percent), whereas the proportion of young to middle-age adults is somewhat smaller among Brazilians (62 percent) and Peruvians (55 percent), reflecting

Table 26.1 Age and gender composition of registered foreign nationals by major nationalities, 2010

	Japan Residents Total (2009)	Registered Foreign Nationals (2010)	China	Korea	Brazil	Philippines	Peru
Total	127,510,000	2,134,151	687,156	565,989	230,552	210,181	54,636
% of Female	51	54	58	54	46	78	47
Age Distribution (%)							
0-14	13	9	7	7	17	10	19
15-19	5	4	4	4	4	4	5
20-29	11	28	44	14	20	20	15
30-39	14	23	24	17	23	31	20
40-49	13	18	13	16	19	29	23
50-59	13	10	6	16	11	6	13
60-69	14	5	2	14	4	1	4
70+	16	4	1	12	0	0	1
	100	100	100	100	100	100	100

Source: Calculated by the authors based on the data in Population of Japan (Sōmushō Tōkei Keishūjo 2012) and Statistics of Registered Foreigners (Hōmushō 2011).

the fact that the latter are more likely to migrate as families and therefore include a larger number of children. The age distribution of Korean nationals is similar to that for Japanese nationals, because a large proportion of Korean nationals are native-born.

Overall, the foreign national population in Japan is slightly more female (54 percent) than male (46 percent), although the gender composition varies by nationality. Filipino national residents are predominantly female, because of a history of “entertainer” migration.³ Chinese national and Korean national residents also include slightly more females, whereas Brazilians and Peruvians are slightly more male. In contrast, foreign national residents from the Middle East, South Asia, Africa, Western Europe, and North America are at least 65 percent male.

II. RACE, ETHNICITY, NATIONALITY, AND CRIME STATISTICS

As in Canada and most European nations, official statistics on race and ethnicity are not collected in Japan. Instead, the government presents population statistics by nationality. Despite the traditionally small size of the foreign-born population, foreign nationals have often had a prominent place in the consciousness of Japanese law enforcement. The first official crime statistics for foreign national offenders date back to the 4th Annual Report of Criminal Statistics (*Keiji Tokei Nempo*), which documented criminal offenses in 1872 (Chūjō 2003). In postwar Japan, the Police White Papers, which first were published in 1973, have consistently reported on crimes by foreigners.

Japanese crime statistics distinguish two categories of non-Japanese suspects: *rainichi* foreigners (*rainichi gaikokujin*) and other foreigners (*sono ta no gaikokujin*). The NPA defines *rainichi* foreigners as all foreign nationals in Japan except for permanent residents, U.S. military personnel, and those foreigners whose immigration status is unknown (Keisatsuchō 2003).

The way in which the statistical category of *rainichi* foreigner is constructed helps reveal the political anatomy of immigration and crime in Japan. The *rainichi* category excludes two controversial groups from the immigration–crime discussion: the *zainichi* population (largely of Korean ethnicity) and American soldiers. *Zainichi* Koreans have a complex and politically sensitive history of colonization and oppression (Chapman 2004; Kim 2006; Tsutsui and Shin 2008; Weiner 2009). The history of *zainichi* Koreans in Japan also reflects the fear of crimes by foreigners in Japan. Most notably, in 1923, a decade after Korea’s annexation, the great Kanto earthquake hit Tokyo, killing more than 100,000 people and injuring many more. Shortly after the earthquake, rumors spread that Koreans were taking advantage of the disaster by poisoning common wells and robbing stores. These rumors created panic in some disaster-stricken areas, and thousands of Koreans were killed by Japanese mobs and vigilante groups (Ryang 2003). A remark made by Tokyo governor Ishihara Shintaro in 2000 reminded many that the feelings that animated the great Kanto earthquake massacre are not dead and buried. At

an earthquake drill for the Tokyo Metropolitan area, Ishihara urged members of Japan's Self-Defense Forces to pay special attention to foreign residents because "if a very large disaster were to occur, even a big, big riot [by foreigners] is possible" (Yamamoto 2004, p. 35).

American soldiers represent another sore spot for Japan's government, as the presence of U.S. military bases⁴ and their financial, environmental, and criminal costs have been repeatedly challenged and criticized (Yonetani 2001; Gerson 2010; Hook 2010a). The large presence of the U.S. military in Japan is another legacy of World War II and of the subsequent occupation of the defeated country. Most of Japan regained sovereignty in 1952, but the southern islands of Okinawa remained under U.S. rule until 1972. At present, U.S. bases are disproportionately concentrated in Okinawa, occupying over 75 percent of the prefecture's land (Hook 2010b).

The criminal and accidental victimization of Japanese residents by American soldiers has triggered occasional public outcries against U.S. military bases. The NPA recorded 6,933 penal code offenses by U.S. soldiers between 1973 and 2004, including 3,505 larcenies, 1,341 assaults, 441 robberies, 172 sexual assaults, and 34 homicides (Nihon Kyōsantō 2005). One of the most publicized crimes of violence was the Okinawa rape incident in 1995, in which three American soldiers kidnapped a 12-year-old girl on the street, bound her with duct tape, and beat and raped her in their rental car (Pollack 1996). This incident provoked large protests in Okinawa and demands for a fair trial and the removal of U.S. bases. Public outrage was further fueled when offenders' supporters argued that the arrests were made because of Japanese racism (Pollack 1996). Statistically speaking, the proportion of crime in Japan that is committed by U.S. soldiers is quite small. Even in Okinawa, where most bases are concentrated, crimes by U.S. soldiers and their dependents account for less than 7 percent of all crime that has occurred since Okinawa's reversion in 1972, and only 1.1 percent of all crime in 2008 (Hook 2010a). But it is unclear how much official crime counts have been artificially lowered by the rules of extraterritoriality that still govern U.S. military conduct in Japan. These rules are themselves the subject of considerable contestation in Okinawa and other parts of Japan.

Although the Japanese police gather statistics on *rainichi* and "other" foreigners, the discourse in police reports, political debates, and media accounts focuses exclusively on *rainichi* crimes. Police White Papers have been consistently silent about the "other" category of foreigners, even though they comprised a majority of foreign national penal code suspects up until 1992 and even though they have continued to account for a substantial minority of crimes by foreigners thereafter.

III. ARREST

The perception of foreigners as criminals is hardly unique to Japan. Indeed, the association between immigrants and crime could be the rule rather than the exception in immigrant-receiving countries in the contemporary world. As the 1931 report of the National Commission on Law Observance and Enforcement stated, in the United

States, “the theory that immigration is responsible for crime, that the most recent ‘wave of immigration,’ whatever the nationality, is less desirable than the old ones, that all newcomers should be regarded with an attitude of suspicion, is a theory that is almost as old as the colonies planted by Englishmen on the New England coast” (quoted in Moehling and Piehl 2009, p. 739). The purported criminality of immigrants has also been a staple of anti-immigration discussions in Europe. In Italy, political campaigns against migrants from non-European countries and East Europe, symbolized by the 2002 Bossi-Fini law, accused some foreigners of being a major criminal threat (Totah 2002; Melossi 2003; Angel-Ajani 2003; Calavita 2005; Barbagli and Colombo 2009).

Although the claim of migrant criminality may be questionable, foreign nationals did come to constitute a substantial presence in many European penal systems as the migratory flows into and between European countries increased. In Italy, for example, foreign national suspects make up 24 percent of homicide arrests, 40 percent of sexual assault arrests, and 49 percent of theft arrests (Barbagli and Colombo 2009). Conversely, studies in the United States have found that foreigner crime rates are no higher, and are often lower, than those of native-born citizens (Stowell 2007; Sampson 2008; Lee and Martinez 2009). Even in Europe, some foreign groups have higher crime rates than the native-born, whereas others show the opposite tendency (Tonry 1997).

The variability of migrant crime rates compared with native-born crime rates is evidence that the relationship between foreign-bornness and crime is far from straightforward. Three variables help explain the variance. The first concerns the characteristics of migrants and the contexts of migration. Some migrant groups migrate with higher levels of economic, social, and cultural capital, and receiving societies often treat different groups differently. These differences in resources and social contexts influence the propensity to offend.

The second variable is law enforcement. Migrants in any given country vary in terms of race, ethnicity, class, and social integration and, therefore, are subject to varying levels of social stigma. This stigma can stimulate policing that is targeted on some foreigners, thus inflating the crime rate in that group.

The third variable is the method of measurement. Migrants are by definition a mobile population, and some are never counted in population statistics, either because they are not properly documented or because they are staying in the receiving country for only a short time. A certain amount of crime is committed by persons who are undocumented in population statistics. Thus, population statistics can understate a foreign-born population in a given country and thereby overstate its crime rate. The impact of this measurement error is greater if a migrant group is relatively small and/or if the proportion of the foreign population that is “undocumented” is relatively large.

Unlike in Europe and North America, the number of foreign national offenders remains small in Japan. Of course, this does not mean that migrants to Europe are more criminal than migrants to Japan because the percentage of foreign national residents in Japan is smaller than that in Europe, and this difference contributes to differences in foreign representation in arrest statistics. However, the proportion of crimes by foreigners

Table 26.2 Percentages of *rainichi* and total arrests for selected offenses, 2010

	Total	Rainichi	Rainichi
Penal-Code Offense Total	322,620	6,710	2
Homicide	999	32	3
Robbery	2,568	133	5
Forcible Rape	803	22	3
Assault	49,525	938	2
Larceny	175,214	3,457	2
Special-Code Offense Total	77,378	5,148	7
Immigration Law	3,601	3,189	89
Moral environment Law	3,522	517	15
Anti-Prostitution Law	727	90	12
Drug Offense	14,529	538	4

According to Statistics of Registered Foreigners for 2009, registered foreign national residents with temporary immigration status consist of approximately 1 percent of the population in Japan. This number does not include tourists, short-term visitors, and unauthorized residents who are counted as *rainichi* in crime statistics.

Source: Calculated by the authors based on the data in Keisatsuchō 2011, "The Status of Crime in 2011," and Keisatsuchō 2001, "The Status of Drug and Firearms in 2011".

in the total crime count does merit consideration because it indicates how much impact foreign offenders have on the overall crime situation.⁵

According to official statistics for 2010, *rainichi* foreign nationals comprised approximately 2 percent of all penal code arrests in Japan (see Table 26.2). This proportion has been stable for the past decade (Keisatsuchō 2011). Yet according to the Statistics of Registered Foreigners in Japan, the proportion of foreign national residents with temporary immigration status is approximately 1 percent (Hōmushō Nyūkoku Kanri Kyoku 2011)—about half the proportion in the *rainichi* arrest statistics. These two statistics are not directly comparable because statistics for registered foreign national residents do not include two sizable subgroups of *rainichi*: short-term visitors and unauthorized residents. This inconsistency between crime and demography statistics also makes it difficult to compute *rainichi* crime rates in a reliable manner (Nakashima 2000; Noro 2002; Yamamoto 2004, 2008).

The *rainichi* foreign national percentages are slightly higher for robbery (5 percent), drug offenses (4 percent), and homicide (3 percent), but they are still a small fraction of Japan's crime totals. The only offense for which foreign nationals comprise a majority of arrests is (unsurprisingly) immigration law violations (87 percent). The proportion of foreign national arrests is also relatively high for some moral offenses, such as violations of the Moral Environment Law (*fūzoku tekiseika hō*) (15 percent) and antiprostitution

law violations (12 percent). Chinese nationals comprise the largest proportion of foreign national arrests (approximately 40 percent), followed by Koreans and Brazilians, reflecting the nationality compositions among foreign national residents. *Rainichi* foreigners are somewhat overrepresented in Japanese prisons and jails, at 5 percent of the incarcerated population in 2009,⁶ but this is still much lower than the figures for France, Germany, and other European countries. Arrest data further suggest that different nationalities are drawn to different types of offenses, which may reflect social networks. For instance, Iranians have a relatively large proportion of drug offenders, Colombians are more likely to be charged with burglary, Brazilians are more likely to be involved in automobile-related thefts and drug offense, and U.S. nationals are more likely to be arrested for violent crimes.

Despite the demonization of unauthorized migrants in political debates and media representations, unauthorized migrants have always constituted a minority of *rainichi* arrests. Even in 2003, when a series of anti-foreign crime measures were introduced, unauthorized migrants constituted just 17 percent of *rainichi* penal code arrests—and only 0.3 percent of all penal code arrests in Japan (Keisatsuchō 2004). In 2010, the criminal impact of unauthorized migrants was even smaller, comprising just 7 percent of all *rainichi* penal code arrests (Keisatsuchō 2011).

Are foreign nationals more likely to commit crime than Japanese nationals? The Japanese police and conservative politicians often claim the answer is yes, and migrant support activists have challenged their assertions (Nakashima 2000; Gaikokujin Sabetsu Watch Network 2004).

A major point of contention in this debate is how to estimate the *rainichi* population. Police White Papers suggest high criminality for foreign populations based on the fact that the percentage of *rainichi* suspects in the clearance statistics is higher than the proportion of registered foreign national residents. In contrast, migrant-support activists, such as Nakashima (2000), argue that the police method of comparison erroneously emphasizes the criminal propensity of foreign nationals by excluding a large number of short-term visitors from the population base; these are people who do not register as residents but who may commit crime. When short-term visitors are counted, the arrest rate of foreign nationals is lower than that for Japanese nationals (Nakashima 2000). Noro (2002) further complicates this analysis by weighing the *rainichi* population size by the number of days stayed in Japan. His analysis found that the arrest rate is higher for *rainichi* foreigners than for Japanese nationals, although he stressed that it is almost impossible to come up with an accurate estimate of the foreign national population.

One way to get around the “short-term visitor” problem is to compare the arrest rate by immigration status instead of aggregating all statuses into one catch-call category (see Table 26.3). When this is done, arrest rates for most temporary visa holders are higher than those for Japanese nationals. In 2009, the overall penal code arrest rate in Japan was 2.6 per 1,000 population, whereas the arrest rate for student visa holders was 5.3, for settler visa holders 7.9, and for trainee visa holders 11.7. The only exception is the entertainer visa holder, whose arrest rate was 1.9 per 1,000. These statistics show that arrest rates are higher in some crime categories for the *rainichi* population.

Table 26.3 Penal code arrests per 1,000, total and foreign nationals by immigration status, 2009

	Arrests (persons, per 1000)	Ratio to Japan Total
Japan Total	2.61	–
Entertainers	1.92	0.74
Students	5.27	2.02
Trainees	11.70	4.48
Long-term Residents	7.91	3.03

Source: Calculated by the authors based on the data in Keisatsuchō Keijikyoku Soshiki Hanzai Taisakubu (2011), "The Arrest Status of Crime by *Rainichi* Foreigners"

Does this mean that *rainichi* foreigners have a higher propensity to offend? Not necessarily. For one thing, these statistics do not take age and gender into account, two variables that typically have a great impact on the likelihood of criminal offending. The high proportion of females among entertainer visa holders probably contributes to their lower arrest rate. Similarly, the youthfulness of the *rainichi* population likely contributes to its higher arrest rate.⁷ We were unable to obtain age and gender data that would enable a more detailed analysis.

In addition, there is the possibility of law enforcement selection effects. Arresting a suspect on an unrelated charge to buy time for interrogation (*bekken taiho*) is a common practice in Japanese policing, and so is the use of immigration charges to extend criminal investigations (Tsuda 2001). Arrests for immigration violations became particularly prominent after the NPA's Emergency Program called for the apprehension of unauthorized residents in 2003 (Yamamoto 2010; Namba 2011). The target of this policy was migrants from non-Western countries, and the selective stop-and-frisk of foreign-language speakers and foreign-looking nonwhites may well have contributed to higher arrest rates for this population.

Chinese nationals have long been a favored target of the Japanese police. In 2000, two police departments in Tokyo distributed hundreds of fliers saying "*Chugokujin Kana to Omottara 110-ban* (If You Think It Might Be a Chinese Call the Police)." The flier also encouraged reports to the police if Chinese speakers were seen in private buildings (Okamoto and Suzuki 2005). The Kanagawa Prefecture Police distributed a similar flier asking residents to call the police if they saw Chinese carrying large bags, talking on cell phones, walking up stairs, or parking a car (Okamoto and Suzuki 2005).

If the offending propensity of *rainichi* foreigners seems higher than that of the Japanese, systematic discrimination may well be one of explanations. Migrant workers often comprise the secondary labor market (Piore 1979) and are excluded from traditional labor unions, making them more susceptible to workplace abuse and layoffs

(Shipper 2008). Japan's "backdoor" labor migration policy places some migrant workers in an especially vulnerable position. For instance, the foreign trainee system had long been used as a source of cheap, low skilled labor, without acknowledging trainees as workers (Terasawa 2000). Since foreign trainees are legally nonworkers, they have often been excluded from the full protection of labor laws (Terasawa 2000; Igarashi 2011). In its Trafficking in Persons Report for 2011, the U.S. Department of State condemned Japan's trainee system as a façade for forced labor. These trainees are often subject to "abuses including debt bondage, restrictions on movement, unpaid wages and overtime, fraud, and contracting workers out to different employers" (U.S. Department of State 2011). Despite denials by the Japanese government, journalists and migrant support nongovernmental organizations (NGOs) have repeatedly reported the abusive treatment of trainees by their employers and by brokers; abuses include the confiscation of passports, the control of a trainee's bank account by the employer, the confinement to a dormitory, the prohibition of communication with people outside the workplace, and verbal and physical violence (Gaikokujin Kenshūsei Mondai Nettowāku 2006; Yasuda 2007).

Brazilian workers, many of whom have Japanese ancestry, tend to have a secure and flexible settler visa, but most of them were hired as temporary workers (Higuchi 2010). Japan's long recession, which started in the 1990s, severely affected many vulnerable workers. According to a 2009 study in Hamamatsu, a city in Shizuoka prefecture known for its large number of Brazilian workers, 47 percent of Brazilians reported being unemployed when the national unemployment rate in the same year was only 5 percent (Higuchi 2010).⁸

IV. JAPAN'S CRIME "CRISIS" AND THE CONVERGENCE OF IMMIGRATION CONTROL AND CRIME CONTROL

In Japan, the mission of crime control and immigration control are concentrated in different organizations. Prefectural police departments are responsible for criminal investigation, with coordination by the NPA, a policy-making agency without investigative capacity. In contrast, immigration control is in the realm of the Immigration Control Bureau, a subdivision of the Ministry of Justice. At the start of the 21st century, those two organizations narrowed their distance, especially in the Tokyo metropolitan area, where the governor enthusiastically linked the supposed danger of foreign criminals with a plan to halve the number of unauthorized residents in Tokyo. The police and the Immigration Control Bureau also collaborated in a series of major raids in Tokyo, and police officers started arresting more unauthorized residents in their routine police patrol.

In contrast with the recent controversy that Arizona's immigration law prompted in the United States, the involvement of police in immigration control was hardly challenged in Japan. Three factors seem to account for the acceptance of the convergence of immigration control and crime control: the uniformity of criminal laws throughout the nation and the similarity of policing styles all over Japan, the political weakness of the Immigration Control Bureau, and the low political salience of migrants' rights. In contrast to the United States, where federal and state law enforcement are distinguished, Japan has a nationally unified system of laws and policing (Ames 1981). Furthermore, the Immigration Control Bureau is much weaker than the police both in political power and in human and financial resources. The political insignificance of immigration further facilitated the easy penetration of the police into the immigration field. The Bureau could not resist when police decided to reach into the realm of immigration control.

The trigger for the immigration–crime control convergence was twofold: changes in the perception of crime and security in Japan (Johnson 2007) and administrative changes in the Japanese police (Hamai 2004; Kawai 2004). After facing a significant legitimacy challenge from a series of scandals in the late 1990s, the Japanese police made efforts to regain public trust and obtain additional resources. Publicity was critical for this to occur, and one of its main objectives was convincing the public that the police were performing their jobs well. To accomplish this objective, police mandated that all reported cases should be officially processed. Ironically, a reform intended to make the public feel safer had the opposite effect. Crime reports that would have been ignored or informally handled in previous years were now officially recorded, and the number of penal code offenses increased 37 percent, from 2,690,267 in 1998 to 3,693,928 in 2002. At the same time, the clearance rate dropped dramatically, partly because the police did not have capacity to handle the sudden surge in reported crimes.⁹ Thus, a partly artificial increase in crime rates and a decline in the clearance rate became statistical evidence of a crime crisis, and so began the hunt for “folk devils” in 21st-century Japan (Cohen 1972). It was in this context that foreign national offenders became the target of intensified crime control.

V. NATIONALITY DISPARITIES IN PROSECUTION AND SENTENCING

In the 1990s, defense lawyers and Ministry of Justice bureaucrats debated the issue of judicial discrimination against foreign nationals. Defense lawyers argued that foreign national suspects are more likely to be prosecuted and to receive long sentences for minor offenses because of discriminatory treatment by prosecutors (Japan Civil Liberties Union 1991), whereas Ministry of Justice officials argued that disparities in sanctions reflect the different character of offenses between the two groups (Kurata 1993;

Matsuda 1995). The claims of defense lawyers were primarily supported by individual cases and anecdotes, whereas the arguments of the Ministry of Justice bureaucrats were buttressed by statistical analysis. The difference in evidence is not due to a gap in analytical competence, but because the Ministry of Justice has access to detailed data about criminal cases, whereas defense lawyers do not (the Ministry's studies also failed to take into account how discretionary decisions by police and prosecutors shaped the data that it analyzed). Twenty years later, the issue remains contested. There is a continuing disparity between Japanese and foreign nationals, and the Ministry of Justice holds fast to the data that might help us understand why.

A. Prosecution

If a criminal court is an arena for a duel between prosecutors and defendants, Japan's high conviction rate demonstrates the disparity in the weapons the two fighters possess. In Japanese criminal justice, prosecutors have great power to decide which suspects will be convicted (Johnson 2012). According to the White Paper on Crime for 2009, of 503,245 defendants whose cases concluded in Japanese courts, only 75—one in 6,700—were acquitted (Hōmushō Hōmusōgōkenkyūjo 2010). The main reason for this high conviction rate is the conservative charging policy of prosecutors. Japanese prosecutors spend much time and efforts selecting which cases to bring to trial, and they seldom bring charges if they feel there is some significant chance to lose the case. Similarly, if the case is considered insignificant, they are likely to suspend prosecution (*kiso yuyo*). Because Japanese prosecutors are cautious about what cases to charge, they can ensure a high conviction rate (Johnson 2002).

About half of all cases referred to prosecutors in Japan never make it to court. In 2009, the overall prosecution rate was 48 percent, and the prosecution rate varied depending on the offense, with prosecution rates higher for drug offenses, robbery, fraud, and forgery (Hōmushō Hōmusōgōkenkyūjo 2010). Overall, *rainichi* foreign nationals are more likely to be prosecuted than are Japanese nationals for penal code offenses, but the prosecution rate varies substantially by nationality of the suspect.

In 2009, 57 percent of *rainichi* suspects who were referred to prosecutors offices for penal code offenses ended up being prosecuted, which is higher than the national average of 44 percent. *Rainichi* suspects have consistently had a higher prosecution rate than the national average, and the gap was particularly wide in 2003 and 2007, when campaigns against foreign criminals were waged (Figure 26.2A). The prosecution disparity is smaller when “special code” offenses are considered, mainly because of the large number of immigration law violators who are more likely to be sent to the Immigration Control Bureau than to criminal court. But during the mid-2000s, the gap was substantial even after combining the penal code and special code offense categories (Figure 26.2B). In 2003, for example, the overall prosecution rate for *rainichi* offenders was 70 percent, and that was considerably higher than the overall total of 48 percent.

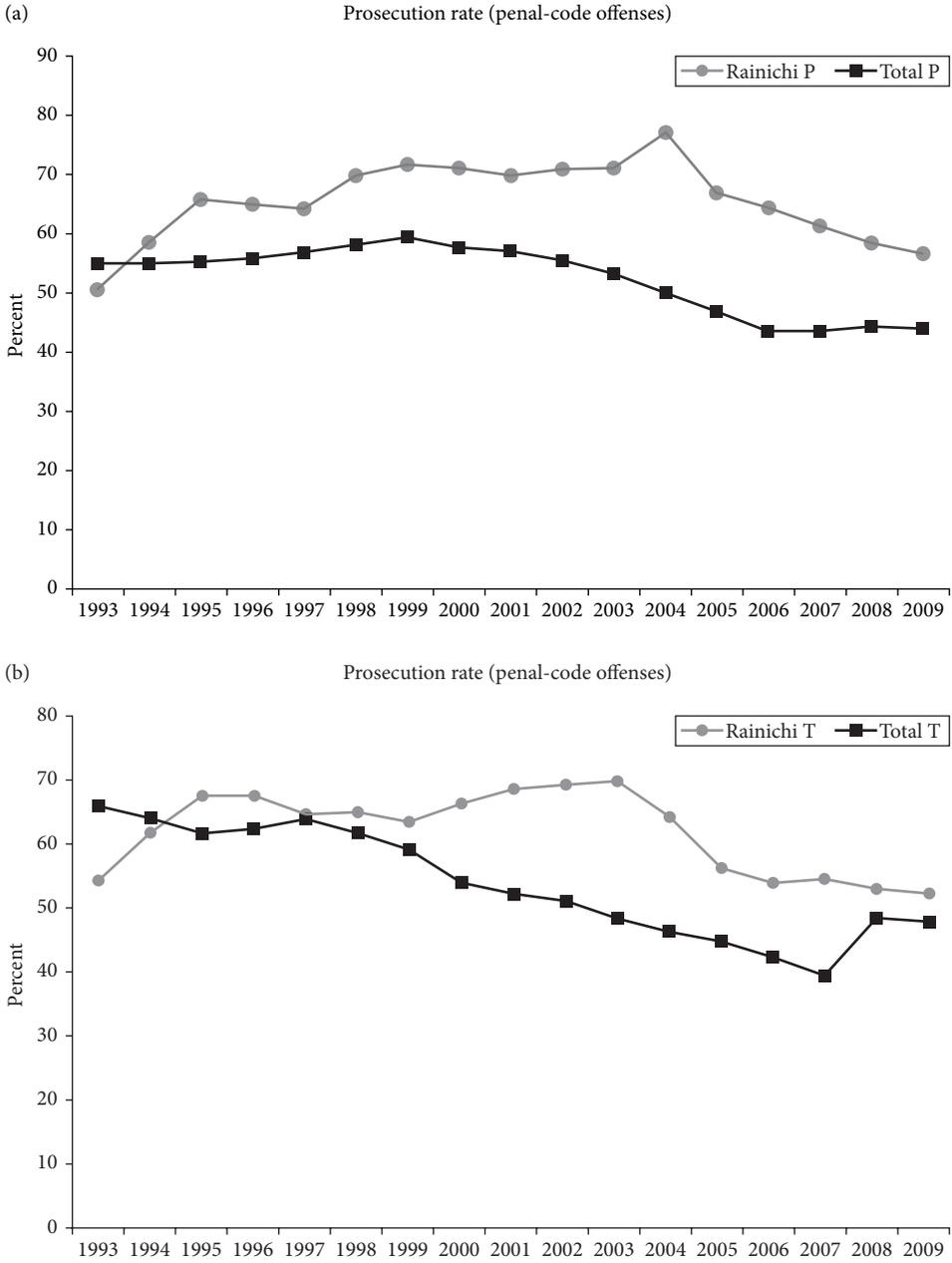


FIGURE 26.2(A) The *rainichi* total prosecution disparity for penal-code offenses, 1993–2009. (B) The *rainichi* total prosecution disparity for all offenses, 1993–2009

Source: Kensastsuchō, “Annual Report of Statistics on Prosecution” multiple years.

Similar disparities are evident for most major penal code offenses. In 2009, 86 percent of *rainichi* robbery suspects who were referred to the procuracy resulted in prosecution, compared to the national average of 66 percent. Similarly, the *rainichi* prosecution rate among homicide suspects was 65 percent, 16 percentage points higher than the national average of 49 percent. The prosecution rate among *rainichi* larceny suspects was 63 percent, substantially higher than the national average of 44 percent. On the other hand, a disparity hardly exists for some offenses, whereas, for other offenses, *rainichi* offenders have lower prosecution rates (42 percent vs. 60 percent for gambling, 44 percent vs. 58 percent for prostitution, and 8 percent vs. 18 percent for embezzlement).

The discretionary power of the Japanese prosecutor is most evident in decisions to suspend prosecution (Johnson 2002). The Japanese Code of Criminal Prosecution allows a prosecutor to suspend prosecution in any case “if [the prosecutor] deems the prosecution unnecessary considering the character, age, circumstance of the suspect, severity of offense, and the situation after the offense” (Ministry of Justice 2011). The prosecutor’s perception of damage done by the offense, the likelihood of reoffending, and the remorse of the suspect have a great influence on whether a convictable case is brought to trial. Suspension is indefinite, and, in practice, it is really a waiver of prosecution used for suspects deemed to deserve lenient treatment. In 2009, Japanese prosecutors prosecuted 96,554 penal code cases while suspending prosecution for 73,459 more—a suspended prosecution rate of 43 percent. The rate of suspension for *rainichi* suspects was 37 percent.

Despite the popularity of the overarching label of foreign criminals in government documents and the Japanese media, prosecution statistics suggest that prosecutorial discretion works differently for different nationals. Table 26.4 compares the penal code suspension rates among the ten groups of nationals that have the largest representation among prosecutable (prosecuted + suspended prosecution) *rainichi* suspects. U.S. nationals enjoy the highest suspension rate at 59 percent. In contrast, the chance that a Chinese national gets a suspension is about one in three (36 percent), whereas for Brazilian nationals it is only one in five (20 percent). The suspension rate is lowest among Colombians; of the 61 Colombians who were prosecutable in 2009, only two received suspended prosecution (just 3 percent).

Do these disparities reflect discrimination, or do they mainly reflect the difference in offenses that members of each group are arrested for? It is difficult to say anything conclusive without the details for each offense, but there is substantial variance in the types of offenses that different nationals commit, and it seems likely that differences in types of offenses do contribute to the differences in suspension rate. To the authors’ knowledge, no data are available that would allow researchers to examine suspension rates by nationality and offense type. Whether disparities in the prosecution rate are due to discrimination is an empirical question that can be answered only if Japanese officials relax their tight grip on case-level data.¹⁰

Table 26.4 National disparities in suspended prosecution rates for penal code offenses: total, larceny, and assault, 2009

	Prosecuted	Suspended	Suspension Rate (%)
A. Suspended prosecution rate: penal code offenses total (for countries of origin with 50+ prosecutable cases)			
Japan Total	96,541	73,459	43
<i>Rainichi</i> Total	4,060	2,426	37
United States	52	74	59
Philippines	169	139	45
Russia	32	26	45
Korea	702	526	43
Vietnam	305	214	41
Nigeria	30	20	40
China	1,577	904	36
Peru	157	71	31
Brazil	598	146	20
Colombia	59	2	3
B. Suspended prosecution rate: larceny (for countries of origin with 30+ prosecutable cases)			
Japan Total	43,177	33,657	44
<i>Rainichi</i> Total	2,159	1,107	34
Korea	241	187	44
C. Suspended prosecution rate: assault (for countries with 30+ prosecutable cases)			
Japan Total	14,996	14,081	48
<i>Rainichi</i> Total	495	570	54
Philippines	19	46	71
United States	23	37	62
Korea	124	165	57
China	133	143	52
Brazil	50	33	40
Vietnam	20	16	44

Source: Calculated by the authors based on the data in Hōmushō (2012), "Annual Report of Statistics on Prosecution."

B. Sentencing

The available data do not allow us to examine sentencing disparities in detail, but aggregate statistics suggest that *rainichi* defendants and Japanese defendants sometimes experience different outcomes.

According to the White Paper on Crime, in 2009, an interpreter was used for defendants in 4,085 cases,¹¹ and, of those cases, 919 defendants received an unsuspended prison sentence (Table 26.5). Of defendants who received an unsuspended sentence, 44 percent received a sentence of 3 years or longer, whereas the national average was only 19 percent. Conversely, non-Japanese speakers are more likely to receive a suspended sentence than are Japanese nationals. In 2009, for example, 77 percent of non-Japanese speakers received a suspended sentence, which is substantially higher than the national average of 58 percent. This is partly due to an extremely high probation rate for immigration law violators. After waiting for trial for months in jail, the vast majority of immigration law violators—94 percent in 2009—received probation and then were transferred to the Immigration Control Bureau, from whence many were deported to their country of origin. But even when immigration law violators are excluded, the probation rate for non-Japanese speakers is still higher than the national average.

The general picture from this limited evidence suggests that non-Japanese speaking defendants have more bipolar trajectories than their Japanese speaking counterparts: they are more likely to receive a suspended prison sentence, but if they are sentenced to prison, they are more likely to receive a longer sentence. Assuming that the lack of Japanese language skills is a proxy for temporary immigration status, this pattern implies the tendency of Japanese courts to give suspended sentences for less severe

Table 26.5 The distribution of unsuspended prison sentences at the initial court, cases with interpreter and total, 2009

Term	Cases with an Interpreter	Total
	% (n)	% (n)
Shorter than 1 year	7 (65)	17 (4334)
Shorter than 2 years	21 (191)	33 (8,767)
Shorter than 3 years	28 (256)	31 (8,181)
Three years or more (including indefinite sentence)	44 (407)	19 (4,958)
Unsuspended Sentence Total	100 (919)	100 (2,6240)

Source: Calculated by the authors based on the data in Hōmushō Hōmusōgōkenkyūjo (2010), White Paper on Crimes.

offenses by deportable foreign nationals and then to transfer them to the jurisdiction of the Immigration Control Bureau, which can send them back to their country of origin, while punishing more severe offenses with longer periods of incarceration. Judges know that giving a suspended sentence to a deportable migrant does not mean setting them free. Once convicted, some temporary migrants may immediately become subject to deportation, and, even if they are not deported right away, a criminal record effectively closes the door to visa renewal.

In the current nation state system, the ultimate difference between nationals and non-nationals is that nationals have an inalienable right to reside in the national territory, whereas non-nationals do not (Brubaker 1992).¹² Almost the only way for the state to legitimately exclude its physically and mentally capable nationals from society is through criminal punishment. This is not the case for non-nationals because the state has plenary power to deny residence to unwanted non-nationals (Bosniak 1994). The high rate of suspended prison sentences for foreign national defendants in Japanese courts is not necessarily an indicator of the benevolence of Japanese law to migrants. Rather, it is the result of the fact that the state has an alternative means to exclude non-nationals from society, which is less costly than imprisonment and therefore more efficient.

The Japanese police and Ministry of Justice are highly cognizant of the interchangeable quality of criminal laws and immigration laws as means to exclude undesirable populations. The 2001 revision of penal laws and of the Immigration Control Laws further reflects the convergence of these two legal modes. Until 2001, noncitizens who were charged with criminal offenses were deported only if they were convicted and sentenced to a year or more of imprisonment without suspension. The 2001 revision expanded the deportable crime categories by making those who are convicted of particular offenses deportable regardless of the severity of punishment and, by implication, the severity of the offense.¹³ The list of newly deportable offenses is long, including trespassing, forgery of currency, forgery of official documents, forgery of quasi-monetary documents (*yūka shōken*), manipulation of digital information on a credit or debit card, forgery of seals or notarizations, pornography, adultery and bigamy, homicide, assault, confinement, kidnapping, robbery, larceny, fraud, extortion, dealing in stolen goods, collective violence, assault with firearms, habitual assault, habitual larceny, habitual robbery, habitual rape, and the use or possession of special tools to open locks. What these offenses share in common is the police, public, and political perception that they are disproportionately committed by foreigners (Yamamoto 2008). The last offense—the use or possession of tools to open locks—was created in 2001 to target Chinese offenders, who were believed to be responsible for the growing number of burglaries in Japan.

The number of deportations in Japan temporarily increased in 2004 following the NPA's program to intensify the policing of foreign criminals; the number declined thereafter (Figure 26.3A). The decline can be attributed to a large drop in the number of visa over-stayers. The combination of prolonged economic recession and intensive policing provided many reasons for undocumented migrants to leave Japan. Deportations due to

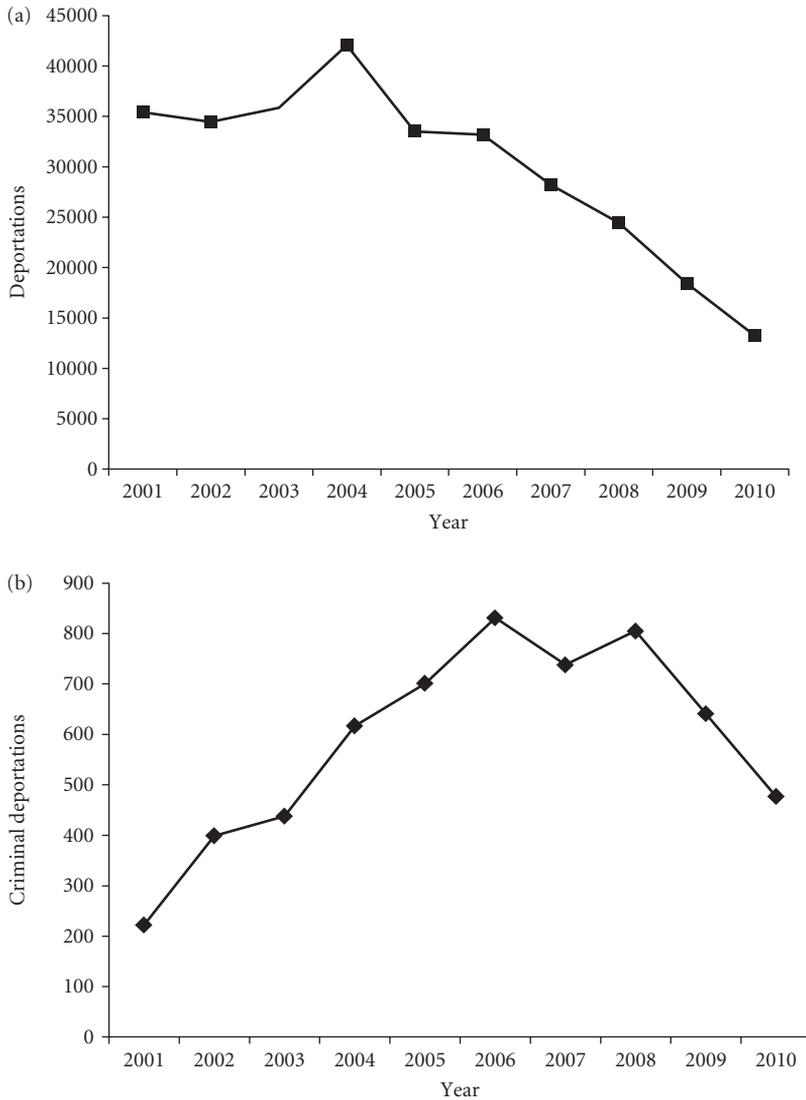


FIGURE 26.3 (A) Deportations in Japan, 2001–2010. (B) Deportations due to criminal law violations, 2001–2010

Source: Hōmushō Nyūkoku Kanri Kyoku (2007; 2011)

criminal violations comprise a small minority of all deportations, but this category kept increasing even after the total number of deportations fell (Figure 26.3B).

In sum, the foregoing analysis illustrates and illuminates some of the interactions between crime control and immigration control in the Japanese context. The shortcomings in this analysis also show that the search for sentencing disparity by nationality requires better data and—ultimately—greater openness on the part of Japanese officialdom.

VI. CONCLUSION

Japan does not collect race or ethnic statistics; it only records the nationality of residents and crime suspects. Japanese crime statistics employ the category of *rainichi* foreigners (visiting foreigners) to distinguish newly arrived migrants from the resident or *zainichi* population. At the start of the 21st century, *rainichi* foreigners came to be considered one main target of the police. Unauthorized migrants were seen as especially criminal, and stricter immigration controls were deemed the most appropriate response.

In contrast to the large symbolic presence of *rainichi* foreigners in Japan's crime discourse, their actual presence in crime statistics is small. *Rainichi* foreigners make up only 2 percent of all penal code arrests and only 5 percent of the incarcerated population. What triggered the political campaign against foreign criminals in Japan was not a much increased foreigner crime problem but rather changes in the perception of crime and security and the desire of the police to assert their authority and bolster their legitimacy through a high-profile anticrime campaign. In this context, foreigners became a preferred target of the police.

Disparities in prosecution and sentencing between Japanese nationals and foreign nationals were first identified in the 1990s, and the same issues remain salient today. The impact of prosecution disparity is particularly significant because Japan's conviction rate exceeds 99 percent: if you are charged, you will almost certainly be convicted and sentenced. But there are large gaps by nationality in penal code prosecution rates. Overall, *rainichi* foreigners are more likely to be prosecuted than Japanese nationals, but, within the category of *rainichi* suspects, some nationalities have a higher prosecution rate than others, whereas others are less likely to be prosecuted. At trial, *rainichi* suspects are likely to receive a suspended sentence, but, if they receive an unsuspended sentence, their terms of imprisonment tend to be longer. Whether these disparities reflect discrimination or different offending patterns is a question that requires more detailed data and additional research. Our own hunch is that both influences are operative.

Because of the large demographic changes that Japan is now experiencing, the current focus on *rainichi* foreigners may not last much longer. More of the migrants who came to Japan in the 1980s and 1990s have acquired permanent residency status, and some have become naturalized Japanese citizens. One result is that Japanese citizens and denizens are slowly becoming more ethnically diverse. The current *rainichi*-*zainichi* dichotomy also seems to be losing traction. If the trend continues, administrators and scholars will need to construct new frameworks for classifying and understanding Japan's emerging ethnic communities.

Japan has a rapidly aging society, and, in fits and starts, it is seeking ways to open its doors to more permanent immigration. The Fourth Basic Plan for Immigration Control, issued in 2010 as a five-year outline for immigration, declares that Japan will promote policies to actively seek more migrants from Asia to cope with its population decline. The Japanese government has also presented its "Three Hundred Thousand

International Student Plan” (*ryugakusei sanju man-nin keikaku*), which is designed to encourage the migration of highly skilled workers from other Asian countries. These policies could raise the prospects for a larger flow of immigrants to Japan and for the country’s increased acceptance of permanent immigrants. Japan seems to be realizing that migrants are not merely temporary visitors; many stay for the long term—with permission and without.¹⁴

The high salience of crime in Japan’s immigration politics reflects the weakness of its immigration administration. If acknowledging the need for increased immigration leads to a shift away from control-oriented immigration policies and toward more integration-oriented ones—and if services to support immigrants improve—Japan may be able to cultivate a less fearful approach to new members of its society.

NOTES

1. To make internal border control more efficient, police officers are encouraged to use Article 65 of the Immigration Control and Refugee Recognition Acts, which allows the police to arrest unauthorized migrants and send them directly to the Immigration Control Bureau without going through the normal criminal procedures.
2. Trainees came to be protected by labor law in July 2010.
3. From the 1980s to the early 2000s, a large number of Filipina women came to Japan on “entertainer” visas. This visa was officially meant for professional musicians and entertainers, but those who came in this way primarily worked at nightclubs and pubs as singers, dancers, and hostesses—and in some cases as sex workers. Many entertainers married a Japanese spouse and remained in Japan. In 2005, the Japanese government started applying stricter admission guidelines to entertainers, thereby decreasing the number of newly admitted Filipino nationals under this category from 47,765 in 2005 to 8,608 in 2006—a drop of 82 percent (Hōmushō Nyūkoku Kanri Kyoku, 2007).
4. As of January 2009, there were 94,217 U.S. soldiers, military personnel, and family members in Japan—almost half on the islands of Okinawa. See Gaimushō and Bōeishō (2008).
5. Some analysts argue that the large number of foreigners arrested and incarcerated in Italy reflects the structural oppression of migrants rather than their criminality (Palidda 2009).
6. In 2009, 7 percent of inmates were foreign nationals (including permanent residents) (Hōmushō 2010).
7. Migrants often differ from the native population on demographic factors that are known to influence the crime rate, and recent studies in the U.S. suggest that migrants have a lower crime rate when these demographic factors are controlled (Lee and Martinez 2009).
8. The unemployment rate in this survey should be interpreted with caution because it did not employ probabilistic sampling and because the wording of the question used to measure unemployment is unavailable (there were 2,773 Brazilian respondents). Higuchi (2010) notes that surveys conducted in other regions found similar levels of unemployment.
9. Police scandals also increased transparency and accountability, making it more difficult for police to cook the crime books (Hamai and Ellis 2007).
10. On the problem of doing research in fact-rich, data-poor Japan, see Brinton (2003).
11. In 2009, 38 languages were interpreted in Japanese courts, and the most frequently used languages were Chinese (31 percent), Korean (11 percent), Portuguese (11 percent), Tagalog (11 percent), and Spanish (7 percent) (Hōmushō Hōmusōgōkenkyūjo 2010).

12. A state may revoke the nationality of its citizens but the practice is rare.
13. Since 2010, the number of foreign nationals detained in Japan by immigration officials for a year or more has declined markedly. This drop seems to reflect a change in Ministry of Justice policy that was prompted by harsh public criticism of long-term detention following high-profile hunger strikes and suicides by detained immigrants (Japan Times 2012).
14. For the view that Japan's immigration policy continues to guarantee that foreigners are disempowered and to assure their status as perpetual "other," see Arudou (2012a) and other writings at www.debito.org. On this view, Japan is destined to wither into an "economic backwater" as long as its immigration policy remains "hard-wired to fail." Our own view of Japan's future is a little more optimistic, but Arudou's prediction is plausible. After an unbroken rise since 1960, Japan's registered non-Japanese population dropped in 2011 for the third consecutive year (Arudou 2012b).

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CHAPTER 27

ETHNICITY, MIGRATION, AND CRIME IN THE NETHERLANDS

GODFRIED ENGBERSEN, ARJEN LEERKES,
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THE development of research on the relations among ethnicity, migration, and crime in the Netherlands reflects the ways migration flows and immigration control policies have evolved in the Netherlands after World War II. We pay attention to research on settled immigrant categories (first- and second-generation immigrants who have become naturalized citizens or have a Dutch residence permit) and to research on immigrant categories with a weaker residence status (such as asylum seekers and irregular immigrants).

In the 1980s and 1990s, research primarily focused on four immigrant groups that are today established ethnic minorities: Surinamese, Turks, Moroccans, and Antilleans. In the second half of the 1980s, these groups displayed serious integration problems, evidenced by weak attachment to the labor market and high unemployment rates. Research later expanded to include criminality among asylum seekers and irregular migrants. In recent years, attention has focused on the involvement in crime of migrant groups from Central and Eastern Europe.

The effects of migration management on immigrant crime also became a subject of research; for instance, the effects of open borders as a result of the EU enlargements (resulting in mobile banditry) and the effects of external border control (the growth of human trafficking organizations) and internal border control (forms of subsistence crime as a consequence of barring irregular migrants from access to conventional means of acquiring income).

Most of the research into ethnicity, crime, and migration discussed in this essay was done at a time when the position of immigrants began to receive increasingly critical scrutiny. High unemployment among immigrants and tragic international (the U.S. terrorist attacks of September 1, 2001) and national events (particularly the assassinations of politician Pim Fortuyn and filmmaker and writer Theo van Gogh) played an

important contributing role. In the period 1990–2012, the Netherlands gradually took leave of a policy that emphasized self-organization and preservation of the cultural identity of ethnic minorities (e.g., the arrangements for education in the minorities' own languages)¹ and reduction of socioeconomic inequalities. It has been replaced by a policy with a stronger emphasis on assimilation, on active citizenship, and on the social obligations of citizenship and the individual responsibilities of citizens. There is greater focus on the moral dimension of integration (Entzinger 2006). Integration policies have not only become linked to issues such as employment and an obligation to learn the Dutch language and to become familiar with Dutch culture, but also to social problems of public order and crime.

In this essay, we first outline the major migration flows to the Netherlands and the ethnic composition of the population. In subsequent sections, we analyze research under five themes: the differential involvement of ethnic groups in criminality, subcultural explanations for criminality, victimization and fear of crime, the social organization of human trafficking, and the functioning of the criminal justice system. We conclude with a brief look at Dutch policy with respect to ethnicity, crime, and immigration.

Our discussion of the five themes demonstrates the theoretical and methodological plurality present in Dutch research into ethnicity, crime, and immigration. In the 1980s and 1990s, research was dominated by Hirschi's social control theory (Hirschi 1969), with the survey as the favored research method. Over time, this orientation was supplemented with rational choice perspectives, subcultural explanations, and with insights from the organizational sciences. Additionally, the longitudinal approach of life course criminology became very prominent. Merton's strain perspective and social capital approaches have also become more important in recent years, particularly in research on migrants with a weak legal status, such as irregular migrants and (rejected) asylum seekers. The plurality of theoretical perspectives has brought a plurality of methodologies in its wake. Increasing use is made of administrative databases and of extensive police investigations (for the analysis of organized crime). Qualitative methods, including ethnography and extended qualitative interviews, are also widely used.

These are the main outcomes and conclusions of research on ethnicity, migration, and crime in the Netherlands:

- Over 20 percent of the total Dutch population in 2011 consisted of first- and second-generation immigrants from an increasing variety of countries worldwide.
- The Netherlands has a long tradition of monitoring criminal involvement of various ethnic groups using police data about criminal suspect offenses. In 2009, about 1 percent of all native Dutch individuals were registered as suspects of a criminal offense. That figure was higher for most non-native groups: 6.0 percent for Antilleans, 5.3 percent for Moroccans, 4.1 percent for Surinamese, and 3.1 percent for people of Turkish origin. Cohort analyses show that more than half of all first- and second-generation Moroccan and Antillean boys have been suspected of at least one crime by the age of 23; among native Dutch boys, that figure is 25 percent.

- The overrepresentation of various immigrant groups in Dutch police statistics can partly, but not completely, be explained by demographic and socioeconomic characteristics of these groups (age differences, educational level, incomes, living in cities or not). Other explanations that have been suggested include a relative lack of parental supervision and informal control within ethnic communities, specific cultural traits (honor, respect, codes of masculinity), the “street culture” in urban districts with many immigrants, and selectivity in police apprehensions and punishment.
- Having a weak residence status may indirectly contribute to offending among asylum seekers and irregular migrants. In the Netherlands, migrants with a weak legal status have limited access to social rights and facilities and are therefore more dependent on informal support and illegal sources of income. At the same time, the effect of a weak legal status should not be overemphasized because the majority of asylum seekers involved in administrative procedures or residing illegally in the Netherlands are not involved in any form of crime.
- The removal of restrictions on mobility from Central and Eastern European countries, many of which became EU member states in 2004 or 2007, resulted in forms of “mobile banditry” from these countries. Labor migrants from these new member states may also become involved in (petty) crime when alcohol is involved or when they are unemployed and delinquency becomes an alternative source of income.
- Compared to native Dutch citizens, non-Western immigrants are not only overrepresented as crime suspects but also have an elevated chance of becoming crime victims and to feel unsafe in their neighborhood. This is mainly attributable to the younger age of non-Western immigrants and their tendency to live in (deprived) urban settings.
- The European Union’s restrictive migration policies for migrants from non-EU countries (“Fortress Europe”) may increasingly drive migrants from these countries into the arms of human traffickers. Dutch research observes two types of human smuggling organizations—small and ethnically homogenous organizations that operate peacefully and sometimes offer smuggling services as a favor to friends; and larger, professional criminal organizations that use violence and sometimes hostage-taking.
- Dutch research into immigration, ethnicity, and crime pays little attention to the possible role of the police and justice system in producing the overrepresentation of immigrant groups in crime and detention figures. It suffers from a lack of “relational thinking”: social relations among immigrants and native groups and institutions are often taken for granted. Although some studies indicate selective police actions, Dutch criminologists generally agree that selective law enforcement cannot be the only cause of ethnic differences in registered crime. Ethnic differences are substantial, even when controls are used for relevant characteristics such as age, socioeconomic status, and degree of urbanity. Selective law enforcement also does not explain why certain immigrant groups (Antilleans, Moroccans) are more often

suspected of crime than are other groups with relatively similar socioeconomic and cultural backgrounds (like Turks).

- Compared to the 1990s, relatively large numbers of irregular immigrants are held in immigration detention centers. A minority of these are eventually deported. Immigrant detention in the Netherlands seems to serve three informal functions: deterring irregular residence, controlling pauperism among irregular immigrants, and managing popular anxiety by symbolically asserting state control.
- Research on ethnicity, migration, and crime suggests the need for more balance between open and closed national societies. Immigrants seem to be more at risk of involvement in crime when national societies exclude newcomers too much. Open borders, however, may also generate forms of delinquency, including drug trafficking or “mobile banditry.”

I. A RELUCTANT COUNTRY OF IMMIGRATION

Following World War II, the Netherlands was a country of emigration. Encouraged by state-sponsored emigration policies, many Dutch citizens emigrated to typical immigration countries such as Australia, Canada, and the United States and, to a lesser extent, to New Zealand and South Africa. Between 1946 and 1969, some 400,000 Dutch citizens left the Netherlands. In the same period, the Netherlands experienced a major influx of repatriates from the former Dutch East Indies (now Indonesia) following Indonesia's independence in 1949. Today, more than 380,000 first- and second-generation immigrants² with an Indonesian background live in the Netherlands.

A new migration pattern occurred in the late 1950s and early 1960s, with the arrival in the Netherlands and other Western European countries of the so-called guest workers from the Mediterranean. As the term *guest worker* implies, these labor migrants were expected to stay in the Netherlands temporarily and to return to their countries of origin when they had finished their jobs. Initially, in the early 1960s, Spain, Italy, and Portugal were the main sending countries of guest workers to the Netherlands. Later, substantial numbers of guest workers from Turkey and Morocco arrived. The formal recruitment of guest workers ended with the oil crisis of 1973. Many guest workers from Italy, Spain, and Portugal returned to their home countries, but many others, particularly among those of Turkish and Moroccan origin, decided to stay. Migration from both countries continued after guest worker recruitment ended, although on an individual basis. Some came illegally, whereas others arrived through formal family reunifications.

Later, many Turkish and Moroccan youths chose to bring spouses from their former home countries. This resulted in extensive marriage migration (also called migration for “family formation”). That phenomenon persists to the present day, although it has become less prevalent in recent years because of stricter immigration policies and

increased in-country intraethnic marriages (see Leerkes and Kulu-Glasgow 2011). Between July 2003 and October 2004, 4,542 partners of first- and second-generation Turks and Moroccans received residence permits because of family formation. For the period of November 2004 to February 2006 that number had dropped to 2,077.

The idea that guest workers and their families would stay in the Netherlands only temporarily, which dominated official Dutch thinking on immigration and immigrant integration for many years (Van Amersfoort 1982; Muus 2004), turned out to be a myth. In 2010, there were 389,000 first- and second-generation immigrants from Turkey in the Netherlands (197,000 born in Turkey; 190,000 born in the Netherlands with at least one Turkish parent). In the same year, there were 355,000 first- and second-generation immigrants from Morocco in the Netherlands (168,000 born in Morocco; 187,000 born in the Netherlands with at least one parent born in Morocco) (De Boom et al. 2011).

A third wave of immigration occurred after the independence in 1975 of Surinam, a former Dutch colony on the northern coast of South America. Following independence, nearly 300,000 Surinamese persons—about one-third of the total population—migrated to the Netherlands. In 2010, the Surinamese population consisted of almost 345,000 persons (186,000 born in Surinam; 159,000 born in the Netherlands with at least one Surinamese parent). In the late 1980s, an additional wave of postcolonial migration began: the arrival of residents of the Dutch Antilles. Because these Caribbean islands are still part of the Netherlands, Antilleans are Dutch nationals and have free access to the Netherlands if they can afford the travel costs. In 2010, there were about 141,000 Antilleans living in the Netherlands (89,000 born in the Antilles; the others born in the Netherlands with at least one parent born in the Dutch Antilles).

A fourth major immigration wave consisted of asylum seekers. Before late 1980s, relatively few asylum seekers came to the Netherlands, but this changed in the early 1990s, particularly because of the wars in former Yugoslavia (1992–1995). In the period 1990–2001, the numbers of asylum seekers—with some fluctuations—increased strongly. In the years 1991–1992, about 21,000 individuals per year applied for asylum. This increased to about 43,000 per year in 1999–2000. After that, the number of asylum applications decreased to 11,000 per year in 2003–2004. An important reason for the decline was the enactment of a new Aliens Act in 2001, which introduced stricter procedures for asylum seekers.

Of course, even before that, not all asylum requests were granted. In the early 1990s, almost half of all requests were approved, particularly for refugees from former Yugoslavia (Engbersen, Van der Leun, and De Boom 2007). Later, in the years following the introduction of the new Aliens Act, most asylum requests were rejected, and an increasing percentage of residence permits issued were only temporary. Among the six cohorts of migrants who applied for asylum between 2001 and 2006, between 21 and 42 percent had a residence permit in 2007 (Indiac 2007).

However, not all rejected asylum seekers left the country. It is estimated that about 20 percent of all asylum seekers who had exhausted all legal means in the period 1995–2004 remained in the Netherlands as irregular migrants in 2004 (De Boom, Snel, and Engbersen 2010). (This has not been estimated for more recent years.) In the past

25 years, most asylum seekers arrived from former Yugoslavia, the former Soviet Union, Turkey, Afghanistan, Iraq, Iran, Sri Lanka, Angola, Somalia, and Sierra Leone.

A fifth and continuous pattern of immigration consists of the influx of immigrants from other Western countries, including other EU countries. The number of foreign-born residents from Western countries increased from 440,000 in the early 1970s to almost 740,000 in 2010.³ More than half from other Western countries came from EU countries. The number of immigrants from other EU countries has increased strongly in recent years, particularly after the EU enlargements of 2004 and 2007.⁴

On January 1, 2011, there were 3.43 million first- and second-generation immigrants in the Netherlands, accounting for 21 percent of the Dutch population. About 45 percent of the non-native residents originate from Western countries (including Central and Eastern Europe), and the other 55 percent are from non-Western countries. The top 10 most numerous groups are Turks (389,000), Indonesians (380,000), Germans (379,000), Moroccans (356,000), Surinamese (345,000), Netherlands Antilles and Aruba (141,000), Belgians (114,000), Poles (87,000), former Yugoslavians (80,000), and citizens of the United Kingdom (79,000). These figures show three crucial developments in immigration to the Netherlands (Engbersen, Van der Leun, and DeBoom 2007). First, there is an ongoing pluralization and fragmentation of migration flows. In the early 1970s, the large majority of all foreign-born residents in the Netherlands came from a limited number of other Western countries. Today, two-thirds of foreign-born residents have arrived from various non-Western countries. The category of non-Western immigrants is itself also diversifying. In the early 1970s, the majority of non-Western immigrants came from four non-Western countries—Turkey, Morocco, Surinam, and the Dutch Antilles, traditionally the main sending countries to the Netherlands. In 1990, almost 80 percent of non-Western immigrants living in the Netherlands came from these four countries. By 2010, the share of the “traditional” sending countries had fallen to around 57 percent. In the same period, the share of other so-called non-Western immigrants and their offspring in the Netherlands increased from 21 to 43 percent (De Boom et al. 2011). Immigrants now arrive from more than 200 countries.

A second trend, therefore, is a new geography of migration. There is an increase in long-distance migration from a growing number of countries. At the same time, the traditional South–North migration is being supplemented by migration flows from East to West. According to recent estimates, around 300,000 immigrants from Central and Eastern Europe are now present in the Netherlands (mainly from Poland, Bulgaria, and Romania) (Van der Heijden, Cruyff, and Van Gills 2013). These include temporary labor migrants who are not registered in the official population registers.

A third general trend in contemporary migration patterns relates to the differentiated nature of residence statuses in the Netherlands. The traditional labor migrants, family immigrants, and immigrants from former colonies and their offspring generally had strong residence statuses. They are now increasingly augmented by new categories of immigrants with weaker residence statuses, such as asylum seekers, temporary labor migrants (mainly from new EU member states in Central and Eastern Europe), and

irregular migrants. The civic or legal differentiation in residence statuses reflects the complexity and selectivity of the current European and Dutch systems for management of migration.

II. DIFFERENTIAL INVOLVEMENT OF ETHNIC GROUPS IN DELINQUENCY

This section discusses differential involvement in delinquency of members of groups of different ethnic origins. First, we describe research concerning postcolonial immigrants and first- and second-generation Moroccans and Turks. Then, we discuss research concerning asylum groups and labor migrants from Central and Eastern Europe. Many of these studies rely on the official crime statistics of the Dutch police (the so-called Recognition Service System; Dutch acronym HKS), which registers suspected offenders after official questioning by the Dutch police. Minor misdemeanors are not registered in HKS. Individuals registered in HKS are not convicted criminals but suspects.

A. Crime Patterns among Established Minority Groups

Since the publication of work by Marianne Junger (1990), who described and explained ethnic differences in crime involvement, numerous studies and reports have shown that non-Western immigrants are overrepresented among crime suspects (Blom et al. 2005; Jennissen 2009). These studies mainly focus on Antilleans, Moroccans, Surinamese, and Turks.

One percent of all native Dutch citizens were officially registered as a suspect of at least one crime committed in 2009 (Van Noije and Kessels 2011). Among non-Western immigrants (first- and second-generation combined), the corresponding figure was 3.8 percent. The ranking of the four groups has remained unchanged throughout the last 10 years: immigrants of Antillean origin are most frequently registered as crime suspect (6.0 percent in 2009), followed by those of Moroccan (5.3 percent), Surinamese (4.1 percent), and Turkish (3.1 percent) origin. Men of Antillean origin stand out, with 9.4 percent being suspects, followed by men of Moroccan origin (8.8 percent). Women figure less prominently in police data than do men. However, women of Antillean origin are relatively frequent crime suspects (3.6 percent); a higher figure than for native (Dutch) men.

Recent cohort analyses have revealed interesting patterns. One cohort analysis, for example, followed youths who were 12 years old in 1999 until they were 22 in 2009. Sixty-five percent of all first- and second-generation Moroccan boys had been suspected of at least one crime by the time they reached age 23; the figure among boys of Antillean origin was 55 percent, whereas among boys from other non-Western groups the figure

approximated 50 percent. Among Dutch boys born in the Netherlands with two parents who were also born in the Netherlands, 25 percent were suspected of committing a crime by age 23 (Van Noije and Kessels 2011, p. 207).

Another cohort study by Blokland et al. (2010) identified similar patterns. This study was based on the officially recorded criminal careers from age 12 to 22 for all boys and girls born in the Netherlands in 1984. Ethnicity was based on the country of birth of (one of) the parents. Twenty-three percent of men and 5 percent of women born in 1984 had at least one police contact prior to age 23. Youths of non-Western origin were overrepresented in police registrations. Overrepresentation was strongest for boys of Moroccan origin: 54 percent were registered at least once, and, of those registered, one-third were registered five times or more.

The Dutch situation, and that in Europe more generally, differs from the situation in North America in important respects. In the United States and Canada, first-generation immigrants have, on average, lower crime rates than do the native born (see Hagan, Levi, and Dinovitzer 2008). Furthermore, although second-generation immigrants tend to have higher crime rates than their parent generation, they continue to have lower or equal crime rates compared with the nonimmigrant population (i.e., third-generation immigrants and up). Little comparative research has been done to explain these cross-Atlantic differences. Lynch and Simon (2007) examined the relationship between immigration and crime in “immigrant nations” such as the United States and “non-immigrant nations” (including Japan, Germany, and France). Nonimmigrant nations tend to have relatively high ratios of immigrant to native-born crime, which the authors explain from the stronger tendency in “immigrant nations” to accept and integrate newcomers into mainstream society. Leerkes and Bernasco (2010) add that the explicit or implicit comparison in U.S. studies between immigrant crime and the crime rate among the native black population may also explain part of the difference. The Netherlands and other Western European countries lack a comparable high-crime native group.

The high registration rates among groups of immigrants in the Netherlands (including second-generation) are partly explained by demographic and socioeconomic characteristics of these groups (such as gender and age patterns, educational levels, household income, and whether people live in cities). For some immigrant groups (such as the Turks), these general distinctions explain about half of the difference in delinquent involvement compared with the native Dutch. For other immigrant groups (particularly those with relatively high suspect rates, such as the Moroccans and Antilleans), these general characteristics are less important in explaining the comparative difference in delinquent involvement (Van Noije and Kessels 2011, pp. 214–15). Here, other explanations may be more important, such as the lack of parental supervision and social control exercised through ethnic communities, the “street culture” in urban districts with many immigrants, and social networks that stimulate delinquent behavior (see also Bovenkerk 2002; De Jong 2007; Van der Leun et al. 2010). Selectivity in apprehensions and punishment may also play a role (we discuss this in Section V).

It should be added, however, that the high delinquency figures among Moroccans and other non-Western groups are also related to age. Both first- and second-generation

immigrants in these groups are relatively young in comparison to the native Dutch population and are therefore more likely to be involved in street crime. In all groups, the likelihood of criminal behavior drops rapidly between 20 and 30 years of age (Van Noije and Kessels 2011, p. 206), although this applies less to Antilleans, where delinquency persists until a later age.

B. Crime Patterns among Asylum Seekers and Irregular Migrants

Although second-generation immigrants tend to have higher crime rates than first-generation immigrants, the overrepresentation of immigrants in Dutch crime statistics is not limited to the second generation. This is true for most regular immigrants groups, as well as for groups with a weaker legal status, such as asylum migrants. De Boom, Snel, and Engbersen (2010) found that, in 2004, the suspect rate for asylum migrants (all nationalities combined) varied from 3.4 percent for accepted asylum migrants to 5.4 percent for asylum seekers currently involved in asylum procedures and around 10 percent for rejected asylum seekers residing illegally in the Netherlands.

The data on asylum migration and crime suggest that there is an indirect connection between asylum migrants' legal status and criminality. In other words, legal or civic status has become a relevant factor in explaining patterns of criminality. The governmental regulation of migration implies a differentiation between status groups that results in patterns of civic stratification (Morris 2003). Asylum migrants with a weak legal status (i.e., asylum seekers currently involved in administrative procedures and, even more so, rejected asylum seekers remaining illegally in the Netherlands) have less access to social rights and facilities and are therefore more dependent on informal support systems and illegal sources of income than are asylum migrants with a stronger legal status (i.e., accepted asylum migrants with a residence permit or, even more so, with Dutch nationality).

Asylum migrants with a weak legal status—especially rejected asylum seekers who continue to reside in the Netherlands—are mostly suspected of minor property crimes (theft, shoplifting, and sometimes burglary) and of using forged or borrowed documents, which are mainly used to pass ID checks but also to obtain access to the formal labor market. These types of crimes have been described as “survival crime” (Engbersen and Van der Leun 2001; Althoff and De Haan 2006). Recently, Leerkes (2009) proposed to make a distinction between “residence crime” (i.e., crimes that enable migrants with a weak legal status to enter or reside in a country, regardless of the quality of that stay) and “subsistence crime” (i.e., crimes committed to achieve a minimum standard of living during that stay).

It is important not to overemphasize the effect of a weak legal status, however. The majority of asylum migrants still in procedure or residing illegally in the Netherlands are not suspected of any form of delinquency. Additionally, large differences can again be observed between asylum migrants of different nationalities. Asylum migrants from

the former Yugoslavia, Iran, Algeria, and Angola are suspected of crimes much more frequently than are asylum migrants from countries like Sri Lanka, Iran, and Afghanistan (De Boom, Engbersen, and Leerkes 2006). These differences can be explained in part by differences in human and social capital (De Vroome and Van Tubergen 2010). Some groups more than others are able to mobilize extra resources through the networks in which they are embedded and may have more opportunities on the Dutch labor market (Dourleijn and Dagevos 2011). These additional resources and opportunities prevent police contacts.

These findings on connections between a weak legal status and crime are in line with Dutch research into the relationship between irregular residence and crime. This research showed that the number of irregular migrants, many of whom do not have a history as asylum seekers, suspected of a criminal offense more than doubled in the period 1997–2003. This increase was to a substantial degree the unintended outcome of the intended marginalization of irregular migrants, achieved by the adoption of increasingly restrictive policies that have reduced the options open to irregular migrants for regular work and residence (Leerkes, Engbersen, and Van der Leun 2012). The marginalization thesis assumes that the exclusion of irregular migrants from formal employment and public services has a criminalizing effect. A series of measures targeting irregular migrants has made it more difficult for these migrants to support themselves in a conventional manner.⁵

Leerkes, Engbersen, and Van der Leun (2012) also demonstrated, however, that the marginalization thesis cannot fully explain the increase in crime involvement among irregular migrants. Other factors include a larger police deployment and increased use of legal procedures to terminate residence permits of noncitizens convicted of “deportable crimes.” If they do not leave the Netherlands, they become irregular migrants. Moreover, contrary to “ordinary” irregular migrants, those who have become irregular because of previous offending are usually declared “undesirable aliens.” This means that continued or renewed residence within a stipulated period (usually 5 to 10 years) is not only illegal, but constitutes an immigration crime in and of itself, punishable with 6 months of imprisonment for each violation (illegal residence as such is not punishable in the Netherlands). Involvement in regular crimes such as theft and violence is also relatively common among such former offenders. In other words, crime involvement may lead to illegal residence, rather than the other way round.

Finally, there are also irregular migrants who travel to the Netherlands in order to commit criminal acts (e.g., in the drug trade or to commit burglary). This is called *criminal migration* or *cross-border crime*. These alternative explanations are relevant to understanding the complex relationship between illegality and criminality, but do not result in a rejection of the marginalization thesis.

C. Crime Patterns among Labor Migrants from Central and Eastern Europe

The collapse of the Iron Curtain between East and Western Europe in 1989 and the later enlargements of the European Union initiated new migration flows. Millions of labor migrants (mainly from Poland, Bulgaria, and Romania) travelled to West European

countries, including the Netherlands (Black et al. 2010). Removing internal borders within the European Union also facilitated criminality, although cross-border banditry predated EU enlargement (Bort 2000; Weenink and Huisman 2003).

Following the 2004 EU enlargement, research was conducted in the Netherlands into “mobile banditry” emanating from Poland and Lithuania (Van der Laan and Weenink 2005). This study revealed that mobile perpetrators pursued a “hit-and-run” strategy, staying in the Netherlands for just a brief time and then moving abroad with their stolen goods.

Recent studies in Belgium among Romanian and Serbian migrants involved in property crimes by handling stolen goods have modified this picture somewhat (Van Daele and Vander Beken 2010a). Two patterns emerged through the analysis of police investigations and interviews with perpetrators in prison; the first pattern is mobile banditry. The perpetrators seek to achieve maximum gains as quickly as possibly through crime and by transporting the stolen goods mainly to their home country to sell them there. These perpetrators have no or few ties with Western Europe; the locus of their social networks remains in their country of origin. The second pattern is that of labor migrants who attempt to build a new life in Western Europe, become unemployed, and then become involved in crime as a means of improving their financial situation (Van Daele and Vander Beken 2010b). Contrary to the “mobile bandits,” the money they make is spent in Western Europe. Although the second pattern also concerns a mobile group, they tend to be locally embedded in Western Europe to a greater extent. There are no clear figures on the size of these two groups, although there are some indications that the extent of mobile banditry in the Netherlands is limited.

A third pattern of criminal activity emerges from a study in delinquency and public nuisance linked to Polish labor migration to the city of The Hague (Snel et al. 2011). This revealed the darker sides of the new labor migration. Homelessness, overcrowding in boarding houses, and excessive alcohol use among Polish labor migrants caused public nuisances in certain neighborhoods and in specific public places, such as public squares or in front of local supermarkets. Police registrations showed an increase in the number of Polish labor migrants registered as crime suspects. They were mainly suspected of violent crime (especially among themselves) and of shoplifting in certain supermarkets. These offenses seem to be related partly to alcohol abuse and partly to unemployment of Polish labor migrants, who sometimes lose their temporary jobs, have limited access to unemployment benefits, but are unable or unwilling to return to their home country, and end up committing theft (Snel et al. 2011). This latter explanation is in line with the results of the aforementioned Belgian study.

III. SUBCULTURAL EXPLANATIONS OF CRIMINALITY

In addition to conducting comparative, quantitative studies based on police data concerning suspects, researchers in the Netherlands also focus on cultural explanations

Table 27.1 Cultural mismatch between street culture and school culture

Street culture	School culture
"Quick money," "easy come"	Discipline, long-term investment
Flexible (time) structure	Strict (time) structure
Informal, unwritten rules	Procedures, written rules
Mobile, dynamic	Immobile, concentration
Action	Rational planning
"Macho" (masculine)	"Nerd" (feminine)
Passions, desires (hedonistic)	Self-control, self-discipline
Aggression, violence as a legitimate code	Arguing, reasoning, debating
Slang	Standard Dutch language

Source: El Hadioui (2010, p. 39).

for criminality. The latter studies tend to be qualitative. A new journal, *Tijdschrift over Cultuur en Criminaliteit* (Journal on Culture and Criminality), in which issues of migration and ethnicity play a prominent role, was started in 2011. Cultural approaches explain criminal behavior in relation to the nature of social relations in specific subgroups and the related values, standards, symbols, and learning processes. Examples include work by Van Gemert (1998) and Van San (1998) who analyzed the roles of honor, respect, masculinity, violence, and material status symbols in the lives of Moroccan and Antillean youths.

The criminogenic effect of street cultures has become a new field of study. De Jong (2007) has analyzed delinquent group behavior displayed by youths of Moroccan origin. These youngsters learn subcultural street values, such as standing up for oneself, loyalty to friends, being ruthless, showing courage, being streetwise, conspicuous consumption, and being relaxed and cunning. Street values generate specific forms of criminality and are important for the youths in terms of social recognition and individual gratification but may also block their participation in mainstream society. This social mechanism has been analyzed more closely by El Hadioui (2010). In his view, groups of Moroccan youths are subject to a mismatch between the values of street culture and those of school culture (see Table 27.1). This mismatch contributes to premature school-leaving and forms of criminality. The street culture can, to some extent, be seen as a form of negative social capital that has a constraining effect on upward aspirations (Willis 1977; MacLeod 1995; Portes 1998).

Subcultural explanations also emerge in the studies of public nuisance associated with temporary Polish labor migrants and homeless Poles in the inner city of The Hague. Concern has been growing in recent years about the drinking culture of Polish labor migrants and its negative consequences for public order in public spaces (Garapich 2011). Following Douglas (1997), drinking can be seen as one of the ways in which labor

migrants express their masculine cultures and construct social relations. Drinking acts mark the boundaries of group identities, making them practices of inclusion and exclusion. Furthermore, drink rituals and habits are related to (exploitative) working conditions and the “non-places” (Augé 1995) in which labor migrants are embedded (such as the highly organized and controlled “Polish hotels” in the Netherlands, in which some of them are housed).

These (sub-)cultural studies are valuable because they complement one-sided demographic or socioeconomic explanations and overly general explanations in terms of weak social bonds or weak systems of social control. They can be criticized, however, for a lack of “relational thinking” (see Bourdieu and Wacquant 1992): limited attention is paid to sometimes problematic social relations between immigrants and native groups and institutions. Forms of delinquency that are claimed to be (sub-)cultural manifestations may instead be the unique outcome of the interaction between preexisting (sub-)cultural values and experiences of social exclusion in the country of immigration. For example, although commitment to the street culture may complicate opportunities in main stream society, blocked opportunities also tend to create or reinforce involvement in the street culture. Turkish and Moroccan males have much higher chances of dropping out of the educational system in the Netherlands than in Germany (Koopmans 2003). Such cross-national differences are likely due to structural differences in the reception of immigrants.

IV. VICTIMIZATION AND FEAR OF CRIME

Compared with the native Dutch, non-Western immigrants are not only more frequently registered as suspects or perpetrators, but also have an elevated chance of becoming crime victims and feeling unsafe. This is shown by the Integral Safety Monitor (Integrale Veiligheidsmonitor, IVM), a victimization survey introduced in the Netherlands in 2008 and conducted at national, regional, and local levels. This survey shows that 25 percent of the native population aged 15 and over fell victim to at least one crime in 2010. For the non-Western population, the figure was 29 percent. This higher percentage is attributable to the younger age of non-Western victims and that they are more likely to live in (deprived) urban settings. As people get older, the reports of victimization decrease. Of all the non-Western groups, Antillean groups reported the least victimization (27 percent) (Van Noije and Kessels 2011).

The IVM also provides insight into perceptions of danger. Non-Western immigrants, especially those of Turkish and Moroccan origin, feel less safe than do native Dutch citizens. A quarter of Dutch natives sometimes or often do not feel safe compared with 4 of 10 non-Western immigrants. The differences between native Dutch people and people of non-Western origin can partly be attributed to demographic factors (such as the kind of neighborhoods where people live and socioeconomic background characteristics). Previous victimization is also a relevant factor in perceptions of danger.

V. THE SOCIAL ORGANIZATION OF HUMAN TRAFFICKING

Migration flows into the Netherlands, to a certain extent, reflect the migration policies pursued by governments since World War II. These policies partly concerned flows that are relatively easy to control (such as family migration) and partly those that are more difficult to control, such as asylum migration or unwanted labor migration. The enlargement of the European Union and the removal of internal borders facilitated mobile banditry. At the same time, the restrictive entry policies applied at Europe's outer borders have also generated certain forms of criminality. Within Europe, there is a demand for cheap, illegal laborers willing to perform specific types of work, and, outside Europe, there is a vast supply of potential laborers willing to do the work (Bommes and Sciortino 2011). Some of them manage to travel to Europe through legal means (e.g., on a tourist visa) and some enter illegally. Some are dependent on human traffickers. The intensification and modernization of Europe's outer border controls (giving rise to the notion of "Fortress Europe") is driving migrants from outside the European Union into the arms of human traffickers.

Kleemans (2009) showed that forms of organized crime can be explained through the nature of the social relations that actors maintain with each other (which includes the role of trust) and through the use of manipulation and violence (Kleemans and Van de Bunt 1999). A rational choice or organization perspective is insufficient to explain the complex and sometimes irrational ways that organized crime works (Kleemans 2011).

Similar insights emerged in a study by Staring et al. (2005) into the social organization of human trafficking. The study was based on an analysis of 11 major police investigations (including an analysis of telephone taps recorded by the police) in the Rotterdam area. The Dover case, in which 58 Chinese nationals died through suffocation in a container truck, was part of this study. The study distinguishes two ideal types of human trafficking organizations (see Table 27.2) based on five dimensions: the size and composition of the collaborative venture, underlying social networks and loyalties, structures of domination, structures of coordination, and characteristics of the human trafficking operation. The first type is characterized by its small scale and ethnic homogeneity. Traffickers and those trafficked know each other, and peaceful negotiations take place about the nature of the trafficking operation. It is sometimes just a matter of friends doing each other a favor (also see Staring 2004; Van Liempt and Doomernik 2006). The second type, by contrast, is larger in scale and multinational in nature. Actors from several countries play roles in the trafficking operation. These are professional, hierarchical organizations whose members use violence and sometimes hostage-taking (Kleemans 2011). The trafficked persons are very much dependent on the traffickers who often determine the final destination. These organizations exist for economic gain. Both types of collaborative ventures are difficult for local and national police units to combat: the

Table 27.2 Two types of human trafficking organizations

	Type A	Type B
Size and composition		
Size of collaborative venture	Small-scale	Large-scale
Ethnic composition of venture	Homogeneous:shared home country	Heterogeneous:multinational
Ethnic composition of trafficked persons	Homogeneous: fellow nationals	Heterogeneous: various nationalities
Selection	Cautious selection of trafficked persons	No selection, as long as one pays
Underlying social bonds		
Loyalties	Based on transnational bonds	Economic gain as bond and goal
Dominance		
Structure of authority	Decision making by negotiation: horizontal	Decision making by command: hierarchy
Role of violence	No physical violence	Internal and external violence, and toward trafficked persons
Coordination		
Division of tasks	Little division of tasks	Strong division of tasks
Characteristics of trafficking operation		
Size of operation	Limited number of trafficked persons	Large number of trafficked persons
Initiative for operation	Primarily at client side	At client and venture side
Travel sum	Limited	Sizeable
Nature of payment	Previous to departure	In stages
Scope of trafficking services	Limited	Extensive
Middlemen	Not used	Are used
Concealment	Not an issue	Major issue
Keeping agreements	Reliable	Less reliable
Determination of destination	Primarily by trafficked persons	Traffickers and trafficked persons

Source: Staring et al. (2005).

first type, because of its embeddedness in family and ethnic networks and the second because of its professionalism and multinational character.

The EU enlargements of 2004 and 2007 had consequences for the size of the irregular populations in Western Europe and the Netherlands. Labor migrants from Central and Eastern Europe who were previously irregular residents in Western Europe became EU

citizens and thus acquired legal status. In consequence, a vast regular labor force became available that partly ousted irregular labor migrants from outside the European Union from certain work sectors. This reduced the flow of irregular EU migrants to Western Europe and the Netherlands, which in turn diminished the role of human trafficking organizations.

In the intermediate term, the differences between wage levels in Western Europe and Central and Eastern Europe may be reduced, resulting in a decline in labor migration from the latter to the former. Already, today, labor migration from Central and Eastern Europe (particularly from Poland) appears to be stagnating (Organization for Economic Cooperation and Development [OECD] 2009). This process occurred in the past with respect to migration from Spain, Italy, and Portugal in the 1960s. This implies a future need for new labor migrants from outside the (current) European Union for certain sectors of the labor market. Human trafficking organizations are likely to play a role in the recruitment and transportation of these new laborers.

VI. CRIMINAL JUSTICE

Dutch research on ethnicity, crime, and immigration has paid little attention to the possible roles played by the police force and the justice system in bringing about overrepresentations of immigrant groups in police data and in detention (see Van der Leun and Van der Woude 2012). We briefly discuss this subject next.

A. Selective Law Enforcement

The overrepresentation of specific groups—such as the classic minority groups, asylum seekers, and Polish labor migrants—in crime figures, and particularly among those included in the suspect statistics, raises the question of possible selective law enforcement. The few studies into selective law enforcement show ambiguous results. Research in the 1980s and 1990s found no indications of systematically different treatment of non-Western immigrants by the police (Junger 1989; Rovers 1999). More recent research by Wittebrood (2004) into ethnic differences in crime registration showed that selectivity may occur, although it is mostly indirect. As the police currently prioritize the fight against delinquency in poor, multicultural neighborhoods, Moroccan or Antillean youths have a greater chance of being detained and registered than do native Dutch youths. Two other recent studies also found evidence that some selectivity takes place in law enforcement, including more direct forms. Weenink (2009) looked at the effects of prosecutorial decision making in the Dutch juvenile justice system. He showed that certain categories of immigrants were punished more harshly than Dutch natives and that this resulted from problems that emerged in encounters among juvenile suspects, judicial workers, and police officers. Because juveniles with an immigrant background

tend to deny committing offenses and to equivocate in the eyes of police officers and social workers, prosecutors tend to treat them more severely. Leerkes, Varsanyi, and Engbersen (2012) used Cox regression to analyze reappréhension data involving irregular migrants. They report suggestive evidence for a tendency by police to focus on ethnic groups believed to be characterized by a high percentage of irregular migrants (in the period of study, Eastern Europeans) and “criminals” (Moroccans and other North Africans).

There is nevertheless general agreement among Dutch criminologists that selective law enforcement cannot be the only cause of ethnic differences in registered crime. Van San and Leerkes (2001) give four arguments for this position. First, ethnic differences are quite substantial, even when age, degree of urbanity and, socioeconomic position are controlled (also see Blom et al. 2005; Jennissen 2009; Van Noije and Kessels 2011). Second, discrimination and selectivity do not explain the substantial group differences between immigrant groups regarding crime rates and types of crimes committed. Some immigrant groups (such as Moroccans in the Netherlands) may face relatively high levels of discrimination, whereas others (such as recent Chinese immigrants in the Netherlands) are more likely to be seen as “model migrants.” However, different immigrant groups with relatively similar socioeconomic and cultural backgrounds (Moroccans and Turks in the Netherlands, for example) have substantially different crime rates.

Third, some (white) immigrant groups (Yugoslavs, Russians, Poles) are less easily identified by police than are members of visible minority groups (Antilleans, Moroccans) but are nevertheless prominent in crime figures.

Fourth, ethnic bias as such cannot explain gender and age differences within ethnic groups. For instance, Moroccan and Turkish girls are significantly less involved in crime than their Dutch counterparts, and Moroccans become less overrepresented in crime statistics compared to their peers in other groups when they reach their 20s (Jennissen 2009). In addition, some (but not all) self-report studies among young members of immigrant groups also find higher rates for members of non-Western immigrant groups than for native Dutch youths. For instance, Wittebrood (2003) found that young non-Western immigrants more often reported having committed violent offenses and offenses against property than did native youths. Selective law enforcement strategies by the police thus can amplify ethnic differences in crime but cannot fully explain differences in registered crime patterns for immigrant groups (Tonry 1997; Haen Marshall 1997; Van San and Leerkes 2001).

B. Detention

Detention figures, if taken at face value, also indicate a crime problem among immigrants, although selectivity causes a more serious bias here than at the arrest stage (Rovers 1999). Dutch penal policy was long characterized as lenient with low incarceration rates. However, imprisonment rates increased substantially in the period

1994–2005, before subsiding. The increase was associated with the building of new prisons that increased detention capacity and with the elimination in 2003 of an earlier policy that forbade holding more than one person in a prison cell.

In September 1994, 8,700 people were incarcerated; by 2004, this had increased to 16,500 (i.e., approximately 0.1 percent of the population). Since then, the incarcerated population fell to 12,700 in 2011.⁶

The share of first- and second-generation immigrants in prison also increased, especially during the first period. Official data on imprisonment, however, distinguish only between native and foreign-born, which means that second-generation immigrants effectively are not counted since they are native born. Between 1994 and 2004, the percentage of foreign-born prisoners increased from 45 to 50 percent. By 2011, however, this had fallen to 42 percent, whereas the share of the foreign-born in the overall Dutch population remained stable at about 10 percent. The recent decrease is probably the result of a lower priority given to drug trafficking prosecution and to a further increase in the share of second-generation immigrants. In the overall population, the share of second-generation immigrants increased by 16 percent between 2004 and 2011. Relatively large groups come from Surinam, the Dutch Antilles, Morocco, Turkey, Algeria, and the former Yugoslavia. Rates per capita are especially high for Algerians, Antilleans, and Surinamese.

Most inmates are convicted for crimes of violence and theft, and immigrants are no exception. However, a disproportionate proportion of foreign-born prisoners have been convicted of drug offenses (predominantly production, trafficking, and sale). For example, in 2011, about one-third of the convictions of Surinamese (33 percent) and a quarter of convictions involving Antilleans (24 percent) were related to drug offenses, compared with 15 percent for native-born inmates. The growing proportion of foreign-born inmates between 1994 and 2004 was partly due to more aggressive enforcement of anti-drug laws; the number of prisoners convicted of drug-related offenses more than doubled from 1,355 in 1994 to 3,255 in 2004.⁷

Koopmans (2003) compared these figures to the available figures on prison populations internationally to conclude that the overrepresentation of foreign-born inmates is much higher in the Netherlands than in countries like Great Britain, Germany, or France. In Germany, 27 percent of the prison population in 1997 was non-German, whereas 53 percent of inmates in the Netherlands in 1998 were foreign-born (Koopmans 2003). According to Koopmans, these high numbers can be attributed to the failure of Dutch integration policies. Koopmans, however, does not differentiate between reasons for detention. For instance, the high involvement of certain migrant groups in drug-related offenses in the Netherlands has more to do with the country's position as a transit country for drugs than with ineffective integration policies.

Apart from the increase in foreign-born prisoners, there has also been an increase in the number of irregular immigrants who are being administratively detained in immigration detention centers (Van Kalmthout 2005; Broeders 2010; Leerkes and Broeders 2010; Leerkes and Broeders 2013). Immigration detention is an administrative nonpunitive measure to facilitate expulsion. On September 30, 2006, the number of immigrants

held in custody because of immigration laws (2,555) was six times higher than in 1994 (425). After 2006, this figure dropped to some extent, and, between 2008 and 2010, it stabilized at around 1,600. In the period 1994–2006, the annual number of administratively detained immigrants increased from 3,925 to 12,480. The increased use of immigration detention contrasts with the figures on effective expulsions, which have been dropping from a peak of 12,015 deportations in 2002 to 6,150 in 2007 (Leerkes and Broeders 2010). Other data also show that the Dutch authorities have difficulty expelling detainees. Immigration detention resulted in expulsion for 61 percent of all detainees in 2000 and for 57 percent in 2001 (Advisory Commission on Alien Affairs [ACAA] 2002, p. 23). On the basis of research among 400 immigrant detainees in 2003–04, Van Kalmthout and Hofstee-van der Meulen (2007, p. 101) argue that the percentage of illegal migrants actually expelled is even lower and may even be less than 40 percent. More recently, the number of expulsions has increased somewhat (Leerkes and Broeders 2013).

Given the relative ineffectiveness of the detention system as a means of expelling irregular migrants, Leerkes and Broeders (2010, 2013) suggest that immigration detention in the Netherlands serves three informal functions, in addition to its official function as an administrative instrument of expulsion: to deter irregular residence, to control pauperism among irregular immigrants, and to manage popular anxiety by symbolically asserting state control. These informal functions indicate that society does not yet have an adequate way to deal with migrants who have not been legally admitted, but who are also difficult to expel. The third informal function, of managing anxiety by symbolically asserting state control, also appears to play a role in the detention of regular migrant groups.

VII. CONCLUSION

Although most of the research on ethnicity, immigration, and crime that we discuss was carried out in a time when the position of immigrants was coming under increasingly critical scrutiny, the focus on these issues to some extent developed independently of the altered political climate. Studies into migration, integration, and crime were already carried out in the 1970s, when migration was viewed much less critically.

Nonetheless, the heightened political fascination with these issues has strongly influenced the research agenda, particularly in applied social research. The number of studies on the involvement of migrant groups in criminality has not been counterbalanced by studies into the effects of the functioning of the Dutch police, public prosecution, and judicial systems in relation to hypotheses about social selectiveness, discrimination, and stigmatization negatively affecting immigrants (Van der Leun and Van der Woude 2012). The pursuit of such a reflexive research agenda should be given much greater priority.

From a policy perspective, the available studies on ethnicity, migration, and crime suggest that there is a need to find an optimal balance between closed and open national societies. Available studies suggest that forms of immigrant crime become more likely

if societies try to exclude newcomers too much—either through formal immigration control or through more informal exclusionary practices such as labor market discrimination. When the demand for immigration is substantially higher than the number of immigrants who are allowed to enter a country with government consent, practices of legal exclusion are bound to lead to instrumental criminal responses, such as human smuggling. Likewise, if those who are formally defined as equal members of society end up being rejected in practice, there is a risk of more expressive criminal responses, such as when second-generation immigrants drop out of school and become attracted to street culture.

Open borders, however, may also generate forms of crime. If the free movement of legal goods and certain persons is promoted, as is done as part of the project of European integration, it is also easier for criminals to migrate to other countries and commit crimes such as drug trafficking or aggravated theft. Likewise, if the amount of migration exceeds the amount that can be absorbed by labor markets, an increasing number of newcomers will end up in highly marginal conditions. This can be observed in various metropolises in poorer countries that are experiencing high levels of domestic migration (Davis 2006).

The extent of legal international migration is a highly politicized issue that cannot be settled by science. In our view, however, the Netherlands and other countries of immigration tend to lean too much to the restrictive extreme, especially in relation to labor migration. Part of the labor migration that now occurs illegally could be legalized through temporary legal migration programs (Engbersen and Leerkes 2010).

Finally, governments and actors in civic society, including immigrants themselves, have a continuous responsibility to ensure that those who have formally been included in the society are also included in society's conventional institutions. Immigrants should not be discriminated against in the labor market—let alone in the criminal justice system—and their children should have access to education, both in theory and in practice. Recent societal developments, in the Netherlands and internationally, unfortunately show that the inclusion of immigrants requires permanent attention.

NOTES

1. This multicultural emphasis was in line with the Dutch tradition of “pillarization” (i.e., compartmentalization along sociopolitical and religious lines). There were separate state-sponsored arrangements for immigrants, such as Muslim and Hindu schools, broadcasting organizations, and political consultation facilities. The immigrant integration policy was aimed at “mutual adaptation in a multicultural society with equal opportunities for Dutch people and ethnic minorities” (WRR 1979).
2. First-generation migrants (in Dutch, *allochtonen*) are people born abroad with at least one parent born abroad. Second-generation migrants are born in the Netherlands and have at least one parent born abroad. Often a distinction is made between people of Western and non-Western descent (see note 3).
3. Statistics Netherlands distinguishes between Western and non-Western countries. Western countries are all European countries including Central and Eastern Europe

- (except Turkey), North American countries, some Asian countries (Japan and Indonesia), and the countries in Oceania (Australia, New Zealand). Turkey and all the countries in Latin and South America, Africa, and Asia are considered non-Western.
4. On May 1, 2004, eight Central and Eastern European countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia; known as A-8) joined the EU along with Malta and Cyprus. Bulgaria and Romania joined on January 1, 2007 (known as A-2).
 5. In 1991, the Dutch government tied the “social fiscal number” (i.e., social security number) to a legal residence requirement, thus barring the route to legal labor market participation. Other measures are the Marriages of Convenience Act in 1994 and the compulsory Identification Act of the same year. The centerpiece of the new policy of internal migration control was the “Linkage Act” of 1998, which was intended to exclude illegal aliens from the benefits of the welfare state. The linking act amended the Aliens Act and some 25 other acts dealing with social security, housing, education, and healthcare and makes entitlements in these fields dependent on residence status. Parallel to these legal innovations, the Dutch government has also invested heavily in database systems that are able to register, track, and identify the resident migrant population (Broeders 2007).
 6. Source: Statistics Netherlands, statline, <http://statline.cbs.nl/statweb>, visited August 2012.
 7. Source: Statistics Netherlands, statline, <http://statline.cbs.nl/statweb>, visited August 2012.

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CHAPTER 28

IMMIGRATION, CRIME, AND CRIMINALIZATION IN ITALY

STEFANIA CROCITTI

NEARLY 4,600,000 immigrants lived in Italy in 2011, making up 7.5 percent of the national population. The Italian government, however, refuses to recognize its character as a “receiving” or immigration country. This may partly be because Italy has historically been a country of emigration: between 1876 and 1961, more than 23 million Italians emigrated (Stella 2003).

Some scholars maintain that mass immigration into Italy started in the 1970s, when the need for guest workers came to a stop in receiving European countries such as Germany, France, and the Netherlands. As a result of the first OPEC oil crisis, which reduced the need for immigrant workers, most Western European countries abandoned migrant labor recruitment and introduced restrictive entry rules. Migratory flows were pushed toward Italy, which would have represented a second choice (Zanfrini 2004). According to other scholars, immigration was not linked to the external oil crisis, but depended on opportunities created by Italy’s rapid economic development in the 1960s and 1970s (Einaudi 2007).

Italy in the 1970s first experienced a wave of immigration by Tunisians who settled in Sicily and worked in fisheries and agriculture. The late 1970s and early 1980s saw the arrival of new immigrants, mostly Moroccans, Senegalese, and Nigerians, who found work in industry and construction, taking low-skilled and low-paid jobs that Italian workers rejected. Since the 1990s, the main flows have been from Eastern Europe: first, Albanians and Poles who entered after the fall of communism in their countries, and then Ukrainians and Moldavians (see Einaudi 2007, pp. 87–93).

The increasing numbers of arrivals, especially from Albania, began to attract attention to “mass immigration.” New laws were enacted in the 1990s, and the subject became a recurring topic in political and mass media debates. Perceptions of a connection between immigration and crime led to increased fear of the “stranger,” even though the

groups affected changed over time. Initially, North Africans were described as coming to Italy to sell drugs and threaten Italian youth. Then, Albanians and other Eastern European migrants were perceived as a threat to the security of Italian cities because of their involvement in prostitution (although the sexual demand was mainly from Italian men). Today, the criminal behavior of Romanians—above all, Roma people—is said to jeopardize Italy (Dal Lago 2004, pp. 180–204).

In recent decades, immigration has commonly been portrayed not as a structural factor of Italian society, but as an emergency to be dealt with by use of extraordinary measures. Legal migrants are typically viewed as people who will work and stay in Italy only temporarily, and illegal migrants are described as a threat to internal security and as appropriate targets of punitive measures.

Abdelmalek Sayad (2008, p. 33) pointed out that “an immigrant has reason to be so, only in the status of ‘temporary,’ and provided that he complies with what is expected of him: he is here, and he has reason to be here, only to work, with a work and in a work context; because you need him, as long as you need him, where you need him.”

In Italy, as in Europe generally, immigration policies have moved along a dual track: the acceptance of legal inflows of workers useful to the national economy and the punishment of illegal immigrants considered dangerous for public order. A policy document of 2001–2003¹ emphasized that Italy receives a “great contribution by the vast majority of immigrants,” but, at the same time, it considers the “defense of public order and safety of citizens” to be more important than the enhancement of immigrants’ integration. Without the immigrant workforce, the document continues, Italy would not be able to bear its health care costs, its pension system, and the costs of elderly care, and it states that “immigrants are a vital component of the Italian economy and for the construction of the wellbeing of us all.” However, the “we” to which the document refers is exclusive not inclusive; it distinguishes between “Italians” and the “immigrants” who contribute to the collective well-being but are excluded from entitlement to it. To the contrary, stigmatization and criminalization processes in legislation, law enforcement practices, and public opinion contribute to a logic of otherness. As Calavita (2007, p. 32) pointed out, “immigrants are useful as ‘others’ willing to, or forced to work with conditions and wages that local workers usually refuse. The economic benefit that immigrants provide the economy, lies precisely in their ‘otherness’ or diversity, but, at the same time, this is the pivot on which wheels the anti-immigrant sentiment.”

In this essay, I analyze immigration in Italy using these interpretative paradigms. A glossary at the end defines key terms and processes. In the first section, I discuss theories on the construction of the immigrant as Other and the theme of immigrants’ identification as “criminals.” In the second section, I describe recent changes in the legal immigrant population with respect to number, age, gender, country of origin, reasons for residence, and distribution on Italian territory. I also discuss illegal migration using estimates of undocumented immigrants, highlighting how “irregular status,” a legal construction, is influenced by frequent changes in immigration laws.

The third section discusses Italian immigration laws that govern the condition of the “foreigner” (i.e., people who are not European Union [EU] citizens). I describe procedures

concerning entry and stay in Italy for purposes of work. I then discuss the roles of migrants in the underground economy, which underlines a need for an immigrant workforce that is larger than the numbers admitted each year. Because of this, Italian governments have often in the past 20 years implemented “regularizations” to grant residence permits to undocumented immigrants employed in the underground economy.

The relationship between immigration and crime is introduced in the fourth section. It begins with an analysis of Italian laws on the management of illegal migrations, starting from border controls, and of procedures for the expulsion of immigrants who have entered and remained unlawfully. I give particular attention to the Centers for Identification and Expulsion, administrative detention facilities for the deportation of illegal immigrants. I also discuss the political and legislative debates on the crime of illegal entry and residence from the 1990s until such an offense was enacted into Italian law in 2009.

In sections V and VI, I review official statistics on immigrant crime. Official data are not used so much, or not only, as indicators of involvement in illegal acts, but as indicators of the criminalization of migrants through the activities of criminal justice agencies from police to penitentiaries. Section VII deals with immigrants as victims of crime, focusing on offense trafficking and smuggling. The main findings may be summarized as follows:

- In recent decades, Italy has faced a rapid increase in its immigrant population and has shifted from being an *emigration* to an *immigration* country.
- Recent Italian immigration laws have been shaped on the basis of an “emergency logic” and as if immigration were mainly a “public security” concern.
- The system for selection of legal entrants has been strictly linked to regular work. However, the high demand of foreign workers in the underground economy has foreseeably attracted many undocumented immigrants.
- The paradox implicit in having an economy in which many sectors are dependent on immigrant workers, but with laws that tightly limit labor migration, can be seen in the widespread use, more than in any other European country, of recurrent regularizations or amnesties.
- Research has shown no clear link between the immigrant population and criminality. The overrepresentation of foreigners in crime statistics can equally plausibly be viewed as the result of a process of primary and secondary criminalization.
- The growing incidence of foreign-born people in crime statistics (above all, in the prison system) has reinforced the assumption that “immigrants equal criminals” in so legitimizing the state in its use of repressive tools.
- The punitive system created to fight illegal immigration has not been effective but serves symbolic functions.

Political, economic, and cultural implications of migration are highlighted, emphasizing how it has been subjected to a “culture of control” (Garland 2001b) that enables

governmental mechanisms for managing marginal groups in developed countries (see Simon 2007; Weber and Bowling 2008; Wacquant 2009). Some paradoxes of Italian law are discussed. These include the gap between legal provisions and migration realities, for example concerning hiring of immigrant workers and procedures concerning forced removal of illegal immigrants. Italian immigration policies serve to construct an image of Italian society “in a permanent emergency” threatened by mass immigration, thereby legitimizing resort to ever more punitive and criminalizing approaches—above all, for illegal immigrants.

I. NATIVES AND “OTHERS”

The identification of immigrants with deviance and crime is a traditional topic in sociology and criminology (see Becker 1963; Sayad 1999; Bourdieu 2008). Representations of Others have always moved between opposite extremes of the migrant as an “innovator” (Durkheim 1893) who makes for the development of civilization (Park 1928) and as a “suitable enemy” (Christie 1986), symbol of every form of social pathology.

Robert Park (1928) described the immigrant as a “marginal man” living between two worlds and experiencing cultural conflict (Sellin 1938). But the otherness of the newcomer is temporary: marginalities and conflicts are followed by integration into the host community which, according to the “catastrophic theory of civilization” (Park 1928, p. 882), makes possible the development of a new society resulting from the mixture of races and cultures. Georg Simmel (1993[1908]), in contrast underlined that otherness can take on negative implications. The stranger is the “potential traveler” who can arrive today and tomorrow will remain, but who does not renounce the freedom to come and go. This closeness/distance gives rise to diffidence and suspicion. The stranger is “the man who has to place in question nearly everything that seems to be unquestionable to the members of the approached group” (Schütz 1944, p. 502), even though the immigrant’s lack of points of reference is a “mirror” that reflects difficult situations and crises already present in the host community (Melossi 2002, p. 278).

It is at this point, in the interaction between the established and the outsiders (Elias and Scotson 1965), that the processes of control and social reaction become central. The public debate on strangers becomes a useful instrument for redefining the moral boundaries of the society (Erikson 1966). The need to protect an (alleged) national identity threatened by the diversity of the stranger and to defend public security put into danger by the criminal behavior of the enemy within legitimizes exclusion and punishment.

As with Durkheim’s (1893) theory of punishment, penalty is, above all, intended to have an effect on honest people: it is not aimed to rehabilitate the guilty but to strengthen the social cohesion. The simple representation of the punishment, so long as the public does not know that it is a farce, is sufficient to reinforce the conviction in honest citizens that their “normal” behavior is right.

As regards labor migrations, the construction of immigrants in terms of “otherness” (Calavita 2005) can be linked to the formation of a “reserve army” that is essential to the Italian economy (see Reyneri 1998):

Immigrants are Others... who do the work that locals largely shun.... With their legal status dependent on legitimate work contracts (temporarily) legal immigrants are almost as vulnerable as their illegal counterpart working in the underground economy. (Calavita 2005, pp. 72–73)

Immigrants are useful precisely because they are at the margins of society, but their marginality and exclusion become stigmas from which spring suspicions and resentments (Calavita 2007). Foreignness becomes an easy target of this suspicion, and if “some foreigners actually do commit [a deviant or a criminal act] the vicious circle becomes perfect, and the foreigner will be deemed doubly guilty: for his/her foreignness and for his/her deviance, which is, in any case already implicit and completely foreseeable in his/her foreignness” (Melossi 2002, p. 263).

The representation of immigrants, especially illegal immigrants, as a social danger legitimizes state intervention, in a repressive and punitive way, to protect its citizens and, at the same time, reinforces cohesion among the community members.

II. THE IMMIGRANT POPULATION

In 2011, there were almost 4.6 million immigrants resident in Italy. The migratory flows have increased rapidly and continuously (Figure 28.1). In 1990, about 600,000 immigrants constituted little more than 1 percent of the population. Today, 7.5 percent of the population are immigrants. This is above the European average of 6.5 percent.² Italy, like traditional receiving countries such as Germany, France, Switzerland, and Belgium, has become a country of immigration.

Immigrants are distributed unevenly: 61.3 percent live in the north, 25.2 percent in the center, and 13.5 percent in the south and on Mediterranean islands (see Table 28.1). The concentration in northern regions, which has always been a characteristic of migrants’ settlement patterns (including internal migrants from southern Italy), results from the segmentation of the Italian labor market (see Zincone 2001; Ambrosini 2005) and from different types and levels of employment in the north and the south.³ Lombardy (23.3 percent), Lazio (11.9 percent), Veneto, and Emilia-Romagna (11 percent each) have the highest numbers of foreign-born residents.⁴

As Table 28.2 shows, places of origin are diverse. More than 74 percent of immigrant residents come from EU member states, other eastern and central European countries, and Africa. Among the more numerous communities, those from Romania (969,000), Albania (483,000), and Morocco (452,000) stand out. Moroccans and Albanians have been among the first three nationalities present in Italy since the 1990s. The flows from

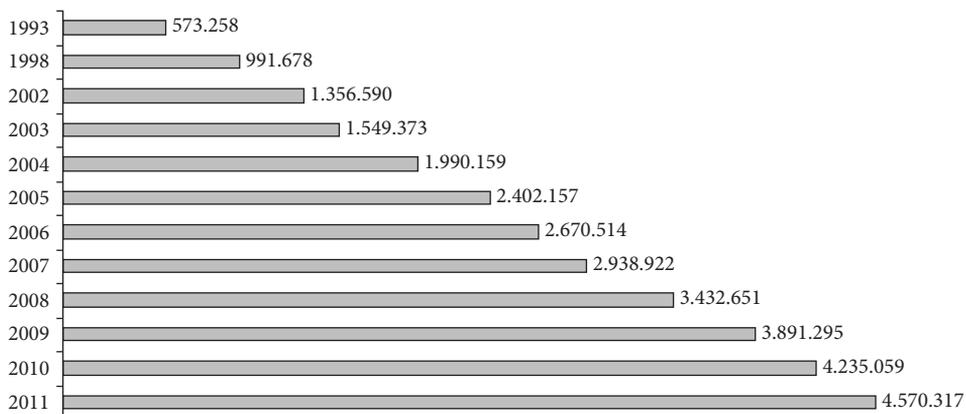


FIGURE 28.1 Immigrant residents in Italy, selected years

Source: Italian Institute of Statistics (Istat 2011; <http://www.istat.it>).

Table 28.1 Immigrant* residents by Italian areas, 2011

Italian Areas	N	Percent
North West	1,597,389	35.0
North East	1,200,881	26.3
Center	1,153,057	25.2
South and Islands	618,990	13.5
Total	4,570,317	100

* In this table and in the following, the term "immigrants" refers to foreign-born people who stay in Italy legally—foreign nationals who have acquired Italian citizenship are included, whereas Italian citizens foreign-born are excluded (they are recorded as Italians).
Source: Italian Institute of Statistics (Istat 2011; <http://www.istat.it>).

Romania⁵ have increased substantially, especially since 2007, when Romania became an EU member state.

According to Italian Institute of Statistics (Istat) data, 60 percent of legal entries into Italy are connected to employment, although family reunifications are on the increase: family reasons increased from 14 percent of the total in 1992 to 33 percent in 2008.

The percentage of female immigrants has increased and is higher now than for males: 51.8 percent of immigrants in 2011 were women, compared with 44.1 percent in 1998.⁶ This is due to family reunifications: 51 percent of migrant women entered Italy for that reason in 2008.

The mean age of resident immigrants is 32 (44 for Italians), with high levels of people of working age (76 percent), especially in the 28–49 age bracket, and of minors (21.7 percent). Only 2 percent of immigrants are over 65 (but over one-fifth of Italians), even

Table 28.2 Immigrant residents by places of origin and selected countries, 2011

Place of Origin and Country	N	Percent
European Union—27 Member States	1,334,820	29.2
of those: Romania	968,576	21.2
Center-East Europe (Non-European Union)	1,094,123	23.9
of those: Albania	482,627	10.6
Ukraine	200,730	4.4
Other Europe (Non-European Union)	12,524	0.3
Africa	986,471	21.6
of those: Morocco	452,424	9.9
Tunisia	106,291	2.3
Egypt	90,365	2.0
Asia	766,512	16.8
of those: China	209,934	4.6
Philippines	134,154	2.9
North America	18,199	0.4
Center-South America	354,186	7.7
of those: Ecuador	91,625	2.0
Perù	98,603	2.2
Other Areas	3,482	0.1
Total	4,570,317	100

Source: Italian Institute of Statistics (Istat 2011; <http://www.istat.it>)

if demographic estimates foresee the largest increases in the next 20 years among the elderly (Caritas/Migrantes 2011).

There are almost 1 million foreign minors, of whom 600,000 were born in Italy (13.9 percent of total births). Almost 6,000 are unaccompanied minors, mostly aged between 16 and 17 years.⁷ More than 700,000 youngsters of foreign nationality were enrolled in Italian schools in 2010–2011 and made up 7.9 percent of students (Caritas/Migrantes 2011; Istat 2011).⁸

Other indicators show a transformation from temporary immigration to settlement immigration (Sayad 2008). In 2009, there were more than 2 million families with at least one immigrant: 1,600,000 were composed solely of foreign citizens (in 1991, there were 127,000), and 500,000 families were mixed. In 2010, approximately 66,000 foreign-born people acquired Italian citizenship (11 percent more than the previous year). The new Italians are disproportionately women because mixed marriages are celebrated mostly between foreign females and Italians (Istat 2011). However, the percentage of marriages

as a basis for citizenship has fallen from 85 percent in 2004 to 43 percent in 2009 (Cesareo 2011, p. 15), also because naturalization, citizenship acquired after a period of regular and continuous stay, increased (Codini 2007).

Undocumented Migrants

To this point, I have described “legal” immigration. Estimates of illegal immigrants also need to be considered. In Europe, irregular migration reached its highest level in 2002, when 5 million undocumented migrants were estimated. The level fell to 3.3 million in 2008 (Clandestino 2009).

This reduction resulted from at least three factors: policies in various countries (including Italy, Spain, and Greece) to deal with illegal inflows, entry into the EU of sending countries of significant illegal migrant flows (especially Romania), and increased expulsions which, at the EU level, doubled between 2005–2009, reaching 85,000 in 2009 (Ortensi 2012, pp. 61–62).

There are estimated to be 10 irregular immigrants in Europe for every 100 regular immigrants. Italy, with about 440,000 undocumented immigrants in 2011,⁹ makes up 13 percent of the European irregular total.

As can be observed in Figure 28.2, showing estimated undocumented immigrants from 1990 to 2011, the level has remained quite stable, even though the number of legal immigrants increased approximately 10 times (Blangiardo and Rimoldi 2006, p. 71; Blangiardo 2012).

Some variations result from government policy choices and from changes in EU structure. The 2002 regularization¹⁰ (the largest ever in Italy) made legal status available to undocumented immigrants who could demonstrate that they worked in the underground economy. Thus, regularization is a reason that the number of illegal immigrants peaked in 2002 and was much lower in 2004 (Blangiardo and Rimoldi 2006, p. 71). The

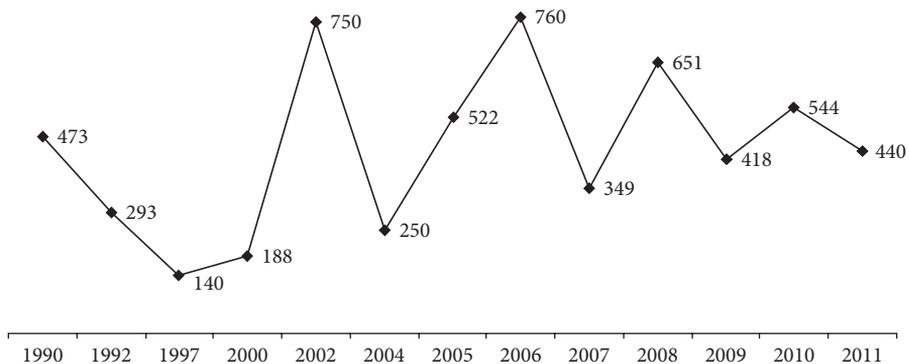


FIGURE 28.2 Illegal immigrants in Italy, selected years (n in thousand)

Source: Blangiardo (2011, 2012).

reduction in 2007 resulted from the entry of Romania into the EU; Romania had been a major sending country. Although EU citizens enjoy rights of free circulation and residence under the Schengen Treaties, immigration from other countries is governed by restrictive laws.

III. ITALIAN IMMIGRATION LAWS

Official statistics distinguish between Italians and immigrants, who are identified on the basis of nationality and area of origin. Citizenship in a EU member state plays a central role in the management of immigration. For EU citizens, there is freedom of circulation and residency.¹¹ In the case of non-EU citizens (foreigners), each government may adopt its own laws (although the 2004 Treaty of Amsterdam identified immigration from third countries among the competencies of EU institutions). Member states have resisted the complete Europeanization of migration policies to safeguard their sovereignty on the matter (Plebani 2011).

The first Italian law on foreigners goes back to 1990 (Martelli law nr. 39).¹² It introduced the two documents necessary to enter and remain in Italy legally (the visa and the residence permit),¹³ set standards for family reunification, and provided for removal and expulsion of irregular migrants.¹⁴ In 1998, the “Single Act on Foreigners” (*Testo Unico sulla condizione dello Straniero*; hereafter TUS) was approved.¹⁵ It was meant to pull together and replace previous laws on immigration. The TUS remains in force, although it has been changed more than once, sometimes substantially.¹⁶ The frequent changes reveal a vision of migratory phenomena as a “perennial emergency.” Although immigration has become a structural element of Italian society, governments have adopted and continue to adopt extraordinary measures that impede the creation of a true organic system (Codini 2012). In recent years, changes to the TUS have been made by means of “security packets” (extraordinary and urgent measures that governments may promulgate in exceptional circumstances). Even today, migration is seen principally as a public security concern.

Legal changes have been influenced by the high level of politicization associated with migration (Einaudi 2007). As Sayad (2008, p. 18) warns, immigration is not a “politically neutral” phenomenon, as it is sometimes made out to be, explained by reference to purely economic considerations. Italian lawmakers “obsessively redesigned” (Codini 2009, p. 77) the rules on immigration to satisfy and conciliate political demands, economic interests, and requests for security, which often conflict among themselves.

Labor Migrations Between Regularity and Regularization

The residence permit (*permesso di soggiorno*) may be issued for various reasons (e.g., work, family, study, and asylum).¹⁷ Since labor immigrants are the majority of foreigners in Italy,¹⁸ I focus on the legal procedure for migrants seeking work.

Each year, on the basis of labor market needs, a ministerial decree establishes a quota of foreigners allowed to enter and work in Italy (Sciortino 2009).¹⁹ The 2002 Bossi-Fini Law (changing the TUS) established that employers who want to hire a foreigner must present the so-called Residence Contract Proposal (*contratto di soggiorno*)²⁰ to the Immigration Office. The proposal identifies a specific foreigner by name. Only in some exceptional cases (e.g., for seasonal jobs) may employers simply specify the number of workers they want to hire; workers will then be selected from a special list of foreign laborers. Once the Immigration Office has obtained police consent, it issues the permit to hire. The foreigner will obtain the visa needed to enter Italy, sign the contract proposal, and apply for the residence permit.²¹

Since 2002, foreigners who apply for the residence permit must be fingerprinted. This is to reduce the risk of forgery, and it is also required if the permit is renewed. In Italy, fingerprints may, in principle, be taken only when people are considered to be “dangerous” (e.g., particular people whose identity is unknown) and in relation to a crime (e.g., following arrest by the police). The foreigner who requests a residence permit is therefore effectively assumed to be dangerous and criminal *per se* (Caputo 2007a). This presumption of danger characterizes many other aspects of Italian laws. When the law governing proposals for migrants’ entry was enacted, it was said to have been necessary to avoid the presence in Italy of unemployed and dangerous foreigners; it was argued that lack of employment would have induced immigrants to seek illegal means of income.

Paradoxes and contradictions can be found in the legal procedure just described. One is the close link between residence and work. For instance, dismissed foreigners may remain in Italy only for 1 year to look for a new job. Then, if they are still unemployed, they may be expelled. “This provision is in contrast with the reality of the labor market which offers temporary work contracts especially in the sectors where immigrants are predominantly employed such as construction, agriculture, tourism, catering, and cleaning services” (Triandafyllidou and Ambrosini 2011, p. 264).

A second paradox is evident from the geographical relationship between the demand and supply of work. When the employer presents the job proposal, the foreigner must be in his or her own country of origin. However, the employer’s proposal must refer to a specific migrant. Considering that almost all proposals are put forward by Italian employers (and not by immigrants who live in Italy), it is reasonable to wonder how the employer can know, and therefore hire, a foreigner who is abroad and theoretically has never been in Italy. The geographical distance between the demand and the supply of labor clearly is a fiction (Paggi 2002; Caputo 2007a). In reality, “many workers . . . arrive undocumented and work unregistered, hoping either to establish a relationship with an employer willing to undertake the complicated bureaucratic procedure necessary to legal entry, or to support their application during one of the periodic regularizations” (Chaloff 2006, p. 155).

Regularizations (or amnesties) are extraordinary measures through which residence permits may be issued to immigrants who work in Italy without a regular contract. Regularizations throw light on another contradiction of the law, since many undocumented immigrants work in the Italian informal economy.²² This is demonstrated by the six regularizations Italian governments have enacted in the past 25 years (Table 28.3).²³

Table 28.3 Immigrants benefiting from regularizations,^a ministerial quotas on labor inflows,^b and regularized/quotas ratio

	1986	1990	1995	1998	2002	2009
Regularized	105,000	218,000	244,000	217,000	646,829	294,744
Ministerial Quotas	—*	—*	—*	58,000	79,500	—**
Regularized/Quotas	—*	—*	—*	3.7	8.1	—**

^aRegularizations are legal instruments through which the state issues a residence permit for working reasons to illegal immigrants who are able to demonstrate they work in the Italian underground economy.

^bEach year, a quota of immigrants allowed to enter Italy for working reasons is established.

*Quotas were introduced in 1998.

**In 2009, the ministerial quota was replaced by with regularization.

Source: Carfagna (2002), Istat (2011; <http://www.istat.it>) and Ministero dell'Interno (2011; <http://www.interno.it>).

The number of immigrants benefiting from amnesties increased constantly from 1986 to 2002, when nearly 650,000 workers were legalized.²⁴

As Table 28.3 shows, the number of workers legalized is higher than the quotas established in the ministerial decrees. In 1998 and 2002, the number legalized was, respectively, nearly four and eight times higher than the ministry's estimate.

These data demonstrate that the need for foreign workers is far greater than the Italian government estimates. Immigrants (both regular and irregular) can find jobs in the underground economy. The lack of a regular contract, however, makes immigrants extremely vulnerable. Working conditions and earnings are left to informal agreements, and, although the employer has a lot to gain, the immigrant worker has everything to lose.²⁵ It may be said, paraphrasing Abdelmalek Sayad,²⁶ that the informal economy is a great consumer of immigrants.

The repeated use of extraordinary measures such as amnesties confirms that these tools do not solve the problem of irregular labor immigration.²⁷ Unlike other European countries (especially Germany), Italy did not actively recruit a foreign workforce. Instead, “the tolerance of entries through the back door” constantly produced “a sizeable segment of irregular workers that, at nearly regular intervals, was absorbed into the official labor market through an amnesty” (Sciortino 2009, p. 4).

IV. CRIMINALIZATION

There are two images of immigration at work here: one of “good” immigration, functional to the national development, and one of “bad” immigration that is dangerous to security.²⁸ This distinction treats having or not having a residence permit as if it were a

natural characteristic (Caputo 2007a), a choice of the migrants. On the contrary, it is a legal construction, one whose boundaries are variable. It has been called “status mobility” the “migrants’ shifts from one legal status to another, [which are] often multiple and complex—sometimes because of circumstances beyond their control” (Schuster 2005, p. 764).²⁹

Although the effectiveness of Italian immigration policies in selecting regular entries and contrasting irregular ones is dubious, the symbolic value and instrumental use of the law cannot be underestimated. Migration is an ideological and political theme of great relevance. Migration is perceived by some as a problem of legality and public order. To conservative ideologies and a logic of securitization, immigrants are the new “dangerous class.”³⁰ From a socially critical perspective, management of migration is a form of neo-racism (see Balibar and Wallerstein 1991; Delgado and Stefancic 2001), neo-colonialism (see Rigo 2005; Mezzadra 2008), and institutional discrimination (see Re 2007; Palidda 2009).

The seeming nexus between immigration of undocumented migrants and criminality has influenced Italian policies, in the sense that exclusive mechanisms have predominated. Italian laws include measures of social inclusion,³¹ but they seem to take second place in comparison with measures targeting irregular immigration.³²

Italian integration policies have been characterized as “awarding” the immigrant with integration (De Bonis and Ferrero 2004).³³ The process of social inclusion aims to make the immigrant responsible:³⁴ only those able to move between the tight, changing mesh of regularity and irregularity, by adopting efficient strategies of adaptation and avoiding the punitive system created to control the *clandestinità*, can become legitimated members of society.

The fight against undocumented immigration involves complementarity between administrative and penal laws (Caputo 2003; see also Dal Lago 2003). Administrative and police measures are linked to penal sanctions that aim to reinforce the administrative measures.

A. “Clandestine” Immigrants and Border Controls

Non-EU citizens who try to enter Italy without documents must be refused by the police at the border. The number of refusals has decreased drastically in recent years: 59,908 foreigners were refused in 1991; 30,871 in 2000; 20,547 in 2006; and 9,592 in 2007 (Ministero dell’Interno 2011, p. 13).

The decrease resulted from three main factors. First, because of the Schengen Agreement, external frontiers are no longer national (Italian) but European borders, and citizens of new EU States (e.g., Romania, one of the main sending countries) may be refused admission only in exceptional circumstances.³⁵

Second, new measures aimed at preventing entry into “Fortress Europe” include policies of externalization of controls and delocalization of the borders, supported by agreements with sending countries geographically close to Italy, such as Algeria, Egypt,

Morocco, and Tunisia. The goal is to impede irregular inflows and facilitate expulsions (Cuttitta 2010).³⁶

All EU countries are not affected in the same way by irregular migration. Southern countries, such as Italy (with 8,000 km of coastline), experience significant inflows: “The popular wisdom is that irregular migrations arrive to Italy from the sea, because of the difficulties in patrolling the extensive Italian shores especially where important countries of origin/transit are geographically close (e.g., Libya in the case of Lampedusa and Sicily and formerly Albania, as regards Otranto in the Apulia region)” (Triandafyllidou and Ambrosini 2011, p. 265).

Even before the “Arab Spring,” Italy concluded bilateral agreements with Libya to cooperate in the fight against illegal immigration. In 2009, joint Italian/Libyan patrols were authorized to send illegal immigrants back toward Libya. The Italian government financed the construction of centers and facilities to hold and manage immigrants who tried to reach Italy (Paoletti 2010).³⁷

Externalization of controls and delocalization of the borders can impinge on fundamental international and European human rights norms. For example, forced refusal at sea and redirection back toward the Libyan coasts could impede would-be asylum seekers from filing applications and oblige them to return to an unsafe place (Klepp 2010; Triandafyllidou and Ambrosini 2011). According to the Geneva Convention on the status of refugees, the receiving state may not “expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion.” Italian law likewise obliges the border police to help all immigrants, including illegal ones, in need of assistance.

Refusals also decreased since migrants who entered Italy (or tried to enter) by avoiding border controls or showing forged documents have become a low percentage of the total number of irregular immigrants. In 2006, only 36 percent of undocumented migrants held by the police were stopped at frontiers; the rest were found unlawfully within the territory. The majority of undocumented immigrants are thus overstayers who remain after their residence permits have expired (Ministero dell’Interno 2007).³⁸

B. Centers of Identification and Expulsion

Foreigners who are in Italy without documents or after their residence permits have expired may be expelled. According to the original 1998 law, expulsions occurred when the head of police ordered foreigners to leave the country. When there was an unacceptable risk that the immigrant would violate the order and remain in Italy, the immigrant could be sent to a Temporary Center of Detention (now called Centers of Identification and Expulsion [CIE]) for the time necessary to organize forced removal.

The 2002 law radically modified the mechanism of expulsion: administrative detention in the CIE became the rule, with the order of removal to be used only in exceptional circumstances (e.g., for overstayers, whom the police ordered to leave Italy within

15 days). In 2011, Italy implemented the European directive 2008/11/EC on voluntary return under which forced removals have become residual and exceptional.

The current law allows undocumented foreigners (including overstayers) stopped by the police to ask for a period of 7–30 days to leave Italy of their own accord. This is an alternative to forced removal. However, there are some exceptions: when immigrants are viewed as dangerous, if there is a risk of flight, or if expulsion ensues from a penal conviction. In these cases, the police order the forced removal, and, if it is not immediately possible, the foreigner is detained in a CIE for the time necessary to organize the deportation.

Administrative detention in a CIE is mainly justified by two reasons: (1) the need to obtain travel documents and find the carrier necessary for deportation and (2) the need to identify foreigners who have no documents, so as to know the country of origin for repatriation.

Detention in the CIE has all the characteristics of penal imprisonment.³⁹ It must be approved by a judge and must have a maximum length. The detention period has progressively lengthened: the 1998 law envisioned a 1-month maximum, the 2002 law extended this to 2 months, the 2009 law extended this up to 6 months, and the 2011 law up to 18 months. The increases have been attributed to difficulties in identifying immigrants because of the complex procedures that involve the diplomatic and consular authorities of foreign countries.⁴⁰

Detention in the CIEs seems to have become a way of containing and neutralizing illegal foreigners. In 2006, a ministerial commission was appointed to inquire into the detention centers. The Commission De Mistura (named after its president) found that 88 percent of administrative detentions were extended to the maximum legal period. At the same time, however, it learned that the identities of immigrants were known before detention in 30 percent of cases. The commission concluded that operations violated the rationale of the law because confinements did not depend on difficulties in identifying foreigners' identification, but on organizational problems related to deportation.

The De Mistura Commission emphasized that a high percentage of immigrants in the CIEs were former prisoners being held awaiting deportation (see also Medici Senza Frontiere 2005). In these cases, detention is in effect a double punishment—an extension of incarceration beyond the term the judge prescribed. Such transfers could be avoided by carrying out checks on the migrant's identity and organizing the deportation while he or she was in prison (Miraglia 2007). The De Mistura Commission suggested a reorganization of the centers and advised that detention be used only when the foreigner's identity is unknown and for not longer than 20 days.⁴¹

C. Undocumented Immigration

The Italian debate on the punishment of illegal entries dates back to the early 1990s, when three bills concerning clandestine immigration failed to pass in Parliament,

mainly because of opposition from left-wing political parties and Catholic organizations (Einaudi 2007, pp. 120–206). In 2008, being an undocumented immigrant was made an aggravating circumstance for all offenses: the punishment was to be increased by one-third if the offender was undocumented. But, in 2010, the Italian Constitutional Court (no. 249) held this unconstitutional. The court stated that harsher sanctions cannot be based on a “stigmatizing presumption of dangerousness of people who did not comply with administrative norms on residency.”

In August 2009, entering or remaining in Italy unlawfully became punishable as a crime. The new law made undocumented entry or stay in Italy a misdemeanor punishable by a fine of 5,000 to 10,000 euros. This penalty may be replaced by expulsion, if there are no obstacles to removal (article 10, TUS). From August 2009 to April 2010, 19,918 foreigners were reported for undocumented entry and remaining in Italy; 21.5 percent were expelled and deported (Ministero dell’Interno 2011, p. 19).

The crime of clandestinity can be criticized on the basis that the penal law should intervene, as *extrema ratio*, only to protect fundamental public goods and only by use of measures proportionate to the protection necessary for those goods. In the case of irregular stay, the penal law is being used only to further administrative interests.

Similar criticisms can be made of the whole Italian system for the expulsion of illegal immigrants. The law provides that a foreigner who has not been deported within the maximum period of detention must be released and ordered to leave Italy within 7 days.

Foreigners who violate this order and are found on Italian territory commit a crime punishable by a fine and receive a new order to leave (article 14 TUS).⁴² However, an immigrant who has been deported but re-enters Italy before expiration of the ban to re-enter (which can last from 3 to 5 years) is punishable by a term of penal detention of up to 4 years (article 13 TUS).

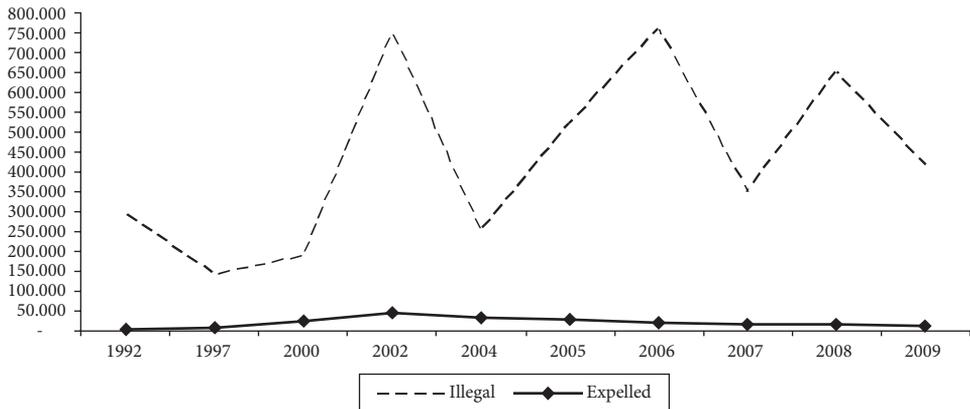
Italian law provided that foreigners sentenced for one of these crimes, if found illegally in Italy, were punishable by up to 5 years in prison, followed by a new deportation. However, the European Court of Justice⁴³ declared this violative of the 2008/115/EC directive, and the Italian law has been changed by shifting the penalty from incarceration to a fine. The directive clarifies that “the use of detention for the purpose of removal . . . is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient” (no. 16). The court stated that foreigners who do not obey the expulsion order may not be incarcerated, since imprisonment is not the least coercive available measure and is not justified to carry out the removal. The administrative and penal systems for expelling irregular foreigners are somewhat ineffective. As Table 28.4 and Figure 28.3 show, Italian authorities have managed to remove only a small percentage of irregular foreigners.⁴⁴

Deportation from CIEs is not conspicuously efficient (see Table 28.5). Administrative detentions increased from 5,000 in 1998 to 17,000 in 2002, and then fell to 7,000 in 2010. The number of immigrants repatriated after detention in the CIEs varied from year to year, growing from 2,858 in 1998 to a peak of 11,081 in 2005, before falling to

Table 28.4 Illegal immigrants and expelled immigrants, expulsions as percentage of total illegal immigrants, selected years

	1992	1997	2000	2002	2004	2005	2006	2007	2008	2009
Illegal Immigrants	293,000	140,000	188,000	750,000	250,000	522,000	760,000	349,000	651,000	418,000
Expelled Immigrants	4,653	8,950	27,042	44,706	32,874	30,428	22,770	15,680	16,861	13,506
Expelled/ Illegal, Percent	1.6	6.4	14.4	6.0	13.1	5.8	3.0	4.5	2.6	3.2

Source: Illegal immigrants, Blangiardo (2011, 2012); Expelled immigrants, Ministero dell'Interno (2011).

**FIGURE 28.3** Illegal and expelled immigrants, selected years

Source: Blangiardo (2011, 2012); Ministero dell'Interno (2011).

3,399 in 2010. The percentage of deportations remained more or less constant over the years: 57.1 percent repatriated in 1998 and 48.3 percent in 2010 (Ministero dell'Interno 2011; Colombo 2012).

Although administrative detention became stricter, it did not materially increase the number of foreigners reported. Neutralization and the symbolic use of the law characterize the administrative/penal system which, apart from a (questionable) deterrent effect,⁴⁵ aims at governing migrants through the prism of crime: “through criminalizing practices that range from increasingly intrusive forms of surveillance all the way to immigration detention, the state effectively penalizes and stigmatizes foreigners as ‘other’ in order to sort and admit only those considered vetted” (Bosworth and Guild 2008, p. 714).

Table 28.5 Foreigners (non-European Union citizens) detained in a Center of Identification and Expulsion (CIE), foreigners deported after administrative detention (N), and percentage of deportations, 1998–2010

Year	Detained in CIEs	Deported	Deported/Detained (%)
1998	5,007	2,858	57.1
1999	8,847	3,902	44.1
2000	9,768	3,134	32.1
2001	14,993	4,437	29.6
2002	17,469	6,372	36.5
2003	13,863	7,021	50.6
2004	16,465	8,939	54.3
2005	16,055	11,081	69.0
2006	12,842	7,350	57.2
2007	9,647	4,459	46.2
2008	10,539	4,321	41.0
2009	10,926	4,153	38.0
2010	7,039	3,399	48.3

Source: Ministero dell'Interno (2011); Colombo (2012).

V. IMMIGRANTS AND THE CRIMINAL JUSTICE SYSTEM

Italy mainly manages illegal migration as a criminal law issue. Immigrants are commonly said to have contributed significantly to the increase in the level of criminality. Explanatory paradigms include social determinism (crime results from conditions of socioeconomic disadvantage and marginalization) and deviant aptitudes of migrants (the ideas are derived from criminal anthropology). In this section, I analyze migrants' delinquency from a different perspective, one that focuses on criminalizing processes.

A. Are Official Crime Statistics a Good Measure of Immigrants' Criminality?

Official crime statistics are often offered as evidence that immigration increases the level of crime. Growing proportions of immigrants among reported, arrested, convicted, and

detained people are invoked as evidence of high levels of crime among foreign-born people.

Figure 28.4 shows how the percentage of migrants among the total of people charged with crimes and detained in Italy has increased in recent years. In 1990, immigrants were 7.5 percent of the people charged with a crime. In 2005, they were 23.7 percent. The pattern is similar for immigrant detainees: from 15.1 percent in 1991 to 36.2 percent in 2012.

Likewise for arrests and convictions: Italian Institute of Statistics (Istat) data show that 22.8 percent of the people arrested by the police in 1999 were immigrants. In 2005, the figure was 50.2 percent. Foreign-born citizens were 16.5 percent of convicted people in 1999 and 21.9 percent in 2005.

Official statistics thus demonstrate that “immigration has had a substantial impact on crime in Italy” (Barbagli and Colombo 2009, p. 69). The impact has been higher for some offenses, including pickpocketing, burglary, drug dealing, exploitation of prostitution, personal injuries, and sexual violence (Barbagli 2002, p. 82). Not all foreigners have been equally involved in criminal acts: those coming from the Philippines, China, Pakistan, Egypt, Argentina, and Brazil have had low levels of involvement, whereas “thefts and robberies are often committed especially by former Yugoslavs [and] Moroccans, Rumanians, Algerians and Tunisians; drug dealing [is committed] by Moroccans and Tunisians; smuggling of marijuana by Albanians and that of cocaine by South Americans; and exploitation of prostitution by Albanians and Rumanians” (Barbagli 2002, p. 83).

Another important feature emerging from crime statistics refers to immigrants’ immigration status. The Ministry of the Interior noted that “undocumented people are often a great majority out of the total number of reported foreigners. The greater involvement in crime of undocumented foreigners depends on the different functions that crime has in the foreigner’s life. . . . As regards instrumental and economic crimes (e.g., burglary), the number of undocumented foreigners is higher, . . . given the greater difficulty, or the lower interest an irregular foreigner has to carry out legal work, and therefore the higher probability that s/he has of committing illegal acts” (Ministero dell’Interno 2007, p. 359; emphasis added).

An irregular status and difficulties encountered in finding a legal job may increase the likelihood of involvement in crime. However, the ministerial statement is a good example of arguments fueling the stigmatization of immigrants—particularly of undocumented immigrants—as criminals. Those who entered and remained in Italy in violation of residence laws (and, by virtue of the tight link between regular stays and work, those who “choose” to remain in Italy unemployed) are dangerous, since they have a “lower interest”—in the Ministry’s words—in legal activities. Therefore, the Ministry seems to suggest, they have a high propensity to commit crimes.

The increase of immigrants in the criminal justice system is not (or not necessarily) an index of their dangerousness. It also depends on penal control dynamics, on the functioning of criminal justice agencies, and, therefore, on how (and why) crime statistics are created. It is well known that official data are not an index of criminality, but of criminal justice agencies’ activities. Official crime statistics record only illegal acts

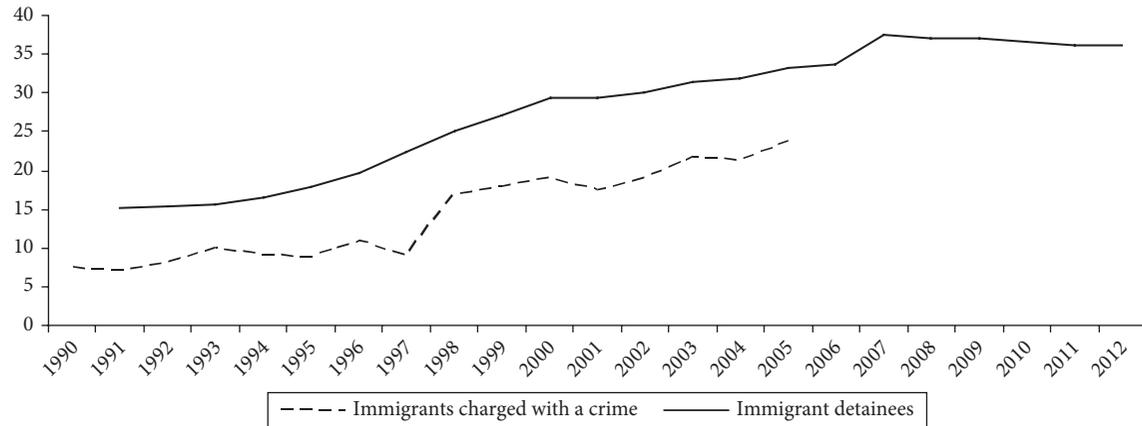


FIGURE 28.4 Immigrants charged with a crime (percent of total charged) and immigrants detained in Italian prisons (percentage of total detainees)—time series. data at June 2012.

Source: Immigrants charged with a crime, Istat (2011; <http://www.istat.it>); Immigrant detainees, Department of Penitentiary Administration (<http://www.giustizia.it>)

of which police have knowledge through reports or through their own investigations. Official data are affected by the problem of the “dark figure,” the number of crimes not coming to official attention.

The further the distance from the crime itself, the greater the distortion produced by the penal system is likely to be. Thorsten Sellin long ago observed that “the value of criminal statistics as a basis for measurement of criminality in geographic areas decreases as the procedure takes us farther away from the offense itself” (Sutherland and Cressey 1978, p. 30). Thus, police records are a more reliable index than arrest statistics, arrest statistics are more reliable than court statistics, and court statistics are more reliable than prison statistics.⁴⁶ For all these reasons, it is problematic to rely on official data as a valid measure of criminality.

B. Immigrants Charged and Police Stops

The number of immigrants reported to the police and charged with a crime has increased steadily in recent years (see Figure 28.4). Thirty-nine percent of reported immigrants came from central eastern Europe (especially Albania and Romania) and 38 percent from Africa (especially Morocco), with the EU, Asia, and the Americas trailing behind (see Table 28.6).

In 2005, immigrants constituted 24 percent of the total number of people charged with a crime in Italy, but, in that year, the offender was known in only 23 percent of reports (other reports were filed against an unknown person). The 2002 Italian victimization survey revealed that only 35 percent of crimes committed are reported. Consequently, the level of immigrant delinquency, measured via official statistics, concerns only a small portion, 8 percent, of the total of reported and unreported crimes: 0.35 (crimes reported) for 0.23 (known offender) equals 0.8 (Melossi 2010, p. 453).

Official statistics are strongly influenced by the practices and priorities of criminal justice agencies, especially the police. The latest and most complete available data, examining the categories of offenses for which immigrants are charged, show a high incidence of immigrants in crimes discovered as a result of police investigations (e.g., exploitation of prostitution, forgery of documents and false identity, and drug-related crime). Immigration influences not only involvement in crime, but the control mechanisms that produce official crime statistics.

The selectivity of criminal justice agencies in America and Europe has been demonstrated by studies of structural discrimination and institutional racism (Loader 2002; Weber and Bowling 2008; Palidda 2009). To use a metaphor, if you “fish” in only one part of the sea, that’s where you catch more fish. Catching more fish will legitimate other interventions in that part of the sea and, at the same time, stigmatize categories of people as criminals (Melossi 2010). This connects with what Bernard Harcourt (2007) called the “ratchet effect,” an expression of cultural or racial profiling that adheres to labeling. The choice to concentrate resources on a particular category of people (e.g., immigrants) and on some types of crime (e.g., drug dealing—characterized by high visibility

Table 28.6 Immigrants charged with a crime by area of origin and selected countries, 2005

	N	Percent (%)
European Union—25 Member States	10,518	8.1
Other Europe	51,031	39.1
of those: Albania	11,573	8.9
Romania*	20,967	16.1
Africa	49,718	38.1
of those: Morocco	20,297	15.6
Tunisia	6,934	5.3
Asia	9,553	7.3
of those: China	3,964	3.0
North America	706	0.5
Center-South America	8,745	6.7
of those: Ecuador	1,640	1.3
Perù	1,591	1.2
Oceania	187	0.1
Total	130,458	100

*Romania entered the European Union in 2007.

Source: Italian Institute of Statistics (Istat 2011; <http://www.istat.it>).

and a high risk of discovery) means that those people will be labeled as criminal (Becker 1963) and legitimizes use of additional controls and punitive devices against them.

These processes are particularly evident in police stops on foot, which depend mainly on physical traits or ethnic origins of the people stopped. A report from a project on police stops in Emilia-Romagna among immigrants who were legal residents of the region, concluded:

If we consider only those [immigrants] who were stopped on foot, we see that the likelihood of being stopped [by the police] goes down to 1.4 per cent for Italians but it stays at 14 percent for foreigners, a difference of exactly 10 times! If one furthermore considers that non-European immigrant males, i.e., those more 'visibly' immigrant, scored a rate of stops even higher and, especially, that we were able to interview only legal, that is documented immigrants and not the undocumented... we have to draw the conclusion that for undocumented non-European male immigrants the probability of being stopped by the police on foot is much, much higher than that of Italian males. (Melossi 2003, p. 386)

Police checks do not come about randomly or by chance. The police decide to stop an immigrant on the basis of a report, a suspicion, a feeling, or sometimes also for reasons linked to prejudices. One policeman observed, “Prejudice has become a tool for work” (in Fabini 2010, p. 305).⁴⁷ When a foreigner is found to be without documents, and the officer must decide whether to initiate expulsion or deal with the case informally, the criterion used seems to be the migrant’s functionality or dysfunctionality (see Sbraccia 2007). This resembles police practices described long ago by Bittner (1967). Undocumented immigrants who have a job in the underground economy, and thus benefit the Italian economy, are more often than not released by the police. The dysfunctional immigrant, assumed to be involved in the illegal economy, gets deported. This exercise of discretionary power by the police does not necessarily imply a violation of the law, but it does involve the interpretation and use of a legal power. Rather than act as a guarantor of public order, the police maintain “the rules of disorder” (Palidda 2000, p. 31).

The rules of disorder—and therefore selective activities—are influenced and tightly linked to the context in which penal agencies act, as is shown by a comparative project in two Italian regions with substantially different immigration profiles (Crocitti 2010).⁴⁸

Table 28.7 Immigrants charged with crimes and as percentages of total charges, by offense, 2005

	Total	Immigrants	Immigrants/Total (%)
Crimes against persons	129,404	16,721	12.9
of those: Homicide	1,659	263	15.9
Sexual violence	3,174	959	30.2
Personal Injuries	38,195	5,148	13.5
Crimes against public ethics	15,098	2,464	16.3
of those: Exploitation of prostitution	1,243	671	54.0
Property crimes	176,813	46,203	26.1
of those: Theft	58,334	22,966	39.4
Robbery	12,776	4,247	33.2
Crimes against economy and public faith	92,783	28,453	30.7
of those: Law on drugs	42,809	14,402	33.6
Forgery and false identity documents	32,818	13,179	40.2
Crimes against the State	66,755	9,988	15.0
of those: Violence against public officers	18,900	5,590	29.6
Criminal association	4,473	487	10.9
Other crimes	70,137	26,629	38.0
Total Crimes	550,990	130,458	23.7

Source: Italian Institute of Statistics (Istat 2011; <http://www.istat.it>).

The following interview notes underline a sort of police tolerance of irregularity in the southern region. All the interviewed immigrants were undocumented but had not been expelled by the police because they worked in the underground economy and were economically useful.

F., an undocumented immigrant, told me that sometimes the police went to the building site (where he worked) but they did not control foreigners' documents. F. said that he was never stopped on foot by the police, though, he added, "Everybody knew that I was undocumented." [Interview no. 2]

R. was a builder, working in the underground economy since he did not have a residence permit. Thanks to his job, R. knew several people, including policemen and customs officers (as R. told me, he had done small repairs in their houses). This implied that he was not afraid of police checks. [Interview no. 3]

Tolerance of irregular stays in the northern region also emerged from the following notes, but foreigners there were more worried about police stops on foot than were immigrants in the south. Consistent with Matza's (1969) ideas about police stops as bureaucratic practices for checking "suitably suspicious people," meant and depicted as the "enemy within," police stops in the north seemed characterized by dynamics typical of military operations.

A., an undocumented immigrant, had an interesting idea on policing mechanisms: "When the police stop you, you give them information about your identity. They check [in their databanks] if you did something wrong [i.e., previous criminal records], and if you did nothing wrong, they let you go." A. was stopped and checked by the police, but he was never expelled. [Interview no. 5]

T. was stopped several times, and the police behaved "like in the movies." . . . T. talked about stops with "guns aimed at me, and I remember I thought it was dangerous, as if a shot was fired, it would be dangerous for me." [Interview no. 1].

C. The Prison System

Selectivity can be found throughout the criminal justice system. A project in Bologna (based on in-depth interviews with judges, public prosecutors, and lawyers) showed that penal agencies focus their attention on some types of crime (e.g., drug dealing, property crimes), linking criminal justice policy and responses to behaviors that attract public attention. Immigrants entering the criminal justice system overlap with the new urban underclass, blamed because it is considered responsible for its own poverty and social marginalization. This image legitimizes "the opportunity to set off a disciplinary process which is able, if not to normalize the behavior of all those [immigrants] involved, at least to neutralize their social dangerousness, at the same time rendering the choice to carry out criminal activities less eligible and at a high level of risk" (Campesi 2003, p. 179).

Prison population numbers are lower in Europe than in the United States,⁴⁹ but the foreign prison population has steadily increased (Garland 2001a; Melossi 2001; Bosworth 2010). In 2007, on average, about 20 percent of detainees in European prisons were immigrants (Aebi and Delgrande 2009). In Italy, the number of immigrant detainees grew by 6.6 percent between 1989 and 1991, by 6.4 percent between 1997 and 2000, and by 33 percent in 2000–2008 (Delgrande and Aebi 2009, p. 32). In 1990, immigrants were 15 percent of the prison population and 36 percent in 2011. The majority came from Africa, followed by EU citizens and other Europeans (Table 28.8).

As Table 28.9 shows, 95.4 percent of people confined for immigration law offenses were immigrants, as were 78.9 percent confined for prostitution,⁵⁰ and 43.8 percent for drug-related crimes. Levels were lower for crimes against public faith (e.g., forgery; about 40 percent), against public administration (e.g., resistance to public officers), and against the person. Immigrants made up only 27.6 percent of property crime confinements, even though media and political imagery fuels stereotypes of immigrants as thieves.

Table 28.8 Immigrants detained in prison by area of origins and selected countries, 2011

	N	Percent (%)
European Union—27 Member States	4,896	20.3
of those: Romania	3,583	14.8
Other Europe	4,379	18.1
of those: Albania	2,770	11.5
Africa	12,186	50.4
of those: Morocco	4,895	20.2
Tunisia	3,189	13.2
Egypt	514	2.1
Asia	1,274	5.3
of those: China	354	1.5
Philippines	77	0.3
North America	32	0.1
Centre-South America	1,385	5.7
of those: Ecuador	182	0.8
Perù	212	0.9
Other Countries	22	0.1
Total	24,174	100

Source: Department of Penitentiary Administration (<http://www.giustizia.it>).

Table 28.9 Prison population, selected crimes, by total detainees and (legal and illegal) immigrant detainees, 2011

Crime	Total	Immigrants (N)	Immigrants/Total (Row Percent)	Immigrants (Column Percent)
Crimes against persons	23,693	7,455	31.5	30.8
Property crimes	33,647	9,297	27.6	38.5
Crimes against public administration	8,072	3,158	39.1	13.1
Crimes against public faith	4,396	1,736	39.5	7.2
Law on drugs	27,459	12,021	43.8	49.7
Law on prostitution	1,089	859	78.9	3.6
Immigration law	2,442	2,329	95.4	9.6
Total Detainees*	66,897	24,174	36.1	

* The total number of detainees does not correspond to the sum of people detained for the selected offenses because people convicted of more than one crime are counted within each pertinent category. Each type must be analyzed separately.

Source: Department of Penitentiary Administration (<http://www.giustizia.it>).

There are distinctive patterns in the detention of immigrants. Only 9.6 percent were detained for immigration offenses, but 49.7 percent were held for drug-related crimes. Harcourt's (2007) "ratchet effect" seems to be evident. Drug dealing is highly visible; offenses are mainly discovered by police who can easily select the "stretch of sea" in which to fish.⁵¹

Table 28.10 provides other indices of institutional and structural discrimination. In 2011, 42 percent of immigrants were detained without a final decision, a majority of whom were awaiting the end of the first level of trial. Foreign-born citizens were 40.5 percent of detainees held in preventive custody waiting for the first level of trial.

Following the principle of colorblindness (cf. Re 2006), custody rates are affected by immigrants often failing to satisfy legal requirements (e.g., lodging) to be eligible for alternatives and because they (especially illegal immigrants) may be considered at high risk of absconding.

Pretrial custody, nonetheless, can be one of the criminalizing devices through which poor and socially marginalized immigrants are governed. Immigrants experience the most repressive face of the state, the "penal state," which replaced the welfare state in dealing with migration as a social problem (Wacquant 2000b; Garland 2001b; Snacken 2010).

The new institution of "prison as surrogate ghetto" (Wacquant 2000a) is also evident in the overrepresentation ratio that compares population composition data with crime data. A higher proportion of immigrants among prisoners than among the total population constitute overrepresentation: the higher the ratio, the higher the

Table 28.10 Prison population by status of detainees: total detainees and (legal and illegal) immigrant detainees, 2011.

Status	Total	Immigrants (N)	Immigrants/Total (Row Percent)	Immigrants (Column Percent)
Convicted without a final decision	27,251	11,450	42.0	47.4
<i>of those: Waiting for the first level of trial (Preventive Custody)</i>	13,625	5,514	40.5	22.8
Convicted with a final decision	38,023	12,544	33.0	51.9
Others	1,623	180	11.1	0.7
Total Detainees	66,897	24,174	36.1	100

Source: Department of Penitentiary Administration (<http://www.giustizia.it>).

overrepresentation. High rates are evidence of criminalization. In 2006, Italy had, after the Netherlands, the highest ratio of immigrant overrepresentation (6.59) among European countries (Melossi 2008b, p. 11).⁵²

Incarceration may be “as much a measure of criminalization as it is a measure of criminality” (Melossi 2008c, p. 51) or social dangerousness. Nonetheless, in recent decades, a moral panic, “a mass stigmatization,”⁵³ has shaped public discourses and mass media debates (Maneri 2009). Italian citizens worried that immigrants, perceived to be dangerous invaders, have caused crime rates to increase, although there is little systematic evidence of this. The fear of immigrants is the result of a social and political construction of foreigners as criminals. This mechanism has been defined as tautological: statements about alarm and threats linked to migrants serve to show and reaffirm the reality of the statement itself, as in the famous “definition of the situation” by William Thomas (Dal Lago 2004, p. 73).

VI. THE (NON)LINEAR EQUATION BETWEEN IMMIGRATION AND CRIME

Official crime statistics are produced for purposes not connected to the analysis of deviant phenomena.⁵⁴ Even so, the perceived connection between immigration and crime is widespread in Italy. This is, however, a nonlinear equation, as has been shown in many other countries (e.g., Marshall 1997; Tonry 1997; Martinez and Valenzuela 2006; McDonald 2009).

An econometric analysis by Bianchi and colleagues (2009) examined the relationship in Italian provinces between immigration and crime as shown in police records during the period 1990–2003 and concluded that there is no evidence that an increase in the

immigrant population causes more criminality. Data concerning foreign citizens living in Italy⁵⁵ were correlated with criminal activities (e.g., violent crimes, robberies, thefts, and drug-related offenses). Crime and immigration were not systematically correlated over time.

After checking for demographic,⁵⁶ economic,⁵⁷ and political⁵⁸ determinants, the authors estimated that “a 1 percent increase in immigrant population is associated with a 0.1 percent increase of total crime. Distinguishing among types of crime, the effect is driven by property crimes (while violent and drug-related crimes are unaffected by immigration)” (Bianchi, Buonanno, and Pinotti 2009, p. 8).

The study also explored the causal impact of immigration on crime. Resorting to an instrumental variable (which took into account growth in the foreign population),⁵⁹ the authors found that “the causal effect of immigration on either violent, property, or drug-related crimes [was] not significantly different from zero” (pp. 10–12). In other words, crime levels are not related to the size of the immigrant population (Bianchi, Buonanno, and Pinotti 2009).

Analyses of immigrants’ involvement in official crime statistics suffer from the lack of information about undocumented offenders. By definition, only people legally authorized to stay are usually included in population data.

Among immigrants charged with crimes, as Table 28.11 shows, 60–80 percent are undocumented⁶⁰ (see Ministero dell’Interno 2007, p. 361; Barbagli and Colombo 2009, p. 73). Some have argued that the undocumented status by itself is an important reason for immigrants’ involvement in crime. However, not all undocumented immigrants are delinquents. Some have jobs and play important roles in the Italian economy (as recurrent legalizations show). In any case, having an irregular status does not solely depend on the migrant. Procedures governing lawful stays are so complex (and legal changes are so frequent) that the line between regularity and irregularity is easy to cross inadvertently.⁶¹

Table 28.11 Percentages of illegal immigrants among total immigrants charged with crime, selected offenses, 2006

Homicide	74
Attempted homicide	72
Personal injuries	62
Sexual violence	62
Exploitation of prostitution	63
Theft	80
Robbery	79

Source: Ministero dell’Interno (2007).

A recent study noted, “although precarious legal conditions coupled with socioeconomic disadvantages expose irregular foreigners to resort to unlawful devices and to be under the influence of criminal organizations, . . . rash conclusions [should be avoided]; one should also consider the difficulties linked to a regular immigration, and in fact some scholars have pointed out how current laws may be considered, to a certain extent, as ‘criminogenic’” (Caritas/Migrantes and Agenzia Redattore Sociale 2009, p. 16).

The same study compared immigrants’ and Italians’ crime rates and concluded that they were similar, with immigrant rates possibly lower. For people aged 18–44 in 2005, Italians had a rate of 1.50 percent, and immigrants had a rate of 2.14 percent—if only immigrants with residence permits are considered—and of 1.89 percent if the estimated total number of immigrants in Italy is taken into account. If offenses that can be committed only by foreigners (i.e., crimes linked to immigration laws) are excluded, the Italian and immigrant crime rates would be the same. If socioeconomic conditions generally could also be part of the comparison, the immigrant crime rate would be lower than that of Italians.⁶² Unfortunately, official statistics are not disaggregated according to socioeconomic criteria and little pertinent research has been done. Education, employment, family status, income, and other socioeconomic status factors are well-known to be correlated with criminality. The unavailability of these data in relation to crime makes all comparisons suspect (Caritas/Migrantes and Agenzia Redattore Sociale 2009, p. 15).

VII. IMMIGRANTS AS VICTIMS

Victimization of immigrants has been little studied (Palidda 2001; Barbagli and Colombo 2009). The main available sources are official statistics, which offer little information because “for some offenses, the proportion of victims of unknown nationality is relatively large and this may produce effects on the percentage of immigrants on the total number of victims” (Ministero dell’Interno, 2007, p. 372). Official statistics probably undercount immigrants’ victimization because those without lawful residence may avoid reporting because of fear of the risk of being convicted of illegal stay and expelled.

Moreover, “even regular immigrants are not always able to be heard [by the police] both because interpreters are not always available and because there are police operators with attitudes of disdain if not outright hostility toward the victim” (Palidda 2001, p. 168). In any case, the offender and the victim frequently have the same foreign nationality. Concerns for solidarity and protection of their community may reduce the likelihood of reporting a crime. Pressures or threats made against victims by the members of the group may also be influential.

The number of foreign-born people among total victims is disproportionately large compared with their proportion of the general population (Ministry of the Interior 2007, p. 372). The foreign-born percentage is higher for violent crimes (e.g., homicide both attempted and consummated) and sexual violence than for property crimes (burglary and robbery) (see Table 28.12).

Table 28.12 Percentages of foreigners (non–European Union citizens, 15 member states) as victims of crime among total victims, selected offenses, 2006

Homicide	16.0
Attempted Homicide	19.1
Sexual Violence	18.8
Bag-snatching	5.7
Burglary	12.3
Robbery	10.2

Source: Ministero dell'Interno (2007).

The proportion of immigrants among homicide victims increased dramatically in the 1990s, from fewer than 10 percent of victims in 1992 to double that in 1995–1996. In recent years, “one in four women victims of murder, and one in five men, are foreigners” (Ministero dell’Interno 2007, p. 374).

Ministry data disaggregated by nationality of the offender and the victim allow analyses only for some offenses: attempted and completed homicides, rapes, and robberies. The data show that there is a relationship between the nationality of the victim and that of the offender: there is “intra-ethnic victimization” (Ruggiero 2008). During 2004–2006, 74 percent of foreign victims of homicide were killed by a foreign national (the rest by Italians). For robbery, 72 percent of foreign victims were attacked by a foreign national (the rest by Italians). Sexual violence is different: in 90 percent of cases involving foreign victims, the offenders were Italian (Ministero dell’Interno 2007, pp. 376–77).

For two types of crime, human trafficking⁶³ and smuggling,⁶⁴ foreigners’ involvement is very high. These offenses almost exclusively involve foreign criminal organizations whose members come from the same country as the victims (Ministero dell’Interno 2007, p. 378).

In 2010, the Italian government reported investigating 2,333 suspected trafficking offenders; in 2009, there were 2,521 suspects. Italian prosecutors brought 621 trafficking offenders to trial. Courts convicted 174 trafficking offenders in 2010 and 166 in 2009 (U.S. Department of State 2012).

Italian measures to protect victims of trafficking are victim-centered: article 18 TUS, for instance, guarantees 12-month residence permits to victims. The victim can be enrolled in a training program and be sheltered in special facilities. Victims are not required to cooperate with the police in order to receive the residence permit, although 68 percent of assisted victims in 2011 did cooperate with police investigation of their exploiters. The main three countries of origin of assisted victims in 2011 were Nigeria, Romania, and Morocco (U.S. Department of State 2012).

The markets into which victims are inserted include prostitution of women and minors and exploitation and slavery in the labor market. The labor market conditions in which exploited immigrants sometimes work make them highly vulnerable and unable to complain to public authorities. Data on accidents at work in recent years show high numbers of immigrants among victims: “while declared accidents at work reported a 1.3 percent decrease . . . those involving immigrant workers rose by 3.7 percent” (Cesareo 2008, p. 15).

VIII. CONCLUSION

Italian immigration laws aim at controlling inflows of people from abroad. The visa and residence permit system has been introduced to facilitate selection of useful migrants. Annual quotas are established to enable foreign workers to be hired according to national labor market needs. The expulsion system is meant to act as a deterrent, discouraging undocumented immigrants from entering and staying and allowing the deportation of those who enter or remain unlawfully.

However, the sharp distinction between documented and undocumented immigrants can exist only in legal provisions and in political and media debates. In migrants’ lived experiences, the line between regularity and irregularity is not so clear because their status depends on frequent legal changes and on the discretionary powers of Italian authorities. Although Italian norms strictly link residency to a regular job, many immigrants can find employers willing to hire them in the underground economy. Thus, there is no clear link between a regular status and work: a residence permit does not guarantee a legal job, and being undocumented does not necessarily mean lack of employment.

Although Italy has not actively recruited foreign workers, two considerations have had comparable effects: difficult and sometimes ineffective border controls and the high demand for labor in some sectors of the economy. At the same time, the rules on regular entry have become more restrictive, and punishments for undocumented stays and the expulsion system have become more severe.

There is a clear discrepancy between legal requirements and migration realities. The Italian economy needs foreign labor, even in an irregular manner, and the government has repeatedly intervened *ex post* to regularize undocumented workers. However, the large number of immigrants, who often live in conditions of social exclusion, has contributed to stereotypes that Italy is threatened by an “uncontrolled invasion” of foreigners. Such perceptions, in turn, have legitimized the use of increasingly repressive means to regulate regular flows and to fight irregular ones. All of this contributes to a vicious circle effectively defined as a “tautology of fear” (Dal Lago 2004).

The construction of the migrant’s image as alien and dangerous has strong symbolic value. The stranger becomes an enemy against which the community of citizens must defend its national identity and its cultural, moral, and social boundaries. This

strengthens internal cohesion and the social contract between the government and its citizens and results, ultimately, in reassertion of state sovereignty.

Contradictory logics are found in the management of migration. Italian governments increasingly make use of regularizations of some categories of illegal foreign workers, but irregularity has become the target of ever harsher penalties. These political choices ignore the demand for immigrant workers that attracts undocumented migrants whom the state should, in principle, deter from entry or expel on apprehension.

An emergency logic characterizes Italian migration policies. In governing migrations, conflicting political, economic, and social interests must be combined. Maintaining immigration as a marginal, temporary, and exceptional phenomenon aids the construction of an image of the state “in a permanent emergency,” entitled to resort to extraordinary measures to manage migration, even at jeopardy to fundamental human rights safeguards. And, if some foreigners behave in a deviant way, the vicious circle becomes perfect: immigrants are guilty both of “foreignness” and of deviance (Melossi 2002). The emergency logic, together with constant overlap between the migration and criminal questions, dictates a system in which immigration in Italy is governed mainly through the prisms of crime and criminalization.

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GLOSSARY

Immigrants are foreign-born people who stay in Italy. In the immigrant population, an important distinction has to be made between **EU citizens** (*comunitari*) who come from a EU Member State, and **non-EU citizens** or **foreigners** (*extracomunitari* o *stranieri*) coming from a third country.

Depending on their legal status, immigrants—both EU and non-EU citizens—can be distinguished between **legal (regular/documentated)** and **illegal (irregular/undocumented)**: the former comply with legal provisions concerning entry and stay in Italy. The latter infringed the rules on entry and stay, since they either entered Italy avoiding border controls, showing forged documents or in other furtive ways (they are called **clandestine immigrants**: *clandestini*), or they entered Italy lawfully but stayed beyond the expiration of their visa or residence permit (they are called **overstayed**).

The **visa** (*visto*) and **residence permit** (*permesso di soggiorno*) are the two documents necessary for a lawful entry and stay in Italy. In particular, the **visa** is the document necessary to enter Italy; it is issued by the diplomatic authorities of the immigrant’s

country. It cannot be issued to migrants who are considered a threat to public security.⁶⁵ The **residence permit** is the document necessary to remain in Italy legally. It can be issued for various reasons (e.g., work, family, study, and asylum) and, usually, must be renewed each year. The Italian police are responsible for issuing and renewing the permit. Immigrants who do not renew their permits thereby change their status from documented to undocumented and may be punished for the crime of illegal stay and be deported.

Regularizations (*regolarizzazioni*) or **amnesties** (*sanatorie*) can change the immigrants' status from illegal to legal. These are extraordinary instruments through which the state issues a residence permit for working reasons to an undocumented immigrant who can demonstrate that he or she works in the underground economy (without a regular contract).

After 5 years of regular and continuous residence, immigrants may apply for the **EC residence permit for long-period stayers** (*permesso CE per soggiornanti di lungo periodo*). They must demonstrate that they have a valid residence permit, earn a sufficient income, and live in a suitable accommodation, and they must pass an Italian language test. The EC permit, being of indeterminate length, gives foreigners the right to leave and to re-enter Italy without a visa.

Italian **citizenship** may be acquired through birth, marriage, and lawful residence ("naturalization"):

- **Children born in Italy from foreign parents** may become Italians only at the age of majority (18 years old), if they have regularly and continuously resided in Italy until that age, and if they have declared their desire to become citizens within 1 year after reaching the age of majority;
- the **spouse of an Italian national** may acquire citizenship if he or she has legally resided in Italy for at least 2 years after marriage, or after at least 3 years if he or she resides abroad;
- EU citizens may apply for citizenship by **naturalization** after 4 years of legal residency; non-EU citizens can be "naturalized" after 10 years of lawful and continuous residence.

Official statistics (including crime statistics) distinguish between **Italians** and **immigrants**. "Italian citizens, foreign-born but resident in Italy, are not counted among the immigrants. Conversely, some immigrants may have acquired Italian citizenship. . . . The characteristic of immigrants is a permanent feature: people continue to belong to the immigrant population even though they have acquired the Italian citizenship. It is the country of birth, not citizenship, which defines the geographic origin of an immigrant" (Istat 2011, p. 5).

Immigrants, in fact, are identified in official records on the basis of **nationality** and area of origin. Ethnicity is not recorded because classifications based on ethnic origins would represent a form of discrimination because the Italian Constitution prohibits any distinction based on "race."

In demographic statistics, **resident immigrants** are foreign-born people who legally reside in Italy (so, they have a visa or residence permit) and are recorded in the municipal registers.

Crime statistics refer to both legal and illegal **immigrants** and foreign-born people: the distinction between documented and undocumented immigrants is possible only for some kinds of crime (see Table 28.11). Data on **Centers for Identification and Expulsion** and **deportation**, instead, refer to **foreigners**—that is, non-EU citizens.

NOTES

1. The policy documents are approved every 3 years and describe proposed state actions and interventions concerning immigration. The 2001–2003 policy document is available at <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2001/aprile/doc.-programmatico-1.html>.
2. Data for 2010. See Ortensi (2012, p. 54). There is no official definition of the immigrant population, making a comparative analysis difficult: some countries gather data on “foreign nationals” and others on “foreign-born people.”
3. According to 2007 Istat data (<http://www.istat.it>), before the economic crisis began, the level of unemployment (based on the ratio between people looking for a job and the workforce) was 7:4.2 in the northwest and 3.2 in the northeast; the center was 6.1, and the south and the islands 11.8.
4. In Lombardy and Lazio, immigrants are concentrated mainly in Milan and Rome, metropolitan areas that offer occupational opportunities in the services sector. Settlements in Veneto and Emilia-Romagna are linked, instead, to opportunities in the small and medium-sized industries that characterize their economies.
5. In 2004, there were little more than 200,000 citizens from Romania (data from Istat).
6. Within the foreign communities, the ratio between males and females is fairly well balanced. However, in Moroccan, Senegalese, Pakistani, Albanian, and Chinese communities, males are more numerous than females. Conversely, female migratory flows characterize Ukraine, Polish, Peruvian, Ecuadorian, and Philippine communities in which women play the role of breadwinner.
7. At the legal age (18 years), unaccompanied minors lose the right to be protected and assisted by the Italian state and, if undocumented, may be deported.
8. Foreign students include both foreign-born minors and minors born in Italy from foreign parents. Italian citizenship is not acquired at birth but at the age of majority. See the Glossary.
9. The numbers were increasing in 2011 due to landings on Lampedusa (Sicily) of Tunisian and Libyan citizens following the political changes of the Arab Spring. In the first 6 months of 2011, more than 44,000 landings were registered on the Italian coasts (Ortensi 2012, p. 63).
10. See the Glossary.
11. The EU Treaty provides that citizens of a Member State:
 - a) have the right to enter and stay in Italy for a period of 3 months provided they have an identity document. They have also to declare their presence in Italy at a police station;
 - b) have the right to remain in Italy after 3 months and up to 5 years, if they prove they have a job, or a sufficient livelihood, or if they are enrolled in a course of study. In these cases, the EU citizen obtains a special permit to stay (*attestazione di soggiorno*);

- c) are entitled to a permanent residence permit if they prove that they were in Italy for 5 years. After 4 years of continuous legal residence, the EU citizen may apply for Italian citizenship (Perin and Bonetti 2012).
12. Before 1990, immigration was governed by the Italian Public Security Law (see Caputo 1999, p. 424).
 13. The visa and residence permit are described in the Glossary.
 14. Measures introduced by the Martelli law are not truly innovative. Before 1990, the Italian Public Security Law required that the foreigner present him- or herself at the police station (within 3 days of entry into Italy) to make a “declaration of residency.” An expulsion procedure existed under the security laws: foreigners who were “socially dangerous” could be expelled by the Ministry of the Interior and the prefect, and the foreigner was obliged to leave (see Caputo 2006).
 15. 1998 Legislative decree no. 286.
 16. The main changes were in 2002, 2004, 2007, 2009, 2011, and 2012.
 17. Foreigners must ask the police for the issue of a residence permit within 8 days of arrival in Italy. The permit must be renewed every year. In 2009, an “Agreement of Integration” (*accordo di integrazione*) was introduced: when the permit is issued, the foreigner receives 16 credits and some integration objectives (concerning, e.g., linguistic competences and living conditions) to reach during his or her stay. If the foreigner loses all the credits due to illegal behavior (e.g., violation of the penal or administrative laws), the permit will be revoked and procedures of expulsion follow. The permit is renewed if the immigrant, before expiration of the residence permit, is able to achieve at least 30 credits (which include the credits allocated at the time of signing the agreement) by reaching the integration objectives. In particular, the foreigner must demonstrate that she or he has acquired a certain level of proficiency in Italian and adequate knowledge of the fundamental principles of the Italian Constitution and the functioning of Italian institutions (e.g., health, education, social services). A test of the achievement of these objectives is given at the Immigration Office, which communicates the outcome (positive or negative) to the administrative authorities (Prefect and Police) responsible for renewal of residence permits. In theory, the agreement can represent a useful instrument to favor social inclusion. In practice, it is an additional burden on the (precarious) resources of foreigners. Similar experiences in other European countries have had different results (on France, Carra and Fiorini 2012; on Germany, Schmid-Drüner 2006).
 18. Sixty percent of residence permits are issued for working reasons (Istat 2011).
 19. In 1998, the quota was for 58,000 workers; in 2006, it increased to 370,000 and then decreased to 98,000 in 2011. Due to the economic crisis, a proposal was made to block the entrance of new foreign workers in 2012 (Sciortino 2009). Quotas are divided according to types of laborers (e.g., domestic workers and caregivers) and nationality (a higher quota is allowed for those sending countries that have signed agreements for the readmission of their irregular citizens). See Sciortino (2009) and Cuttitta (2010).
 20. The proposal includes the offer of work and the employer’s guarantee concerning the worker’s accommodation and the costs incurred for the return journey back to the country of origin.
 21. The whole procedure may take several months, so, frequently, by the time migrants obtain the permit, it is almost due for renewal (Triandafyllidou and Kosic 2006).
 22. The underground economy plays a crucial role on irregular immigration, “a cause rather than an effect of undocumented migrants” (Reyneri 1998, p. 84).

23. More immigrants in Italy have benefited from amnesties than anywhere else in Europe: almost 2 million immigrants were regularized, in comparison with 1.6 million in France, 1.3 million in Greece, 1.2 million in Spain, 76,000 in Germany, and 53,000 in the United Kingdom (Colombo 2012, p. 31).
24. In Table 3, the small number in 2009 is because the measure was limited only to domestic workers and caregivers.
25. On this type of migrants' exploitation, see Carchedi, Mottura, and Pugliese (2003); Caputo (2007b); Melossi (2008a).
26. "Economic growth is a great consumer of immigrants" (Sayad 2008, p. 24).
27. "Does this mean that migrants really emerged from the underground economy as well as from illegal stay? Unfortunately, both of the aims of the legalization were only partially and transitionally achieved" (Reyneri 1998, p. 91).
28. Security refers not only to public safety, but also to other considerations (e.g., occupational, cultural, and identity issues).
29. Factors that affect status mobility are often merely political: consider, for example, amnesties that transform undocumented immigrants working in the underground economy into regular immigrants.
30. Zero tolerance policing is a clear example of conservative approaches (Wilson 1987; De Giorgi 2000; Wacquant 2007).
31. Inclusive measures include aid in learning the Italian language, support in education, prevention of discrimination and xenophobia, and training of linguistic and cultural mediators to ease relations between immigrants and the public administration.
32. The Italian model of integration adheres neither to assimilationism nor to multiculturalism (Geddes 2003; Castles and Miller 2009). It seems similar to the German model of the *Gastarbeiter*, the guest worker. In Germany, the guest worker system "was based on a high level of state involvement. The idea was to ensure 'rotation' by recruiting workers for a limited period, restricting their rights, and minimizing family reunion. Migrants were expected to accept relatively poor wages and conditions, make little demand on social infrastructure, and not get involved in labor struggles. Germany, like other Western European states, was trying to *import labor but not people*" (Castles 2006, p. 742; see also Castles 1986). In Italy, it has been stated that the migrant is "a guest on a perpetual test, for whom any prospect of settlement must take account of his/her precarious legal status" (Magistratura Democratica/ASGI 2006, p. 1082).
33. In a circular by the Ministry of the Interior (nr. K 60.1 of 2007), acquiring Italian citizenship is defined as a "benefit," an acknowledgment "of actually taking root [of the immigrant] within the territory of the State."
34. Note the agreement on integration mentioned in Note 17.
35. EU citizens may be rejected at the border only if they lack a valid identity document or a valid passport or are considered dangerous for public order and public safety.
36. Elspeth Guild defined externalization of migration policies as the process whereby the place where travellers are controlled shifts "from the border of the sovereign state into which the individual is seeking to enter to within the state of origin" (quoted from Paoletti 2010, p. 54).
37. Numerous doubts have been raised in relation to the legitimacy of a similar collaboration (see Vassallo Paleologo 2007; Pastore and Trinchieri 2009). These doubts were confirmed by an "admonition" by the European Parliament and European Court to the Italian authorities when mass deportations to Libya took place of foreigners who had landed in Lampedusa (Sicily) (Klepp 2010).

38. The number of clandestine people among irregular migrants has been uneven: 41 percent in 2000; 49 percent in 2002; 25 percent in 2003; 40 percent in 2005 (Ministero dell'Interno 2007, p. 336). These changes, and in particular the increase of overstayers, result from political decisions (e.g., the decrease in 2003 was related to the high number of immigrants regularized in 2002).
39. The law defines foreigners as “guests” of the center, but they may not leave. If that happens, the police are authorized to bring the immigrant back. Administrative detention is more punitive than penal detention; various procedural and other guarantees are in place for prisoners, whereas the CIEs’ management is subject to few protective obligations toward the immigrants, and administrators have wide discretionary powers (see *Medici Senza Frontiere* 2005).
40. Within the EU, only Lithuania allows a longer period of detention (20 months). In other countries, detention is shorter: 1 month in France, 2 in Greece, and 6 in Belgium. Detention, however, may be indeterminate in Denmark, the United Kingdom, and Sweden. See Colombo (2012, p. 124).
41. Management of CIEs is difficult, as is demonstrated by revolts inside them, some resulting in deaths of immigrants. In the *Medici Senza Frontiere* (2005) report, it becomes apparent that the centers and their administration (which is entrusted to social organizations) have a military-like character. The centers are surrounded by high walls and barbed wire so as to avoid flight. Inside, there is a separation between administrative offices and the area where foreigners are held. The police assist managers of the centers in ordinary administration—even though, according to the law, they should not ordinarily be present and should be called in only to intervene in cases of unrest.
42. Art. 14 TUS was changed in 2011 after the decision of the European Court of Justice discussed in the text.
43. European Court of Justice, April 28, 2010.
44. Expulsions do not include refusals at borders.
45. Deterrence can be linked to the “less eligibility” concept of Rusche and Kirchheimer (1978[1939]), according to which crime should appear less “eligible” than a nondeviant life; otherwise, penalties would lose their deterrent function. However, with regard to migration, a research project (based on life stories of immigrants interviewed in Italian prison and in CIEs) has demonstrated the greater “eligibility” of a criminal life. Deviant adaptations are preferred by foreigners, especially irregular ones, when they face a structure of limited employment opportunities (characterized by precariousness and exploitation) and have few prospects of changing their irregular stay (Sbraccia 2007).
46. On the topic of official statistics as a measure of crime, see the 2006 European Sourcebook of Crime and Criminal Statistics (<http://www.wodc.nl>).
47. Research on the municipal police in Bologna (Fabini 2010) showed that the main factors influencing the police decision to stop an immigrant on foot are nationality (especially, migrants coming from Maghreb and Senegal) and places where foreigners hang around (urban areas characterized by drug dealing).
48. In the southern region of Calabria, the small number of immigrants and their inclusion in the informal economy have mitigated conflicts between natives and foreigners; in the northern region of Emilia-Romagna, immigration has become an important social issue generally and in connection with employment and crime, influencing the emergence of a high demand by citizens for security (Crocitti 2010). On the differential integration of immigrants in Italian regions, see Consiglio Nazionale dell’Economia e del Lavoro (2012) and Cesareo and Blangiardo (2011).

49. More than 2 million people are detained in U.S. penal institutions, of whom 32 percent were whites, 38 percent blacks, and 22 percent Hispanics (<http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf>).
50. Offenses mainly refer to exploitation of prostitution, since in Italy prostitution is not in itself a crime.
51. The attention by penal control agencies contributes to the reproduction of social marginality and exclusion, which is productive of higher rates of crime and, in turn, of an increased attention by penal agencies (Melossi 2003, p. 386).
52. In 2007, in Italy, the ratio was nine times higher for immigrants reported and arrested than for the same categories of Italians (Di Nicola 2009, p. 168). Comparisons of criminal justice and immigrants' residence data are difficult since the former do not distinguish between documented and undocumented immigrants, and the latter include only lawful residents.
53. Jock Young (2009, p. 13) defines moral panic in the modern period as a process that "involves the focusing of the mass media, buttressed by scientific experts and other moral entrepreneurs, and the mobilization of the police and the courts and other agencies of social control. Such a process of mass stigmatization involves a widely circulated narrative on the genesis, proclivity and nemesis of a particular deviant group that tends to amplify in intensity over time . . . and then finally extinguishes. It very frequently results in a process of deviancy amplification, a translation of fantasy into reality, where, in certain aspects, the initial stereotypes are self-fulfilled."
54. Kitsuse and Cicourel (1963, p. 137) proposed that crime rates "can be viewed as indices of organizational processes rather than as indices of certain forms of behaviour."
55. Residence permits were the measure of regular migrants whereas an estimate based on amnesties was the measure of undocumented immigrants.
56. Such as gender (males) and age (15–39 year old).
57. For instance, unemployment rate and gross domestic product (GDP) pro capita.
58. Political orientation of the local governments.
59. For more information about the instrumental variable—an "exogenous supply-push component of migration by nationality as an instrument for shifts in immigrants population across Italian provinces," see Bianchi et al. (2009, pp. 8–10).
60. For homicide, personal injuries, theft, robbery, exploitation of prostitution, and sexual violence.
61. For example, a 2009 change created a possibility of arrest for the crime of illegal residency for remaining in Italy more than 6 months after a stay permit expired. Before that, foreigners could remain for 1 year while looking for a job, and irregularity was not a crime. After a 2011 change, irregularity remained a crime, but the time of job search after the permit expired was extended again to 1 year.
62. Solivetti (2004, p. 178), in a statistical analysis of relations between levels of social inclusion and immigrants' crime in several European countries, concluded that "the existence of a strong relation between deviance of immigrants and their level of socioeconomic and cultural integration emerges as a very realistic hypothesis."
63. Trafficking is "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation" (article 3(a), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime, 2000).

64. Smuggling of migrants is “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (article 3(a), UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, 2000). Smuggling, contrary to trafficking, does not require an element of exploitation, coercion, or violation of human rights.
65. Immigrant’s dangerousness is evaluated, for instance, according to previous convictions for offenses, such as drug-related crime, terrorism, exploitation of prostitution, and exploitation of minors.

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CHAPTER 29

CASE STUDY

Sentencing Violent Juvenile Offenders in Color Blind France: Does Ethnicity Matter?

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RACE and ethnicity remains a main focus of sentencing research. The number of publications has increased and the sophistication of analyses has improved, but the research is unevenly distributed even among industrialized nations. Most of the empirical work published in major academic journals is produced by American researchers using American data.

The academic debate is infused with the American experience and framed by its recent historical developments. European countries, however, have distinctive mental frameworks for thinking about these issues based on their own political histories and embedded in their own institutions and policies. France, for example, has always been a country in which diverse groups mixed. In 2006, there were 5 million immigrants (8.2 percent of the population) and a much larger but unknown number of persons who are descendants of minority groups.¹ Since 1970, however, Maghrebian and Muslim immigrants have largely outnumbered previous recent immigrants (mainly Christians from southern Europe) and are concentrated in the outskirts of large cities. The legal framework has long been premised on disregard of ethnicity and race, whether based on geographical origins or religious beliefs. How are race and ethnicity to be understood in such a context?

One major recent and comprehensive meta-analytic review of American work on racial disparities offers three important generalizations: First, “as a whole, these findings undermine the so-called ‘no discrimination thesis,’ which contends that once adequate controls for other factors, especially legal factors (i.e., criminal history and severity of current offense), are controlled unwarranted racial disparity disappears” (Mitchell 2005, p. 462). Second, “the influence of race varies by type of offense and type of sentencing outcome” (2005, p. 463). And third, “the present findings provided virtually no support for the threat hypothesis at the structural level. In fact, none of the three racial threat

measures (crime problems, racial composition, and racial economic inequality) were related to unwarranted disparity in the hypothesized manner” (2005, p. 463).

Although there is not enough robust quantitative research in Europe to justify a European meta-analysis, findings from selected countries seem not to contradict the American findings. However, no comparative American-European work has been published, so it is difficult to know how similar the situations are. Research in Europe is in any case less methodologically sophisticated—for example, the interactive effects of victim and offender race have not been explored—and studies would not be able to focus on much debated American issues such as capital punishment since such a sentence is contrary to European human rights laws.

This article aspires to inform the debate on race, crime, and justice in a continental European context, based on an empirical study of disparities affecting juveniles in French courts. We investigated whether and to what extent ethnicity is associated with sanctioning in juvenile courts. We examined a large dataset that includes all cases of serious crimes by juveniles in two juvenile courts, in two jurisdictions, over more than 20 years (1984–2005). The results may advance understanding of how legal and extra-legal factors contribute to minority overrepresentation in the French juvenile justice system. The findings may help advance understanding of how such phenomena vary between countries and are related to national characteristics.

Juvenile justice systems may reveal patterns that are specific to their distinctive structural features and procedures. The French system has specialized professional magistrates and courts. The Ordinance of February 2, 1945 provides for the primacy of education over penal sanctions in dealing with delinquent children and for a right to education for delinquent adolescents. Sentencing juveniles between 13 and 16 to imprisonment is possible only after a conviction for a very serious crime. Since 1970, an average of 600 young people have been detained in the entire country at any one time, with fluctuations (400 in 1992, 1,000 in 1989, and 780 in 2012).

Race and ethnicity are important political issues in France but not important research issues. Even liberals concerned about inequality disagree about the need to study the subject and are reluctant to use racial or ethnic data. Many politicians say they are proud that France ignores matters of race and ethnicity. Only a very few empirical criminal justice studies include race or ethnicity variables in statistical analyses. They are summarized below. There is not a single previous sentencing study focused on juveniles.

We studied a large administrative unit (the Departement of Isère, which had a population of 1,016,000 in 1990, of whom 8 percent were foreigners), more than one juvenile court (two or three: the geographical jurisdiction of juvenile courts varied over time), and a long enough period to collect a statistically adequate number of cases. We used paper archives of thousands of trials from 1984 through 2005. We examined only violent offenses brought to court, leaving the majority of youth crimes outside our scope. We identified 1,868 qualifying sentences and compiled data on legal variables (crimes for which the defendant is brought to court, criminal history, age), personal variables (gender, occupation of youth, socioeconomic status of parents, family structure, nationality), and ethnicity measured through the birthplace of the parents.

We investigated the main effects of race and ethnicity in sentencing for different types of violent crime. To assess racial and ethnic effects, after controlling for legal and extralegal variables, we tested whether young minority offenders were sentenced more severely (i.e., were more often sent to prison) and, if so, to longer prison sentences. The study is able to discern whether judges are contributing to racial disparities in custody. Local surveys and one national assessment show that there is a massive presence of minority youth and adults in prison. We used logistic regressions that were carried out for the full sample of violent crimes for which the juveniles were indicted (“all violent crimes”) and subsequently for two subsets: “nonlethal and nonsexual violence” (acquisitive or not) and “sexual violence” (consisting of sexual assaults and rapes).

We did not find massive and systematic discrimination based on ethnicity for the overall sample or for the subsamples. Systemic discrimination is not the rule. The best predictors of severity were the type of crime for which the defendant was indicted and his criminal history. Ethnic disparities in French prison cannot be explained by judicial decision making. However, we found traces of sentencing discrimination. In one jurisdiction, especially for sexual crimes, race explained a share of sentencing severity.

Section I of this essay sets the European context by reviewing the literatures of three nations with different legal traditions: two large continental countries, Germany and France, and the United Kingdom. Section II presents our hypotheses and discusses data and methodology. In particular, we discuss legal and extralegal variables in the French context and how we measured and combined them. Section III presents findings on severity measured by the total number of days of imprisonment (suspended or unsuspended) ordered by the judge and on the subsample of cases that resulted in unsuspended prison time. Section IV summarizes our findings and their limitations, and Section V discusses the implications for comparative study of racial and ethnic disparities.

A number of conclusions stand out:

- The literatures on racial and ethnic disparities and discrimination in sentencing are less sophisticated and much smaller in Europe, including France, than in the United States.
- The French literature is especially small; this essay reports on the first quantitative analysis of racial and ethnic differences in sentencing of young offenders.
- French political theory and law envision individuals primarily in terms of whether they are or are not French citizens; French law consequently forbids collection of personal data on race or ethnicity and is meant to achieve “colorblindness” in the legal system.
- Our analyses showed race effects in decisions to impose prison sentences (whether or not the sentence was suspended) and in sentence lengths of unsuspended prison sentences for some offenses; however, the findings were inconsistent between offenses and between the two courts examined, and criminal history, age, and jurisdiction had larger or equivalent effect sizes.
- Nonetheless, some evidence of race effects was found, which suggests that legal and theoretical colorblindness does not necessarily produce operational colorblindness. Nor, however, does the race and ethnicity sensitivity of countries such as the United States.

I. DISPARITIES IN SELECTED EUROPEAN COUNTRIES

Disparity in sentencing has been addressed by American academics in hundreds of studies over the last 40 years. There have been many reviews and syntheses concerning the overall sentenced population (e.g., Mitchell and MacKenzie 2004; Kansal 2005; Tonry 2011; Walker, Spohn, and DeLone 2012) and some concerning juveniles specifically (Leiber 2004).

The American political debates and empirical studies have led to improvements in the formulation of hypotheses and in the methodologies used for testing them. A series of narrative reviews (Kleck 1981; Zatz 1987; Chiricos and Crawford 1995; Spohn, in this volume) and, more recently, quantitative meta-analyses (Pratt 1998; Mitchell 2005) have been published.

European countries have devoted considerably less attention to the topic. The United Kingdom has more invested in penal research than any other continental European country, but, even there, little has been published (e.g., Hood 1992; Shute, Hood, and Seemungal 2005). Most criminologists even in the United Kingdom deplore the paucity of such work (Abbas 2004).

Overrepresentation of minorities in criminal justice systems has been shown by several studies in Europe. Little is known about the causes of this overrepresentation and the role of courts. Although some researchers have found racial disparities in sentencing, existing studies have not concluded that there is systematic discrimination.

In the United Kingdom, a Home Office document summarizes the position of the government: "evidence shows people from BME (Black and Ethnic minority) groups continue to be disproportionately represented in the Criminal Justice System" (Barclay, Munley, and Munton 2005, p. ii). However, the study of discrimination generally, and in sentencing particularly, has been largely inconclusive. Bowling and Phillips (2002) reviewed the U.K. research and Abbas (2004) presented the context in which it developed. Crow and Cove (1984) carried out a survey in nine courts in London, and Mair (1986), in Leeds and Bradford, concluded there was no evidence of direct discrimination in court. Hood conducted the most sophisticated study in 1992. After controlling for other factors, he found that Afro-Caribbeans were 5 percent more likely than white defendants to be imprisoned and were more likely to receive a longer sentence if they had pleaded not guilty. A study based on questionnaire research investigated the experiences of minority and white defendants in 2000 and 2002 and documented a widespread belief that minorities are discriminated against (Shute, Hood, and Seemungal 2005).

On the continent, an "overrepresentation of foreigners in German prisons and particularly in youth prisons" has been established (Winkler 2003, p. 76; translated and quoted by Dünkler 2005). However, Albrecht (1997) concluded from a narrative review of German research that available studies did not confirm the hypotheses of discriminatory treatment in police and criminal court decision making, including

sentencing. As is true of many European studies, Albrecht's study was less technically sophisticated than many U.S. studies. Studies in Bavaria conducted in the late 1990s largely concur (see Dittmann and Wernitznig 2003, p. 195; translated by Dünkel 2005). However, other studies concerning Turkish and Yugoslavian offenders showed that these groups receive harsher punishments than do comparable Germans (Ludwig-Mayerhofer and Niemann 1997; see also Mansel and Albrecht 2003), and that foreign recidivists are punished more severely, particularly concerning imprisonment (Hartmann 1995).

In France, disproportionate representation of minorities in prison was revealed by sparse ad hoc research. No studies on minorities were produced before 1990, apart from studies using data on foreign nationals.

"Foreign" and "minority" juveniles are two distinct notions. A child born in France of foreign parents will automatically become a French national when he turns 18, provided that he resides in France at that time or that he has resided in France for 5 years or more since he was 11. This is the right of the birthplace (*jus soli*). For a short period between 1994 and 1998, the applicant also had to state to the public authorities that he wanted to become French. Practically, this means that all sons and daughters of immigrants and all young immigrants (people born abroad from foreign parents) will become French unless they choose otherwise. This is different from the process in countries such as Germany, where the principle of nationality by birthplace is not the rule. For the purpose of our study, this has important consequences. Some juveniles belong to both categories. A teenager can be both French and belong to a minority; most children of immigrants do. Offspring of French citizens are themselves French nationals even if born abroad; this is especially pertinent in France since settlers had to withdraw from Northern Africa after independence was obtained by French colonies and protectorates (this population is officially designated as "repatriated from Africa").

By law, no ethnic or racial administrative data are maintained in France. Researchers usually use the birthplace or country of origin of persons (adults or juveniles) in order to place them in a minority or majority category. Demographers Aubry and Tribalat (2007, p. 21) found that, in 1982 and 1999, the percentages of juveniles with foreign origins from the Maghreb were 6 and 6.6 percent, respectively; from sub-Saharan Africa, 0.5 and 2.2 percent, respectively; and from other European nations were 7.6 and 5.3 percent, respectively. Among those repatriated from Africa, the shares were 5.5 and 3.9 percent, respectively. These are national averages, and members of minority groups are geographically concentrated: for example, in the municipality of Clichy near Paris, 69.4 percent of youth under 18 years belong to a minority.

We recorded juveniles' origins through the places of birth of their parents and classified the sample into two categories: those with European parents and those with at least one parent born in North Africa (mainly Maghreb) or Turkey. Hereafter, we refer to the former group as the "majority" and to the latter as the "minority." According to the SAPHIR database, minorities in Isère amounted to 19 percent of the juvenile population in 1982 and 16 percent in 1999.

In the past 20 years, the National Institute of Statistics and Economic Studies (INSEE 1999; see also Kensey, Cassan, and Toulemon 2000) has conducted only one study on life in prison that took minority status (not nationality only) based on the birthplace of parents into consideration. Minority adults were vastly overrepresented in prisons² when counted based on their nationality (23.5 percent of the national prison population in 1998, half of whom had a Northern African passport; see Cassan, Kensey, and Toulemon 2000) or on the country of birth of their father (40 percent of inmates in France in 1998 had fathers born abroad; see Kensey, Cassan, and Toulemon 2000). Farhad Khosrokhavar (2004), in a book on Islam in French prisons, found that minorities between the ages of 18 and 29 (whose fathers were born abroad) were detained at a rate 9.27 times higher than youths whose fathers were born in France. Detention rates were especially high for those of Maghrebian descent.

Minorities are the majority in juvenile prisons according to Le Caisne (2005). In the juvenile department of a prison near Paris in 2003, only 6 of 93 detainees were of French origin (Le Caisne 2005, p. 15). Other studies of special facilities for juvenile offenders outside the region of Paris (out-of-home placement in Reinforced Educational Centers [CER] and Closed Educational Centers [CEF] by the *Protection Judiciaire de la Jeunesse* [PJJ, the French national probation service]) estimate that more than 60 percent of young people held there were foreign or of foreign descent (Choquet et al. 1998; Roché et al. 2004).

Even fewer studies have focused on courts. A study of sentencing in criminal courts based on a sample of offenses against police officers (threats, insulting or defamatory acts) between 1965 and 2005 was carried out in one court near Paris by Jobard and Névanen (2007). “North African” and “black” groups were defined using their state of birth and their first names. Both groups were about twice as likely as Europeans to be sentenced to an unsuspended sentence (13.6 percent of Europeans, 23.6 percent of Northern Africans, and 25.4 percent of blacks), and they were sentenced to longer prison times. However, multivariate analyses showed that the effects of race or ethnicity disappeared once procedural factors³ were taken into account. This suggests that courts are not overincarcerating minority juveniles, at least for the crimes that were studied.

Devah Pager (2008) studied the context of judicial decision making in France at the level of *départements*, a geographical unit used for the deployment of state and judicial services (there are 100 such units in France, which are in turn part of 22 administrative regions). This is the only research in France on the influence of contextual factors on sentencing. Criminal courts in *départements* with the highest percentages of juveniles with foreign origins used harsher sentences (pretrial detention, probation measures called *contrôle judiciaire*, and detention) on average for all convicted individuals (Pager did not differentiate between minority and majority), after controlling for unemployment, other demographic variables, and the overall crime rate.

To date, no other study focusing on sentencing processes or examining minority membership as a contextual variable or as a characteristic of defendants has been published in France. To summarize, a gross overrepresentation of minority members in prison has been observed but there is no explanation of its causes.

II. HYPOTHESES AND DATA

Our aim was to learn whether the overrepresentation of minority youth can be attributed to judicial sentencing. Two measures of possible bias are more frequent recourse to imprisonment (with or without parole) rather than alternative punishments and a larger number of unsuspended days in prisons for minority youth. The discrimination hypothesis would be falsified if young people with African or Turkish origins were not sentenced more harshly than those of French origin after controlling for legal factors.

To determine both the direction and magnitude of racial or ethnic effects, we tested whether and to what extent minority youth were sentenced to longer prison sentences after controlling for legal and extralegal variables. We used logistic regressions first on the full sample of violent crimes for which juveniles are indicted (“all violent crimes”) and subsequently on the two subsets “nonlethal and nonsexual violence” and “sexual violence.”

The unit of analysis was judicial decisions and not individuals (thus, one juvenile sentenced in 1988 and again in 1990 constitutes two cases). In the first step, we include discrete sentencing outcomes (the decision to incarcerate or to place the juvenile in a closed facility compared with other penalties) and in the second included continuous outcomes (the severity of the prison sanction as measured by the number of days of imprisonment without parole).

Our results are based not on a sample but on all decisions during the period 1985–2005 in the two jurisdictions⁴ of the French department of Isère.⁵ This allows us to regard p as significant if $p < .10$ (Cohen 1988; Hosmer and Lemeshow 2000). Isère is in the south-eastern quarter of the country. It has three urban poles: the cities of Grenoble and Vienne and a northern border area adjoining the metropolitan area of Lyon (the second largest city in France). The database contains detailed information (encoded through 217 numerical descriptors) from all judicial files of minors (younger than 18 years). There were 1,868 defendants; the mean number of judgments per year was 87.95. In 1987, the number of judgments was lowest (46) and in 2000 and 2002 highest (123 each year).

We excluded from our analysis court decisions that declared a trial legally impossible (e.g., when the time limit for criminal proceedings had expired) and defendants whose cases had not yet concluded. We excluded acquittals because only those convicted are eligible for sentencing.

In some cases, the information collected was incomplete. Sometimes, court clerks did not properly fill out documents or information seemed to have been lost (missing prior records). Thus, we could not always include all decisions at all stages of our computations.⁶ Taking into account these data limitations, our study consists of 1,446 cases (1,360 when the variable “prior record” is included) of juvenile defendants sentenced in Isère for violent crimes from 1985 to 2005. In France, as in many European continental countries, most juvenile crimes brought to court do not consist of violent offenses but rather of thefts (without threat or weapon), vandalism, and minor assaults (without medical

injuries leading to temporary disability of 7-plus days). Homicides and attempted homicides perpetrated by juveniles are exceptional. For example, at the national level in 1987 and 1999, respectively, 109 and 121 such cases were recorded by police, which amounts to 1.1 and 1.2 per year for each of the 100 *départements*.⁷

A. The Legal Context

The French juvenile justice system consists of specialized magistrates and courts. The recruitment, appointment, and career prospects of judges are insulated from influence by local and national politicians. A juvenile judge may make decisions in his office or in court without the presence of a prosecutor but only for minor crimes. He otherwise works in a “children’s court” (the name is preferred over juvenile court to emphasize the judge’s protective role). Decisions are made by one judge only. Assize juvenile courts are reserved for the most serious crimes only (some aggravated rapes and homicides). The Ordinance of February 2, 1945 asserts the primacy of education over the penal sanction and the right to education for delinquent young people (under 18 years of age). The ordinance gave the juvenile judge responsibility for both investigation and adjudication, again with a protective incentive. Despite tense political debates since 2002, the Ordinance of 1945 remains in effect. Since 2007, minimum sentences have been introduced for juvenile recidivists even for minor crimes. However, such dispositions are not relevant to our study, for which data end in 2005.

The ordinance allows prison sentences beginning at the age of 13. Juveniles under 13 were not eligible for penal sanctions until recently, even if they had committed a serious crime. The judge could only use measures of protection, assistance, surveillance, or education. In 2002, new penalties were introduced called “educational sanctions,” but they excluded going to prison. Today, prison sentences of juveniles between 13 and 16 are possible only after conviction of a very serious crime. The general rule is that juveniles incur half the adult penalty. Between 16 and 18, the minors are regarded as more adult—pre-trial detention is possible for a limited time. A halving of the maximum severity of the penalty still applies, but under exceptional circumstances this principle may be disregarded. Another recent law created “juvenile correctional courts” for 16- to 18-year-old recidivists liable to 3 years of prison. Again, this does not affect our data.

In April 2012, 780 juveniles were in confinement—1.2 percent of the overall custodial population in France. Between 1982 and 2002, the number fluctuated between 400 and 800 without a trend (approximately 2 per 10,000 in the 15–17 age group). Incarceration remains exceptional for young people.

B. Legal Variables

Fair sentencing should be based only on legal factors. Those always include the crime committed and the criminal history of the defendant.

Table 29.1 Eight types of crime, by legal classification and frequency, isère, france, all juvenile courts, 1985–2005

Crime type	Percent of cases	Number of cases	Majority*	Minority*
Homicides	1.25	18(100%)	10(55.6%)	8(44.4%)
Assault with grievous bodily harm (temporary work disability** > 8 days)	27.66	400(100%)	176(44.0%)	224(56.0%)
Robbery with weapon	12.79	185(100%)	73(39.5%)	112(60.5%)
Robbery (theft with violence and temporary work disability**)	3.32	48(100%)	17(35%)	31(64.6%)
Rape	4.50	65(100%)	31(47.7%)	34(52.3%)
Sexual assault	18.33	265(100%)	173(65.3%)	92(34.7%)
Assault with weapon (without temporary work disability**)	12.66	183(100%)	82(44.8%)	101(55.2%)
Assault with weapon (temporary work disability** <8 days)	19.50	282(100%)	113(40.1%)	169(59.9%)
Total	100.00	1,446(100%)	675(46.7%)	771(53.3%)

*Majority and Minority variables are defined in the following section.

**Temporary work disability is a translation of ITT (*Incapacité Temporaire de Travail*)—a measurement of the severity of bodily harm based on medical statement.

Previous international research has shown that sentences vary considerably by the type of crime but there is no agreement on a scale of offense seriousness. Scholars claim that the broad legal categories used by judges are not specific enough and allow for large variations within categories (Kleck 1981). Therefore, in our database, we include only the eight types of serious crimes shown in Table 29.1.

We defined the criminal history variable as the number of times defendants had been found guilty by a court in the past for any type of crime. Information on previous sentences was missing for 86 defendants. Findings using criminal history are based on 1,360 cases, 641 defendants with European origins and 719 minority defendants.

A small number of defendants in our database were older than 18 years (eight Europeans and 15 minority were 18; two minority were 19 years old, and one European was 21 years old), which is surprising and unexplained. We retained these cases because they were decided by a juvenile court.

C. Extralegal Variables

The construction of a major extralegal variable used in our models, the ethnic origins of the defendants, needs to be discussed in detail. We use the words “ethnicity” or “race”

as synonyms in reference to groups whose members have physical differences, what the Canadians call “visible minorities.” Juveniles born in overseas territories (the French Caribbean Islands) are often both French and nonwhite, and they may be subject to ethnic discrimination. Still, they are coded “European” since we have no way of doing otherwise from information in judicial files. The data and the two populations are described in more details in Gordon et al. (Forthcoming).

Most of the juveniles (87.2 percent of the 1,446 considered cases) were French either because their parents were French or because they were themselves born French (which implies that they were born in France and asked for French citizenship) or because they later adopted French nationality. French personal identification documents mention neither the religion nor geographic origins of individuals. It is not possible to trace an individual’s geographic or ethnic origin accurately based on official identification documents. Instead, in this study, we combine the defendant’s and the defendant’s parents’ birthplace and nationality to define a proxy. These data are in most cases found in the judicial file; together with personal information about the youth, documents describing the parents’ status (in particular their nationality and place of birth or state of origin) are gathered and the household structure is described. When such information could not be found, the juveniles were not included in the analysis.⁸

We considered all individuals who had at least one parent born in North Africa (Algeria, Morocco, Tunisia, Egypt, Libya, and other North African countries) or in Turkey as belonging to a minority. We assumed that individuals whose parents were both European, born either in France or in another European country, belonged to the majority group (hereafter denoted Europeans). We could determine the birthplaces of both parents for 1,173 judicial decisions.⁹ Finally, we excluded defendants with unknown geographic origin and those with Asiatic, sub-Saharan, and American origin. Only 48 defendants among the 1,544 with known geographic origins were neither Europeans nor Northern Africans and Turks. Taking these considerations into account, our database included sentencing dispositions for 675 Europeans and 771 African or Turkish defendants.

Gender is a second extralegal variable. As in all Western countries, the vast majority of defendants were male ($n = 1,381$, 95.5 percent). There were only 65 females, 33 minority and 32 Europeans. Due to this unbalanced composition, we did not include this variable in our regressions. Controls were made by studying the stability of the results when females were excluded from the regressions.

Since education is mandatory until the age of 16, it is not surprising that the majority of the juvenile defendants (77.7 percent) were secondary schoolchildren (62.8 percent) or apprentices (14.9 percent). The others were workers ($n = 42$, 2.9 percent), unemployed ($n = 236$, 16.5 percent), or in other situations ($n = 38$, 2.7 percent). There were 17 juvenile defendants missing values (1.2 percent). We did not include this variable in our regressions, but verified the stability of the findings by retaining only the schoolchildren and apprentices.

At the time of the crime, most defendants lived with both their biological parents (58.1 percent; 15 missing values [1 percent]); minority: 67 percent, majority: 47.8 percent,

$\chi^2 = 53.86, p = .001$). The rest lived in other situations (mother and stepfather, father and stepmother, only one parent, with other family members, etc.).

Since we do not know the defendants' family income and because the construction of judicial files does not impose an obligation to answer standardized and precise questions about social status, we created a binary socioeconomic status (SES) code based on the parents' status as appearing in documents within the file. Executives, artisans, farmers, shopkeepers, and individuals having a qualified professional education (i.e., teacher) were scored as having high status. Low status corresponds to workers, employees, housewives, and unemployed. When the defendant lived with two parents (or his stepparents), the SES was coded as high if at least one had a high status. Thus, we introduced a slight bias toward high SES. When data were available only for one parent, we coded SES according to his or her status. Despite the coding bias, almost all defendants had a low socioeconomic level. Among the 1,245 cases with available information, 89.2 percent of minorities and 71.2 percent of Europeans had low SES ($n = 1,004$).

Finally, some variables are related to the functioning of the criminal justice system itself: jurisdiction and type of court. They are extralegal in the sense that, in theory, they should not influence the probability that defendants receive different sentences for the same type of offense.

Among the 1,446 cases examined, the court of Grenoble judged 968, and Vienne or Bourgoin handled 478. Finally, there were different types of juvenile courts for violent offenders. Defendants can be judged by a "juvenile court" or a "juvenile assize court." The latter treats offenses such as homicides or rapes committed by offenders 16 year of age or older. In our database, the assize court judged only 19 cases. Since this variable is perfectly correlated with the type of offense and age of the offender, we did not include it in the regressions.

III. FINDINGS

Judges can issue a simple warning to the adolescent, refer him to his parents, fine him, or sentence him to prison. The judge can also combine those sentences. Prison sentences may be suspended or not and given with or without probation. After warnings, prison sentences constituted the most frequent disposition. There are three types of prison sentences: suspended prison sentences (*prison avec sursis*), suspension with probation (*prison assortie de mise à l'épreuve*), and imprisonment without probation or suspension (also referred to as affirmative prison sentences [*prison ferme*] since they involve actual imprisonment).

A. Minorities Are More Often Sentenced to Prison

We tested the propensity of juvenile judges to use any type of prison sentence for perpetrators of violent crimes. We used only the first decision (judges often supplement the

Table 29.2 All violent crimes. Logistic regression estimates for being sentenced to prison (imprisonment, prison with conditional sentence or with probation)

	Model 1: Main effects		Model 2: Main effects + interaction effects		Model 3: Restricted sample (male schoolchildren with low SES)	
	b	EXP(b)	b	EXP(b)	b	EXP(b)
Intercept	-2.956 (.601)	.052***	-2.962 (.602)	.052*	-4.164 (.842)	.016***
Jurisdiction	.116 (.062)	1.123*	.118 (.062)	1.125*	.229 (.091)	1.258**
Age	.170 (.039)	1.186***	.170 (.039)	1.186***	.240 (.055)	1.271***
Prior Record	.464 (.061)	1.590***	.468 (.067)	1.596***	.373 (.109)	1.452***
Ethnicity	-.160 (.061)	.852***	-.107 (.072)	.899	-.197 (.111)	.821*
Family Structure	-.187 (.061)	.829***	-.179 (.061)	.836***	-.208 (.087)	.812**
Ethnicity by prior record			.023 (.066)	1.023	-.131 (.108)	.877
Ethnicity by Jurisdiction			-.129 (.062)	.879**	-.229(.091)	.796**
Sample size and significance	N = 1,339; $\chi^2 = 174.33$, $p = .001$		N = 1,339; $\chi^2 = 178.60$, $p = .001$		N = 687; $\chi^2 = 89.83$, $p = .001$	

Bold when coefficient is significant. Standard errors are in parentheses and for significance: * $p < .10$; ** $p < .05$; *** $p < .01$

Restricted to defendants having fewer than 10 prior records, others considered in the analyses as outliers ($n = 9/1,360$; 0.6 percent).

Coding: Jurisdiction: -1 = Vienne + Bourgoin, 1 = Grenoble; Age = numeric; Prior Records= numeric; Ethnicity: -1 = minority, 1 = majority; SES: -1 = low, 1 = high; Family structure: -1 = other, 1 = classic, with two parents.

main sentence with a second or third one, unsuspended prison time being always given as the main one) and restricted the analyses to cases with no missing value for criminal history ($n = 1,360$ including outliers). Since ethnic bias may be crime-sensitive, we first considered “all violent crimes” (model 1) and then “violent crimes, nonlethal, and non-sexual” and “sexual crimes.”

Table 29.2 shows the results for model 1. Significant main effects were found for both legal and extralegal variables. The largest effect was for criminal history. The variable “Prior Record” is measured by “the number of times that defendants have been condemned by a court in the past for any type of crime.” Age was also taken into account by judges, as the law requires. Younger juveniles were less often sent to prison. Defendants living in an “unstructured” family (not composed of the two biological parents) received a sentence to prison 1.21 times more often (OR varies between 1.20 and 1.23 in all three models), than those living in “classical” families (two biological parents). The two jurisdictions had different practices for comparable offenses; the court in Grenoble more

often used prison sentences than the one in Vienne. Finally, ethnicity mattered in sentencing young people to prison, even when controlling for these other factors.

The interaction effect, explored in model 2, reveals that the effect of ethnicity varied by jurisdiction. Disparity in sentencing seems to be observed only in Grenoble (where $b = -0.129^{**}$). Minority defendants were 1.17 times more often sentenced to prison in model 1, 1.23 in model 3, whereas model 2 was not significant; 61 percent of minority defendants received a prison sentence compared with 43.4 percent of majority defendants ($\chi^2 = 27.22, p = .001$). No significant difference was observed in Vienne (respectively, 42 against 41 percent for each group).

Model 3 deals with three additional variables (gender, school, SES). Because, for many youth, their files did not include all required information, the sample size shrinks from 1,339 to 687. It is made up of a population restricted to males with the status of schoolchildren and whose parents had low SES. The pattern of findings was unchanged; ethnicity remained a significant dimension in sentencing, with both a main effect and an interaction effect with jurisdiction.

Our strategy was to increase crime specificity and repeat the logistic regression for only those types of violent crimes having a large enough population of defendants (excluding homicides, which are specific and rare violent crimes). We split the population into two blocks and retained “crimes of nonlethal and nonsexual violence” and “sexual offenses.”

Results in Table 29.3 for the role of ethnicity for nonlethal and nonsexual violent crimes were the same as those for all violent crimes. Among those having received a prison sentence for nonlethal and nonsexual violent crimes, 66.2 percent were minority members and 33.8 percent Europeans. Most defendants sentenced to prison were minority members. In addition, minority juveniles were more often imprisoned for those crimes: 57.5 percent of minority members received a prison sentence for nonlethal and nonsexual violent crimes compared with 42.5 percent among majority members. Even after taking into account the most important explanatory variable (prior record), and age, family structure, and others, ethnicity influenced decision making (model 1). With the inclusion of the interaction effects, ethnicity was no longer significant (model 2), revealing that the ethnic factor can be unstable. Restricting the analysis to the subsample of male schoolchildren with low SES (model 3), the ethnic variable was significant in explaining prison sentences. A similar effect was found in Table 29.2 for “all violent crimes.”

Eighty minority juveniles (69 percent) were sentenced to prison for a sexual crime compared with 113 majority juveniles (57 percent). The next set of findings (Table 29.4) displays the judicial outcomes for sexual offenses ($n = 253$) and rapes ($n = 61$). Among the 314 cases with defendants tried for sexual assaults, only 47 had a prior record (15 percent); among them, 16 had committed rape (34 percent of the recidivists). For sexual offenses and rape, although ethnicity is not the most influential variable in determining the type of sentence, it was significant except in model 2. Age and prior records were the most important variables explaining sentencing. The attenuating effect of minority tends to decline with higher age, as French law provides (typically, mitigation is less for 17- than for 15-year-olds). Prior record was not significant in the model controlling for

Table 29.3 Violent crimes, nonlethal and nonsexual. Logistic regression estimates for being sentenced to prison (imprisonment, prison with conditional sentence or with probation)

	Model 1: Main effects		Model 2: Main effects + interaction effects		Model 3: Restricted sample (males schoolchildren with low SES)	
	b	EXP(b)	b	EXP(b)	B	EXP(b)
Intercept	-4.133(.862)	.016***	-4.159(.864)	.016***	-5.619(1.281)	.004***
Jurisdiction	.295(.077)	1.343***	.290(.079)	1.336***	.470(.127)	1.601***
Age	.218(.055)	1.243***	.219(.055)	1.245***	.297(.081)	1.346***
Prior Record	.532(.067)	1.703***	.562(.075)	1.755***	.448(.125)	1.565***
Ethnicity	-.280(.073)	.756***	-.149(.135)	.861	-.457(.237)	.633*
Family Structure	-.190(.073)	.827**	-.180(.073)	.836**	-.186(.110)	.830*
Ethnicity by prior record			.079(.075)	1.082	-.121(.125)	.886
Ethnicity by Jurisdiction			-.044(.079)	.957	-.181(.126)	.834
Sample size and significance	N = 1,009 $\chi^2 = 199.82, p = .001$		N = 1,009 $\chi^2 = 201.21, p = .001$		N = 485 $\chi^2 = 97.04, p = .001$	

Bold when coefficient is significant. Standard errors are in parentheses and for significance: * $p < .10$; ** $p < .05$; *** $p < .01$

Coding: Jurisdiction: -1 = Vienne + Bourgoin, 1 = Grenoble; Age = numeric; Prior Records = numeric; Ethnicity: -1 = minority, 1 = majority; SES: -1 = low, 1 = high; Family structure: -1 = other, 1 = classic, with two parents.

gender, schooling, and poverty (model 3). No jurisdiction effect was observed in any of the three models.

In summary, we observed court decisions for “all violent crimes” (Table 29.2), “non-lethal and nonsexual violent crimes” (Table 29.3), and “sexual crimes” (Table 29.4). For each category of crimes, we ran three models (with and without interaction effects and finally with additional controls). In explaining the decision to sentence a young person to prison, criminal history measured by the number of prior convictions, age, and jurisdiction was the most influential explanatory variable. Family structure and ethnicity also influenced sentencing, with comparable effect sizes for “all violent crimes” and “violent nonlethal nonsexual offenses.” A role for family structure was not observed for sexual offenses. A significant effect of ethnicity on judicial outcomes was found in all three sets of regressions in six models out of nine. In the three sets of regressions, an effect of ethnicity was not found when interaction effects were tested in the full sample

Table 29.4 Sexual crimes (sexual assaults, rapes). Logistic regressions estimates for being sentenced to prison (imprisonment, prison with conditional sentence or with probation)

	Model 1: Main effects		Model 2: Main effects + interaction effects		Model 3: Restricted sample (males schoolchildren with low SES)	
	b	EXP(b)	b	EXP(b)	B	EXP(b)
Intercept	-5.758(1.123)	.003**	-5.746(1.122)	.013**	-8.330(1.69)	.001***
Jurisdiction	-.172(.132)	.842	-.186(.148)	.831	-.109(.174)	.896
Age	.434(.078)	1.54***	.434(.078)	1.54***	.610(.120)	1.84***
Prior Record	.418(.212)	1.51*	.460(.257)	1.58*	.378(.335)	1.46
Ethnicity	-.249*(.143)	.780*	-.213(.239)	.771	-.374(.183)	.688**
Family Structure	-.214(.132)	.808	-.211(.132)	.810	-.267(.174)	.765
Ethnicity by prior record			.067(.257)	1.07		
Ethnicity by Jurisdiction			.037(.148)	1.03		
Sample size and significance	N = 312, $\chi^2 = 55.32$, $p = .001$		N = 312, $\chi^2 = 55.32$, $p = .001$		N = 190, $\chi^2 = 45.29$, $p = .001$	

Bold when coefficient is significant. Standard errors are in parentheses and for significance: * $p < .10$; ** $p < .05$; *** $p < .01$

Coding: Jurisdiction: -1 = Vienne + Bourgoin, 1 = Grenoble; Age = numeric; Prior Records = numeric; Ethnicity: -1 = minority, 1 = majority; SES: -1 = low, 1 = high; Family structure: -1 = other, 1 = classic, with two parents

(including girls, juveniles who are not attending any type of school, and the few higher status defendants). In the three sets of regressions, an effect of ethnicity was found when interaction effects were tested on the restricted sample (male schoolchildren with low SES).

B. Minority Youth Receive Longer Unsuspended Prison Sentences

We have so far discussed the propensity for judges to sentence juveniles to prison, whether unsuspended or suspended. Another important measure of severity is the duration of unsuspended sentences (with neither probation nor parole). Only this type of sentence can contribute to the overrepresentation of minority prisoners. In this

Table 29.5 Percentage of youth sanctioned by unsuspended imprisonment, broken down by violent crime category and ethnicity

	Minority (n)%	Majority (n)%	TOTAL (N)%
Homicides (N = 18)	5 (5/8) 63	3 (3/10) 30	8 (8/18) 44
Violent nonlethal and nonsexual crimes (N = 1,019)	122 (122/586) 20.8	45 (45/433) 10.4	167 (167/1019) 16.4
Sexual crimes (N = 314)	36 (36/116) 31	23 (23/198) 12	59 (59/314) 19
of which Rapes (N = 61)	23 (23/30) 77	10 (10/31) 32	33 (33/61) 54
of which Sexual assaults (N = 253)	13 (13/86) 15	13 (13/167) 8	26 (26/253) 10
All crimes (N = 1,351)	163 (163/710) 23	71 (71/641) 11	234 (234/1351) 17

section, we consider only imprisonment defined as unsuspended sentences. We tested whether lengths of confinement among juveniles sentenced to prison were distributed along racial or ethnic lines.

We computed the number of days of imprisonment. The shortest prison time in our database was 8 days (seven cases) and the longest was 4,320 days (three cases). The subsample of juveniles sentenced to prison time was much smaller than the total sample ($n = 234$ or even $n = 81$, when restricted in relation to gender, poverty, and schooling). In France, prison for juveniles was considered as the last resort until 2007, when then-President Sarkozy introduced mandatory minimums and decided vastly to expand the prison population. Delinquents sentenced to imprisonment were older ($n = 234$, median = 16.10, standard deviation (sd) = 1.12) compared with the overall dataset ($n = 1,357$, median = 15.39, sd = 1.56) and had more often been sentenced previously (median = 2.11; sd = 2.39 compared with median = 0.75; sd = 1.54).

Minority offenders were twice as likely as majority offenders to receive imprisonment with neither probation nor parole ($n = 163$ minority, 23 percent, compared with 71 Europeans, 11 percent) (Table 29.5). On average, for all violent crimes including homicides, when sanctioned to unsuspended imprisonment, minority youths served more days (average = 307; median = 90) than those in the majority (average = 186; median = 60). Homicides were few in number but made an important contribution to the total number of prison days for the two groups. Excluding them has a limiting effect on disparity, but majority members still received less severe penalties (average = 181 days; median = 60) than did minority juveniles (average = 232 days; median = 90).

Disparity in sentencing did not characterize all violent crime subcategories. Sexual crimes prompted longer prison sentences (Table 29.6). The average punishment for rape was 802 days for minority defendants (530 days for majority ones), and minority youth received 267 days for sexual crimes other than rape, compared to 91 for majority juveniles. Judges did not punish minority youth convicted of violent nonlethal and nonsexual crimes more harshly. The opposite occurred, with an average penalty of 120 days for minority youth and 130 for majority youth.

Table 29.6 Average and median number of days of unsuspended imprisonment, broken down by violent crime and ethnicity

	Minority (N)	Majority (N)	Majority-Minority Majority
	Average number of days Median number of days	Average number of days Median number of days	
All violent crimes including homicides	(162) M = 307 Me = 90	(71) M = 186 Me = 60	-0.65-0.5
Homicides	(5) M = 2670 Me = 4320	(3) M = 310 Me = 150	-7.61-27.8
All violent crimes without homicides:	(157) M = 232 Me = 90	(68) M = 181 Me = 60	-0.28-0.5
Violent nonlethal and nonsexual crimes	(121) M = 120 Me = 60	(45) M = 130 Me = 60	0.080
Sexual crimes	(36) M = 609 Me = 360	(23) M = 281 Me = 90	-1.16-3
Of which Rapes	(23) M = 802 Me = 360	(10) M = 529 Me = 360	-0.510
Of which sexual crimes with exclusion of rapes	(13) M = 267 Me = 120	(13) M = 91 Me = 30	-1.94-3

Homicides are rare in both continental Europe and France (police data show rates ranging from 1.2 to 1.6 per 100,000 per year between 1985 and 2005). Juveniles commit only a fraction of them; in 1997, they represented 6 percent of perpetrators nationally. With eight homicides sanctioned by imprisonment (of 18 identified over 20 years), we cannot produce any statistical conclusions. There was substantial variability. Some homicides were not sanctioned with incarceration for such reasons as the age of the defendant and the nature of the homicide (some were judged not intentional, as in car accidents). One homicide was committed by a female teenager of Turkish origin who was forced to marry an old man and murdered her undesired 1-year-old child. Another juvenile murdered his father. Such particularities could explain the important differences found, with almost 2,670 days per conviction for minority ($n = 5$) defendants compared with 310 for majority ($n = 3$).

For all violent crimes except homicide (see Table 29.7), which numbered 208 cases after removing 13 defendants with fewer than 9 days of prison or more than 1,500, no ethnic factor is found. The observed difference in the harshness of prison time between

Table 29.7 All violent crimes except homicides. Log linear regression estimates for the number of days of unsuspended imprisonment

	Model 1: Main effects	
	B	SE
Intercept	6.797***	1.200
Jurisdiction	.175 (trend)	.103
Age	-.150*	.075
Prior record	-.011	.034
Family structure	-.007	.085
Ethnicity	-.096	.095
Sample size and significance	N = 208, F(5, 203) = 1.90, $p = .096$	

Bold when coefficient is significant. For significance: * $p < .10$; ** $p < .05$; *** $p < .01$.

Thirteen defendants sentenced to less than 9 days and more than 1,500 days removed as outliers after the study of residuals. Because the distribution of sentence length is positively skewed, a logarithmic transformation of this DV is applied and used in regression analyses. That procedure approximates a normal distribution, in accordance with the assumption of the linear least-squares regression framework

majority and minority cases (see Table 29.6) does not appear significant in the regression. Age is the only variable that significantly affected severity.

We ran a log linear regression on “violent offenses, nonlethal and nonsexual” ($n = 161$, after removing three defendants sentenced to more than 800 days, considered as outliers after the study of the residuals) and including the same variables (i.e., jurisdiction, age, prior record, family structure, and ethnicity). None of those factors displayed a significant effect on the length of imprisonment (findings not displayed). The absence of an ethnicity correlate is not surprising because the average and median numbers of unsuspended prison days are very similar (see Table 29.6).

Regarding sexual crimes (rape and other sexual crimes), there was a stark difference in the number of prison days shown in Table 29.6 (609 vs. 281). Such crimes trigger much harsher penalties than other nonlethal violent crimes. There were only 56 valid cases for “all sexual crimes,” so control variables are limited to legal ones and ethnicity. Ethnicity appears to be a marginally significant factor (see Table 29.8). However, the most important determinant was the jurisdiction, which indicates that there were different local practices or norms. Neither prior criminal records nor age played a role for sexual crimes. Note that age and prior record are correlated ($r = .20^{***}$) and this could induce a colinearity effect.

In sum, regarding the number of unsuspended prison days, minority defendants received longer sentences, after controlling for legal factors, only for sexual crimes. For violent and nonsexual crimes, no ethnic influence was identified.

Table 29.8 All sexual crimes (rapes and other sexual crimes). Log linear regression estimates for the number of days of unsuspended imprisonment

	Model 1: Main effects	
	B	SE
Intercept	6.863***	1.771
Jurisdiction	.641***	.173
Age	-.119	.112
Prior record	-.050	.089
Ethnicity	-.385*	.164
Sample size and significance	N = 56; F(4.52) = 7.10; $p = .001$; $R^2 = 35.3\%$	

Bold when coefficient is significant. For significance: * $p < .10$; ** $p < .05$; *** $p < .01$.

Two defendants sentenced to more than 2,587 days removed as outliers after the study of residuals. Because the distribution of sentence length is positively skewed, a logarithmic transformation of this DV is applied and used in regression analyses. That procedure approximates a normal distribution, in accordance with the assumption of the linear least-squares regression framework

IV. SUMMARY OF FINDINGS AND LIMITATIONS

Is there systematic discrimination against minority juveniles in French courts? The findings reported here suggest that there is to some extent, particularly concerning the use of prison sentences, whether or not executed, and concerning lengths of prison sentences for some—but not all—types of violent crime. However, other factors have stronger effects.

A. Summary of Main Findings

In six of nine models tested in Section III, race was one of the factors that explained use of prison sentences rather than less restrictive sanctions. Minority juveniles are more often sentenced to prison (imprisonment, prison with conditional sentence, prison with probation) than are majority juveniles. The latter group more often benefit from softer sanctions; their cases are more often closed under conditions (a warning coupled with restrictions on seeing people or going to specific places), are punished by fines (which in practice appear never to be implemented), are given community work, or are simply released to their parents. That pattern can have adverse effects over time because prison sentences, even if suspended, constitute a criminal history element that judges will take into account in future court appearances. Ethnicity as a variable may to a certain extent be hidden in another variable, criminal history, which often proves one of the most predictive influences on the severity of sanctions given to juveniles.

We obtained these findings for “all violent crimes” and for two subsets of crimes, “nonlethal and nonsexual violent offenses” and “all sexual offenses.” The ethnic factor remained valid even after controlling for a number of legal (age, prior record) and some extralegal variables (family structure, jurisdiction) and when testing the models in a restricted population (males schoolchildren from a low-SES family). However, ethnicity constituted neither the only nor the most influential factor. Criminal history, age, and jurisdiction had larger or equivalent effect sizes. Ethnicity exerted its influence directly or in interaction with the jurisdiction.

For “all violent crimes,” disparity was observed in Grenoble but not in Vienne. Regressions restricted to sexual crimes only produce a quite similar panorama. Why that was so cannot be answered by our analysis. The judicial system is centralized in France, but individual prosecutors may have distinctive orientations. Court decisions depend on a small number of juvenile judges and differences in their individual approaches may be reflected in their decisions. Or, local political or socioeconomic conditions may influence what happens.

We focused separately on the smaller group sentenced to unsuspended imprisonment. These are the sentenced defendants who constitute the flow of cases into prison. Minority juveniles serve longer time for certain types of offenses (homicides and sexual crimes) but not for “nonlethal and nonsexual violent crimes,” the most frequent category of violent crime in juvenile courts. We tested whether juveniles were sanctioned to serve longer prison time after being indicted for a sexual crime based on their ethnic status. Ethnicity plays a significant role in lengthening severity for sexual crimes but not for “nonlethal and nonsexual violent crimes.”

Can we assert that judicial discrimination is present in France in sentencing young offenders? The answer is yes. A significant ethnic effect was observed that could not be explained by other tested variables. We observed ethnic disparity in sentencing when judges decided whether to use prison. We found additional disparity in the length of prison sentences for sexual offenses. Ethnic disparity was, however, present only in Grenoble, not in Vienne.

The effect of ethnicity does not appear to be large, and it does not seem to be systemic. Sentencing is not disparate for all types of crimes. Nor was disparity evident in both jurisdictions studied. A generalization that the juvenile system is racially biased would be difficult to defend based on our study. Conversely, asserting that no bias exists would also be wrong. Characteristics of the judicial decision-making process are not sufficient to explain minority overrepresentation in imprisonment. It must be combined with other explanations, such as lower SES, family structure, higher crime rates, and police practices. Only a set of variables going beyond judicial decision making is likely to adequately account for the observed differences in confinement of minorities in France.

B. Limitations

A number of limitations to this study must be mentioned. First, it was restricted to one of 100 *départements* of France. The demographics of Isère are distinctive. African and

Asian immigration is less pronounced there than in the region of Paris, which could lead to particular treatment by courts. Some ethnic groups may be especially disadvantaged, especially if residing in high-crime *départements* of France, such as those surrounding Paris.

Second, because of a lack of sufficient numbers of cases, and despite a time span of 20 years, we could not investigate possible ethnic bias concerning the most violent crimes: homicides and rape. For similar reasons, we could not test interaction effects of ethnicity and gender.

Third, previous research indicated that the judicial process itself can influence decisions. We controlled for prior records and age but lacked data on pretrial detention status (which has proven influential in the United States). It constitutes an element of the “cumulative disadvantage” hypothesis. Race “might have a cumulative effect by operating indirectly through other variables to the disadvantage of the minority group members” (Zatz 1987, p. 75). Lieber and Johnson (2008, p. 563) emphasized that “the influence of race on decision making at judicial disposition, once controls for legal criteria and extra-legal factors are considered, has been less consistent than at intake” (e.g., Bishop and Frazier 1988; Leiber and Jamieson 1995; Bishop 2005). We could not test whether the apparent bias sometimes found against minorities in our study has its roots in judicial system intake.

Fourth, the effect of the judge’s ethnic background could not be observed since that information was not recorded. Based on characteristics of the judges currently working in the two courts, none is likely during the period covered by our analysis to have belonged to a minority.

V. IMPLICATIONS

France has had a distinctive history in which the recognition of membership in ethnic and religious communities as primary characteristics has been perceived as an obstacle to the state-building process (Roché 2007*b*). This makes France an interesting case study. In a colorblind country, courts should also be colorblind and should sentence whites and nonwhites in the same way.

In that sense, the implications of our findings may be generally important, and not only for France. If racial discrimination in sentencing were absent in colorblind France, this would constitute a severe blow to community-based societies. Were it so, it would prove that it is better to ignore color than to politicize and organize identities along such a cleavage. A colorblind polity would encourage a colorblind criminal justice system. However, if a colorblind state does no better than others, this would mean that the solution to ethnic disparity cannot be found in institutional arrangements nor in the political philosophy that inspired the foundation of the French political and legal systems.

What is observed? The French arrangements do not prevent discrimination in courts, but the opposite pattern does not seem to do any better. The principle of colorblindness

does not deliver its promised effects on the functioning of the French justice system. Ignoring ethnicity does not prevent bias against minority groups. However, the reverse is equally true. Acknowledging the existence of racial groups in other polities, as in the United States, has not ended ethnic bias in courts there. Although bias is systemic neither in France nor in the United States, it happens in both. Of course, the overrepresentation of minorities in prisons cannot be explained in either country solely on the basis of bias in judicial decisions. Still, one might be tempted to conclude that there is no obvious “best practice” among democracies preventing racial disadvantages in the criminal justice process when it comes to fundamental laws, constitutions, or declarations of human rights.

Second, the dominant theories of racial disparity and discrimination (minority threat and the like) propose that judges react not only in relation to legal factors but also to their environment when imposing harsher sanctions on minority group members. It might be demographic, criminological, institutional, or political aspects of the environment that influence their decisions. However, discrimination in sentencing has been mostly researched, documented, and theorized in the United States. Every nation has a singular political and criminal justice system, and the American one features a strong emphasis on decentralization and elections of judges and prosecutors as sources of legitimacy. Such features are not found in continental Europe and even less in France, one of the most centralized of all Western states.

To reduce the extreme incarceration rates and racial bias of the United States would then consist of insulating the penal system from its very context. Michael Tonry has advocated this solution as a means to limit the expansion of the number of prison beds for minorities (Tonry 2004). Insulation is determined by institutional arrangements, some of them being of constitutional nature, others stated in laws organizing the functioning of the state and the criminal justice institutions.

Again, the French case study could make a direct contribution to this debate. It constitutes an interesting case study because it has a very specific political and administrative system in which the criminal justice system is centralized and the judiciary is fairly insulated from local political influence. In France, neither bench judges nor prosecutors can be elected, judges are trained in a unique central academy, and all are professionals, belong to a national body, and have no dependency to locally elected politicians or local representatives of the state. Juries consist of laymen only for very serious crimes judged by assizes courts (not even all homicides or cases of rape). In that context of a professional and national magistracy (professional by training, insulated from political influence and from public opinion and elections), it is surprising to note the presence of both ethnic bias in sentencing and variations across juvenile courts. Further research would be necessary to assess comparatively and precisely the range of racial discrimination so that the contribution of institutional arrangements to the restriction or elimination of ethnic (and perhaps other) discrimination can be better understood.

Highly contrasting polities and criminal justice systems are obviously facing the same challenges, and this poses the question of the link between sentencing practices and the organizational architecture of nations. What if the principles governing a polity and its

core institutions were not the major determinants of the observed bias in its criminal justice system?

Comparative future research is needed in many specific areas. What are, if any, the outcomes of the functioning of the criminal justice systems and, particularly, of comparative judicial discrimination? In some countries, the legal framework was and largely remains founded on the voluntary ignorance of ethnicity and race, whereas others have decided the opposite. Investigations need to be designed to strictly compare the size of disparities and discrimination across countries and not only within one state. Comparing nation states constitutes the only way forward to understand the role of the constitutional order on judicial sentencing of minorities. Without such an approach, it proves unsatisfactory to have a preference for one option over another. We suppose that there is no best democracy when it comes to general institutional arrangements as set up by fundamental laws for preventing racial disadvantages during the criminal justice process. More research linking the macro (polity) and micro (court outcomes) levels is also needed to falsify such a statement. This entails specifying the traits of state arrangements at the macrolevel and measuring them systematically across a variety of states, as well as devising ways of rigorously comparing minorities despite the fact that the meaning varies immensely with the national context.

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NOTES

1. Immigrants are defined as foreigners born abroad but living in France in the French census by the National Institute of Statistics and Economic Studies (INSEE), and minorities are not identified; see article by Body-Gendrot in this volume.
2. "Jails" and "prisons" are used synonymously. They include all detention facilities in France. They are run by the central government (Ministry of Justice). The French system is presented in detail in Roché (2007a).
3. One limitation is that previous convictions were not included among the control variables.
4. Grenoble: 1,235 cases; Vienne: 608 cases; Bourgoin: 25 cases. Since the tribunal of Bourgoin no longer exists, and given the small number of trials in its jurisdiction, for the purpose of this study, we grouped it with Vienne. This choice leaves two geographical units: Grenoble (66.1 percent of cases) and Vienne-Bourgoin (33.9 percent).

5. The population in 2005 of the *département* of Isère was 1,162 million inhabitants, of which 26.2 percent were less than 20 years old. France had a population of 61 million at the same date.
6. In addition to the 268 juveniles with unknown ethnic origins, we excluded 90 acquittals (49 minority, 41 European), 5 “period prescribed by the statute of limitations has passed” (3 minority, 2 Europe), and 3 “Expiry of the Punitive Claims of the State” (1 minority, 2 Europe). Among the 1,446 remaining sentences (771 minority, 675 Europe), information about previous records is missing in 86 cases. Thus, when recidivism is considered, we have 1,360 cases (719 minority, 641 Europe).
7. These numbers are extracted from the yearly sourcebook of crime published by INSEE: “Aspects de la délinquance et de la criminalité constatées en France.”
8. Among the 1,868 cases, 264 had unknown geographic origin, 12 had not been judged when the data were collected, and 48 were neither European nor from Northern Africa or Turkey. That left 1,544 records, 824 minorities and 720 European.
9. Some recidivist defendants may have several records, corresponding to different offenses perpetrated during the 20-year period spanned by this study. Here, we consider each record independently because many descriptors may differ from one record to the other.

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CHAPTER 30

CASE STUDY

Lost and Found Christianity, Conversion, and Gang Disaffiliation in Guatemala

KEVIN LEWIS O'NEILL

My mom used to clean houses. But we didn't have, um, a babysitter or anything. I just remember that, that she would leave us with, um, with neighbors. And sometimes... or as we got older, she started leaving us alone. We would walk to school with my brother and come back, and go inside the house and... just be at the house. So we're alone, all the time. And mom would come, from work, at night, just come home, work at night and make dinner, and go to sleep. And that was it, that was all we would do, right. At first we would just be like, inside the house, right. But then we started seeing other kids, in the neighborhood, we started meeting up with other kids in the neighborhood... we started to see that there was other kids that were... bad kids. Worse than us.

Julio is a born-again, ex-gang member who grew up in Los Angeles, California but has since been deported back to Guatemala. His story provides a window onto Christianity's relationship to hemispheric security by tracking the growing world of Central American gangs—such as *Mara Salvatrucha* (MS-13) and *Barrio Dieciocho* (18th Street)—from the perspective of gang ministry. Julio is a former member of the 18th Street gang and current gang minister. Gang ministry is a genre of pastoral care in which self-identifying pastors from a range of denominational backgrounds minister to active and ex-gang members as well as to at-risk youth. Their focus tends to settle on MS-13 and 18th Street. These are two of the most dangerous gangs in the Americas. They originated among Mexican and Central American immigrants in Los Angeles, California, during the gang wars of the 1980s. Since then, US deportation policies have transported members of both gangs back to Central America, with one of the strongest networks forming in Guatemala. Their scope has swelled to include most of Central and North America. Julio, a former member of 18th Street, is but one example. Tens of thousands of men and women, some of whom are former soldiers, now smuggle drugs, participate in

human trafficking, and control prison systems. Although important research focuses on why thousands of young men and women join these gangs (ERIC et al. 2001, 2004), this essay looks instead at one of the only ways out of this gang life: Christian conversion. It is a look at Julio's story, one that joins a growing conversation about Central American gangs and the efficacy of Christian conversion (FEPAZ 2006; Brennehan 2009; Flores 2010; O'Neill 2010b; Wolseth 2011).

The promise of Christian conversion, at its most basic, has placed an expanding cadre of Protestant ministers at the intersection of security and salvation. This is because MS-13 and 18th Street's growing influence in Central American countries such as Guatemala has coincided with the rapid evangelization of once overwhelmingly Roman Catholic countries. Over 90 percent Roman Catholic in the 1980s, 60 percent of Guatemalans now self-identify as either Pentecostal or Charismatic Christian (Pew Forum 2006). Gang ministry has broad cultural appeal. Courted by state officials and funded by international aid agencies to augment (largely unsuccessful) efforts at securing neighborhoods, these ministers work to open the hearts of active gang members to what these men and women of faith understand as the saving grace of Jesus Christ. Although a sincere conversion does not guarantee a release from either gang, and occasionally itself prompts death, gang ministers shepherd "the fallen" to attend services, participate in Christian support groups, and undergo the painful process of tattoo removal—an effort at erasure that these pastors often say invokes Christ's passion.

Christian conversion as a way out of gang membership raises an interesting set of questions regarding race, ethnicity, immigration, and crime across the Americas. Central to the discussion is how Christian conversion helps structure processes of gang disaffiliation along the faithful lines of once being lost and then being found. David Gutterman (2001) characterizes the narrative structure as follows: "the moment of conversion—when the spirit enters your heart—is the necessary door through which a person must pass if he or she is to move from chaos to order, from ignorance to belief, from blindness to sight, from sinfulness to grace, from dissonance to harmony, from isolation to reconciliation, from death to salvation" (p. 22). Highlighting how the converted narrate their departure from gang life as a born-again experience ultimately helps highlight how efforts at gang prevention, intervention, and reinsertion often rely on a series of Protestant images and imperatives to distinguish the lost from the found (O'Neill 2010b, 2011, 2012, forthcoming). This is the case with Christian forms of gang outreach throughout the Americas as well as their ostensibly secular counterparts.

In this essay, I scrutinize Julio's narrative to decipher its structure as well as its source of efficacy. The intent is threefold. The first is to contextualize these conversion narratives amid new forms of Christianities as well as new regimes of deportation. Of particular interest is how born-again ex-gang members organize their life histories around the themes of once being lost and then being found. The second is to assess race and ethnicity on a hemispheric scale—for these deported, born-again ex-gang members experience a transformation in terms of self-identity from Guatemalan (when born) to Latino (while in the United States) to deportee (when back in Guatemala) to Christian (when converted). It is a process that disrupts an otherwise isomorphic relationship

between space, place, and race. The third is to link intimate life histories to larger processes of securitization. Put another way, what does security (as a lived experience) look like?

The essay proceeds in five parts. Section I provides a brief definition of Pentecostal and Charismatic Christianity. Section II presents the historical context of both MS-13 and 18th Street. Section III briefly positions this case study within the field of security studies, highlighting the relevance of religion to questions of security. Section IV provides a brief note on method, placing this article in the broader context of a developed and multisited research project on gang ministry. Section V, the main section of this text, examines the conversion narrative of a onetime member of 18th Street and now Pentecostal pastor. It provides long stretches of transcribed interview material, edited only for punctuation. The aim is to allow the singularity of this man's transformation to shed light on the shifting forces that allocate the recognizability of certain persons as saved (and others lost). The conclusion provides a short discussion and some policy recommendations.

The main points, themes, and conclusions that this case study evidences and advances are as follows:

- Gang activity is a major issue that impacts the lives of all Guatemalans.
- As it currently stands, state responses to gang activity have followed a repressive, strong fist approach that focuses on deportation, incarceration, and execution.
- Poverty and crime force undocumented Central Americans in the United States to join gang life.
- New regimes of deportation have expanded United States-based Latino gangs to Central America.
- For certain gangs, at certain times, Christian conversion provides active gang members with a way out of gang life.
- Christian outreach, especially gang ministry, has become a viable social resource in Central America, augmenting more traditional modes of security.

I. PENTECOSTAL AND CHARISMATIC CHRISTIANITY

"I mean . . . you're my mom and everything, but I don't need you," Julio remembered saying to his mother. *"I'm leaving," I told my mom. But when I walked out, I could see her grab me and she said like, "what you mean you don't need me? I brought you to this world I could send you right back." And I was on the floor, "ma, you're killing me!" And, I, uh, I-I, I was, I saw her. When she was doing it. And I could see that she did, want to kill me. She did want to kill me and it was . . . And, and I still, I remember, myself, 24 years old, calling her and,*

and asking her to forgive me. But I also told her, "I, I haven't forgot the day you tried to kill me. I haven't forgot the day that, that you, you act real mean with me. You know, the day that, that you blame me, for... for, everything that was going on." It's hard for her, 'cause she hasn't came to learn, right? It's really hard for her. She doesn't understand. She know, she knows I'm going to church, and she knows how I am, how I was, right? She's just, thinks I'm out here trying to scam people or something.

An estimated 800 million people, or 13 percent of the world's population, are Protestant, and the majority of these believers reside in the "global south," marking a major shift over the last 100 years. Many scholars, of course, make strong arguments against the accuracy of these numbers. In his review article, Joel Robbins (2004) identifies several scholars (Stoll 1990, p. 6; Levine 1995, p. 157; Corten 1997, p. 313) who note that the figures are hyperbolic and that religious conversion is a very difficult process to track globally, allowing statisticians to exaggerate the numbers. The statistical representation of Protestant growth in Guatemala, for example, is difficult to assess. The numbers range from the dramatic to the conservative. The Pew Forum on Religion and Public Life (Pew Forum 2006) places the number of Guatemalans who report that they have "had a direct experience of the Holy Spirit" at 60 percent, whereas more conservative studies argue that the number of true Christians in Guatemala is far fewer (see Grossmann 2002). Yet, it is clear that in 1900, an overwhelming 81 percent of Protestants globally were Caucasian, whereas by 2005 this number had dropped to 43 percent as Protestant Christianity continued to spread beyond the Western world. In 1900, 2 percent of Africans and Latin Americans and only one-half of 1 percent of Asians were Protestant. By 2000, the percentages had risen to 27 percent of Africans, 17 percent of Latin Americans, and 5 percent of Asians. In these three continents together, Protestantism went from just 1.5 percent of the population in 1900 to 16.5 percent in 2000. This is more than a 1000 percent increase (Shah 2004, p. 118).

The most dramatic Protestant growth emerges in Pentecostal, Charismatic, and neo-Pentecostal churches. All three are characterized by personal conversion, evangelization, belief in the Bible's authority, and the understanding that Jesus Christ's crucifixion was a sacrifice made on behalf of humanity's fallen nature (Bebbington 1989). Admittedly, this commonly accepted four-part definition obscures the diversity of evangelical expression, effacing the fact that the term (historically speaking) has been broad enough to include an assortment of rather distinct traditions: Dutch Reformed churches, Southern Baptists, some Episcopalians, and the majority of African-American Protestant sects (Lofton 2008, pp. 224–28). Pentecostalism, the first of the three movements, arose in the early 1900s through a series of revivals in Kansas, Texas, and California. It places great emphasis on the so-called "gifts of the Holy Spirit": speaking in tongues (*glossolalia*), healing, prophecy, spiritual discernment, and miracles. News reports of Pentecostalism's fiery, even contagious, style of worship propelled the movement across North America. A 1906 *Los Angeles Times* article describes the Azusa Street Revival: "colored people and a sprinkling of whites compose the congregation, and night is made hideous in the neighborhood by the howlings of the worshippers who

spend hours swaying forth and back in a nerve-racking attitude of prayer and supplication” (p. 1). At a pitch, sometimes best described as “howling,” Pentecostalism has since expanded throughout the world, with the movement yielding converts at such an impressive clip that many suggest that Pentecostalism may soon overtake the Roman Catholic church as Latin America’s largest Christian presence (see Cox 1995; Miller 1997; Wacker 2001).

The traditional Pentecostalism of the 20th century eventually gave birth to Charismatic Christianity—the movement’s second wave—which began in the 1950s and includes self-conscious efforts to renew historic churches, such as the Roman Catholic church, through an emphasis on the gifts of the Holy Spirit (Csordas 1994). Yet, it is neo-Pentecostalism, a much more recent development that takes place in largely independent churches, which is now very popular in Guatemala. Understanding neo-Pentecostalism begins with the movement’s ministerial focus. These independent, nondenominational churches emphasize their responsibility to usher in the kingdom of God today instead of waiting for Jesus Christ’s second coming. The time to act is now. This kind of Christian participation means subscribing to an apocryphal narrative that announces the church’s responsibility to redeem their nations from the power of Satan through the saving grace of Jesus Christ. Neo-Pentecostalism also involves an active demonological imagination that understands the world as constantly under attack by fallen angels. In the Guatemalan context, neo-Pentecostals also stress a personal relationship with God through worship services defined by song, testimony, healings, and speaking in tongues. And while traditional Pentecostalism has been historically popular among Guatemala’s poorer communities (both urban and rural) and has been relatively conservative in behavior and dress (e.g., no dancing, no makeup, no revealing clothing, etc.), neo-Pentecostalism, in contrast, tends to thrive in the capital city and is popular among middle and upper middle-class professionals—as well as those who long to be upwardly mobile. Neo-Pentecostalism historically has not been indigenous, but today it is increasingly so as megachurches broaden their ministerial scope. Guatemalan neo-Pentecostalism also tends to maintain strong ecclesiastical relationships with congregations in the United States as well as those in Africa and Asia. Mega-churches in Guatemala, for example, tend to have North American-trained pastors as well as satellite churches throughout the United States; they also worship in large auditoriums modeled after megachurch structures in the American South.

II. GANGS ACROSS THE AMERICAS

I was still a baby, I was like, what? Three years old? Julio, born-again, deported ex-gang member, explained in a Guatemala City eatery. But we started growing up in L.A., Baldwin Park. I still remember. [My mom told us about Guatemala.] She would let us know what, what had happened. I don’t know why. Trying to keep us, keep us—just so we

can keep, like, our roots. 'Cause we're growing up in L.A., and we're growing up without speaking Spanish. It was really hard for her. So she would let us know: "you guys are from Guatemala, right." 'Cause when we started school, it was just like, they had just passed a law where they stop teaching in Spanish. So, it was, like, you had to, you had to know [English], right. But it was, it was, it was weird, but we managed.

The rise of gang ministry emerged alongside the rise of Pentecostalism in Central America. El Salvador's civil war (1980–92) coincided with Guatemala's (1960–96), pushing tens of thousands of Central American refugees to Los Angeles' poorest neighborhoods (Zilberg 2004). Once in Los Angeles, for reasons of belonging and security, Salvadoran migrants formed MS-13 to defend themselves against the city's already well-established Asian, African American, and Mexican gangs (DeCesare 2003). Initially modest in reach, MS-13 became a transnational organization in the aftermath of the 1992 Los Angeles riots. Amidst a torched cityscape and a surging Moral Majority, increasingly strict antigang laws resulted in tougher prosecution rates, expanding the legal grounds for deportation to include such minor offenses as shoplifting (De Genova and Peutz 2009). With this, the total annual number of deported Central Americans tripled in the late 1990s, rising from 8,057 in 1996 to 24,285 in 2004 (Johnson 2006). In 2007, as the criminalization of Latinos continued to mix with an unwieldy war on terror, the US government deported some 74,000 Central Americans to Honduras, Guatemala, and El Salvador (Seelke 2008, p. 7). The pace of repatriation quickens even today. President Barack Obama issued more deportations during his first year in office than did President George W. Bush during his last year in office (Hsu and Aizenman 2010). Of those deported to Central America between 2000 and 2004, 20,000 self-identified as gang members (Arana 2005, p. 102).

However, the immigration laws that deported these gang members also banned US officials from disclosing the criminal backgrounds of the deportees to their home countries (Wallace 2000). With a lack of coordination between the US government and Central America's postwar governments, these deportees met minimum life chances, a heaving drug trade, and a glut of weapons left over from the region's civil wars (ERIC et al. 2004). As men and women born in Central America but oftentimes raised in Los Angeles, the youngest of these deported gang members did not speak Spanish fluently (Ramirez 2004, p. 1138). They had no family but the gangs, and they had no viable life chances but gang life (Buff 2004). These factors generated the ideal conditions for gang expansion. More than a decade later, and amid homicide rates that outpace even those of Guatemala's genocidal civil war (Painter 2007), MS-13 now boasts more than 100,000 members throughout the Americas—a population that continues to grow alongside a hemispheric drug trade (Gutiérrez 2007). Some 90 percent of the cocaine shipped from the Andes to the United States flows through Central America (Seelke 2008, p. 3). For this reason, members of MS-13 have been arrested as far south as Lima, Peru and as far north as Toronto (Funston 2006).

In Central America, governments have tended to employ civil war-era tactics of social control, such as paramilitary death squads, racial profiling, and unlawful incarceration (ERIC et al. 2004). Meanwhile, the U.S. government confronts MS-13 under the auspices

of the newly minted Immigration and Customs Enforcement, a division of the U.S. Department of Homeland Security that has been able to deport Central Americans at an unprecedented rate. Whereas it took 8 years to triple the number of Central Americans deported annually from the United States (from 1996 to 2004), this new division of Homeland Security recently tripled that already bloated number in just 18 months (from 2006 to 2007) (Seelke 2008, p. 7).

As each government involved freely admits, efforts at security to date have failed to curb the growth and influence of MS-13. This is one reason that state-level security debates throughout the Americas have begun to pair suppressive policies—ones that favor incarceration and deportation—with more integrated efforts at gang prevention, ones that synthesize efforts at community policing with youth programs and social services (Seelke 2007). The 2007 Mérida Initiative is a \$1.3 billion hemispheric effort to bridge a historically contentious relationship between civil society and Central American state agencies, while also bracing efforts by the United States to work across borders. Los Angeles's new \$168 million Gang Reduction Program, with its own focus on community outreach and the language of empowerment, is yet another example (Villaraigosa 2007).

These efforts at an integrated approach are also why the practice of gang ministry continues to experience increased attention and financial support—why, for example, an evangelical pastor heads Los Angeles' Gang Reduction Program, making the Reverend Jeff Carr into L.A.'s first ever “Gang Czar,” and why Central American governments, including Guatemala's, continue to develop street ministries and prison chaplaincy programs that advance, as Ian Hacking would say, “new ways to be people” (1986, p. 222). Borrowing heavily from self-help discourses and the field of cognitive psychology, and building atop a neoliberal rhetoric of personal accountability, gang ministry demonstrates how, in the words of Nikolas Rose, “the soul of the citizen has entered directly into political discourse and a practice of government” (1999, p. 1; see O'Neill 2010a). This effort generates new techniques for living and dying, novel constructions of citizenship and delinquency, and unexpected formations of security in Latin America.

III. SECURITY STUDIES

Watching [the older gang members], and then they became, like our parents. Taking care of us. They would kick us out. When it would get dangerous, they would kick us out. And we're like, “no we want to stay right here, right?” “No, no, no get out of here cause it's about to get crazy up in here, right? We just kill some guy from MS gang and they're gonna come over here, they saw who we were, and we're ready for them. We're gonna blast them.” Right. And, and we were like, we wanted to stay 'cause we felt part of already. But we were not part of the neighborhood yet, we were just a bunch of . . . kids from the hood, right. Bunch of bad kids from the neighborhood.

Salvation's relationship with security challenges many social scientific approaches to security, which tends to be assessed in Latin America with an emphasis on "gates" (Low 2003) and "walls" (Caldeira 2000) as well as efforts at "securing" (O'Neill and Thomas 2011) and even "disembedding" (Rodgers 2004) the city through new modes of segregation (Sassen 2001) and the neoliberal privatization of security forces (Ferguson 2006). This case study draws from such scholarship to counter an enduring perception about the place of religion in the study of security found in the more interdisciplinary field of security studies, an unfolding literature with deep roots in academia as well as in contemporary policy debates. Replete with various references to religious fundamentalism (Habeck 2006), motivated by the events of September 11th (Rinehart 2006), and defined largely by the rise of global terrorism (Fox and Sandler 2006), security studies tend to understand religion as a threat (Lincoln 2003), as represented by popular titles such as *Dying to Kill* (Bloom 2005), *Holy Terror* (Eagleton 2005), and *Belief and Bloodshed* (Wellman 2007). Yet, ethnographic research on gang ministry demonstrates that religion, observed here through Charismatic and Pentecostal Christianity, is not simply a social entity to which security forces must respond. Rather, religion is a cultural phenomenon that contributes to the practice and construction of security—to the very idea of what it means to be secure.

IV. METHODS

JULIO: Yeah, 'cause you told me we're not gonna use my name or anything else...

KEVIN: Yeah no no, no, I'm not using your name. Not at all. That's not how anthropologists do things. It's anonymous and, if I use this in a book or something, I change some stuff to keep it anonymous... So you're 27 years old. And you're born in Guatemala? Were you born in the capital?

My conversation with Julio comes from a much larger research project, one that documents and describes the practice of gang ministry and analyzes its consequences. This has meant multisited research in three social fields. The first has been chaplaincy programs in maximum-security prisons. These chaplains represent a range of denominations and theological dispositions, but all self-identify as Charismatic or Pentecostal Christian. Shadowing these chaplains within the prison context has proven essential to this project. Nowhere else does gang ministry as political rationality meet the everyday level of prison life more vividly than in those moments when chaplains instruct active members of MS-13 to explore their inner worlds—for the sake not just of their own salvation but also of regional security. The second social field consists of Christian halfway houses, to which active gang members go for intensive treatment programs. These programs can be as short as 2 weeks or as long as 2 years. In these houses, I have observed one-on-one counseling sessions, group-therapy meetings, and social events, such as movie nights and special meals. I have also interviewed gang ministers to understand

how certain theological assumptions affect the Christian production and practice of rehabilitation. The third social field has been street ministry, which communicates its vision of security and rehabilitation through a range of print media: pamphlets, posters, moral manuals, and self-help books.

V. THE CONVERSION

Born in 1984 in Guatemala City, Julio arrived in Los Angeles in 1987 with his mother and older brother. While she worked long hours cleaning houses and hotels, hustling for the American Dream, Julio attended public school by day and met up with kids from the neighborhood at night. They lived at Normandy and 1st Street—the heart of the 18th Street Gang. At 8 years old, Julio started hanging out with active members. “They were our role models,” he explained. “We would look up to them. Honor them. Respect them. Talk about them. ‘See that guy,’ we would say. ‘He just got out. He did 5 years ‘cause they say he killed some guy from another neighborhood.’ They were honored. Respected. They were our role models. We had nobody else to look up to in the neighborhood. We would see them with girls. Drinking. Just partying. And we would look up to them.” Deported in 2002 for attempted murder, Julio converted out of gang life in 2003. He remembers the day he jumped into gang life:

“In 1996, it’s time for me to go to junior high school, right? And junior high is in the middle of two different neighborhoods. Rebels 13 and 18th Street Gang. And behind the guys from Rebels 13 are the guys from MS-13. By the time I start junior high school, I was already dressing like a gangster. I was already cutting my hair real short. Wearing the clothes that we wear. I mean, I couldn’t provide for myself, but I had a friend who let me borrow his clothes ‘cause my mom was really poor, and he was like, ‘Man, that’s embarrassing. You know, you’re supposed to be, you know, dressed like a gangster.’ So, he would let me borrow his clothes. I mean, I’d cut my hair at his house, and we’d go gangster to school. And when we got to school, we’d meet up with a bunch of other guys that were going through the same situation or on the same trip as we’re going through, but in a different side of town. Now, we coulda been best friends. We coulda helped each other out. But there was already something in our hearts that said, ‘they’re from another part of town.’

“So the first week of school has this tension, and there’s a lot of police. Because every year it happens. When kids from different neighborhoods come to the same school, they’re gonna run into each other. So there’s a lot of tension during those first days of school. But we start going to school, and all of us are like, ‘hey you know what, there’s not any homeboys here.’ ‘Cause nobody’s actually from any neighborhood yet. Everybody just lives in a neighborhood. Nobody’s been jumped in yet. But we know where we’re from, right? My neighborhood is 18th Street gang. They’re from Rebels 13. So we’re like [to the kids from our neighborhood], ‘hey, check this out: when it’s time to do lunch, we’re gonna meet up over there. But be careful ‘cause they rolling deep.’

“So lunchtime hits. Bam. I grab my stuff and I go to the place. And we’re over there, you know, chillin’. We’re watchin’ them. They’re watchin’ us. Until all of a sudden, it just jumps off right away. We’re like, ‘what the fuck you guys lookin’ at?!’ And, ‘let’s do this!’ So then we start fighting. We’re like 12 years old. And so we all go to the principal’s office. They ask, ‘What are you guys doing? You’re not gangsters. Think about your future.’

“So the next day, it’s the same thing. It’s the same thing until their older brothers come after school, and our guys come from our neighborhood. They all come after school. After school, trucks and cars come with people from Rebels 13 gang and people from the 18th Street gang. We’re in the alley. They’re in front of the school. They know where we’re at. We know where they’re at. We leave out the back of the school. They leave out the front of the school. And everybody ends up at the 7–11 in Santa Monica and Las Palmas Avenue. ‘Cause they know that’s where it’s gonna go down. If something’s gonna happen, it’s gonna be there. If 18th Street are punks, they’re gonna go out another way. If Rebels are punks, they’re gonna leave before 18th Street gets there.

“So the whole school is there. I’m talkin’ about 400 people. They’re all there. They’re just ready to see the throwdown. See what’s gonna happen. And I’m just goin’ through this, like, ‘damn, what’s goin’ on?’ You know? ‘What am I doing?’ I mean, my mama never taught me to be no gangster. But then, these guys tell us, ‘You know what, we’re not gonna do nothin’ for you guys ‘cause you guys are not from the neighborhood. You guys are just kids that grew up in our neighborhood. We’re not gonna do nothin’ for you guys unless you guys jump into the neighborhood.’ So, what do you do? You jump in, or you don’t. So we’re like, we’re just gonna let it be and think about it. And the older brother of one of these guys was like, ‘hey, you know what, I don’t want my younger brother to jump into the neighborhood. I don’t want my brother to jump in and you guys need to respect it.’ And everyone’s like, ‘we don’t got your brother’s back, though, you know that.’ And he’s like, ‘yeah, I know. I got my brother’s back. He’s my family.’ So, nothing happens. Nothing happens. Everything’s cool.

“But the next day, when we’re going to school, we get kidnapped by these guys from Rebels 13. We get kidnapped. They pull up in a van. They pull us all inside. Inside an Astra van, and when they take us out of the Astra, we’re in Santa Monica Park. It’s on Gower and Santa Monica. That’s the heart of their neighborhood, in the park. So they take us there, and they’re all right there, even the youngsters, the ones that study with us. They’re all right there, and they just jump us. Bing. Bing. They just start jumping us. Punkin’ us. And with markers. Putting “Rebels 13” on our faces. They send us home in boxers, laughing at us.

“So, we’re walking home, and we’re like, ‘what are we gonna do? Homeboys from 18 don’t wanna back us up ‘cause we haven’t jumped into the neighborhood. So what do we do?’ So, my homeboy, one of the homeboys, his name was Guillermo, he says, ‘fuck this. I’m gonna jump into 18 today.’ So we all go, right. We’re gonna tell ‘em what happened. We’re gonna tell ‘em we wanna jump into the neighborhood. And so we jump into the neighborhood that day. All of us. All six of us. We all jump into the neighborhood. And they give us our names, like, they give you your ID badge or something, right? We all jump into the neighborhood and they’re like, ‘alright, we’re gonna show you guys we don’t let those fools mess with us like that. We’re gonna go handle that right now.’

"We all jump in trucks, in Monte Carlo trucks, and Toyota, uh, Tacoma trucks, and different kind of cars. I remember I jumped into a Buick, a blue Buick Regal. This homeboy, Pelón, he was handicapped, but he would drive with his hands. He had the thing with the gas and the brake. He was driving with his hands, right? And he was like, 'come on, you're coming with me.' And I was with him, and he said, 'let's go get these fuckers.'

"We go to the neighborhood, and we're looking for them. Looking for them, and they know what's gonna happen. So they're all hiding, until we catch one guy slippin'. I remember, they called him Ratón. They said, 'don't shoot.' Homeboy told me, 'don't shoot. Just get close to him. Ask him where he's from, and get out the car, and then shoot him like a man.' So we pull up next to him, and I get out the car. And I tell him, 'hey, where you from?' He said, 'I'm from Rebels 13 gang' but he put his hand inside his pocket. When he put his hand inside his pocket, I pull out the gun, and I shot twice. I hit him in the stomach, and I jumped in the car. My homeboy Pelón punched me. He was all, 'you better make sure that fool's dead.' And I got out the car, and I start shaking, and I tell him 'he's dead.' I tell him he's dead, and I hear the cops. I jump in the car, and we left. That was the first day I jumped into 18th Street Gang. I was 12 years old. And the next day, [after shooting Ratón] I can't go to school 'cause I'm a gangster, right. You're not a little kid. You're a gang member now. It's crazy, huh?"

Julio's life unraveled from there. He became more involved with 18th Street, trusted to an increasing extent with moving drugs through the city. As a minor, at only 14 years of age, his fellow gang members allowed him to get arrested. Predictably, his family support waned: "I got kicked out of my house [at 14 years old]. My mother didn't want to see me no more. My mom was ashamed. Mom was ashamed. Sometimes she—I would have to call her, and beg her to come pick me up from jail 'cause they wouldn't release you if you were a minor. Your parent needs to come pick you up. I have to beg her. Sometime she wouldn't come for like, two or three weeks to pick me up. Until they would like call her and be like, 'if you don't come pick up your child we're gonna take him to the foster home, right.'" He regrets much of this time. "I mean, I missed, I missed a lot of opportunities, man. Many birthdays in jail, man. My fifteen birthday I was in jail... sixteen. Seventeen. Eighteen... My birthday's May 12th. All my summers, I was busted, man. Most of my summers I was, I was in jail, man. Doing time... doing county... [long pause] We, we went at it and we started... killing each other. Killing each other. All, all—everybody from my generation. I call L.A. to see who is over there and everybody from my generation is either dead, doing time, or in Guatemala."

Julio's life changed dramatically one night. "I was, um, I was in the neighborhood because some older neighbor, some older gang member had just got out. And I wanted 'em to show—you know, show my respects. So I went to the neighborhood, went over there to say hi, how they were doing... you want to put these guys in your pocket 'cause they're going back to prison, sooner or later. And you never know when you're gonna go to prison. I mean, the older homeboys? You got to... you, you gotta take care of them cause they don't like being out here. They're always, they're always going to go back. So while they're out here, show them love. So... so, when I see them, right, and I, uh, say I'm gonna go over there, I'ma leave them some money and some drugs. They just got out. They want to get high and party, right. I went to go leave them a thousand dollars. And, and some balloons of a... of heroin. 'Cause

I know they're old-school gang members, they love heroin, right. They're not gonna be on the streets too long; they're probably be on the streets like a month, the most. They're gonna miss their first parole violation, I promise. So you know they're going back inside.

"So we're, we're chillin' with them, right. And these other gangsters just drive by in front of the neighborhood, right. And I said, man these guys got balls, man. These guys got balls man. How, how they gonna just drive through my—through the neighborhood, right? And I ask the other homeboys, 'man, you guys see those guys?' 'Yeah but they be—they already pass twice, you know. They're nobody.' But I feel, I feel, I feel angered, right. But all this time they already had killed my cousin. So my cousin got killed by the cops. So when I see these guys, I get, I was so, so angry. And they got stuck in a red light. And I said, 'they're through.' Alright, so I grab my 38 special, right, and I jump in through the traffic, right, and I say I'm gonna kill these fools right here. And when I pull next to 'em, this guy saw me in the rearview, on the, in the rearview mirror, right. And . . . when I pull up next to him, he pull out his badge, and a gun, like this. When I see him and I see a gun, I don't know why I shot . . . but I shot. And I see the badge, right, and he shot too, right. They were undercover [police officers]. He shot twice. And I started running. I ran through the cars, right, and, I was by . . . we were by MacArthur Park. . . . And he was shooting . . . but we're running. And I see this guy, right, going for me. I jumped in, I jumped into a high school, right. And . . . and I thought they were gonna . . . I thought he was gonna jump in too, right. But he didn't jump in, he just like, they—rather they call back up and all this. But in all this, I was already on the phone. Bam. We had what you call, um, what you call undercover taxi drivers, right? These Mexicans, right, that can't get like a real taxi? I told him pick me up. Pick me up on . . . by the Jack n' Bo—the Jack n' Box on Rockwood and 6th. He was like, 'I'm on my way.' And, and I crossed the street and I seen his little round car, and I told him, 'pop the trunk.' Pop the trunk, I jumped in the trunk, boom. Told him take me anywhere. And they were on me, they were looking for me. They were looking for me, man. They were on my ass. I decided to leave the state. So I went to Vegas. I'm like 16 years old now."

Julio goes to Las Vegas and then to Iowa. He traffics a range of drugs across state lines for profit, making thousands of dollars. He eventually returns to Los Angeles and gets arrested the first day he is in California. There were street cameras recording his exchange with the undercover police officers. He immediately goes to jail. There, he finds Jesus or, as he says, "Christ found me in jail." Julio continues, "so I'm down for attempted murder, right, so I'm in a one-man cell on the 29th floor. People are just there. They go to court, and then they go to prison. And in our cellblock there's nothing but [members of the] south-sider [gang]. So we do like, our workout and everything, but the guy that was next to me was Cartoon. Older cat. You could hear it in his voice. He asks me, 'hey what are you down for?' And I say, 'hey you know what, I don't wanna talk about it, you know. Just let it be. You want my file, you can pull my file. Just make sure I ain't no rapist, or no, no gay shit, right.' And, he's like, 'hey man, relax man, don't get so . . . so, uh, so defensive man, so political. Leave all the politics for later, you'll get enough politics in pen.' So we just let it be."

He and Julio started having conversations. "He'd say, 'let me read you something.' And he would just start reading . . . on Jesus, man. He would start reading about Jesus story: how he was born, what he did, how much he love us, and he be like, 'hey, you

know what, Jesus love you, man.' And it would be like . . . I was like, I dunno, not like I never heard of Jesus, y'know, but like there was no time for God. Right, my mom was very confused 'cause, my mom was, she went to Christian church, didn't like it cause it was too loud; went to a Catholic church, didn't like it cause she didn't want to kneel down before the, uh, the sculptures. Um, went to Jehovah's Witness church, right, and she, she just thought they were like really weird, right? And then she, she went to Mormon church and she liked it there cause they would help each other. Right? So she decided to stay there. So then it was . . . me thinking of God was like, I mean it's just whatever you can find . . . to make you feel better, right. Whatever, and . . . this guy was talking to me about God and, and it was like so confusing. What church would this guy be from, right? Never talked about *a* church, he just talked about Jesus.

"One day, right, it's like three in the morning and he's like, you can hear the door open, so I get up, 'cause I thought, you know, what's going on right? Maybe it's a fire or something, right. I get up, I throw my shoes on real quick, right, throw my stuff, and he's like, 'hey, relax Julio, it's me, I'm leaving.' And I said, 'where you going, man?' Said, 'I got sentenced.' And he asked the deputy, 'hey deputy, can I leave him something?' He's like, 'yeah sure, hurry up, make it quick,' right. And he opened up his bag, right, and he pull out . . . a blue . . . New Testament. Those small ones. . . . And he threw it in my bunk. And he was like, 'hey Julio, you should read this, it's gonna save your life, man.' And, uh, I ask him, 'how much time you doin?'" 'I'm going to federal. I got life bro.' And it hit me. It hit me. It broke . . . it broke me down. It hit all my principles. All my gang member life principles. Right, why would this guy be talking about love, Jesus, salvation, God's mercy . . . and he's going to the pen, doing life—he was a third-striker. So he was, he's about to get washed up. He's gonna do what we call 'all day.' He left and . . . I just, I didn't even know what to think, right. And I was just like, I just sat there like in shock, like man, this guy is about to do life, man. But what, what, what hit me more was how would he, why would he talk about God. I would be . . . hating God, right? But he was talking about God, and love, and all this good stuff."

Shaken by the seeming paradox of a man sentenced to life and his faith in God, Julio narrates his life story as opening to God—as training himself to understand God's purpose for him. Of importance is how Julio's rapprochement with God takes place between him and the Bible. This is a classic Protestant framing device that Julio assumes and that subsumes him. "So at the infirmary, I got these, I got these cigarettes . . . and I would, I would start tearing off the back of, of the, uh, the New Testament book, the pages. And I would and—from one cigarette, you can make five rollies. Just put little bit, you don't need too much, right? It's just to get through, just, just one good hit, or two good hits and you'll be alright. And, um, I was, I was sort of leading into . . . the Book of Revelations, man. And then one day I felt bad, I said I should, I should just read it before I smoke it. And I started reading it, I started reading the book of John, man. And I fell in love with Jesus, man. 'Cause . . . I ran, I ran into this scripture, right, where, when Jesus look at this multitude that was following him. And he said that he had compassion . . . of him . . . 'cause they were like sheeps that didn't have no shepherd. And that just, stuck a arrow . . . in my heart, man. And I could see myself standing right there . . . I could see like, my cellblock, on that beach, right. And just me on the other side, right, just like waving at him . . . like, hey,

you could love me too if you want . . . right. And that's what I told him, 'if you wanna love me, you can love me. I'll let you love me.' And then, that's when he just . . . pour himself . . . to me. He started giving me his love, right. So I had my, little, my little bible with me. And I just started reading it, reading it, reading it. And I came to, I, I mean, I think the Lord, the Lord came to my life. Right, and he . . . and I fell in love with him. And he just started opening all the doors, right, making things possible."

Julio's faith blossoms and he begins to re-read his past life in light of his new faith. "A lot of things that happened in my life, they don't even make sense to me, right? But I know that, that God is for real, because he saved me. I could remember . . . times . . . when I was supposed to die on the streets. So I was just checking myself, and I said, man these guys were so close. And . . . then everything started making sense. Like every time I would go to sleep, God would allow me to go through my life, and to see all the times, that I was supposed to die, and he didn't allow it. And . . . show me his love. That's how, that's how my life changed. It's not because I wanted it to. It's because he, he wanted to. He . . . I guess in a way he waited until I was done. Washed out. Until I didn't have no more opportunities. To do what I was doing in the States. And then . . . it's like if he tell me, like, like if he would tell me . . . are you done? Are you done trying to . . . trying to do the things you want to do? You ready to let me . . . enter into your life? And I gave up. I gave up. I'm a pastor."

Eventually deported, Julio returned to Guatemala with little knowledge of his home country and with even fewer contacts. "So, I call my mom [once I land in Guatemala]. And I ask her if I had any family [in Guatemala]. She told me [where my] grandma lived. So I'm like a light and I jump in a cab. And . . . and I don't know how, right, but something told me, that's the house. That wasn't the house, but it was like, right next door, right. And I knocked and I say, 'Eh, uh, uh, I'm looking for my grandma,' right. 'She doesn't live here, she lives next door.' So I went next door and, and she opened her arms to me. She opened . . . and, and—I, when she hugged me, man. I broke down, man. I broke down because . . . I wanted to feel like that was my mom. I wanted to feel and I wanted to say I'm home . . . at last, after all this shit I gone through. And something, something told me that, that it was gonna be alright. It was gonna be alright. I wasn't gonna be fleeing no more. . . . I wasn't gonna be selling drugs no more . . . that God was gonna provide for me . . . and . . . things started to change. So Guatemala, for me, is . . . new life. It's a new opportunity. It's a opportunity that, that I'm never gonna have in the States no more."

Julio fell into a deep depression that many deported men and women experience. Having never known Guatemala in any substantial way, forced to live in an urban context that is completely unrecognizable to a resident of Los Angeles, California, Julio eventually leaned on his faith as well as a growing cadre of Protestant ex-gang members. "And when I came to my grandma's house, after of like, 2 months of silence from me, 'cause I, I was in shock when I was here in Guatemala. I was just, I didn't want to go out, I was scared. And um, my grandma saw me reading the little, the blue Testament, that I still had . . . and, she told me, 'what are you reading?' And I share with her the Gospel . . . Christ. And she came to the Lord. And she asked me, she told me, 'let's go to church.' I told her, 'Yeah sure' and she asked me, 'which one?' I didn't know—I have no orientation of churches. I don't know, she could have taken us to, to a . . . Jehovah's Witness church for all she knew, right? And I wouldn't, I didn't know anything else, either. But God is so wonderful, because, when she asked me I told her,

'it doesn't matter. The nearest one.' So we don't have to go far, right? And... when we go to that church, there's this deported ex-gang member congregating in that church. His name is Jorge. See how God works? So, we're at the church, right? And all the sudden, this small guy, right, steps up to me, right and said, 'let me pray for you'—in English! I looked at him like... what's going on, right? And Jorge puts his hands, in, in my life, and, and I could just... I just I feel something in my heart... that I have never felt in my whole life and was... the need... to... pour out. All my burden. And I could, I could see myself, just pouring out all the hurt, the pain, the struggle, the hunger, being cold, being... being a struggles, being in hotel rooms, and being... I could just, just see myself just... letting it all out. Letting it all out. And then, that's it, Jorge just prayed for me and I didn't see, I didn't see him for a while. Then one day he came to my house, 'cause he asked people in the church where does that family live, right? And, um, we see them walking from like a block away, right? They must not live far away. So he came to the house, he knock on the door, and my grandma say, 'hey, they're looking for you.' I got scared, right? I start looking for a way out, right? So, when I go to the door, right, Jorge tells me, 'I have a—I had a dream last night. That everything that I've gone through, the Lord wants me to share with you. I don't know why, but I know the Lord call you, brought you here for a reason.' And we... we clicked. We became homeboys, man. We became friends, we were best friends right here. Me and Jorge, we're, we're tight, man. We been serving God ever since."

VI. CONCLUSION

JULIO: The Lord has used me to help my family, many times.

KEVIN: Cool.

JULIO: So it's been good.

KEVIN: That's great.

JULIO: And so, that's how it is, bro.

KEVIN: That's how it is.

JULIO: That's how it is.

KEVIN: Thanks so much, man.

JULIO: It doesn't make sense sometimes, right. But that's how it is.

Julio's life story, his entrance into and exit from gang life, represents a growing phenomenon in Central America. For many, Christianity not only provides active gang members with the social resources to leave gang life but also a conversion narrative that helps them organize their past and future around the moral coordinates of either being lost or found. Beyond the criminological efficacy of such a narrative—that is, whether Christian conversion actually keeps men and women out of gang life—of importance is Christian conversion's narrative efficacy. Julio, because of his Christianity, not only organizes his life differently than before (e.g., "Me and Jorge, we're, we're tight, man. We been serving God ever since") but also organizes his worldview differently than before ("So I come here [to Guatemala] and I'm like, lost man. I don't wanna sell drugs

anymore”). The predominance of this very Christian orientation—this commitment to either being lost or found—supersedes (for many) other recognizable narrative tropes: rich/poor, white/brown, and man/woman, for example. Continued attention to these cultural coordinates, to how the deported come to understand their own lives amid new regimes of deportation and securitization, leads to a number of important policy recommendations.

First, develop lines of communication between the security industry and gang ministers. At present, there is no office or organization that links the growing number of gang ministers with their secular counterparts.

Second, fund training sessions for gang ministers on the historical and material conditions that have resulted in gang affiliation. Training sessions would provide gang ministers with an alternative vocabulary to describe the conditions that have resulted in gang membership. To date, the reasons cited by those who are most active in gang ministry often overlooked the region’s civil wars, a new deportation regime, the drug trade, and poverty. The reasons cited usually linger on personal choice and the language of sinfulness.

Third, create incentives for cooperation between gang ministers and their secular counterparts. There are not many opportunities for these two worlds to pool their resources. Providing workshops or public events at which gang ministers could interact with security professionals would generate cross-fertilization.

Fourth, push for greater responsibility on the part of government agencies in Guatemala. The Guatemalan government has largely ceded control of security issues to international aid agencies and now the church. The government must be encouraged to participate in the activities just proposed and to increase its financial commitment in matters of prevention, intervention, and reinsertion.

Fifth, push for greater professionalism on the part of ministers in their handling of conversion narratives. Too many gang ministers stress the success stories of one or maybe two ex-gang members. These men, who converted out of gang life, become ambassadors to the idea that Christianity secures. Officials need a more realistic picture of conversion as a way out of gang life.

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CHAPTER 31

CASE STUDY

Immigration, Social Exclusion, and Informal Economies: Muslim Immigrants in Frankfurt

SANDRA M. BUCERIUS

MUCH research has shown that the crime rates of second-generation immigrants rise in comparison to those of the first generation, but do not usually exceed those of the native-born population (see Berardi and Bucerius 2013 in this volume). Germany, however, is one of the countries in which the crime rates of second-generation immigrants clearly exceed those of the native-born population. Self-report studies conducted in German high schools and cities have shown that second-generation immigrants of some ethnic groups—people of Turkish, Moroccan, and, to a lesser degree, Yugoslavian descent—report much higher crime rates than do members of other ethnic groups or the German native-born (e.g., Wetzels et al. 2001; Goldberg 2006; Windzio and Baier 2008). These second-generation immigrants are predominantly the children of former guest workers who were recruited to Germany between 1955 and 1973 to fill low-skilled jobs in the booming German economy.

This essay draws on an ethnographic study of 55 second-generation immigrant male drug dealers between the ages of 16 and 31 (mean age 23) with guest-worker backgrounds in Frankfurt, Germany. It examined the relationship between immigrant status (particularly with guest-worker background), social exclusion, and drug dealing. I present some of my findings, particularly focusing on how my subjects' opportunities in the formal economy were significantly altered by the way the German public education system operates, while at the same time providing the young men with rationalizations for their drug-dealing activities. The largest subgroup ($n = 27$) were of Turkish background, the second largest ($n = 8$) Kosovo-Albanian, and the third Moroccan ($n = 6$), followed by people of Croatian, Bosnian, Serbian, and multinational backgrounds. I met them at a local community youth center in Frankfurt in 2001, and I followed their lives over a 5-year period.

Most of them more or less drifted into dealing (see also Murphy, Waldorf, and Reinerman 1990). Growing up in Frankfurt during the 1980s and 1990s, they were

exposed to the drug trade by older peers. Dealing was the norm, “differential associations” (Sutherland 1939) were available, and making important connections was quite easy. At the same time, they had the best teachers—as in any other trade, becoming a successful drug dealer is facilitated by (and somewhat dependent on) having access to good mentors.

They mainly sold three drugs: cannabis, cocaine, and heroin. Only a few of the dealers limited themselves to a single substance. Most showed considerable flexibility. Cannabis products were by far the most common; 51 of the 55 young men sold them. More than half ($n = 28$) also sold other drugs, especially cocaine. Six, primarily of Albanian heritage, sold heroin. Varying their supply was very common and, as I have described elsewhere, the men believed it made good business sense (Bucerus 2007).

The volume of drugs dealt on a daily basis was heavily influenced by their assessments of risk; for example, based on their police records and their immediate financial situations (see Bucerus 2007 and Forthcoming *a*). Those currently involved with the police tended to restrain their involvement in the market, unless they urgently needed money. Eight of the 55 trafficked more than 1 kilo of cannabis a week, and three men sold more than 500 grams of cannabis, 13 sold more than 50 grams of cocaine a week, and two sold more than 50 grams of heroin a week. The rest sold smaller amounts. Thus, the young men could mostly be classified as in the upper scale of low-level dealers and some could be classified as mid-level dealers.

When I started my field work, 38 of the young men were involved in drug dealing. Younger ones were set on graduating from high school and learning a trade. “Not making the same mistake” as older ones was a commonly expressed sentiment because they had seen how dropping out of school further restricted opportunities in the formal economy. They hoped to increase their chances by obtaining a good high school degree and vocational training.

When I conducted my last formal interview, in 2006, all but three of the men were involved in dealing.¹ Despite planning to finish school and learn a trade, most of the younger ones decided to switch gears and deal drugs:

GEORGIO:² You know, it’s kind of a slippery slope. At some point, you get that you can make so much more money when you’re just doing drugs and you start doing more and more and at some point, you’re just not up for school or vocational training or work anymore. You either have to force yourself, like blatantly force yourself to stay in school, or bye-bye. But when you start off... like I’d say that everyone here thought that they’d just do something on the side for a while. Except maybe Akin... But then, there is also no chance for life if you stay in school. It’s not like *your* life [alluding that I have a wider range of possibilities to choose from when finishing school].

Many of the young men began their careers in the drug market after encountering structural frustrations in Germany, particularly in the educational system. For them, the formal economy offered few possibilities, whereas the informal economy opened up many.

Because they lived in Frankfurt, the banking capital of Europe, and constantly saw people who made a lot of money, they also dreamed about becoming rich. Given their limited options, dealing drugs was seen as the only way to rise in the social and economic strata of society.

ME: Why did you quit school? You were so close to finishing at that point . . .

VELI: I've just been really annoyed by this cunt [teacher] for a very long time. She always made all these stupid Nazi remarks and talked shit about the guys [referring to the other young men]—as if she knew anything. Well . . . and then Jo came along and basically asked me whether I wanted to be part of the deal he had going. So, I just thought to myself: “Fuck it. I'm never going to make that much money again.”

ME: Don't you regret having quit? Do you sometimes think: “Well, I should have stayed on for these 6 more months”?

VELI: Well, yeah . . . of course, I've thought about that before. Especially when I see you and just remember how you tried to tutor me in French, remember that? All these fucking French lessons . . . I'll never forget that. But really, Sandra, what would I have done? I would have had my *Abitur* [high school degree that allows students to go to university] and then? Just look at the guys who learned a trade and even have good grades . . . or even Ozgur, like the only one with an *Abitur* and everything . . . and you still don't get a job. You're still the foreigner. And you know, I am not even a Turk . . . but I am still a foreigner. Why should I pay taxes and work my butt off for this country? I will never ever make as much money as I can with a few good deals. And then, you know, in a few years, amazing house on the beach and chilling in the sun! That's the way to go, Sandra.

The promise of fast money and the possibility of “being somebody” certainly made the drug market a tempting alternative to the formal economy. More important, however, the young men realized at some point that staying in school would not really have made a difference for them:

VELI: I mean, my grades would not have been a problem at all, right, Sandra? You know that! But you know, it would not have made a difference either way. No one would have given me a decent job. I would still be a Turk for everyone. And it's just that everyone does this shit. It's . . . it's . . . so normal!

To understand that view of their limited choices and rationales for why drug dealing would allow for a better life than the formal economy, it is important to understand the complex context of uncertainty and the negative sentiments of many ethnic Germans toward second-generation male Muslim immigrants. As children and adolescents, the young men faced problems stemming from long-standing prejudices against “foreigners,” and as young adults their problems are compounded by the severe anti-Muslim sentiment common in many European states (Open Society Justice Initiative 2009). At the same time, the educational system puts immigrant children at severe disadvantage, giving them an extremely difficult start in the formal economy. Last, the nationality laws

have long prevented access to citizenship, leaving second-generation immigrants as foreigners in the country in which they were born and raised. The general public is also aware that young male Muslims have long been overrepresented in criminal statistics and criminological research (Baier and Pfeiffer 2009; Albrecht 2011).

The term “Muslim”—technically a religious affiliation—is commonly conflated with being ethnically Turkish.³ “Everybody just calls you ‘foreigner’ in Germany or even better ‘Turk.’ No matter whether you’re Moroccan, Albanian, Iranian—‘He has black hair, oh, he has to be a Turk.’” (Cafer). It is in this intersection between their status as decedents of guest workers and being Muslim that the young men have had to create their own place within German society and develop a sense of identity and belonging. They are part of a generation of perpetual “foreigners” who, as youth, no one was really prepared for and who, as adults, are now too old to benefit from recent integration policies and changes in the citizenship law. Accordingly, they are often labeled the “lost generation” (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration 2007). Within this context, I demonstrate how the young men—born, raised, and educated in Germany—are trying to make sense of their drug-dealing activities by pointing to the structural limitations they have experienced throughout their lives.

Analyses of marginalization almost always consider whether (or to what extent) people who deal drugs, join gangs, or are involved in street culture “have a choice.” I believe the young men were not mere victims of structural forces, marginalization, and exclusion; they did have other choices (although their choices were mainly low-paid jobs in the formal economy, for example, at the airport, at a maximum making 1,200 Euros a month for a full-time job). I view them as actors whose choices are confined within the structural limitations they face. I use a Bourdieusian lens, employing the concept of symbolic violence to show how the young men internalized these structural limitations.⁴

The larger project on which this essay is based is driven by my interest in the links among immigration, social exclusion, and the informal economy. In particular, my interest is centered on the *Lebenswelt* (“lifeworld”) of second-generation male Muslim immigrants because they are one of, if not the, most discriminated and socially excluded groups in German society.⁵ I found that the experience of shared social, political, and economic exclusion helped forge strong cohesion among the young men and encouraged their mutual local identification to their neighborhood and also as Muslims, thus developing a positive sense of self. They rationalized their participation in the drug trade as a reaction to this exclusion, but they also understood that their actions and activities strengthened and reinforced the stereotypes that caused them to be excluded. At the same time, they attempted to negotiate their drug-dealing activities while trying to adhere to perceived cultural and religious obligations.⁶

The main findings:

- Second-generation immigrants in Germany face distinctive forms of social, political, and economic exclusion, especially in the school system and under the citizenship laws.

- The shared experience of social, political, and economic exclusion helped forge strong cohesion among the young men, making this shared experience more important than other factors, for example, ethnicity (they interacted effectively across ethnic boundaries—see Bucerius 2007).
- Many of the exclusionary practices the young men experienced became “normal” to them. They internalized these structural limitations, which became so mundane, so commonplace, that they became not only oblivious to but also complicit in their own exclusion and marginalization.
- They rationalized their participation in the drug trade as a reaction to this exclusion, but they also understood that their actions and activities strengthened and reinforced the stereotypes that caused them to be excluded.
- Changing the day-to-day situations for marginalized second-generation immigrants, particular of guest-worker background, presents complex challenges. Most important, Germany’s school system needs reform; it puts children of immigrant background and children of lower socioeconomic status (an intersection that many immigrant children occupy in Germany) at serious disadvantage. At the same time, the public needs to become more aware of the challenges immigrants face and the economic contributions that they have made since World War II.

Although my larger study describes how the interactions of various factors such as the public education system, underemployment, relative deprivation, and a lack of citizenship status shape the actions of the drug dealers, in this essay, I focus on three of these features—negative stereotypes of Muslim immigrants, the public education system, and the naturalization system.⁷ In the first section, I describe the ethnographic study itself and the sample. In Section II, I provide background information on the German political and immigration context in which my study took place and discuss one particular aspect of social exclusion that the young men face in German society, namely, exclusion in the school system. Moreover, I show how the exclusion they face in German society shapes the young men’s opinion about Germany and thus provides legitimization for their drug dealing activities. In Section III, I conclude with suggestions for future research and implications for public policy.

I. THE STUDY

I originally planned to study actors in the informal economy, with the goal of understanding and explaining the workings of the low- and mid-level drug trade in Germany. Although drug dealing continued to be a focus, I soon became much more interested in questions of identity and my research subjects’ situations as noncitizens. Originally looking for drug dealers, I figured I would gain the easiest access to this population at a local community youth center. I chose one that was recommended as a “well-known hang-out spot” for drug dealers.⁸ Given the German political rhetoric described earlier,

I was not surprised that most of the young men at the center were second-generation Muslim immigrants.

The young men had much in common, despite their ethnic differences. Their language of communication was German, and most claimed their German language skills exceeded their mother tongue fluency. They also shared their immigrant status, the neighborhood in which they had grown up and were strongly attached to, their Muslim heritage, their disadvantaged socioeconomic backgrounds, and their drug dealing activities. Most had neither a high school diploma nor occupational training. Like their parents, the great majority did not have German citizenship.

My data⁹ are comprised of daily field notes from conversations and observations during drug transactions (purchase, drug delivery, storage, negotiations, etc.), fights among themselves and with outsiders, and family interactions.¹⁰ The information I collected reflects the lives of 55 of roughly 70–80 young men who frequented the center; these 55 were there most regularly, which gave me the opportunity to form relationships with each of them. I conducted 105 in-depth interviews about their social environment, their sense of belonging, their attitudes toward women and dating, and the informal economy in which they participated. I collected letters from three (of the five) young men who were incarcerated over the period of my research.¹¹ In addition, three of the young men also viewed and critiqued some of my field notes and provided additional information when needed. This reflects Latour's (2000) notion of objectivity in that, by allowing my subjects to critique my work, they did not lose the capacity to object.

For 2.5 years, I spent roughly 6 hours each day for three afternoons per week with the young men (mainly at the youth center). I also participated in their activities 2–3 nights a week: hanging out in the streets, bars, and cafés; cruising around in cars without a specific destination; or going to clubs. After the first 2.5 years, the young men stopped using the youth center as their main meeting point; from then on, I typically met them in the evenings.

Naturally, I developed different relationships with each individual. Some saw me mainly as a ghost-writer for job applications. To others, I was a good table tennis or dart opponent, a (female) listener and counselor for relationship advice, or a friend.¹² I grew very close to some, developing relationships that allowed me to gain very detailed and nuanced insights into their lives. With others, I developed formal research relationships that allowed me to conduct interviews or “hang out” with them, but we never became very close. As is common in multiyear ethnographic studies, a few acted as “key informants,” always willing to reflect on topics and provide additional information.

II. DRUG DEALING, SYMBOLIC VIOLENCE, AND SOCIAL EXCLUSION

To understand the young men's viewpoint regarding their limited chances in the formal economy, one needs to look at the context in which they live. From other research, we

know that the quality of reception in a host society is a primary factor affecting the success of immigrant integration into mainstream society (Reitz 2003; Peek 2005; Portes and Fernandez-Kelly 2008; Reitz et al. 2008) and that weak social integration is a risk factor for criminal activities (Gartner 1990; Junger-Tas 2001). To contextualize the young men's chances in Germany and understand their pathways into drug dealing, it is necessary to look at Germany's relationship with its immigrants, particularly those with guest-worker backgrounds.

A. Germany and Its Immigrants

Germany has long had the reputation of being one of the least immigrant-friendly countries in the world. The former guest workers of predominantly Turkish background and their children are viewed in a very negative light by the general public (Keskin 2002; Legge 2003). Public integration debates often center on the question of why immigrants do not fully assimilate as is expected of them. As Hochschild and Brown (2013) point out in this volume, no other Western country views the integration of second-generation immigrants, particularly of Muslim background, as being so weak. Several studies have demonstrated that, compared with residents of other Western countries, Germans are less accepting of their "foreign" population (see, e.g., Panayi 2000; Lynch and Simon 2002; Legge 2003). Despite having an immigrant population of 8.7–8.9 percent (counting all noncitizens in the country), Germany has long denied being an immigration country.

Like many other European countries, Germany recruited large numbers of guest workers after World War II. Germany's program was intended to allow workers into the country only temporarily, but many stayed and settled. Because guest workers were not intended to immigrate permanently, Germany made no plans to integrate their children. The educational system, formal economy, communities, and government stakeholders were largely unprepared. Programs to facilitate integration were largely nonexistent. As a consequence, second-generation immigrants, in particular, faced many structural barriers to integration, including in the school system and in obtaining citizenship. The young men described in this article are unable to obtain citizenship, thus forcing them to remain "foreigners" in their birth country and exposing them to the risk of deportation (see Bucerius 2012).

The political rhetoric, reflected in official statements and citizenship law,¹³ made it clear that Germany did not intend to recognize the "foreigners" living among them as real immigrants—in other words, as people who would stay (Bommes 2004; Geißler 2004). The unmistakable message for foreign workers, their children, and their grandchildren was that they were not wanted (Green 2001, p. 31).

Only in 1998 did German politicians first begin calling Germany an "immigration country," thereby changing the long-standing political rhetoric. Thus, Germany has finally recognized that the "foreigners" who have lived in the country for generations intend to stay and that better strategies are needed for their integration. One significant turning point was a citizenship law reform in 2000 that allows children of long-term

immigrants to be granted citizenship by birth (but only for children born after 2000, thus having no effect on the young men discussed in this article).

Germany, however, remains unsure how to integrate its large immigrant population, especially the families of former guest workers. The public integration debate around Turks and immigrants in Germany reached a new level in 2010, when Thilo Sarrazin, a former board member of the Deutsche Bundesbank, fiercely criticized multiculturalism in his book *Deutschland schafft sich ab* (*Germany abolishes itself*) (Economist 2010). Sarrazin's book (Sarrazin 2010) sold out within days, and after only 2 months became the best-selling book on German politics by a German author in the last decade. Sarrazin sparked a nationwide controversy about the costs and benefits of multiculturalism. More than 1.5 million copies sold in Germany in less than a year (Economist 2010). Sarrazin's main argument is that Germany is becoming biologically and culturally inferior due to Muslim immigrants. He argues that effective integration requires effort on the part of those to be integrated, and that Muslim immigrants are not willing to expend this effort. In an interview with the newspaper *Lettre International* in 2009, he summarized his views:

I will not show respect for anyone that is not making that effort. I do not have to acknowledge anyone who lives by welfare, denies the legitimacy of the very state that provides that welfare, refuses to care for the education of his children and constantly produces new little headscarf-girls. This holds true for 70 percent of the Turkish and 90 percent of the Arab population in Berlin. (Berberich 2009, p. 201)

He also remarked that there is “no other religion in Europe” making “so many demands” as Islam: “No immigrant group other than Muslims is so strongly connected with claims on the welfare state and crime. No group emphasizes their differences so strongly in public, especially through women's clothing. In no other religion is the transition to violence, dictatorship and terrorism so fluid.” Surveys conducted after the publication of Sarrazin's book found that more than 50 percent of the general German population agreed with him. Two months after the book's release, conservative German Chancellor Angela Merkel (a member of the Christian Democratic Union or CDU) announced that multiculturalism and the idea of “happily living side-by-side has utterly failed” (Economist 2010). It is within this context of ambiguity toward immigrants and widespread open support for views like Sarrazin's, coupled with open anti-Muslim sentiments, that the young men in this study tried to make sense of their lives and the choices that they made.

B. Social Exclusion in the School System

Given Germany's ambivalent relationship with its immigrants, particularly with former guest workers and their children, it is probably not surprising that some features of German society overtly discriminate against immigrants. One is the public education system. Whereas all immigrants of lower socioeconomic status face discrimination in the educational system, the young men I studied used these experienced frustrations

to legitimize and rationalize their involvement in the drug market. They viewed themselves as somewhat superior to other immigrants who were complacent about their exclusion and accepted the status quo. The young men, in contrast, thought of themselves as “active agents” who chose not to be relegated to an inferior status for the rest of their lives and instead to make a better life for themselves by dealing drugs.

In 2000, the Organization for Economic Cooperation and Development (OECD) published its first international comparisons of students’ school performance (PISA—Programme for International Student Assessment). That report and every subsequent report make clear that second- and third-generation migrants and those from disadvantaged socioeconomic backgrounds are significantly disadvantaged in the German school system (BMBF 2004; Organization of Economic Cooperation and Development [OECD] 2004; OECD 2006). In no other country worldwide was the difference in school performance between students from migrant and nonmigrant backgrounds so great (OECD 2006, p. 175). Students who had their entire educations in Germany (mostly second- and third-generation immigrants) performed even worse than first-generation immigrants who experienced only parts of their educations in Germany. Generally speaking, the reading and writing skills of more than half of ninth-grade students from Turkish backgrounds did not exceed elementary school levels (Spiwak 2008). Students in Germany with Turkish heritage or from a disadvantaged socioeconomic background¹⁴ are about 1 school year behind the same populations in the Swiss school system; clearly, institutional disadvantages are at play for migrant students in the German system (OECD 2006, p. 179). Socioeconomic background is the single most important predictor for educational achievement in Germany. In no other OECD country did the socioeconomic backgrounds of the parents matter as much as in Germany (OECD 2004, p. 14; Isserstedt et al. 2010, pp. 72, 101).

The German school system in most *Bundesländer* (i.e., states) assigns children to a specific educational stream after the third school year (in a few states, the streaming happens after the fifth school year). Three basic streams are available: *Hauptschule* (the lowest stream), *Realschule* (the middle stream), and *Gymnasium* (the highest stream). A fourth, *Sonderschule* (special school), caters to students with special needs. Elementary school teachers recommend students for a particular stream based on various criteria, including academic achievement, self-confidence, and ability to work independently. However, in most states, parents have the final say as to the kind of school to which their child applies.¹⁵

This early streaming implies that a child’s educational (and consequently economic) future is more or less decided at age 9 (or, in a few states, at age 11). Only children selected to attend the highest of the three school forms, the *Gymnasium*, will automatically have the chance to earn a high school diploma (*Abitur*), which they need in order to study at a college or university.¹⁶ Students whose first language is not German and who were not much exposed to a German-speaking environment before elementary school (kindergarten is not mandatory in Germany) are seldom able to acquire the same language skills as their German counterparts at age 9 and usually do not attain the grades needed to qualify for the *Gymnasium*.

Compared with their German counterparts, students with immigrant backgrounds are also more likely to be recommended for lower streams, even if they have similar or better academic achievement than native-born youth. Aissa's experiences serve as a good example of how institutional discrimination and streaming in the school system can make students from immigrant backgrounds feel that their academic achievements and attempts to integrate into mainstream society are not being recognized. When focusing on educational outcomes, the actions and responsibilities of individuals are often less significant than the organizational actions (Gomolla and Radtke 2009):

AISSA: Well, in elementary school I only had six A's, two B's and one C on my report card. But the C was in music. In music! I mean, who cares, right? I mean, shit on music . . . as if that counts [for] anything! Everybody else in my class who had these sorts of grades was sent to the *Gymnasium*. But the teacher told my mom that I should go to the *Realschule*. I asked my teacher why I wasn't supposed to go to the *Gymnasium* and she said that the German will get more and more difficult and that you have to be perfect at German. That was just crap—I had an A- in German. I mean I don't even speak anything but German. That's the only language I speak. Tell me that's not bullshit! Well, my teacher told my mom that she could bring me to the *Gymnasium* if she thinks that she can help me with my homework later on. So my mom got scared because she never went to school in Germany and German is not her mother tongue. But, we only speak German at home . . . but somehow the teacher scared the shit out of my Mom.

ME: So, what do you think about all this now?

AISSA: At the time, I did not give a shit because all the foreigners were sent to the *Real- and Hauptschule* and I wanted to be with my friends, of course. I mean, that's all you care about at that age. But when I think about it now, it really annoys me! I mean, you know how the social workers are always saying that I should have done social work? But you need the *Abitur* [graduation from the *Gymnasium*] for that. Well . . . I am honest, I don't know what I would have thought when being like 20 years old or so, but now . . . if I had an *Abitur* now, I would definitely go to college in a second. I was even thinking about going to school again, to get the *Abitur*, but I am working shifts now,¹⁷ so that's not working out with school and stuff . . . I need the money . . . and then 3 years of high school and then another 5 years of college . . . that's really tough! And just because of this racist whore of a teacher. I mean, really, there is just nothing else to say about her.

Aissa was not the only good student—his experiences were similar to those of many of the other young men. Although many started off quite well in elementary school, more than half did not obtain a high school diploma. The great majority of those who received a degree managed only to graduate from the *Hauptschule*; such graduates can realistically hope to pursue only practical vocations such as hairdressing, plumbing, or baking.¹⁸

FERDI: I was once at the *Gymnasium* . . . can you fucking believe that? Yeah . . . I beat the shit out of someone in grade 5 and they put me on the *Realschule* right away. They said I wasn't mature enough for the *Gymnasium*. But I wanted back, you know . . . desperately. I don't know why, actually, but I just wanted back. So, my

teacher said that I just have to give my best and get good grades, you know, and then they would send me back to the *Gymnasium* at the end of the school year. So, that's what I did, but at the end of the school year, the cunt tells me that they don't have space and that I have to wait. So, I freaked out and yelled at her and called her a liar and a fucking slut.

Ferdi's story does not suggest that he questioned his school's decision to lower him a stream when he got involved in a physical fight. According to various accounts of the young men, they accepted as the norm that educational opportunities would be restricted in response to behavioral difficulties. Social conformity and a good education seem to go hand-in-hand in Germany, and Ferdi tried to comply with all rules and perform at his best when wanting back to the *Gymnasium*. When he realized that his teacher had made empty promises (*she was just radically lying to me for an entire year*) and that despite his performance (*I got really good grades—not a single C!*) he would not get a spot in the *Gymnasium*, he openly expressed his frustration through a verbal attack. The teacher responded by moving Ferdi into a different class:

When she moved me to the other class, I really couldn't care less anymore... so I just stopped doing anything... you know... stopped participating... they can't fuck around with me like that. And then I got a D on a German exam. Then the teacher said that if I were to spend less time with my Turkish friends and if I stopped hanging out at the Bockenheimer Warte [public space in the district known as drug dealing spot], I would get better grades again. So, I called her a Nazi. I mean, why does she care, what I do? And why does she care about my friends? So, they put me to the *Hauptschule*. Right away. Because I wasn't bearable at the *Realschule* because I said Nazi. So, I stopped going. Grade 6. School was over. End of story.

Max Weber's (1968) concept of "social closure" and Bourdieu's notion of "symbolic violence" can help us understand why Aissa, Ferdi, and others were so frustrated. Weber describes how the dominant group in society—in this case German mainstream society in general and the teachers in the German school system more specifically—safeguards its own position and privileges by monopolizing and restricting resources and opportunities for its own group (i.e., German students) while denying access to outsiders (i.e., students with immigrant backgrounds like Aissa and Ferdi), regardless of their educational achievements. The educational system severely limits upward mobility (Portes et al. 2009) and blocks people from creating new forms of social or cultural capital that facilitate social mobility (Bourdieu and Passeron 1977). This process becomes so "normal" that Aissa, for example, did not even wonder, at least initially, why he was sent to the lower stream—as he claims, he did not "*give a shit because all the foreigners were sent to the Real- and Hauptschule.*" In other words, and as Bourdieu's concept of symbolic violence postulates, the young men internalized the structural limitations that they faced from very early on and were not always aware of them. When young, they didn't realize the exclusion and marginalization they experienced and their effects on their life chances.

Weber explains that the dominant group singles out certain social or physical attributes (e.g., immigrant or foreigner status) as a basis for justifying various forms of

exclusion. It's clear from Aissa's narrative that his teacher based her recommendation only on his non-German background—neither his grades nor the extent of his enthusiasm would have justified her recommendation. Similarly, Ferdi's story suggests that the teacher never intended to send him back to the *Gymnasium*, despite his academic efforts and achievements. Weber argues that members of the dominant group consciously or unconsciously deprive outsiders of social and economic opportunities in order to secure privileges like a good education for themselves. The teacher's claim that Aissa might encounter future difficulties because he was not a native German may have allowed her to rationalize her decision on the basis that she was trying to look out for him. But, as Aissa's and Ferdi's cases illustrate, social closure happens at the expense of the outsiders through a process leading to their subordination. Bourdieu, building on Weber, explains that by being unaware initially of structural limitations and perceiving the social order as just, marginalized people perpetuate the social structure favored by and serving those who are already dominant—in this case, the German mainstream.

In retrospect, Aissa recognized the irony and injustice of the events he experienced by stating that his teacher's rationale was “*bullshit*.” I spent countless hours listening to Aissa talk about his inability to obtain a university degree because he did not have the required high school degree (*Abitur*). Although he recognized that personal and institutional discrimination had hindered his ability to advance into a higher stream, he also expressed a strong degree of self-blame:

I just did not care enough back then. I mean—I did... but I did not fight enough. I can't only blame her, I also need to blame myself. I should have fought more.

This wasn't the only instance when one of the young men accepted the effects of systemic discrimination and structural limitations as a personal failure. Bourdieu explains that the injustice and structural limitations faced by marginalized people become so mundane, so commonplace, that they become not only oblivious to but also complicit in their own exclusion and marginalization. A number of the young men insisted on recognizing their own responsibility when trying to explain a negative outcome and did not immediately blame structural forces. This prevented them from feeling “hopeless.” They could keep up the belief that they could have ended up elsewhere if they had tried hard enough.

C. “I Am Not Taking This Racist Shit”: Mutual Experiences of Exclusion and the Drug Market as an Opportunity to Become Active Agents

As I listened to the young men recount their stories, I wondered when they realized that what they were experiencing reflected the broader discrimination apparent in German society. In many of their narratives about why they quit school, they often retold the

sequence of events by placing blame on specific individuals: the *Nazi* teacher, the *racist whore*. It was in their analysis of their present-day situations that they expressed awareness of the connections between their lives and the systemic discrimination they faced. It was also only in retrospect that some wondered what they could have done with their lives had they gotten the chance to graduate from a higher stream. Even so, the majority of the young men did not focus on what could have been; they were merely stating the facts, taking almost for granted the disadvantages and discrimination they experienced. They called them *ridiculous* or *racist*, but they were not surprised about this treatment. From the very beginning, these young men were treated differently from German children by official actors such as teachers. Thus, they talked about their experiences in a matter-of-fact way, stories about things that “just happen to immigrants.” As Bourdieu explained, this form of symbolic violence becomes engrained and commonplace in their everyday life.

This explains why they perceived themselves as “different.” They saw Germans being treated favorably within the educational system, and many noted that the schools or classes they attended consisted mainly of students from immigrant backgrounds. It’s not surprising that the young men perceived their experiences of exclusion as part of a universal immigrant experience in Germany, irrespective of their specific ethnic backgrounds. This perception of exclusion and otherness generated a feeling of solidarity among them, played a key role in the formation of their local identity, and ultimately helped them justify their actions within the informal economy.

When the young men started drug dealing, they viewed it as “normal”—everyone in their circle of friends was doing it. When asked to explain their drug dealing behaviour in retrospect, they portrayed their participation as a response to the social, economic, and political exclusion they experienced. In other words, within the context of their experienced and lived marginalization in German society, they internalized this to be their position in society (see *habitus*, Bourdieu 1990).

RAHIM: Sandra, did you hear about this PISA¹⁹ shit? It’s black on white... that you don’t have a chance here as a foreigner! From the minute you’re born they treat you differently... but then you’re supposed to go to university and not do any shit. I know some people make it anyways... but that’s not for me... I have to stand up for myself... I just can’t take so much racist shit day by day. I guess that’s my own fault... but I just get very mad.

The men legitimized their criminal involvement by claiming that they had a very limited framework within which to operate, so it was natural to innovate ways to attain their goals (e.g., through drug dealing). However, they did not argue that they were *forced* into dealing, but rather, that it was the best of the available choices. As Rahim indicated, they felt that by quitting the formal system and “*not taking all that racist shit*,” they were standing up for themselves as much as they could (Bourdieu 1990). So, the young men liked to portray themselves, in retrospect, as active agents. From a reflective perspective, they resorted to criminal lifestyles because they were denied many of the opportunities open to German citizens and refused to be complacent with the exclusion that they

faced. In other words, although the structural barriers they faced are not unique to them but affect all immigrants of lower socioeconomic status in Germany (and particularly, to those perceived as “Turks”), the young men chose to be active agents in responding to their exclusion by essentially saying “fuck you” to the school system, the teachers who screwed them over, and the job market that wouldn’t hire them.

AKIN: You have a choice: you can have them treat you like shit your entire life, first at school and then work like a donkey, making no money, or you can say “fuck you all” and work for a better life. I will not do the same mistake as my dad. I will not let them get me.

ME: Do you sometimes feel bad about dealing drugs?

FATON: Germany does not deserve any better!! This country is almost as fucked up as the U.S. Germany is just . . . this is just such a dirty country. Just look around you. Girls fuck around as soon as they are out of elementary school, parents throw their kids out when they are 18, everybody is a cold-blooded robot or a Nazi. This is fucked up. I don’t sell to Muslims—so whatever, you know! I mean, it’s not my fault that Germans use drugs, is it?

By considering their ongoing involvement in the informal economy to be *a response* to their social exclusion, they were not only able to remain active agents—they were also not *victims* of racism or discrimination. From their perspective, they actively chose not to comply with the expectations that mainstream society seemed to have, and they used their perceptions of social exclusion and negative opinions about Germany (e.g., Germany as the dirty country; see Bucerius 2007) as defense mechanisms to neutralize their involvement in the informal economy. Their assessment of German society and its treatment of them released them from the constraints associated with moral order.

GEZIM: The Germans just want you to do the lowest of the lowest jobs. I mean, that’s what they needed our parents for and that’s what our parents did. Basically, to do the jobs that they did not want to do themselves. Well, that’s done. They can’t play the same games with us, we already know the game. I am not going to work in a fucked up company for like 6 euro an hour and let a Nazi German tell me what to do. They could do that with my Dad, but not with us anymore. We know how to make good money.

In addition to helping the young men cope with their limited economic possibilities, the informal economy allowed them to demonstrate their masculinity and gain respect on the streets. It is important not to underestimate the importance of gaining respect and establishing a certain status. The street allowed them to prove that they were “someone” and that they could help form the laws of the streets and climb the ladder, something often denied to them in the formal economy.

YAKUT: Well, you have a chance here, you know. For one, you make so much more money in comparison to one of these idiot jobs at the airport . . . but people also respect you for what you are. I mean, you can earn respect,

you can really become really important if you have the right connections and know how to turn yourself into someone. That's not possible in any of these ass-licking jobs. When you have one of those, you just lick ass . . . year after year.

III. POLICY SUGGESTIONS AND FUTURE RESEARCH: FOSTERING SOCIAL COHESION AND INTEGRATION

I discuss policy proposals in this section that are relevant for immigrants in Germany generally, not only for those involved in criminal activities. However, given the marginalized position of second-generation immigrants, particularly those perceived as “Turks,” the policy suggestions are especially relevant for groups like the young men described in this essay. Given that I have done research on drug dealers, it would be reasonable to expect policy suggestions from me aimed at assuring that immigrants have meaningful opportunities in the formal economy. Although I do believe that, I also believe that real change can only come with a fundamental change in attitude toward immigrants in Germany, particularly toward those perceived as “Turkish.”

Germany is founded on beliefs that center on “society.” Germany is an elaborate welfare state. Individuals are not considered to be solely responsible for their failures; the German state and society are supposed to step in if an individual is struggling. But for Turkish and Muslim immigrants, individuals and groups are blamed for their own misfortunes based on their supposed lack of willingness to integrate. General public opinion may not be as extreme as Sarrazin’s “leave or integrate” position, but second-generation Turkish immigrants who drop out of school and become involved in violence and drug dealing receive little sympathy. Being Muslim in an overtly Christian country doesn’t help either, and, as Mahir states, the message that Muslims are outliers in German society is quite clear: *“At my school, we had to take religion. But they only had Protestant or Catholic. That’s absurd to me, we had like 90 percent foreigners at my school—all Muslims.”*

Obviously, to maintain social order the state needs to respond to criminal behavior, including drug dealing and violence. As noted earlier, in Germany (and other European countries), crime levels among second-generation immigrants drastically exceed the crime levels of the native population. In more traditional immigration countries—like the United States and Canada—crime rates among second-generation immigrants are typically lower than or equal to those of the native population. What are the reasons for these differences?

One common explanation is that traditional immigration countries select immigrants based on more stringent criteria (like education and work experience), so they are a better fit and are better prepared for Western society. Including education as an

important basis of selection (this is especially true in the Canadian case) means that education is most likely a value for families being chosen to enter the country, which means that parents are likely to pressure children to stay in school and off the streets. In contrast, many guest workers came to Germany without any formal education, raising questions about whether they could (or would) even support social mobility through education as a desirable goal for their children.

However, the argument that “selection” is responsible for the lower crime rates among second-generation immigrants in traditional immigration countries and that lack of selection explains the higher crime levels among immigrant populations in Germany (and other European countries) looks doubtful when account is taken of the crime levels of first-generation immigrants. Crime levels among first-generation immigrants in Germany—as in traditional immigration countries—are much lower than among the German native population.²⁰ Many studies have shown that first-generation immigrants in many countries on average have stronger moral values, better health, and lower crime levels than the native population (Marmot, Adelstein, and Bulusu 1984; Portes and MacLeod 1996; Palloni and Morenoff 2001; Lopez-Gonzalez, Aravena, and Hummer 2005; Williams 2005; Ousey and Kubrin 2009).

The low crime levels among first-generation immigrants in Germany demonstrate that these immigrants are not “culturally criminal.” Nor are they criminal because of lack of education or selection. The difference lies in how immigrants are received in their new country. More traditional immigration countries have implemented measures to help immigrants settle and integrate. Political rhetoric (the United States’ “melting pot” and Canada’s “mosaic”) also sends an important message that immigration is wanted and desirable. Few of these measures are in place in Germany, so immigrants tend to face severe structural difficulties. Inanc’s daily interactions with his German neighbor exemplifies what many young men feel, as if immigrants are neither wanted nor desirable: *‘Almost every day, she makes comments: like ‘Why do you lock your bike here, we’re not in Turkey’ or she makes comments to my Mom about food, she’s like: ‘The entire hallway stinks because of your food. You’re in Germany, when will you learn to cook German food?’*” Germany’s lack of integration policies and its ideology about immigration send the unequivocal message that integration depends on immigrants’ willingness to overcome these obstacles, thus putting all the emphasis on their own efforts and ignoring structural forces and conditions that limit integration.

The demographics of the German immigrant population are different from those in the United States and Canada (supporting the selection argument). However, German immigrants face more difficulties when trying to integrate and are not as well received. Policy recommendations make sense only if they address these structural difficulties and are geared to change public perceptions about immigrants. It is Germany’s historical responsibility to integrate its immigrant population. Germany actively recruited guest workers without making plans to integrate them (assuming that they would eventually leave). The German government has admitted that no one planned for a long-term solution (speech by Angela Merkel [Spiegel Online 2010]), but Germany never implemented even a rotation system or enforced the return of guest workers in

any other way. The integration of immigrants—including those who became “criminals” while growing up in Germany—has become a question of moral and social responsibility. Second-generation immigrants who become involved in crime are a product of German society.

A vital first step is to raise awareness about the relationships between social, political, and economical exclusion and crime; in other words, to educate the public that reducing “foreigner crime” will require improving the social and economic circumstances of immigrant populations. It is Germany’s historic responsibility to make the public understand the ramifications of exclusionary principles and practices.

It is important to change the vocabulary used to refer to immigrants. German politicians and newspapers continue to refer to second-generation immigrants as “foreigners,” even though they were born in Germany and are fluent in German. According to Koopmans (1999, p. 636), the continued and derogatory use of this term “may have real and important consequences, both for the attitudes of the majority population, and for the self-identification of immigrants.” Throughout my fieldwork, the young men repeatedly commented that they were referred to as foreigners, explaining that the common use of the term instilled feelings of being a perpetual “outsider”: “*We may get the fucking passport at some point but we will always be foreigners, my kids will be foreigners, my grandchildren will be foreigners, my great-grandchildren will be foreigners, I don’t think the Germans would ever look at a Turk and say, ‘Yes, you’re one of us’*” (Kaner). Ironically, Germans expect assimilation, yet politicians, the media, and the general public continue to refer to all immigrants as foreigners, as if emphasizing that they don’t really belong to Germany.

A second step will be to raise public awareness of the history of guest workers. German schools do not usually address guest worker history in social science or history classes; the latter usually focus exclusively on World War II and the atrocities committed by the Nazis (during high school, I spent 3 full years in history classes learning about World War II). More recent history, such as “postwar” policies and the guest worker program, are usually not addressed, meaning that students are unaware of Germany’s postwar immigration policies unless they take a personal interest in the topic. This means that the general public is not very well informed about guest worker history, so important background information is missing from public discussions and integration debates. Widespread public education about guest worker history would send an important message: guest workers and their children belong to Germany, are part of Germany, and will not return to their countries of origin.

It may also be helpful to offer Turkish-language classes in German high schools. It is strange that German schools do not offer classes in the language spoken by the largest immigrant population in the country, but that Latin is still widely taught in the *Gymnasiums*. The works of German authors like Goethe, Brecht, and Durrenmatt could be supplemented with work by immigrant authors to reflect the demographic makeup of German society and to encourage a feeling of inclusion among immigrants. At the same time, it will foster understanding among Germans and hopefully—in the future—create a feeling of a “shared history.” When I hosted a going-away party at my house

before moving to the United States, a few of the young men commented that they had never before been in a “German home,” reminding me, that despite attending German schools, the young men have always been segregated from German students. (Akin: “*I’ve never been invited to a German kid’s birthday party.*”)

The German school system itself needs reform. Germans will probably never fully reject the streaming system for fear that they might lose certain privileges (Weber 1968), for fear that German middle-class children might end up in the same classrooms as lower-class Turkish children. However, the roots of the problem go even deeper than the streaming system. Germany’s teachers and early childhood educators are very poorly paid; the younger the children taught, the worse the pay. Unlike in countries such as Finland (Prenzel 2004), teaching is not a highly sought-after profession in Germany, so selection criteria at universities are almost nonexistent. Teacher education often involves random pedagogy seminars—by no means are all teachers prepared for teaching in diverse classrooms. (Aissa: “*My grade 9 teacher was yelling at this girl in my class because she was hungry and could not concentrate. She said something like: ‘It’s illegal in this country to not give children food.’ It was Ramadan and so she constantly made these ridiculous comments.*”)

Appropriate education for new teachers is crucial to foster cultural competence and awareness about ethnic diversity and thereby encourage change. Germany is officially a Christian country, and it expects immigrants to assimilate to German values and beliefs, so policies in Germany are not tailored to cultural differences. Turkish parents who do not allow their children to participate in school trips or in physical education (which is often co-ed) are seen as against integration, as are Turkish females who wear headscarves at school or in public. Commenting on this, Rafet once noted, “*My parents did not allow my sister to go on this 5-day trip to a youth hostel. She was in grade 6 in the Gymnasium. So the teacher said that they should send her to school in Turkey if they’re unhappy with the way they do things. The next year, she was streamed down anyways.*”

The German Islam conference,²¹ established in 2006, is a good forum for discussing such topics at a macrolevel, but, on an individual level, teachers have to be better prepared to handle such debates and discussions. The young men I worked with interpreted many of their experiences with teachers as “racist” and “excluding”—which they certainly were. However, blaming the teachers will do no one any good and certainly not bring about change. It’s the system in general that needs reform, including the pay structure, the lack of training, and lack of awareness on these matters.

Another problem is that kindergarten is not mandatory in Germany. This creates structural difficulties for immigrants. The argument is that mandatory kindergarten interferes with the right of mothers to raise their children at home, but a wealth of literature has demonstrated that mandatory full-day kindergarten is key for educational success (Cryan et al. 1992; DaCosta and Bell 2000; DeCesare 2004; Ackerman, Barnett, and Robin 2005; Baskett et al. 2005), regardless of socioeconomic status (McCain, Mustard, and Shanker 2007). Immigrant children who do not attend kindergarten at all, or attend a kindergarten with immigrant children of the same ethnic background, are not socialized in German and among Germans until they enter elementary school.

They lack social capital and German language skills. This poses serious disadvantages for the streaming that takes place after grade 4. Additionally, class differences become more apparent when a child's (early) education is done mainly at home.

The recent law granting citizenship to second-generation immigrant children born in Germany does not apply to people born in Germany before 2000. Extending this possibility to second-generation immigrants born earlier, even if they have criminal records, would address the reality that most positions of symbolic importance (e.g., police, army, and judiciary) require valid citizenship as a precondition (Koopmans 1999). This generates a cyclical systemic power imbalance that deepens the chasm between nationals and foreigners. Without citizenship, second-generation immigrants are also barred from voting in democratic elections, so German politicians regularly "leave the representation of immigrants and their interests at a minimal level" (Koopmans 1999, p. 635). Without citizenship and the right to vote, second-generation immigrants will remain politically unrepresented and unable to alter their social, political, and economic well-being through the democratic process.

The denial of citizenship (on the basis of having a criminal record) underlines the strong political message that Germany has sent immigrants for years: that even the children of the former guest workers, born and raised in Germany, do not truly belong to Germany and that Germany has no responsibility for the courses their lives have taken. Instead of understanding that the structural limitations second-generation immigrants face—especially those of guest-worker background—may have an influence on criminal behavior, Germany is placing the entire emphasis on agency. However, some politicians are now admitting that mistakes have been made in the past and that integration programs were simply not in place. Granting citizenship retroactively would, in my opinion, be a way to underline this realization with some action.

NOTES

1. Of the three who were not involved in dealing during my study, only one had never sold drugs—the other two quit before I began my fieldwork in 2001.
2. All names are pseudonyms.
3. This is likely because Turks constitute the largest immigrant group with Muslim background in Germany. In truth, Muslims in Germany represent a wide variety of ethnicities.
4. That they had choices is important for several reasons: not all second-generation male Muslims in Germany turn to street culture. This group is overrepresented in criminal statistics, but most—regardless of ethnic background—do not partake in street culture, despite facing similar forms of marginalization and exclusion. Equally important, the young men I got to know did not see themselves as victims. They were aware that they faced certain structural limitations but did not view themselves as being *forced* into the drug trade. This allowed them to maintain a degree of agency and dignity, but also to dream about actively changing their lives and their futures.
5. The image of Muslims in Germany is less associated with being "Arab," as in many other Western countries, and more with being a "non-assimilated Turk," independent of ethnic

background. Thus, Muslims are the least-liked immigrant group in Germany (Lynch and Simons 2002).

6. Even those who were not Muslim by birth adopted a sort of “quasi-Muslim” identity that was accepted by all. They saw themselves as “good” drug dealers (as opposed to “real” criminals), adhering to certain distinctions between “pure” and “impure” drugs, customers, and ways of doing business, which they claimed were in line with Islamic values. Still, they knew that their actions did not really comply with what is expected of good Muslims, so they planned to be “good” after they stopped dealing. In this way, both their drug-dealing activities and the life they envisioned afterward were influenced by their (perceived) religious beliefs and values, providing and reinforcing moral and social norms (Durkheim 2001) and a form of social control and cohesion (Sandberg 2010).
7. I do not focus on details of the drug market or the violence the young men were involved in, their rationales for dealing in certain substances rather than others (for these topics, see Bucerius 2007; Forthcoming *a*), or their choices of sexual partners and spouses (see Bucerius 2008; Forthcoming *a*).
8. I consulted with unit commanders of two different police divisions in Frankfurt to get a sense of drug distribution and the dealing scene from the point of view of the police. Both discussed the results of internal research studies that suggested the neighborhood where the youth center is located had the second largest drug market in the city and that visitors to the center were involved in a majority of drug deals within the local market. I also consulted university students who similarly identified the center as a place of contact with dealers.
9. The process of establishing rapport was very prolonged, taking several months; for details, see Bucerius (Forthcoming *b*).
10. Given these observations, which clearly raise legal and ethical concerns, it is important to note that German universities had not established ethical review boards at the time of my research. To date, there is still no ethical review of research, as in the North American context. As a result, the study did not have any official institutional oversight. However, I was part of a national scholarship foundation that supervised the study at all stages. In addition to my supervisor and other faculty members at the University of Frankfurt, the scholarship foundation helped me sort through ethical, moral, and legal concerns.
11. The relatively low number of incarcerations is not a reflection of the young men’s low level of activity in the drug trade, but of the less punitive criminal justice system in Germany. The young men regularly faced charges, but incarceration was always the last measure. At the time of this writing, an additional six of the young men had experienced incarceration in the years since my research ended, and four were deported to their countries of origin.
12. The one role that I had in common for all of them was as an educator on female sexuality. All of these young men had had many sexual encounters, but they had very little factual knowledge about sexuality, in particular, female sexuality. For most, I was the first female to whom they could pose questions about sexuality; very unexpectedly for me, I quickly took on the role of sexual educator within the group (see Bucerius, forthcoming *b*).
13. The de facto naturalization rate in the 1990s, for example, was between 0.3 and 0.4 percent of those who would theoretically have been qualified based on the length of their residency in Germany (Koopmans 1999).
14. It is not the immigrant background itself that puts students at disadvantage in the German system, but weak socioeconomic background. However, given their social position in

German society, most immigrants in Germany are of weak socioeconomic backgrounds (Baur and Haeussermann 2009).

15. Parents can overrule the teacher's recommendations, but schools are unlikely to accept students who have not been recommended. In some states, the recommendations of teachers are binding; parents cannot send their child to a stream for which the child has not received a recommendation.
16. It is sometimes possible to switch school tracks later if certain requirements (e.g., excellent grades, outstanding behavior, etc.) are met.
17. At the time, Aissa was making a serious attempt to quit drug dealing, working at the Frankfurt airport. His parents had moved to Spain, so he and his brother Nermin needed to pay rent and meet other financial requirements on a monthly basis. Thus, the outside pressure to become more responsible increased significantly. Even though he was successful at securing the job at the airport and continued to work there for an extended period of time (to my knowledge, he is still employed there), he never fully quit dealing. Although he made a regular net income of around 1,100 euros per month, his expenses were significantly higher, so he continued to be involved in drug deals.
18. Some *Bundesländer* require at least one parent to be fluent in German for the child to enter the *Gymnasium*. If that requirement cannot be met, children are automatically excluded, regardless of their elementary school grades. Most states do not have this rule, but teachers appear to be hesitant to recommend the *Gymnasium* for students who are lower class or from an immigrant background. Studies have shown that students from poorly educated families (fathers without a degree from the *Hauptschule*) must perform 50 percent better than students from a well-educated family (fathers with *Abitur*) to receive the same recommendation for a secondary school stream (i.e., *Gymnasium*, *Real-*, or *Hauptschule*; Lehmann and Peek 1997).
19. The Programme for International Student Assessment (PISA) is a study conducted by the OECD, comparing the school performance of 15-year-olds in 65 countries or economies. The test has been conducted every 3 years since 2000, and results have consistently shown that no other country or economy in the world has a greater gap between the school performances of students with and without a migrant background. Students with a migrant background in Germany tend to be 2 to 3 school years behind native Germans.
20. As in other, more traditional immigration countries, the first generation's lower crime rates can partly be explained by their willingness to defer gratification for their children. The guest workers assumed that they would accumulate money for a better life in the future; that is, conflicts with the law would have risked that plan.
21. In an effort to create a long-term dialogue between state and Muslim representatives, the German Islam conference was founded in 2006. Its main objective has been to promote cooperation and social cohesion between German mainstream society and the Muslim immigrant population. Theoretically, this should be a forum for shifting the general integration debate away from the perceived unwillingness of Muslim immigrants to integrate; yet, what is actually happening is that the discussions are strengthening perceptions that the beliefs and values of Muslim immigrants are incompatible with the German mainstream. The main discussion points for this year's meeting, for example, were "religious education in Koran schools and state schools, the headscarf issue, the training of imams, the role of women and girls, halal butchery, and prevention of radicalisation and extremism" (<http://www.deutsche-islam-konferenz.de>). In other words, instead of focusing on issues of inclusion, acceptance, and understanding, the conferences tend to

touch on “problem topics” associated with Turks that serve to strengthen stereotypes about Turkish immigrants and their supposed ability or unwillingness to adopt German core principles and beliefs.

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INDEX

.....

Page numbers followed by *t* and *f* indicate a table or figure, respectively

- Abbott, Grace, 487, 492
- Aboriginal Canadians, 4, 281–315
- atrocities against, 363
 - Canada's recognition of rights of, 362
 - colonial context for crime, 297, 390–392
 - correctional system overrepresentation, 281–282, 290–292, 291*t*–293*t*, 294, 366, 388, 389
 - Cree Courts court-based initiative, 376–377
 - criminal involvement data, 294
 - data collection on, 8
 - educational data, 365–366
 - Elder participation in sentencing process, 361
 - empowerment efforts, 9
 - gang-related behavior, 296, 297
 - Gladue (Aboriginal Persons) Court, 373, 375–376
 - Healing Lodges, 403*n*5
 - homicide victimization overrepresentation, 432–433
 - homicides and gun crimes, 295–296
 - Indigenous justice practices, 371, 375–378
 - Law Reform Commission report, 366–367
 - legacy of colonization for, 362–366
 - life expectancy gap, 364
 - mistrust of the justice system of, 366–369
 - policy recommendations, 379–380
 - R v. Gladue* court-based initiative, 375–376
 - racial bias perceptions against, 281, 369
 - Report of the Aboriginal Justice Inquiry of Manitoba, 368
 - Report of the Royal Commission on Aboriginal Peoples: Vol. 1–5*, 367
 - reputed increased crime involvement, 295
 - Royal Commission on Aboriginal Peoples, 367, 370–371
 - sentencing disparities, 307–308
 - underreporting of crimes by, 368–369
 - unemployment data, 366
 - victimization rates, 8–9, 294, 369, 388
- Aboriginal Justice Strategy Summative Evaluation (2007; Canada), 377–378
- Aboriginal Peoples and Criminal Justice: Equality, Respect, and the Search for Justice* report (Canada), 366–367
- Aboriginals Preservation and Protection Act* (1939; Australia), 398–399
- Aborigines. *See* Aboriginal Canadians; Australia, indigenous population; New Zealand, indigenous population
- Act of February 5, 1917 (U.S.), 635
- Act of March 4, 1929 (U.S.), 635
- Acts Concerning Aliens (Alien Friends Act; 1798; U.S.), 632
- Adams, John, 632
- Add Health. *See* National Longitudinal Study of Adolescent Health
- Adolescents. *See* Disadvantaged neighborhoods, Boston inner-city boys (case study)
- Advertising, political/race-oriented, 41, 46, 50
- Advisory Committee on the Traffic of Women, 492
- AEDPA. *See* Antiterrorism and Effective Death Penalty Act
- AFL-CIO, 545–546. *See also* Beason-Hammon Alabama Taxpayer and Citizen Protection Act

- African Americans. *See also* Jim Crow laws in Alabama and Georgia, struggles of, 605
 arrest rates, vs. whites, 108, 111–112, 111*t*
 beliefs of whites about, 7, 48, 70, 71
 black-crime connection, 1–2, 48–54
 carceral state and, 59
 Census Bureau classification, 109*t*
 civil rights movement and, 43–44, 55
 death by policeman data, 141
 death penalty support, 86
 differential offending hypothesis and, 146–147
 distrust for justice system, 71
 drug offenses and incarcerations, 77, 196, 199, 201, 202, 203*t*, 204, 205*f*–208*f*, 207, 209–211, 215
 Founding Fathers' opinions of, 79
 Great Migration (early 20th century), 2
 Horton, Willie, legal case, 46, 52–53, 73
 housing discrimination, 36
 juvenile drug arrest data, 139
 lethal violence overrepresentation, 431
 life without parole sentences, 176–177
 NCVS data and concerns, 125
 negative opinion of police, 153
 oppression history, 135
 poverty rates, 36
 race, crime, and public opinions, 70–99
 Race, Crime and Public Opinion Survey, 76, 88
 race/racism beliefs of, 73–74
 racial divide hypothesis, 75
 racial profiling of, 7, 89, 90, 107, 114
 racialization of, in the U.S., 22–23, 70, 95–96
 searches and seizures of, 143
 Seattle, Washington, arrest data, 212
 Sentencing Project arrest rate research, 199–200
 stereotyping of, 75, 82, 92
 “stop and frisk” operations against, 211
 traffic/pedestrian stop disparities, 142
 UCR arrest trend data, 111
 victimization rates, 124, 124*t*
 viewpoint of police brutality, 90
 violence, increased involvement in, 7
- African Americans, girls (case study). *See* *Getting Played: African American Girls, Urban Inequality, and Gendered Violence; Sexual violence*
- African Americans, males
 behavioral expectations, in disadvantaged communities, 256
 homicide/victimization vulnerabilities of, 430
 imprisonment data, 107
 incarceration data, 70
 police racial profiling of, 7, 89, 90, 107, 114
 self-reporting of sexual intercourse, 128*n*6
- African Americans, youth. *See also* Disadvantaged neighborhoods, Boston inner-city boys (case study)
 data collection methods used with, 78
 drug use, high school seniors, 119*t*
 incarceration data, 70
 Scottsboro Boys Case, 166–167
- African Americans vs. Whites
 arrest rates, 108, 111–112, 111*t*
 differences in use of criminal justice system, 216
 drug dealing comparison, 195
 drug offense convictions data, 70
 drug sales, 208
 drug use rates, 204
 drug-related arrest data, 194, 201, 215
 imprisonment data, 107
 incarceration rates (U.S.), 291
 juvenile drug arrest data, 139
 self-report data comparisons, 108
 self-reported drug use reports, 194
 sentencing/punishment disparities, 108, 111–112, 111*t*, 179
- African Canadians
 classification, 285
 correctional system overrepresentation, 282, 290–294, 291*t*, 292*f*, 293*t*, 294
 criminal involvement data, 294
 denial of early prison release, 309
 drug possession/trafficking overrepresentation, 297
 gang-related behavior, 297
 as hate crime targets, 295
 homicides and gun crimes, 295–296
 increased post-release conditions, 307
 police mistreatment of, 300

- racial profiling of, 301–304
 sentencing disparities and harshness,
 307–308
 stop and search overrepresentation, 301–302
 unemployment rates, 286
 use of force against, overrepresentation,
 304–305
 violent victimization experiences, 294–295
- Afro-Caribbeans, in Canada, 298–299, 313
 Afro-Caribbeans, in England and Wales
 arrest/imprisonment profile, 6
 blame of, for crimes, 6
 discrimination against, 4
 immigration history, 325
 offending rate overrepresentation, 347
 oppression of in England, Wales, 1
 plea-bargaining issues, 5
 population data, 327*t*
 strip search overrepresentation, 334
 youth school issues, 349
- Afro-Caribbeans, in Miami, Florida, 595
- Ageton, Suzanne S., 117–118
- Aggravated felonies class of crimes, 644
- Ahlberg, Jan, 566–567
- Aid to Families with Dependent Children
 (AFDC), 465
- Alabama (U.S.)
 Beason-Hammon Alabama Taxpayer and
 Citizen Protection Act, 477–478, 544–
 546, 585, 609–619, 641
 challenges to reforms in, 609–614
 criminal statutes, 476–478
 devolution of immigration legislation in,
 604
 Hispanic Interest Coalition of Alabama v.
 Governor of Alabama, 478
 implications of research, 616–617
 Norris v. Alabama (1935), 166
 Powell v. Alabama (1932), 166
 reforms in, 603, 607–609
 Secure-Communities initiative, 601
 undocumented immigrants in, 600–601,
 603–619, 620*n*1
 United States v. State of Alabama, 478, 544
Alabama, Norris v. (1935), 166
Alabama, Powell v. (1932), 166
Alabama, United States v. (2011), 641
- Alabama Coalition Against Domestic
 Violence, 610–611
- Alaskan Native (AIAN), 109, 109*t*–110*t*, 111,
 114, 176, 574
- Albrecht, Hans-Jörg, 348, 837–838
- Alexander, Michelle, 49, 57, 198, 217, 348
- Alien and Sedition Act (1798), 34
- Alien Friends Act (Acts Concerning Aliens;
 1798), 632
- Alien Nation* (Brimelow), 471
- American Bar Association (ABA), 459
- American Bar Foundation, 138
- American Civil Liberties Union (ACLU), 534,
 610
- The American Criminal* (Hooton), 489
- American Indians
 alcohol, substance abuse, 118–119
 arrest rates, 108, 112, 115
 Census Bureau classification, 109*t*
 criminalization, negative impacts, 392–393
 data availability for, 8
 death penalty overrepresentation, 184, 397
 declining violence rates, 124*t*
 drug offenses (2000–2009), 203*t*
 drug use, high school seniors, 119*t*
 executions/mass executions of, 397
 incarceration rates and disparities, 176, 388,
 389
 internal colonialism vs., 395
 lack of scrutiny, for penal sanctions vs., 399
 marijuana use data, 119
 overrepresentation in criminal justice
 system, 388
 punishment/rule of law on, 395
 rape of women, by whites, 399
 sovereign jurisdiction claims, 395–396
 tribal/nontribal law enforcement of, 115
 UCR index crime rate, 111
 victimization rates, 8–9, 108, 123, 124*t*, 125,
 128*n*9, 388
 voting rights disenfranchisement, 392–393
 Zion, James, on laws of, 395
- American Institute of Criminal Law and
 Criminology (Northwestern School of
 Law), 486–487, 496–497
- American Journal of Sociology* article (1896),
 460

- American National Election Studies (ANES), 71, 76
- “The American Negro as a Dependent, Defective, and Delinquent” (McCord), 50
- American Social Hygiene Association (ASHA), 492
- American Sociological Association, 139
- American South, politics of immigration, 600–621. *See also* Alabama; Georgia; Jim Crow laws (Jim Crow racism)
- African Americans/Latinos protests against discrimination, 610
- challenges to legislative reforms, 609–614
- future research directions, 616–618
- immigrant legislation, southern style, 605–607
- Kentucky legislative attempts, 607
- Mexican immigrants, 604, 619
- Nashville, Tennessee, anti-immigrant rallies, 606
- policy suggestions, 618–619
- reforming Georgia and Alabama, 607–609
- understanding southern immigration laws, 614–616
- undocumented immigrants, 600–601, 603–619, 620n1
- American White Cross Anti-Narcotic Association, 498
- Americas, gang-related activity, 864–866. *See also* Guatemala, Christianity, conversion and gang disaffiliation
- Anarchist criminality, 493–497
- Anderson, Elijah, 256
- Andrijevic, Mirko, 714
- Annual Penal Statistics SPACE I, Survey 2010* (Council of Europe), 698n2
- Anslinger, Harry J., 499–500
- Anti-Drug Abuse Act (1986; U.S.), 197, 636, 644–645, 649
- Anti-Drug Abuse Act (1988; U.S.), 197–198, 635
- Antillean immigrants, in the Netherlands, 766–769, 770–774, 777–778, 782–783
- Antipodes, race/ethnicity/crime in, post-mid-1900s, 8–9
- Anti-Semitism, in France, 722, 733n3
- Anti-terrorism, Crime, and Security Act (England; 2001), 332
- Anti-Terrorism and Effective Death Penalty Act (AEDPA; U.S.), 33, 472, 515, 643
- Archer, Dane, 430
- Arizona, Miranda v.* (1966), 647–648
- Arizona Senate Bill 1070 (Support Our Law Enforcement and Safe Neighborhoods Act; 2010), 476–477, 585, 594–595, 600–603, 607, 609, 611, 619, 620n8
- Arizona v. United States* (2012), 477, 642
- Armstrong, Richard, 487
- Arrests and arrest rates. *See also* Incarceration and incarceration rates; Sentencing and punishment
- African Americans vs. whites, 108, 111–112, 111*t*, 179
- Afro-Caribbeans, 6
- Asian ancestry, 114, 115
- in Canada, police arrest practices, 305–306
- in disadvantaged neighborhoods, 219
- drug arrest disparities, reasons for, 209–215
- drug use disparities, 200*t*, 201, 201*f*, 202*t*, 205
- drug use disparities, reasons for, 209–215
- in England, Afro-Caribbean vs. Asians, 9
- first-/second-generation immigrants, 6
- in Germany, of Turks, 5
- hard drugs vs. marijuana, 198
- Human Rights Watch comment on disparities, 199
- in Japan, *rainichi* foreigners, statistics, 745, 747–750, 747*t*, 752, 753*f*, 754, 755*t*
- of Latinos, 593
- mass incarceration/mass immigration, politics of, 468–472
- of Mexicans, 26–27
- of Native Americans, 108, 115
- policing disparities, 108, 111–112, 111*t*, 138–140
- rape/incarceration-arrest imbalance, 179
- Sentencing Project, on racial disparities, 199
- 2009 state/federal prison data, 176*t*
- UCR data, 110–112, 114–117
- U.S. vs. Western Europe, generational differences, 562–564
- violent crime percentages, 113*t*

- Asian American youth, marijuana use, h.s. seniors, 119
- Asians
 alcohol, substance abuse, 118–119
 anti-Asian sentiment, in the U.S., 634
 arrest rates, 112, 115
 in Canada, 285, 286
 capital sentencing discrimination, 184
 Census Bureau classification, 109*t*
 crime rates, generational differences, 561, 562
 in England and Wales, discrimination against, 328–338, 341–352
 gangs, in Canada, 297
 incarceration disparities, 176
 UCR index crime rate, 111
 victimization rates, 125
- Astor, Avraham, 561
- Aubry, Bernard, 838
- Australia. *See also* Australia, indigenous population
 banning of public executions, 397
 criminalization, negative impacts, 393
 immigrant population size, 669
 Indian subcontinent immigrants, 6
 indigenous group empowerment efforts, 9
 indigenous populations, victimization of, 1, 4, 6, 8
 Law Reform Commission of Western Australia, 367
 National Inquiry into Racist Violence, 403*n*2
 Northern Territory Emergency Response, 394
 Queensland Crime and Misconduct Commission, 367–368
 race-based riots in, 298
 race/ethnicity data availability, 8
 White Australia Policy, 363
Youth Level of Service Inventory, 394
- Australia, indigenous population, 4
 aboriginal empowerment efforts, 9
Aboriginals Preservation and Protection Act, 398–399
 “Bringing Them Home” Report, 363
Circle Court model, 374
 colonial context for crime, 390–392
 comparative disadvantages of, 364–365
 criminalization of, 387–390
 death sentence overrepresentation, 397
 disproportionate poverty of, 6
 dominant group blame of crimes on, 1
 Elder participation in sentencing process, 361, 374
 empowerment efforts, 9
Final National Report (1991), 366
 Flora and Fauna Act, 362
 incarceration disparities, 399
 Indigenous justice practices, 371, 373–375
 justice system disparities, 6
 legacy of colonization for, 362–366
 life expectancy gap, 364, 365
 mistrust of the justice system of, 366–369
Nunga Court model, 374
 policy recommendations, 379–380
 precolonization system of justice of, 362–363
 public executions, allowance of, 398
R v Fernando (1992), 371–372
 race/ethnicity data availability, 8
 racial bias perceptions against, 369
 Red Dust Healing, 403*n*5
 Royal Commission into Aboriginal Deaths in Custody, 366
 underreporting of crimes by, 368–369
 victimization of, 1, 4, 6, 8–9, 387–390
 women, victimization rates for, 388–389
- Aversive racism theory, 80
- Bail, Christopher, 673
- Bail and pretrial decisions, 169–171
- Bail Reform Act (1966), 168
- Bail reform movement, 168
- Baker, David, 395, 397
- Barkan, Steven E., 92
- Barlow, David E., 50
- Barlow, Melissa H., 50
- Barrio Dieciocho* (18th Street) gang (Guatemala), 860–862, 868–870
- Barsh, Russell, 395
- Bean, Lydia, 512
- Beason-Hammon Alabama Taxpayer and Citizen Protection Act (HB 56; 2011), 477–478, 544–546, 585, 609–619, 641. *See also* *United States v. State of Alabama*
- Beck, Ulrich, 393

- Beckett, Katherine, 48–49, 55, 56, 59, 201, 209
- Bellair, Paul E., 120
- Bernasco, Wim, 773
- Bingham, Theodore, 489–490
- Black cannabis dealers. *See* Norway, black cannabis dealers in a white welfare state
- Black-crime connection, 48–54
 - data from polls about, 48
 - drugs/war on drugs, 49
 - long-held beliefs about, 49–50
 - male overrepresentation, 51–52
 - media representations, 50–51, 52
 - physical features-related perceptions, 51
 - political significance of, 48–49
 - Progressive era statistics, 50
- Blacks. *See* African American entries; African Canadians; Afro-Caribbeans
- Blokland, Arjan, 773
- Blueprints Program (Colorado Center for the Study of Prevention of Violence), 542
- Blumstein, Alfred, 177–178
- Board of Education, Brown v.* (1954), 167
- Bobo, Lawrence, 76, 77, 80, 88, 90, 96
- Body-Gendrot, Sophie, 713, 714
- Bonn, Scott, 92
- “Border Under Siege” video (Viña), 31
- Bosniak, Linda, 630
- Bossi-Fini law (Eastern Europe; 2002), 746
- Boston, Massachusetts. *See* Disadvantaged neighborhoods, Boston inner-city boys (case study)
- Boston Miracle. *See* Disadvantaged neighborhoods, Boston inner-city boys (case study)
- Bourdieu, Pierre, 408, 409–410, 413, 418–419, 421, 427, 889–890. *See also* Cultural capital
- Bowling, Benjamin, 330, 342–343, 837
- Bracero Program (U.S.), 27–29
- Brettell, Caroline, 531–532, 542
- Brewer, Jan, 595
- Brignoni-Ponce, United States v.* (1975), 641
- Brimelow, Peter, 471
- Brindis, Claire, 574
- “Bringing Them Home” Report (Australia), 363
- British Crime Survey (BCS), 329–332, 330*f*
- Brixton riots (1981; England and Wales), 321, 340
- Broeders, Dennis, 784
- Brown, Robert A., 141
- Brown v. Board of Education* (1954), 167
- Bruly, Ed, 41
- Brunson, Rod, 78
- Buchanan, Patrick, 31
- Buckler, Kevin, 86
- Budd, Tracey, 334, 353*n*7
- Bui, Hoan N., 509, 510, 561
- Burgess, Ernest, 460
- Bursik, Robert, Jr., 507, 592
- Bush, George H. W., 45, 46
- Butcher, Kristin F., 562, 563–564
- Cahill, Clyde, 198
- California
 - American Indian incarceration, 389
 - anti-Chinese immigrant campaign, 633, 640
 - anti-immigrant sentiment, 31, 633
 - capital sentencing discrimination, 184
 - criminal cases analysis, 173, 174, 184
 - death row population data, 184
 - Guatemalan gang origins in, 860
 - homicide victimization study, 570, 578–579*n*7
 - ICE jail personnel training, 533
 - language classes for immigrants, 539
 - Mexican immigration history, 24, 27–28
 - Pentecostal revivals in, 863
 - Proposition 187, 184, 459, 469, 601
 - trafficking of Chinese girls in, 493
 - undocumented immigrants in, 639
- Calverly, Adam, 339
- Canada. *See also* Aboriginal Canadians; African Canadians; Canada, black homicide victimization in Toronto, Ontario (case study); Canada, justice system racial bias
 - Afro-Caribbeans in, 298–299, 313
 - antiracism training, for police, 311
 - atrocities against indigenous population, 363
 - ban on collecting and disseminating race-based justice statistics, 281, 286–287, 309
 - bias perceptions, 281
 - blame of indigenous populations, 4
 - Census/“visible minority” designation, 283, 285–286

- Commission on Systemic Racism in the Ontario Criminal Justice System, 300, 308–309, 311
- correctional system, minority
overrepresentation, 281–282, 290–294
- Criminal Code*, 373
- criminal justice system, race-based data in, 286–289
- criminal justice system, racial
overrepresentation, 281–282
- criminalization, negative impacts, 393
- democratic racism and criminal justice, 309–312
- distinct (3) racial groups, 285
- diversity/tolerance image, 283–284
- early precipitants of crime, 4
- Employment Equity Act, 285, 314n1
- first- vs. second-generation crime rates, 551–552
- freedom of information requests data, 292–294, 292*f*, 293*t*
- gangs/gang membership, 296
- Gladue (Aboriginal Persons) Court, 373, 375–376
- Hong Kong Chinese immigrants, 6
- ICERD signatory status, 286
- Indian subcontinent immigrants, 6
- indigenous rights, recognition of, 362
- Integrated Correctional Services, 289, 314n5
- Integrated Criminal Court Survey, 289, 314n4
- justice system disparities, 6
- Kingston Pilot Project, 302
- Law Reform Commission report, 366–367, 368
- minority victimization, offending in, 294–297
- Multiculturalism Act, 284
- 1980s, growing concern for racial minorities, 285
- Ontario Human Rights Commission, 311
- R v. Gladue* court-based initiative, 375–376
- race/ethnicity, defined, 284
- race/ethnicity data availability, 8
- racial discussions, intolerance for, 284–285
- Racial Profiling Policy (Toronto), 310
- “racial/ethnic intolerance” datasets, 93–94
- Roots of Youth Violence Review, 311
- Royal Commission on Aboriginal Peoples, 367, 370–371
- select racial groups in prisons, 292*f*
- smuggling operations, 500
- Toronto Region Statistics Canada Research Data Centre, 448n8
- Toronto Youth Crime Victimization Survey, 296–297, 296*t*
- War on Terror-inspired police tactics, 339
- white inmates in federal prisons data, 292
- Youth Level of Service Inventory*, 394
- Canada, black homicide victimization in
Toronto, Ontario (case study) (1988–2003), 430–450
- African American comparison, 447n3
- background information (what is known), 432–434
- Black Action Defense Committee, cross-checking, 436
- characteristics of homicides, 437*t*–438*t*
- conclusions, 431–432
- data access limitations, 448n9
- data and measures, 436, 438–439
- discussion, 443–444
- future research directions, 446–447
- neighborhood content measurement, 440–442, 441*t*, 442*t*
- neighborhood effects: multivariate analysis, results, 442–443, 443*t*
- news media role, 433–434
- “off-the-record” conversations, 448–449n10
- policy implications, 444–446
- “residential stability” index creation, 449n17
- spatial distribution of victims, 439–440, 440*f*
- Toronto Police Service, data collection
from, 435–436, 449n11
- Canada, indigenous population. *See* Aboriginal Canadians
- Canada, justice system racial bias, 298–309
- citizen perceptions of criminal justice, 298–301
- corrections, 308–309
- police arrest practices, 305–306
- police use of force, 304–305
- pretrial detention, 306–307
- racial profiling, 301–304
- sentencing, 307–308

- Canadian Charter of Rights of Freedoms, 284
- Canadian Constitution, 284
- Canadian Police Survey on Youth Gangs, 295–296
- Canadian Royal Commission on Aboriginal Peoples, 370–371
- Canadian Vital Statistics Death Database, 448n9
- Cannabis dealers. *See* Norway, black cannabis dealers in a white welfare state
- Cao, Liqun, 299
- Capps, Randy, 473–474
- Carbone-Lopez, Kristin, 517
- Carceral state, 54–61
 - civil rights movement and, 55–56
 - and “double regulation of poverty,” 59
 - and downsizing of social safety net, 59
 - Jim Crow and, 56–57
 - legislation, 56
 - mass incarcerations, 58
 - politics/political initiatives and, 54–55
 - present shift away from, 63–64
 - racialized social control, evolution of, 57–58
 - Scheingold’s view on punishment, 54
 - supposed role of race, 56–57
- Caribbean Hispanics, 24
- Case studies
 - African American girls, urban inequality, gendered violence, 252–274
 - black homicide victimization, Toronto, Ontario, Canada, 430–450
 - inner-city boys/disadvantaged neighborhood, 224–249
 - sentencing violent juvenile offending in France, 834–857
- Castles, Stephen, 672, 674
- Castro, Fidel, 23
- Catholic Charities CYO (California), 540
- Cato Institute, 663
- Cavazzoni, Signor, 500
- Census Bureau (U.S.). *See* U.S. Census Bureau
- Center for Sociological Research on Law and Penal Institutions (CESDIP; France), 709
- Centers of Identification and Expulsion (Italy), 803–804, 807t
- Central Alabama Fair Housing Center v. Magee* (2011), 614
- Central America. *See* Guatemala, Christianity, conversion and gang disaffiliation
- Central Narcotics Intelligence Bureau (Egypt), 499
- Charging and plea bargaining decisions, 171–175
- Charismatic Christianity, and gangs, in Guatemala, 861, 862–864, 867
- Chavez, Leo R., 29–30
- Cheliotis, Leonidas K., 338
- Chicago, Illinois
 - American Institute of Crime and Criminality, 486–487
 - bombing studies, 496–497
 - Haymarket Square riots, 493–494
 - immigrant neighborhood crime levels, 530
 - pre-WW II delinquency areas, 488
 - Project on Human Development in Chicago Neighborhoods, 511
 - violent offending, generational differences, 560–562
 - violent offending, self-reports, 588–589
- Children, Young Persons, and Their Families Act* (New Zealand), 371
- Children of immigrants. *See* Immigrants and their children
- Children of Immigrants Longitudinal Study (CILS), 514, 563, 592
- Chinese Exclusion Act (1882; U.S.), 634
- Chiricos, Theodore, 50, 84, 92, 180–181, 214
- Christian conversions, of gangs, in Guatemala, 860–875
- Chu, Doris, 299
- Chy Lung v. Freeman* (1875), 639, 640
- Citizenship laws
 - EU-15 countries policies, 695–696
 - in France, 553, 695
 - in Germany, 553, 695
 - jus sanguinis* citizenship, 690, 691t–694t, 695–696, 742
 - jus soli* citizenship, 690, 691t–694t, 695–698, 697
 - OECD countries, laws for obtaining, 691t–694t
 - in Sweden, 553
 - in Switzerland, 553
 - in the United States, 690, 691t, 695

- Civil Rights Commission (U.S.), 56
- Civil rights movement (U.S.), 4, 28, 37, 43, 44, 55–56
- Clary, United States v.* (1994), 198
- Clinton, Bill, 47, 465
- Closed Educational Centers (CEF; France), 839
- Clustering countries, studies of approaches to incorporation, 672–673
- Cocaine. *See* Crack cocaine
- “Code of the streets” (Anderson), 256
- Cohn, Steven F., 92
- Colorado Center for the Study of Prevention of Violence Blueprints Program, 542
- Color-blind racism, 80, 218
- Commission for Racial Inquiry (England), 343
- Commission on Systemic Racism in the Ontario Criminal Justice System, 300, 308–309, 311
- Committee on the Elimination of Racial Discrimination (UN), 218
- Committee to Review Research on Policy and Practices, 139–140
- Commonwealth Immigrants Act (1962; England), 325
- Communities. *See* Immigrants in the U.S., crimes committed by and against
- Comparative conflict theory, 72
- Congress (U.S.). *See also* Laws on immigration and crime, in the United States; individual Immigration Acts
- Act to Regulate Immigration (1882), 486
- advice to Dillingham Commission, 486–487
- aggravated felonies class of crimes, 644
- Bracero Program, 27–29
- Harrison Narcotic Act, 497, 499
- Immigration and Nationality Acts, 29, 472, 507, 644, 645, 646, 649
- immigration quota law, 26
- Mann Act (1910), 489
- PATRIOT Act passage, 34, 467–468, 472–473, 630, 650
- Connell, R. W., 412
- Constitution (U.S.), 56, 477, 628–629
- Contra Wars, 23
- Corrections and Conditional Release Statistical Overview (Canada), 290
- Crack cocaine
- convictions of African Americans, 77, 107
- Cuban/Mexicans vs. Puerto Ricans, 122
- disparity, 52
- harshness of penalties, 198
- political rhetoric about, 49
- powder cocaine vs., 88
- SAMHSA data, 207
- user profile, 196–197, 198, 207*f*, 208*f*
- vs. other drugs, punishment disparities, 76, 88, 168, 186
- Crawford, Charles, 180–181, 214
- Cree Courts court-based initiative (Canada), 376–377
- Crime and Disorder Act (England; 1998), 332
- “Crime Report Reveals Menace of Integration” (Citizens Council of Greenwood), 56
- Crime reporting (reporting of crime)
- racial/ethnic disparities in, 115–116
- reasons for not reporting crime, 116*t*
- Criminal Alien Program (CAP), 473, 645
- Criminal Justice Act (1991; England), 353*n*1
- Criminal Justice and Public Order Act (England; 1994), 340
- Crimmigration law and enforcement, 630–632, 648, 651–653. *See also* Laws on immigration and crime, in the United States
- creation of earliest standards of, 634
- criticism of/dismay about, 646, 651, 653
- Flores-Figueroa* shut down of, 652
- Hispanic communities and, 630
- investigation controversies, 647–648
- potential for growth of, 641–642
- Cropper, Porsha, 673
- Crow, Matthew S., 214
- Crutchfield, Robert D., 152
- Cuba/Cubans
- Castro Revolution in, 23
- homicide rates study, 560
- Mariel Cubans, 560, 592, 595
- “Marielitos” boatlife (1980), 592
- marijuana use, h.s. seniors, 119
- marijuana use data, 119
- U.S. homicide victimization rates, 522, 522*f*

- Cullen, Francis T., 71, 73–75, 81, 82, 83, 84, 86–87, 90, 93
- Cultural capital. *See also* Norway, black cannabis dealers in a white welfare state
- Bourdieu, Pierre, description of, 409–410, 415
- conversion to economic capital, 426
- criticism of, 427
- efforts at creating new forms of, 889
- in England and Wales, 346
- habitus* as embodiment of, 410
- “hipness” comparison, 413
- social class and acquisition of, 415, 419, 746
- street capital comparison, 409–410
- Cultural heterogeneity
- consequences of, 243–245
- in poor communities, 241–243
- Culture of Control* (Garland), 60–61
- Culture-conflict theory, 512
- Current Population Survey (CPS), 518, 572
- Customs Enforcement Agency (U.S.), 468
- Czolgosz, Leon F., 494
- Dancygier, Rafaela, 673
- Davis, Angela, 395, 398
- Davis, Zadvydus v.* (2001), 651
- De Jong, Jan-Dirk, 777
- De Mistura Commission (Italy), 804
- de Wenden, Catherine Wihtold, 714
- Deal, Georgia Latino Alliance for Human Rights v.* (2011), 641
- Death penalty
- African Americans/white support, 86
- Antiterrorism and Effective Death Penalty Act, 33
- political opposition to, 46
- public opinion about, 52, 71, 73, 81
- racial cue experiment, 77–78
- Republican position on, 47
- Declaration of Rights of Indigenous Peoples (UN; 2004), 402
- Delinquency. *See also* Disadvantaged neighborhoods, Boston inner-city boys (case study)
- Add Health findings, 120, 510
- Chicago, pre-WW II, international immigrants, 488
- family influences, 510–511
- immigrant generational issues, 485–486, 488, 509, 564–566, 568
- intervention programs, 541
- Monitoring the Future findings, 122
- negative impact of courts, 544
- peer influences, 510–511
- race-crime relationship indications, 147
- self-reporting of, 121–122, 147, 273n5
- sexual victimization and, 274n10
- violence against women and, 271, 273n3
- Il Delitto Politico e la Rivoluzione* (Laschi), 494–495
- Democratic Party (U.S.)
- calls for civil rights legislation, 44
- crime data collection proposal, 56
- distancing from race and crime issue, 44–45
- tough-on-crime policies, 197
- tough-on-crime position, 46–47
- vs. Republicans, on crime-fighting issue, 45
- whites, abandonment of, 42
- Democratic racism (in Canada)
- criminal justice and, 309–312
- defined, 283
- Demuth, Stephen, 170, 214
- Denmark, population percentage with immigration background, 671f
- Deployment hypothesis, 150–151
- Deportations
- Act of February 5, 1917 and, 635
- Anti-Drug Abuse Act of 1988 and, 636, 649
- appetite for, in the U.S., 639
- broadening of crime-based grounds for, 642–646
- Bureau of Immigration analysis, 491
- to Central America, from the U.S., 860, 861, 864–866, 873–875
- Congressional deportation actions, 629
- crime-based rates for exclusion of, 629
- as criminal punishment, 630
- in France, 708, 717, 727, 729, 732
- Harrison Act and, 500
- Human Rights Watch and, 475
- ICE and, 607
- IIRIRA and, 472–473, 515, 535, 649–650
- illegal border crossings and, 594
- Immigration and Nationality Act and, 649
- INS and, 649
- in Italy, 793, 804–806, 807t, 812, 823n7, 825n37
- in Japan, 756–758, 758f
- mass deportation, in the U.S., 26–27, 467

- in the Netherlands, 769, 775, 784
 as percentage of immigration cases, 637
 recidivism rates of deportables, 514
 Republican administration increases, 676
 RICO Latino deportation limitations, 33–34
 rise of, in the U.S., 458
 “self-deportation” by undocumented, 474,
 600, 641
 Supreme Court (U.S.) rulings, 466, 648,
 651–652
 undocumented immigration and, 467
 U.S. budget, 32, 472
 U.S. Presidential power of, 632
 USA PATRIOT Act and, 468, 473
 verbal/physical harassment of immigrants,
 475
 voluntary departure vs., 466–467
- Desmond, Scott, 511
- Devitt, Camille, 674
- Diamond, Jack “Legs,” 499–500
- Differential offending hypothesis, 146–147
- Differential processing hypothesis (rubric),
 148–151
 deployment hypothesis, 150–151
 individual police bias, 148
 racial threat hypothesis, 72, 142
 social conditioning model, 149
- Dillingham, William P., 486
- Dillingham Commission report (U.S. Senate)
 Congressional advisement of, 486–487
 immigrants and their children report data, 556
 pre-World War II immigration, crime data,
 486–490, 502, 508
- DiPietro, Stephanie, 507, 511, 592
- Disadvantaged neighborhoods. *See also*
 Disadvantaged neighborhoods, Boston
 inner-city boys (case study)
 black reports of police treatment in, 153
 characteristics of, 256
 consequences of cultural heterogeneity,
 243–245
 convenience of arrests in, 219
 crack addiction in, 196–197
 cultural heterogeneity in, 241–243
 data collection methods, 78
 exaggerated perception of drugs in, 198
 heightened narcotics policing in, 645
 police concentrations in, 141, 145, 153, 210–
 211, 215, 257
 racial threat hypothesis and, 149–150
 sexual coercion/assault against young
 women, 266–268
 sexual harassment against women in,
 263–266
 “street codes” in, 256
 trust, requirements for development,
 256–257
 underpolicing in, 257, 258, 271
 violence against women in, 254–272
 violence in, 196–197
- Disadvantaged neighborhoods, Boston inner-
 city boys (case study), 224–249
 beefs between neighborhoods and
 consequences, 227, 230–233
 bonds of mutual protection, 235
 challenges/manly behaviors, 229
 “code of the streets,” 231
 community and policing strategies, 232
 escalation limitation efforts, 231
 findings summation, 225–227
 implications for policy and practice,
 247–248
 implications for theory, future research,
 245–247
 interview excerpts, 228, 229, 230, 232, 233,
 234, 236, 237–238
 leveling of expectations, 233–235
 negative role models, influence of, 226, 227,
 233–235, 241
 neighborhood-based identity, 231–232
 neighborhoods, organization of, 228–229
 older peers and cross-cohort socialization,
 237–239
 place-based antagonisms, 233
 profile of teenage boys, 227–228, 231
 public street life variances, 231
 research methodology, 227–228
 rivalries and violence, 230
 violence, and bonds of mutual protection,
 235
 violence, and the age structure of peer
 groups, 235–237
 violence, consequences of social
 organization of, 233–235
 violence, institutional trust, cultural
 resonance, 240–241
 violence, social organization of, 228–232
- Disparity research, 4–5

- Dobbs, Lou, 31
- Doerner, Jill K., 214
- Dole, Bob, 53
- Dominican youth. *See* Disadvantaged neighborhoods, Boston inner-city boys (case study)
- Doob, Anthony, 447–448n5
- Douglas, Mary, 777–778
- “Driving while black,” 114
- Drug dealing. *See also* Norway, black cannabis dealers in a white welfare state
 by African Americans, 197, 199, 215
 in Italy, 81–81i, 808, 813, 815
 by Muslim immigrants, in Germany, 879–897
 in poor minority neighborhoods, 210, 230–231, 238, 240, 258–259
 smuggling, pre-World War II, 497–501
 street capital and, 409
 by youth, in Norway, 409–410, 411, 413, 415, 417–421, 424–426
- Drug laws and race, 196–203
 Anti-Drug Abuse Acts (1986, 1988), 197–198
 arrest disparities, reasons for, 209–215
 arrests and imprisonment, 199, 200*t*, 201, 201*f*
 black arrests (1980–2009), 200*t*
 crack cocaine issues, 197
 decision-makers and, 216–218
 incarceration, 201, 202*t*, 203, 203*t*
 onset of tough-on-crime policies, 197
 sentencing determination, 215
 tough-on-crime policies, growth of, 197
United States v. Clary (1994), 198
 vs. other drugs, punishment disparity, 76, 88, 168, 186
- Drugs and drug use. *See also* Crack cocaine; Germany, Muslim immigrants in Frankfurt; Marijuana; War on drugs
 arrest disparities, 200*t*, 201, 201*f*, 202*t*, 205
 black arrest rates, 178
 black-crime connection, 49
 ethnicity comparisons, 108
 general incarceration data, 194
 hard drugs. vs. marijuana, 198
 heroin trafficking, 497–498
 immigrant generational data, 564–566
 marijuana arrests, 198
 Midwest Prevention Project, 541–542
 racial characterizations, 196
 racial disparities in arrests, 200*t*, 201, 201*f*, 202*t*, 205
 SAMHSA surveys, 203–204, 205*f*–208*f*
 self-report data, 119
 user profile, 204, 205*f*–208*f*, 207
- Du Bois, W.E.B., 76
- Dukakis, Michael, 45–46, 47
- Durkheim, Emile, 794
- Eastern Europe
 Bossi-Fini law, 746
 crime of migrants from, 459, 766, 768, 775–776, 810
 labor migration stagnation, present-day, 781
 migration to Italy, 791–792, 811
 migration to the Netherlands, 771–772, 785–786n3
 migration to the UK, 325–326
 pre-WW II migration to U.S., 484
 prisoner overrepresentation in France, 709
 trafficking of women from, 492
 U.S. quota laws for, 26, 635
- Eberhardt, Jennifer, 51
- EBSVERA. *See* Enhanced Border Security and Visa Entry Reform Act
- Edison, Thomas, 494
- El Hadioui, Iliass, 777
- El Paso, Texas, Latino crime and immigration data, 587–593, 596
- Elliott, Delbert, 117–118
- Ellis Island, New York, 489, 649
- Emergency Program for Security Measures (Japan), 739, 749
- Employment Equity Act (1986; Canada), 285, 314n1
- Enforcement and Removal Operations (ERO) program (ICE), 475
- Engbersen, Godfried, 782
- Engel, David, 542
- England and Wales, 321–353
 Afro-Caribbean discrimination in, 1, 4, 6, 9, 325, 334, 346–347, 349, 837
 anti-Muslim sentiment, 322, 332, 343–345
 Anti-terrorism, Crime, and Security Act, 332
 Asian/British Asian discrimination, 328–338, 341–352
 Bangladeshi discrimination, 6, 325, 331, 334, 343, 345–347, 349–350

- black discrimination, 321–352
- British Crime Survey data, 329–332, 330*t*
- Cantle Report (2005), 341
- Commission for Racial Inquiry, 343
- Commonwealth Immigrants Act, 325
- Crime and Disorder Act, 332
- Criminal Justice Act, 353*n*1
- Criminal Justice and Public Order Act, 340
- data capture/ethnicity categorization systems, 327–328
- drug use data, 334
- Eastern European immigration, 325–326
- ethnicity in, 322–328, 327*t*
- Gillan and Quinton v. United Kingdom*, 343
- homicide rates and patterns, 332
- imprisonment data, 336–339
- Indian immigrant discrimination, 6
- inequality, socioeconomic status, education, 348–350
- intergenerational patterns, family structures, 345–348
- London 2011 riots, 323, 350–351
- London Underground attacks, 322, 332, 346
- Macpherson Inquiry, 322, 340–341
- Ministry of Justice crime breakdown, 330
- multicultural citizenry and space, 326–327, 327*t*
- offending, explanations of, 345–350
- offending, self-reported studies, 333–334
- Offending Crime and Justice Survey, 333–334, 346, 353*n*8
- ONS diversity data, 326–327
- Operation Swamp '81, 321
- Operation Trident, 332
- Pakistani discrimination, 6, 322, 325, 331, 334–335, 338, 343, 345–348
- Police and Criminal Evidence Act, 340, 341–342
- police custody data, 334
- police-citizen clashes, 322
- policing, space, place, 350–351
- policing minority ethnic communities, 339–341
- policy responses, 332
- population figures, 326
- post-colonial journeys, multicultural spaces, 325–326
- presence reports/sentencing patterns, 334–336
- probation services, 339
- race/ethnicity data availability, 8
- racially motivated crimes, 331–332
- racism by Prison System, 322
- riots and demonstrations, 321–323, 332, 340, 341, 350–351
- Scarman Inquiry, 321
- stops and searches, 341–343
- terrorism, security, and ethnicity, 343–345
- Terrorism Act, 322, 340, 343–344
- Ugandan immigrant discrimination, 6
- U.S. data similarity, 8
- victimization, data, 329–332, 330*t*, 350
- victimization, explanations of, 345–350
- Enhanced Border Security and Visa Entry Reform Act (EBSVERA), 468
- Estonia, declining foreign-born population, 670
- Estrich, Susan, 45–46
- Ethnic conflict theory, 72
- Ethnic-specific Latino homicide victimization, 522–523
- Europe. *See also* European Union; Immigrants and their children, U.S. vs. Western Europe; individual countries
- anarchists/anarchist crime, 493, 495
- anti-immigrant sentiment, 676
- citizenship laws, 695
- Congress, immigration quota law, 26
- criminalization/victimization of migrants, 730*t*
- Dillingham Commission study of, 486
- disparities in selected countries, 837–839
- emigration data, 469
- first- vs. second-generation crime rates, 552
- gangster-run businesses, 500–501
- generational differences in crime, 552–555
- immigrant incorporation survey, 672–673
- mid-1990s crime problems, 3–6
- MIPEX project, 699*n*10
- non-EU countries, in-flows of foreign population, 678*t*, 681
- post-WW II multigenerational emigration, 2
- race/ethnicity/crime, post-mid-1900s, 8–9
- recruitment of guest workers from, 3–4
- Somali refugee issues, 417–418
- vs. U.S., serious offenses, 596
- white slave traffic from, 489–492
- WW I, reduction in immigrant labor in, 25

- European Convention on Nationality, 700n17
- European Monitoring Centre on Racism and Xenophobia, 332
- European Social Survey data, 672
- European Union (EU). *See also* individual countries
- attitudes towards immigrants, survey, 672–673
 - conditional *jus soli* citizenship, 695
 - emigration from, 325–326
 - formation of, 325
 - immigrant incarceration, by areas of origin, 814*t*
 - immigrant residents, by places of origin, 797*t*
 - immigrant victimization in, 569
 - immigrants charged with crime, by area of origin, 811*t*
 - immigration policy, 676
 - incarcerations by nationality, 727*t*
 - migration flows, 775–776
 - naturalization policies, 696
 - removal of borders, consequences of, 776, 779
 - restrictive migration policies, 768
- European Union (EU) Treaty, 823–824n11
- European Union Agency for Fundamental Rights (FRA), 569
- E-verify system (U.S.), 607
- Ewing, Walter A., 559, 563
- FAIR. *See* Federation of Americans for Immigration Reform
- Federal Bureau of Investigation (FBI). *See also* Uniform Crime Reports
- creation of, 63
 - crime rate data, 43
 - crime statistic compilation, 110–111, 113*t*
 - Hate Crime Statistics, 517
 - Secure Communities program joint database, 473
- Federation of Americans for Immigration Reform (FAIR), 533
- Feilzer, Martina, 336
- Fernandes, April, 152
- Ferrari, Robert, 487
- Ferron, Christine, 574
- 15th Amendment (U.S. Constitution), 56
- Final National Report* (Australia; 1991), 366
- Finland, population percentage with immigration background, 671*f*
- First Nation citizens (Canada). *See* Aboriginal Canadians
- Fiske, Susan T., 34–35
- Fitzgerald, Marian, 334, 345–456
- Flamm, Michael, 44, 59
- Flora and Fauna Act (New South Wales), 362
- Flores-Figuero v. United States* (2009), 652–653
- Flynn, William, 495–496
- Fong Yue Ting v. United States* (1893), 466
- Ford, Gerald, 43
- Founding Fathers, opinions of blacks, 79
- Fourth Annual Report of Criminal Statistics (*Keiji Tokei Nempo*; Japan), 744
- Fourth Basic Plan for Immigration Control (Japan), 759
- France, 708–734. *See also* France, sentencing violent juvenile offending (case study)
- anti-Arab/anti-Muslim racism, 722
 - anti-Semitism, 722, 733n3
 - assassination attempts in, 494
 - as assimilation model, 672
 - citizenship laws, 553, 695
 - Constitution, 710
 - Council of Europe, police recommendations, 715
 - crime measurement limitation, 713
 - crimes against the person data, 717
 - demographic profile, 711–712, 712*t*
 - demonization of “the Other,” 714, 721
 - ethnic victimization, 721–722
 - ethnicity issue, 710–711
 - foreign population data, 669, 678*t*, 708
 - foreign prisoners in, 665*t*, 719, 838
 - foreign suspects, 717–719, 718*t*–720*t*
 - foreigner-immigrant overlap, 709–710, 711, 712*t*
 - immigration violations, 722–723, 723*f*
 - incarceration, 724–729, 725*f*, 726*t*–728*t*
 - issues and policies, 729–732
 - language diversity, 733–734n4
 - League of Human Rights, 715
 - migration by legal status, 682*f*
 - MIPIX score, 687*t*

- naturalization laws, 8, 695, 700n18
- 1970s racial violence, 721
- North African immigrants, 4, 8, 721, 722
- offending, 716–723
- Police Complaints Authority, 709, 713, 714, 733n1
- police officers, interviews of, 713, 714
- politics of crime and immigration, 721–722, 731, 732–733
- pretrial detention overrepresentation, 713
- prison inmate data, 8
- property crimes, 716*t*, 718*t*, 719*t*
- public attitudes towards immigration, 684*t*
- race-based riots, 298, 721
- racial profiling by police, 714–715
- racial victimization, 721–722
- racism, defined, 721
- riots in, 298
- sentencing, 723–724
- sexual violence data, 716
- Social Justice rating, 687*t*
- trafficking of women through, 492
- value-added policies in, 673
- victimization, 714, 716–723
- xenophobic hostility, 711, 721, 722, 730
- youth “high risk” urban zones, 715–716, 721–722
- France, sentencing violent juvenile offending (case study), 834–857
- all violent crimes data, 845*t*
- crime types, classification and frequency, 842*t*
- findings, 844–852
- findings, limitations, 853–854
- findings, summary, 852–853
- hypotheses/data: extralegal variables, 842–844
- hypotheses/data: legal context, 841
- hypotheses/data: legal variables, 841–842
- implications, 854–856
- INSEE study, 839
- North African/black groups, 839
- Ordinance of February 2, 1945 and, 835
- prison overrepresentation, 839, 844–848
- sexual crimes (assaults and rape), 848*t*
- unsuspended sentence length, minority youth, 848–851, 849*t*, 850*t*, 851*t*, 852*t*
- violent crimes, nonlethal and nonsexual, 847*t*
- Frankfurt, Germany. *See* Germany, Muslim immigrants in Frankfurt
- Franklin, Karen, 268
- Freedom Defense Fund, 41
- Freedom of Information Act, 534
- Freeman, Chy Lung v.* (1875), 639, 640
- French National Consultative Commission on Human Rights, 729
- Friendly House et al. vs. Whiting*, 601
- Gabbidon, Shaun, 73–74, 85
- Gadsden Purchase (1853), 24
- Galliani, Luigi, 496
- Gallup polls, 71, 76, 84, 85, 87, 89, 94, 464
- Gang rape, 254–255
- Gangster discourse, 423–427. *See also* Norway, black cannabis dealers in a white welfare state
- Garland, David, 60–61, 398
- Garner, Tennessee v.* (1985), 140–141
- Gartner, Rosemary, 294, 430, 433
- Geary Act (1892; U.S.), 634
- Gendered violence. *See Getting Played: African American Girls, Urban Inequality, and Gendered Violence* (Miller), research findings
- General Social Survey (GSS; Canada), 31–32, 71, 76, 79, 83, 300
- Geneva Convention on the Status of Refugees, 803
- Georgia (U.S.)
- capital sentencing disparities, 182–184
- challenges to reforms in, 609–614
- devolution of immigration legislation in, 604
- Gregg v. Georgia* (1976), 182–184
- Illegal Immigration Reform and Enforcement Act, 607–612, 614–617
- Immigrant Enforcement Review Board, 608
- reforms in, 603, 607–609
- understanding immigration laws in, 614–616
- undocumented immigrants in, 600–601, 603–619, 620n1
- Georgia, Gregg v.* (1976), 182–184

- Georgia Latino Alliance for Human Rights v. Deal* (2011), 641
- Georgia Security and Immigration Compliance Act (2006), 606
- Germany. *See also* Germany, Muslim immigrants in Frankfurt
citizenship laws, 695–696
foreign-born prison population, 837
immigrant incorporation approach, 672
immigrant population size, 669
limited delinquency problems, 568
“lost generation” in, 567
Muslim immigrants, dislike of, 567–568
naturalization laws, 695–696
second-generation immigrants crime rates, 552, 567
Turkish immigrants, incarceration rates, 5, 9, 567
Turks arrest, incarceration rates, 5, 9, 567
- Germany, Muslim immigrants in Frankfurt
background of drug dealers, 880–882
findings of study, 882–883
future research directions, 893–897
group/subgroup data, 879
policy suggestions, 893–897
relation of German history, 885–886
social exclusion in the school system, 886–890
study description, 883–884
transition from exclusion to drug dealing, 890–893
types of drugs sold, 880
- Gertz, Mark, 92
- Getting Played: African American Girls, Urban Inequality, and Gendered Violence* (Miller), research findings
gender, race, neighborhood context, 257–260
goal of research, 257
implications for policy and practice, 270–273
interviewed youth profile, 257–258
interviewed youth themes, 258–259
interviews/interview excerpts, 258, 261–268
neighborhood descriptions by youths, 259
neighborhood disadvantage, violence against women, 260–268
neighborhood sexual harassment, 263–266
related follow-up studies, 269
school-based sexual harassment, 273n7
sexual coercion, sexual assault, 266–268
witnessing physical violence against women, 261–263
young women’s concerns about men and boys, 260
- Giardini, Giovanni, 558
- Gillbourn, David, 349
- Gilroy, Paul, 344–345
- Gladue (Aboriginal Persons) Court (Canada), 373, 375–376
- Godoy, Angelina, 48–49
- Goldsmith, Pat, 570
- Goldstein, Herman, 138
- Goldwater, Barry, 55
- Gomila, Frank, 501
- Gonzales, Nancy, 510
- GOP (General Opposition Party). *See* Republican Party
- Gordon, Mirta, 843
- Gore, Al, 53
- Gorgeon, Catherine, 713
- Gottschalk, Marie, 59–60, 63
- Granholm, Jennifer, 41
- Great Britain. *See also* England and Wales
civil unrest/riots in, 298
drug monitoring, post-WW I, 498
ethnic minorities, historical background, 325–326, 345
Jamaican migration to, 677
prison overrepresentation of foreign inmates, 783
race-based riots in, 298
racial profiling studies, 301, 302
rule of law application to racial minorities, 395
sentencing history, 643
view of indigenous law, 395
- Great Migration, of African Americans, 2
- Great Recession (U.S.; 2008), 36
- Great Society liberalism, 44
- Green, Eva, 672
- Green, Ross Gordon, 369
- Gregg v. Georgia* (1976), 182–184
- Group conflict theory, 72
- Group position-group threat racism, 80
- Group-based threats, 72–74
- Group-position thesis, 72

- Guadalupe Hidalgo, Treaty of (1848), 24
- Guatemala
 U.S. immigrant incarceration rates, 562, 563
 U.S. undocumented immigrant rate, 22, 32
- Guatemala, Christianity, conversion and gang disaffiliation, 860–875
 Charismatic Christianity, 861, 862–864, 867
 conversions, 868–874
 18th Street gang, 860–862, 868–870
 gang originations, 860
 MS-13 gang, 860–862, 865–868
 Pentecostal Christianity, 861, 862–865, 867
 security studies, 866–867
 study methodology, 867–868
 summary of study, 874–875
- Guest workers. *See also* Germany, Muslim immigrants in Frankfurt
 from Europe, recruitment of, 3–4
 from Italy, migration of, 769
 in the Netherlands, influx of, 769–770
- Hagan, John, 73, 471–472, 475, 562
- Haldeman, H. R., 62
- Hall, Peter, 674
- Halpern-Finnerty, Jessica, 539
- Handlin, Oscar, 663
- Haney Lopez, Ian, 49, 61, 217
- Harrison, Benjamin, 633–634
- Harrison Narcotic Act (1914), 497, 499
- Hart, Hastings H., 460
- Hart, Timothy C., 115
- Hart Celler Act. *See* Immigration Act (1965; U.S.)
- Harvard University 2006 African-American Survey, 76
- Hate Crime Statistics (FBI), 517
- Hate crimes
 in Canada, 295
 in England and Wales, 332
 in France, 709
 immigration association with, 516–517
 in the U.S., 516–517
- Hayes, Rutherford B., 633–634
- Hazard, Angélique, 726, 727
- HB 56. *See* Beason-Hammon Alabama Taxpayer and Citizen Protection Act; *United States v. State of Alabama*
- H.B. 87. *See* Illegal Immigration Reform and Enforcement Act
- HB 87 (Illegal Immigration Reform and Enforcement Act; Georgia), 607–612, 614–617
- Healing Lodges (Canada), 403n5
- Henderson v. Mayor of New York* (1875), 639, 640
- Henry, Frances, 298, 299, 310–311
- Henry J. Kaiser Family Foundation, 76
- Heroin trafficking, 497–498
- Hiatt, Robert A., 570
- Higgins, George E., 85
- Hindelang, Michael J., 146
- Hirschi, Travis, 348, 767
- Hispanic Interest Coalition of Alabama v. Governor of Alabama* (Eleventh Circuit Court of Appeals; 2012), 478
- Hispanics (in the U.S.). *See also* Latinos; Mexican-American youth; Mexicans; Mexicans, historical racialization of; Mexicans, immigrants, in the U.S.
 capital sentencing discrimination, 184
 crime rates, generational differences, 563
 crimmigration law and, 630
 declining violence rates, 124*t*
 differential offending hypothesis and, 146–147
 drug arrest, prosecution disparities, 214
 drug offense incarceration data, 203
 hate crimes against, 517
 Mexico-U.S. border crossing data, 639
 multigeneration crime model, 10
 overrepresentation in prison populations, 471
 punishment opinions of, 79
 “racialization” of, 10
 residential segregation, 36
 in southern states, 135
 term (Hispanic) derivation, 23–24
 traffic/pedestrian stop disparities, 142
 UCR classification of, 114
United States v. State of Alabama and, 478, 544
 victimization rates, 124*t*, 125–127
 vulnerability to pretrial detention, conviction, imprisonment, 471
 white race variation categorization, 653n2
- Hobson, Richmond P., 498
- Hochschild, Jennifer L., 673
- Hodgson, Jacqueline, 724
- Hofstee-van der Meulen, Femke, 784

- Holian, David, 45
- Homicide victimization
 Current Population Survey data, 518
 immigrant trends, in the U.S., 517–518
 of Mexican immigrants, in the U.S., 522–523
 overall, in the U.S., 518–520, 519*f*
 race/ethnic-specific, in the U.S., 520–521, 521*f*,
 522*f*
 San Diego study, 591
 vs. Latinos, in the U.S., 506, 522–523
- Hood, Roger, 335, 336
- Hooton, Earnest, 489
- Hoover, Herbert, 487–488
- Horowitz, C. F., 517
- Horton, Carol, 44
- Horton, Willie, 46, 52–53, 73
- Hull House (Chicago), 487
- Human Rights Watch
 on arrest rate racial disparities, 199
 family separation, detention, deportation
 report, 475
 on HB 56, 544–545
 on incarceration of blacks, on drug charges,
 201
- Human trafficking, 337, 484–485, 489–493,
 500–502, 718, 766–767, 779–781, 780*t*, 781
- Humes, Karen R., 128*n*2
- Hummer, Robert A., 256, 273*n*2
- Huntington, Samuel, 31
- Hurwitz, Jon, 77–78, 92
- ICE. *See* U.S. Bureau of Immigration and
 Customs Enforcement
- ICERD. *See* International Convention on
 the Elimination of All Forms of Racial
 Discrimination
- Identification Act (Netherlands), 7386*n*5
- “Illegal Aliens: Time to Call a Halt!” (INS;
Reader’s Digest), 30–31
- Illegal immigration. *See* Undocumented
 immigrants
- Illegal Immigration Reform and Enforcement
 Act (HB 87; Georgia), 607–612, 614–617
- Illegal Immigration Reform and Immigrant
 Responsibility Act (IIRIRA; U.S.), 465,
 472–473, 480*n*1, 515, 535, 585, 607, 630, 637,
 644, 649–650. *See also* 287(g) program
- Illinois Crime Survey, 496–497
- Immigrant Enforcement Review Board
 (Georgia), 608
- Immigrant incorporation
 in the American south, 603
 analysis of strategies, 577
 benefits of, 541
 changing immigration policies and, 675
 characteristics of, 668
 citizenship laws and, 690
 clustering countries/studies of approaches,
 672–673
 description of, 667
 in Eastern Europe, 726
 economic bases of, 674–675
 in the European Union, 729
 integrative institutions, 543–544
 migrants’ legal status and, 681
 New Haven, CT study, 540
 political incorporation, 673, 688, 690
 public policies for, 686, 687*t*, 688
 role in crime patterns, 552
- Immigrants and their children, 551–579. *See also*
 Immigrants and their children, U.S.
 vs. Western Europe; Second-generation
 immigrants (in the U.S.)
- Census Bureau findings (1936), 558
- Children of Immigrants Longitudinal
 Study, 514, 563, 592
- delinquency issues, 485–486, 488, 509,
 564–566, 568
- Dillingham Commission findings, 556
- early research limitations, 555–556
- family disintegration, 559
- first vs. second generation arrest rates, 552
- future research directions, 575–577
- measurement difficulties, 571–575
- New Jersey State Prison admissions, 558
- “paradox of assimilation,” 559
- policy recommendations, 575–577
- second-generation arrest rates, 507, 551, 552
- Sunderland, Edwin, findings, 556–557
- third-generation risk factors, 509
- U.S. Industrial Commission findings, 556
- Wickersham Commission findings, 557
- Immigrants and their children, U.S. vs.
 Western Europe, 558–571
- arrest and incarceration generational
 differences, 562–564

- delinquency and substance abuse, 564–566
- fatal victimization, generational differences, 570–571
- nonfatal victimization, generational differences, 569–570
- offending patterns across generations, 559–560
- violent offending generational differences, 560–562
- Western European generational crime differences, 566–568
- Immigrants in the U.S., crimes committed by and against, 505–524
- Add Health study, second-, third-generation Hispanic students, 509
- anti-immigrant sentiments, 508
- community-based crime, 511–513
- culture-conflict theory and, 512
- Dillingham Report, 508
- ethnic-specific Latino homicide victimization, 522–523
- family-based factors, 510–511
- generational differences in offending, 509–511
- hate crimes vs. immigrants, 516–517
- immigrant homicide victimization trends, 517–518
- by immigrants and their children, 507–511
- Latino homicide victimization rates, 506
- lowered violent crime rates, 512–513
- Mexican homicide rates, 523
- neighborhood factors, 511
- opportunity theory and, 511–512
- overall immigrant homicide victimization, 518–520
- peer-based factors, 511
- race/ethnic-specific immigrant homicide victimization, 520–521
- social disorganization theory and, 511, 515
- UCR report data analysis, 512
- Wickersham Commission report, 508
- Immigration. *See also* Undocumented immigrants; United States (U.S.), politics of immigration and crime
- in 1980, 1–3
- by Afro-Caribbeans, in England and Wales, 4–6
- analysis of countries as a whole, 670–677
- Bracero Program, 27–29
- California, Proposition 187, 459
- in Canada, 283, 286, 447
- complexity of race, incarceration and, 470
- and crime, multigenerational model, 2–3, 345–348
- and crime, post 2000 research explosion, 6–7
- and criminality, pre-World War II, 484–502
- from Cuba, to the U.S., 23
- in England and Wales, 325–326, 344, 345–348
- foreign-born composition data, 665–666, 665*t*–666*t*
- illegal immigration, to the U.S., 28–29
- incarceration links with, 663–698
- Japanese policies, 740–744
- lowered violent crime rates, 512–513
- from Mexico, to the U.S., 25–26, 28–31
- Netherlands research, 9–10
- in Norway, 408, 416, 420
- Page Act (1875), U.S., 459
- post-1965 growth, in the U.S., 469
- since the mid-1990s, 6–10
- through the mid-1990s, 3–6
- U.S. 287(g) program, 473–474
- U.S. illegal immigration legislation, 465
- U.S. research, 9–10
- Immigration, analysis of countries as a whole
- changing immigration policies, 675–677
- clustering countries, 672–674
- economic basis of immigrant incorporation, 674–675
- Immigration Act (1875; U.S.), 634
- Immigration Act (1891; U.S.), 459
- Immigration Act (1924; U.S.), 635
- Immigration Act (1965; U.S.), 29, 468–469
- Immigration and crime, in U.S. communities, 529–547
- acculturation/integration pathways, 540–541
- Chicago/Los Angeles crime levels, 530
- citizen conflicts in cooperation with police, 536
- conclusions of study, 531
- devolution of law enforcement and, 534–538, 543–544
- external political/policy contexts, 532–533

- Immigration and crime (*Cont.*)
- immediate vs. long-time effects, 530
 - institutional integrative practices, 539–543
 - lawless characterization of immigrants, 532
 - local vs. federal policy conflicts, 538
 - policing of communities, 533–539
 - post-9/11 government targeting of
 - nationalities, 537
 - research focus, 531–533
 - sanctuary cities and, 538
- Immigration and Nationality Acts (U.S.), 29, 472, 507, 644, 645, 646, 649
- Immigration and Nationalization Service (U.S.), 468
- Immigration Commission. *See* Dillingham Commission
- Immigration Control and Refugee Recognition Act (Japan), 741
- Immigration Control Bureau (Japan), 738, 739, 750–752, 756–757, 760n1
- Immigration Marriage Fraud Amendments (1986; U.S.), 635
- Immigration Reform and Control Act (IRCA; 1986), 35, 601, 635
- Immigrations and Customs Enforcement Agency (ICE), 532
- Imprisonment. *See* Arrests and arrest rates; Incarceration and incarceration rates
- Incarceration and incarceration rates. *See also* Mass incarceration
- Aboriginal Canadians, overrepresentation, 388, 389
 - African Americans data, 3, 70, 83, 95–96, 201, 202
 - African Americans vs. whites, U.S., 291
 - American Indians, overrepresentation, 176, 388, 389
 - Asians, disparities, 176
 - Australia, indigenous overrepresentation, 399
 - data gathering difficulties, 668–669
 - drugs/drug use, general data, 194
 - foreign-born composition data, 665–666, 665t–666t, 669–670
 - in France, 724–729, 725f, 726t–728t
 - in Germany, Turkish immigrant rates, 5, 9
 - Hispanics drug offenses (U.S.), 203
 - immigrant generational differences, 558, 562, 563
 - immigration links with, 663–698
 - in the Netherlands, 5, 782–784
 - New Zealand, indigenous
 - overrepresentation, 388, 389
 - Pacific Islanders, disparities, 176
 - rape/incarceration-arrest imbalance, 179
 - sentencing and punishment practices, 176–179, 176t, 178t
 - U.S. vs. Western Europe, generational differences, 562–564
- Incorporation of immigrants. *See* Immigrant incorporation
- Indigenous healing practices, 400–401
- Indigenous populations. *See also* Aboriginal Canadians; American Indians; Australia, indigenous population; New Zealand, indigenous population
- Alaskan Natives, 109, 109t–110t, 111, 114, 176, 574
 - colonial context for understanding,
 - defining crime, 390–392
 - criminal system mistrust, 366–369
 - criminalization, negative impacts of, 392–394
 - criminalization and victimization, 387–390
 - Declaration of Rights of Indigenous Peoples, 402
 - in European colonies, 11
 - First Peoples (defined), 381n1
 - healing practices, 400–401
 - identity and healing, 399–401
 - Native Hawaiians, 109, 109t, 176, 203t
 - Pacific Islanders, 109, 109t–110t, 111, 113t, 114, 176, 285
 - punishment and the rule of law, 394–399
 - rights/politics of neoliberalism, 401–403
 - UN Permanent Forum on Indigenous Issues, 393
- Industrial Commission (1901), 2
- INS. *See* U.S. Immigration and Naturalization Service
- INSEE. *See* National Institute of Statistics and Economic Studies
- Institutional integrative practices, in U.S. communities, 539–543
- Integrated Correctional Services (Canada), 289, 314n5
- Integrated Criminal Court Survey (Canada), 289, 314n4

- Integrated Public Use Microdata Series (IPUMS), 518
- International Centre for Prison Studies, 698n2
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 218, 286
- International Narcotic Education Association, 498
- International Social Survey Programme (ISSP), 673
- Interracial dating, African American opinion of, 80
- Ireland, population percentage with immigration background, 671f
- Ishizawa, Hiromi, 530
- Israel, declining foreign-born population, 670
- Italian Americans, 459, 486, 489
- Italian Institute of Statistics (Istat), 796
- Italy, 791–828
 - adult foreigner detention data, 730
 - Albanian immigrants in, 791–792, 795, 797t, 803, 808, 810
 - anarchist violence in, 495
 - anti-immigrant political campaigns, 746
 - Centers of Identification and Expulsion, 803–804, 807t
 - citizenship laws, 693t
 - “clandestine” immigrants, border controls, 802–803, 805
 - criminalization, 801–806, 807t
 - De Mistura Commission, 804
 - foreign-born prison population, 665t, 760n5
 - human trafficking, 491
 - immigrant population proportion, 669
 - immigrant population size, 669
 - immigrants charged and police stops, 810–813, 811t, 812t
 - immigrés in France, 712t
 - in-flows of foreign population, 678t
 - labor migration, between regularity and regularization, 799–801, 801t, 822, 825n23, 825n29, 827n55
 - legal paradoxes and contradictions, 800
 - migration by legal status, 682f
 - migration laws, 799–801
 - migration of “guest workers,” 769
 - migratory flows, 795–798, 796f, 796t, 797t
 - MIPIX score, 687t
 - natives and “others,” 794–795
 - (non)linear equation between immigration and crime, 816–818, 817t
 - prison system, 813–816, 814t, 815t, 816t
 - prostitution in, 792, 808, 810, 812t, 814, 815t, 817t
 - reliability of official crime statistics, 807–810, 809f
 - residence permits, 799–800, 824n17
 - Romanian immigrants in, 792, 795–796, 797t, 798–799, 802, 810, 811t
 - Schengen Agreement, 802
 - Single Act on Foreigners, 799–800, 805, 819, 826n42
 - Tunisian immigrants in, 791, 797t, 803, 808, 811t, 814t, 823n9
 - undocumented immigration, 683, 792–793, 798–700, 802–805, 806f, 808, 811–813, 817, 820
 - victimization of immigrants, 819–820, 819t
- Jackman, Mary R., 72
- Jacson, Moana, 396
- Japan, 738–761
 - age/gender composition, foreign nationals, 743t
 - arrests, *rainichi* foreigners, statistics, 745, 747–750, 747t, 752, 753f, 754, 755t
 - backdoor labor migration policies, 742, 750
 - border control policy, 760n1
 - crime, terms for, 739
 - “crime crisis” in, 739, 750–751
 - deportations (2001–2010), 758f
 - drug trafficking, 500
 - female slave trafficking, 491, 634
 - foreign-born prison population, 666t
 - Fourth Annual Report of Criminal Statistics, 744
 - immigrant classification in Canada, 285, 291t
 - Immigration Control Bureau, 738, 739, 750–752, 756–757, 760n1
 - immigration policies, 740–744
 - immigration/crime control convergence, 750–751
 - in-flow of foreign population, 679t
 - jus sanguinis* citizenship, 742
 - laws for attaining citizenship, 693t
 - migration by legal status, 682f

- Japan (*Cont.*)
- MIPIX score, 687*t*
 - Moral Environment Law, 747
 - National Police Agency, 739, 741, 744, 745, 750
 - patterns of migrants from, 9
 - prosecution disparities, 752, 753*f*, 754, 755*t*
 - prostitution in, 747–748, 747*t*, 754
 - rainichi* policing focus, 739–740, 741
 - self-perception of, 738–739
 - sentencing, *rainichi* defendants, 756
 - sentencing disparities, 756–758, 756*t*, 758*f*
 - statistics, sources of, 744
 - temporary vs. permanent foreign national residents, 741*t*
 - Three Hundred Thousand International Student Plan, 759–760
 - UCR classification of immigrant arrestees, 114
 - U.S. Census Bureau immigrant classification, 109*t*
 - U.S. “gentleman’s agreement” with, 25
 - White Paper on Crimes, 744, 745, 748, 752, 756*t*
- Jefferson, Thomas, 79, 632
- Jim Crow laws (Jim Crow racism)
- beliefs of whites and, 52–53
 - carceral state and, 56–57
 - crime and, 44
 - demise of, 79–80
 - drug criminalization and, 216–217
 - overturning of, 28
- Jobard, Fabien, 713, 724
- Johnson, Bascom, 492–493
- Johnson, James H., 76, 77, 88, 90
- Johnson, Joseph D., 214, 854
- Jones, Nicholas A., 128*n*2
- Journal on Culture and Criminality (Tijdschrift over Cultuur en Criminaliteit)* (Netherlands), 777
- Junger, Marianne, 772
- Jus sanguinis* citizenship, 690, 691*t*–694*t*, 695–696, 742
- Jus soli* citizenship, 690, 691*t*–694*t*, 695–697, 695–698
- Juveniles. *See also* Disadvantaged neighborhoods, Boston inner-city boys (case study); France, sentencing violent juvenile offending (case study)
- drug crimes and arrests, 139, 200*t*, 413
 - in Japan, 739
 - life sentences, overrepresentation, 177
 - murders/black-on-black crimes, 93
 - in the Netherlands, 781–782
 - in New Zealand, 378
 - sentencing disparities, 5, 84, 140, 177
 - targeting of males, 139
 - victimization, in the UK, 331
 - violent offending, 146
 - Wickersham Commission study, 488
- Kane, Francis Fisher, 497
- Kangawa Prefecture Police (Japan), 749
- Kemp, McCleskey v.* (1987), 182
- Kennedy, Randall, 179
- Kent, Phil, 608
- Kentucky, Padilla v.* (2010), 651–652
- Kerner Commission, 137
- Kilpatrick, Kwame, 41
- Kingston Pilot Project (Canada), 302
- Kirk, David S., 594
- Kleck, Gary, 214
- Kleemans, Edward, 779
- Kneeland, George, 491
- Knowledge Network, Inc., 86
- Kochel, Tammy Rinehart, 140
- Komaie, Golnaz, 576
- Koopmans, Ruud, 672, 783
- Korean War, 28
- Koss, Mary, 274*n*8
- Kubrin, Charis E., 511, 513, 530, 591
- Laissez-faire racism, 80
- Lambou, Madeline Gomila, 501
- Landesco, John, 496–497
- Lang, Charles, 673
- Langan, Patrick A., 141
- Laschi, Rodolfo, 494–495
- Latinos. *See also* Disadvantaged neighborhoods, Boston inner-city boys (case study); Hispanics (in the U.S.)
- in Alabama and Georgia, struggles of, 605
 - Brewer, Jan, false claims about, 595
 - Children of Immigrants Longitudinal Study, 592

- civil rights laws and, 37
 consequences of immigration, 585
 crime and immigration, San Diego, El Paso, Miami, 587–593
 crime-related media portrayal, 51
 cynicism of law/legal institutions by, 595
 generational differences, incarceration rates, 36
 Great Recession (2008) wealth shock, 36
 group variations in crime patterns, 592–593
 historical migration data, 21, 23, 584–585, 588
 homicide victimization rates, 506
 housing discrimination, 36
 immigrant youth risk-taking behavior study, 574
 League of United Latin American Citizens, 533, 540
 loss of homeland, 35
 nonfatal victimization, immigrant generational differences, 569–570
 political demonization of, 31
 political push for punitive legislation, 594
 population surges in southern U.S., 646
 poverty rates, 36
 punitive actions against, 32
 racialization of, in the U.S., 21–37
 reactions to immigrant crimes by, 593–595
 RICO and deportation limitations, 33–34
 socioeconomic collapse of, 36
 spatial/temporal examinations, 589–591
 stereotyping of, 92
 term (Latino) derivation, 24
 2010 undocumented data, 32, 33
 U.S. Border Patrol actions, 32
 U.S. victimization rates, 506
 USA PATRIOT Act and, 34
 violent arrests data, 593
 violent crime reductions, in the U.S., 586
 whites' beliefs about, 93
 worker exploitation, 25, 28, 37
- Lauritsen, Janet L., 118, 121, 128n6
 Law Enforcement Assistance Administration (U.S.), 56
 Law Reform Commission of Canada, 366–367, 368
 Law Reform Commission of Western Australia, 367
 Laws on immigration and crime, in the United States, 628–654. *See also* Beason-Hammon Alabama Taxpayer and Citizen Protection Act; Illegal Immigration Reform and Immigrant Responsibility Act; Senate Bill (SB) 1070; USA PATRIOT Act; individual Immigration Acts
 anti-Asian sentiment and laws, 634
 anti-Chinese sentiment and laws, 633–634
 Congressional deportation actions, 629
 crimmigration law and enforcement, 630–632, 634, 642, 646–648, 651–653
 deportation, crime-based grounds for, 642–646
 detention controversies, 649–651
 federal government power, source of, 628–629
 immigration checks and raids, 645–646
 immigration criminalization, racially charged origins, 632–635
 immigration prosecutions, contemporary surge of, 635–639
 investigative controversies, 647–648
 investigative/detention powers gradients, 629–630
 late 19th century political inability, 633–634
 prioritization of crimes, 638–639
 state/local, intervention laws, 639–642
 Le Caisne, Léonore, 839
 League of Human Rights (France), 715
 League of Nations
 Opium Advisory Committee, 498–499
 trafficking of women study, 492
 League of United Latin American Citizens (LULAC), 533, 540
 Lee, Matthew T., 507, 513, 560, 587, 588, 589–590, 592
 Lee, Tiane L., 34–35
 Leerkes, Arjen, 596, 773, 782, 784
 Legal status of immigrants, 681–683, 682f
 Leiber, Michael J., 854
 Levanon, Asaf, 674
 Levine, Harry G., 197
 Levy, René, 713

- Lew, Vivian, 560–561, 578n5
- Lewin-Epstein, Noah, 674
- Lewis, John, 610
- Liberals/liberalism (in the U.S.)
 fears of being viewed as coddling criminals, 45
 international migration and, 34
 rise of law and order, decline of, 43–45
- Lieberson, Stanley, 3
- Liebling, Alison, 338
- Life without parole (LWOP) sentences, 176–177
- Linkage Act (Netherlands), 7386n5
- Lombroso, Cesare, 494–495
- London riots (2011), 323, 350–351
- London Underground terrorist attacks (2005), 322, 332, 346
- Los Angeles, California
 immigrant generational fatal victimization data, 571
 immigrant neighborhood crime levels, 530
 immigrants vs. native-born homicide data, 560
- Loury, Glenn C., 198
- LULAC. *See* League of United Latin American Citizens
- Lynch, James, 773
- MacDonald, Arthur, 494–495
- MacDonald, John, 587
- Macpherson Inquiry (England and Wales), 322, 331, 340–341
- Madison, James, 651
- Magazine cover study, 29–30
- Magee, Central Alabama Fair Housing Center v.* (2011), 614
- Majmundar, Malay, 466, 467
- Makes Me Wanna Holler: A Young Black Man in America* (McCall), 252
- Manhattan Bail Project, 169
- Mann Act (1910), 489
- Maōri culture (New Zealand). *See* New Zealand, indigenous population
- Mara Salvatrucha* (MS-13) gang (Guatemala), 860–862, 865–868. *See also* Guatemala, Christianity, conversion and gang disaffiliation
- Mariel Cubans, 560, 592, 595
- Marijuana. *See also* Norway, black cannabis dealers in a white welfare state
 Anti-Drug Abuse Act and, 644
 arrests for, 198, 210, 212*t*
 ethnic use data, 120, 122, 196, 204–205, 210
 federal criminalization of possession, 26
 self-report usage data, 118–119, 119*t*
 Toronto student, usage data, 296*t*, 297
- Marriages of Convenience Act (Netherlands), 786n5
- Martens, Peter, 567
- Martin, Patricia Yancey, 256, 273n2
- Martinez, Jorge, 152, 512, 513, 524, 560, 587, 588, 589–590, 591, 592, 593, 595
- Martinez, Ramiro, Jr., 507
- Martini, George, 497
- Maryland, capital sentencing discrimination, 184
- Mass incarceration
 of African Americans, 57–58, 61, 70, 95–96, 98
 of indigenous peoples, 389
 Jim Crow comparison, 57, 217
 as “new racial caste system,” 58
 politics of, 468–472
 public opinion, research review, 95–96
 racialization of, 63, 70, 95–96
 in the U.S., 468–472
- Massey, Douglas S., 31
- Mastrofski, Stephen D., 140
- Mayor of New York, Henderson v.* (1875), 639, 640
- McCall, Nathan, 252, 268
- McCleskey v. Kemp* (1987), 182
- McCord, Charles Harvey, 50
- McGloin, Jean Marie, 511
- McKay, Henry D., 461, 488, 590
- McKenzie, Roderick, 460
- McKinley, William, 494
- McNulty, Thomas J., 120
- Media
 attention to drug abuse, 198
 blacks and crime, representations of, 48, 50–52, 59, 89, 197
 Canada, crime coverage, 281, 431–434, 449n10

- cultural heterogeneity and, 243
 England and Wales, crime coverage, 338, 339, 344, 348, 351
 France, crime coverage, 713, 722, 729, 731–732
 Germany, crime coverage, 895
 illegal alien coverage, 469
 influence of blacks vs. whites, 90
 Italy, crime coverage, 791, 814, 816, 820, 827n53
 Japan, crime coverage, 739, 745, 748, 754
 Latinos, portrayal of, 22, 587, 592
 negative image construction of offenders, 74–75
 and punishment/crime control debates, 47
 Melewski, Matthew, 178
 Memorandum of Understanding (police-ICE), 537
 Memphis Police Department, 141
 Mendelberg, Tali, 44, 53, 217
 Merton, Robert K., 767
 Mexican-American War, 24, 679*t*
 Mexican-American youth
 discrimination against, 541
 drinking levels, 122
 marijuana use, *h.s. seniors*, 119*t*
 offending rate variations, 122
 violent crime, self-reporting, 122
 Mexicans, historical racialization of, 24–32
 anti-Mexican riots and actions, 27–28
 arrests, mass deportations, 26–27
 arrival in the U.S., 24, 25
braceros/Bracero Program, 27–29
 as cheap labor source for whites, 25, 28
 disenfranchisement of, 24–25
 INS apprehension of Mexicans, 28
 1990 population data, 25
 overrepresentation in prison populations, 471
 post-1965 undocumented immigration, 29–30
 reduced living standards, 27
 2010 undocumented data, 32
 U.S. Border Patrol actions, 26, 30
 U.S. recruitment of laborers, 25–26
 Mexicans, immigrants, in the U.S.
 alcohol abuse rates, 565
 Catholic Church services for, 540
 Census Bureau classification, 109*t*
 day laborer attacks, by whites, 516
 disproportionate real wage/earning data, 36
 drug trafficking, by men, 491
 historical background, 21, 23, 584, 636
 homicide victimization rates, 506, 522–523, 522*f*
 identification issues, 612
 incarceration rates, 562, 665, 666*t*
 IRCA's amnesty program, 602
 legal/illegal and immigration laws, 10
 location preferences, 584, 586, 588–589, 592
 marijuana use, 196
 negative metaphorical descriptions, 30
 overrepresentation in crime, incarceration, 471
 population data (assorted dates), 10, 27, 32, 584, 620n1
 post-World War I increased rates, 25
 real wage/earning data, 36
 in southern states, 604, 619
 287(g) program results, 594
 UCR classification of, 114
 undocumented status, 32, 33, 35, 466, 469, 541
 victimization vulnerabilities, 570
 vulnerability to pretrial detention, conviction, imprisonment, 471
 Mexico
 Bracero Program, 27–28
 circular immigration pattern from, 469
 countries of emigration to, 679*t*
 crack cocaine usage, 122
 debt crisis, influence on emigration, 636
 drug smuggling activities, 497
 emigration from, as a “crisis,” 30
 Hispanic/Latino migration percentage, 33, 639
 immigrant percentage data, 22
 legal immigration applications, 472
 Mexicans as marijuana smokers, 196
 population percentage with immigration background, 671*f*
 U.S. acquisition of, 23, 663–664
 U.S. restrictive immigration policies, 29

- Mexico-U.S. border
border violence, 595
Brewer, Jan, false claims about, 595
crossing data, 639
drug smuggling activities, 497, 501
El Paso, Texas, crime and immigration data, 587–593
historical background, 26
militarization of, 28, 30, 35
1924 Border Patrol creation, 26
San Diego, California, crime and immigration data, 587–593
trafficking of women, 492–493
- Mhlanga, Bonny, 336
- Miami, Florida, Latino crime and immigration data, 587–593, 596
- Michaud, Pierre-André, 574
- Midwest Prevention Project, 541–542
- Migrant Integration Policy Index (MIPEX)
access to education measure, 696
description of, 688, 690
leadership of, 699n10
overall score, 687*t*
Social Justice in the OECD similarity, 689, 697
social justice rating, 687*t*
- Migrant stocks and flows, 665*t*–666*t*, 669–670
- Miller, Mark, 672, 674
- Minority group threat theory, 72
- Minuteman Project, 533, 546
- Miranda v. Arizona* (1966), 647–648
- Mitchell, Ojmarrh, 181
- Mitnik, Pablo A., 539
- Moehling, Carolyn, 461
- Monitoring the Future (MTF) survey
limitations of, 121
self-report data, 108, 117, 118–122
- Moral Environment Law (Japan), 747
- Morenoff, Jeff D., 509, 551, 561
- Moreton-Robinson, Aileen, 370
- Morjé Howard, Marc, 672
- Moroccan immigrants, in the Netherlands, 5, 552, 567, 568, 570, 577, 766–774, 777–778, 781–783
- Mosher, Clayton, 308
- Moving to Opportunity for Fair Housing Demonstration (MTO), 265
- MTF. *See* Monitoring the Future (MTF) survey
- Mucchelli, Laurent, 717–718
- Muha, Michael J., 72
- Muhammad, Khalil, 50
- Multiculturalism Act (1988; Canada), 284
- Multigenerational immigrants. *See* Immigrants and their children
- Multiple Cause of Death records (NCHS), 517
- Murakawa, Naomi, 55–56, 59
- Muslim immigrants. *See* Germany, Muslim immigrants in Frankfurt
- Nagel, Udo, 663
- Narring, Françoise, 574
- Nashville, Tennessee, anti-immigrant rallies, 606
- National Advisory Commission on Civil Disobedience, 137–138
- National Advisory Commission on Civil Disorders, 137
- National Association of Criminal Defense Lawyers, 198
- National Bureau of Economic Research (NBER), 517
- National Center for Health Statistics (NCHS), 517
- National Center for State Courts, 86
- National Commission on Law Observance and Enforcement (1931), 2, 460, 487–488, 745–746. *See also* Wickersham Commission
- National Conference of Charities and Correction, 460
- National Crime Commission (1925), 487
- National Crime Victimization Survey (NCVS), 108, 115, 122–125, 274n10
annual rates, by race and ethnicity, 124*t*
Hispanic respondent classification, 128n4
limitations of, 124–125
UCR comparison, 123, 125
- National Epidemiological Survey on Alcohol and Related Conditions (U.S.), 568–569
- National Inquiry into Racist Violence (Australia), 403n2
- National Institute of Statistics and Economic Studies (INSEE; France), 839, 856n1

- National Longitudinal Study of Adolescent Health (Add Health)
 generational crime-related behavior data, 561
 immigrant crime generational research, 509, 510
 limitations of, 121
 self-report data, 108, 117, 119–123
- National Origins Act (1924; U.S.), 507, 635
- National Police Agency (NPA; Japan), 739, 741, 744, 745, 750
- National Police Complaints Authority (Commission nationale de déontologie sur la sécurité-CNDS) (France), 709, 713, 733n1
- National Race and Crime Survey (NRCS), 77
- National Race and Politics Survey (1991), 92
- National Research Council, 139, 180
- National Security Entry-Exit Registration System (NSEERS), 468
- National Youth Survey (NYS), 108, 117–118, 120–123
- Native Americans. *See* American Indians
- Native Hawaiians, 109, 109*t*, 176, 203*t*, 396
- Naturalization/naturalization laws. *See also Jus sanguinis* citizenship; *Jus soli* citizenship; U.S. Immigration and Naturalization Service
 deportation considerations, 690
 in Europe, 8, 695–696
 global variability, 8, 10, 668
 OECD countries (2011), 691*t*–694*t*
 politics of, 10
 in the U.S., 696
- NCHS. *See* National Center for Health Statistics
- NCVS. *See* National Crime Victimization Survey
- Negative role models, 226, 227, 233–235, 241
- “The Negro Criminal: A Statistical Note” (Sellin), 50
- Neighborhoods. *See* Disadvantaged neighborhoods; Disadvantaged neighborhoods, Boston inner-city boys (case study)
- Neighbors Link program, 539–543
- Neoliberalism, indigenous rights/politics of, 401–403
- Netherlands, 766–786
 anti-immigrant politics, 9
 Antillean immigrants in, 766–769, 770–774, 777–778, 782–783
 assimilation policies, 767
 asylum seeker influx, 770–771
 cohort studies, 772–773
 crime patterns: asylum seekers, irregular immigrants, 774–775
 crime patterns: established minority groups, 772–774
 crime patterns: labor migrants from Central and Eastern Europe, 775–776
 criminal justice in, 781–784
 criminality, subcultural explanations, 776–778
 criminalization, victimization data, 730*t*
 data availability, 553
 detention, 782–784
 drug offenses, 783
 EU immigrants influx, 771
 extensive research accumulation, 9–10
 foreign-born prison population, 665*t*, 675
 foreign-born share of population, 671*t*
 guest worker (labor migrant) influx, 769–770
 human trafficking, social organization of, 768, 779–781, 780*t*
 Identification Act, 7386n5
 illegal residence/public safety research, 596
 immigrant incorporation approach, 672
 Indian subcontinent immigrants, 6
 in-flows of foreign population, 678*t*
 justice system disparities, 6
 juvenile justice system, 781–782
 law enforcement, selective, 781–782
 Linkage Act, 7386n5
 Marriages of Convenience Act, 786n5
 migration by legal status, 682*f*
 migratory trends, 769–772
 MIPIX score, 687*t*
 Moroccan immigrants in, 5, 9, 552, 567, 568, 570, 577, 766–774, 777–778, 781–783
 multigenerational data, 567, 771
 pillarization tradition, 785n1
 post-WW II emigration from, 769
 second-generation immigrants crime rates, 552, 567

- Netherlands (*Cont.*)
 smuggling operations, 500
 street culture vs. school culture, 777t
 Surinamese immigrants in, 677, 766, 770–772, 783, 767699n16
 Turkish immigrants in, 552, 577, 766–767, 769–773, 778, 782–783
 victimization/fear of crime, 730t, 778
- Nevanen, Sophie, 724
- New Deal (U.S.), 44, 62
- The New Jim Crow* (Alexander), 57
- The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (Alexander), 57, 217
- New York City (NYC; U.S.)
 Bureau of Social Hygiene, 490–491
 Italian criminality, pre-World War II, 486, 489
 Latinos and police cooperation, 595
 pre-WW I immigrant criminality, 489–490
 pre-WW I vice study, 491
 pre-WW II prostitution data, 492–493
 violent crime reductions of Latinos, 586
 Wall Street terrorist “car bomb” (1920), 495–496
- New York City Police Department, 85
- New York Youth Survey (*NY Times*), 85
- New Zealand
 British colonization of, 364
Children, Young Persons, and Their Families Act, 371
 early precipitants of crime, 4
Sentencing Act (2002), 373
- New Zealand, indigenous population
 blame of for crimes, 1
Closing the Gaps report, 367
 colonial context for crime, 390–392
 community-police relational context, 368
 comparative disadvantages of, 364–365
 criminalization of, 387–390
 disproportionate poverty of, 6
 dominant group blame of crimes on, 1
 Elder participation in sentencing process, 361, 378–379
 empowerment efforts, 9
 equalization of Maōri-Pakeha relations, 371
 Family Group Conference, 378
 incarceration overrepresentation, 388, 389
 increasing court support for, 379
 Indigenous justice practices, 371, 378–379
 Jackson, Moana, on considerations of law, 396
 juveniles and crime, 378
 legacy of colonization for, 362–366
 life expectancy gap, 364, 365
 Marae Youth Courts, 378–379
 mistrust of the justice system of, 366–369
 “Native Schooling System,” 365
 negative attitude towards police, 368
 policy recommendations, 379–380
 prison population data, 366
 race/ethnicity data availability, 8
 racial bias perceptions against, 369
 underreporting of crimes by, 368–369
 victimization of, 1, 4, 6, 8–9, 387–390
 Waitangi, Treaty of, 362, 378
- New Zealand Department of Corrections, 369
- New Zealand Law Commission, 395–396
- Nibbs, Faith G., 531–532, 542
- Nielsen, Amie, 92, 560, 588, 592, 593
- Nixon, Richard, 43, 45, 53, 62
- No Child Left Behind Act (U.S.), 544
- Noncapital cases, sentencing and punishment
 race-based disparities, 167, 168, 172–173, 179–181
- Norris v. Alabama* (1935), 166
- North Carolina, capital sentencing discrimination, 184
- Northern Territory Emergency Response (NTER; Australia), 394
- Norway, black cannabis dealers in a white welfare state, 408–427. *See also* Cultural capital
 gangster discourse, 423–425, 426–427
 gangster vs. oppression discourse, 425–426
 oppression discourse, 421–423
 street capital, conversion to economic capital, 415–418, 426
 street capital, described, 409–410, 421, 426
 street capital, development of, 419–420
 street capital, as distinction, 410–413
 street capital, as status and power, 413–415, 418, 420, 426–427
 street capital, types of, 410–418, 422, 426
 street habitus, conversion to street capital, 420
 street habitus, criticisms of, 427

- street habitus, development of, 415, 418, 419
trajectories to the street, 419–421
violence/socialization in the street, 418–419
Notes on the State of Virginia (Jefferson), 79
NSEERS. *See* National Security Entry-Exit
Registration System
Nurse-Family Partnership, 542
Nyrop, Kris, 201, 209
NYS. *See* National Youth Survey
- Obama, Barack
election of, and race relations, 94–95
and justice for African Americans, 71
“Obama effect,” 94–95
political ad against, 41
O’Connor, Christopher D., 300
Offending Crime and Justice Survey (OCJS),
333–334, 346, 353n8
Office for National Statistics (England),
326–327
Office for National Statistics (ONS), 326–327
Office of Management and Budget (OMB;
U.S.), 23–24, 109
Ohio, capital sentencing discrimination, 184
Oklahoma City, Oklahoma, bombing, 649
Ontario Human Rights Commission, 311
Operation Ceasefire. *See* Disadvantaged
neighborhoods, Boston inner-city boys
(case study)
Operation Swamp ‘81 (1981; England and
Wales), 321
Operation Trident (England and Wales), 332
Operation Wetback, 28
Opium Advisory Committee (OAC; League of
Nations), 498–499
Opportunity theory, 511–512, 541
Oppression discourse, 421–423, 425–426. *See*
also Norway, black cannabis dealers in a
white welfare state
Organized Crime Control Act (1970), 56
“the Other,” demonization of, 714, 721
Ousey, Graham, 94, 97, 513, 591
Owusu-Bempah, Akwasi, 300
- Pacific Islanders, 109, 109*t*–110*t*, 111, 113*t*, 114,
176, 285
Padavan v. United States (1996), 639
Padilla v. Kentucky (2010), 651–652
Page Act (1875; U.S.), 459
Pager, Devon, 711, 724, 839
Palloni, Alberto, 471–472, 562
Park, Robert Ezra, 460, 794
Parrado, Emilio, 594
Pasha, Russell, 499
PATRIOT Act. *See* USA PATRIOT Act
Patterson, Orlando, 347
Peffley, Mark, 77–78, 92
Peguero, Anthony, 569
Pentecostal Christianity, and gangs, in
Guatemala, 861, 862–865, 867
Personal Responsibility and Work
Opportunity Reconciliation Act (1966;
U.S.), 465
Pew Forum on Religion and Public Life, 863
Pew Hispanic Center, 33
Pew surveys, 71
Pfeiffer, Christian, 568
Pfungst, Lori, 201, 209
Phillips, Coretta, 330, 338–339, 342–343, 837
*A Piece of the Pie: Blacks and White
Immigrants* (Lieberson), 3
Piehl, Anne Morrison, 461, 470, 562, 563–564
Pierce, Glenn L., 184
Pinkerton, Robert, 493
Pinkerton National Detective Agency, 493
Plea bargaining decisions, 171–175
Police and Criminal Evidence Act, Section 60
(PACE; England; 1984), 340, 341–342
Police Complaints Authority (CNDS; France),
714
Police White Papers (Japan), 744, 745, 748, 752,
756*t*
Police/policing, racial and ethnic disparities
against African Canadians, 300, 304–305
American Sociological Association, 139
antiracism training, in Canada, 311
arrests, 108, 111–112, 111*t*, 138–140
Chicago, Illinois, Haymarket Square riots,
493–494
citizens’ perceptions of police, 152–153
differential offending hypothesis, 146–147
differential processing hypothesis, 148–151
drug cases, 139
in England and Wales, 339–341, 350–351
killing of African Americans data, 141
race, crime and, 135–155

- Police/policing (*Cont.*)
- racial profiling of blacks, 7, 89, 90, 107, 114
 - research summary, 144–145
 - search and seizures, 143–144
 - studies, types of, 137
 - traffic/pedestrian stops, 142–143
 - in U.S. communities, 533–539
 - use of force, 140–142
 - use of force disparities, 304–305
- Politics (and politicians), 41–64. *See also*
- Democratic Party; Liberals/liberalism;
 - Republican Party; United States (U.S.),
 - politics of immigration and crime
- anti-Obama “racial overtones” ad, 41
- black-crime beliefs, 48–49, 53
- and the carceral state, 54
- Clinton’s crime control package, 47
- demonization of Latinos, 31, 34
- law and order strategy of, 43–44, 49, 55
- 1980s/1990s, race, crime and, 45–47
- punitive attitudes, 59, 73, 75
- race-based framing of crimes, 32, 48, 50, 54, 73
- rise of law and order/decline of liberalism, 43–45
- tough on crime position, 46, 47, 49, 73, 197, 515
- Willie Horton, race, public perceptions, 46, 52–53, 73
- The Politics of Law and Order: Street Crime and Public Policy* (Scheingold), 54
- Portes, Alejandro, 510, 541, 542
- Powell v. Alabama* (1932), 166
- Pren, Karen A., 31
- Prentiss, Mark O., 487
- Presidential campaigns (U.S.)
- Clinton, Bill, 47
 - Dukakis, Michael, 45–46, 47
 - Gore vs. Bush, 53
 - 2008 anti-Obama advertisement, 41
- President’s Commission on Law Enforcement and Administration of Justice, 138
- Pretrial detention/detention decision-making
- bail decision and, 169–171, 306–307
 - in Canada, 306–307
 - charging/plea bargaining decisions, 171–175
 - in France, 713
 - immigrant overrepresentation, 471, 513–514, 562, 713, 839
 - juvenile immigrant overrepresentation, 839, 841
 - racial disparities, 169–175, 181
 - spillover effects of, 169, 187
- Pre-World War I, immigration and crime
- New York City vice study, 490–491
 - white slavers, 489–493
- Pre-World War II, immigration and crime, 484–502
- anarchist criminality, 493–497
 - anti-immigration legislation, 486
 - Chicago, delinquency areas, 488
 - Dillingham Commission and, 486–490, 502
 - drug smuggling, 497–501
 - Hoover, Herbert, and, 487–488
 - Italian criminality, 486
 - prostitution/white slave trade, 489–493
 - statistical conclusions, 488–489
 - summary of immigration, crime issues, 485
 - Wickersham Commission and, 487–488
- The Prison and the Gallows* (Gottschalk), 59
- Progressive era, black-crime statistics, 50
- Project on Human Development in Chicago Neighborhoods (PHDCN), 511
- Prostitution. *See also* Human trafficking;
- White slave trafficking
- Eastern European migrants and, 484
 - European regulation of, 492
 - international data, 500
 - in Italy, 792, 808, 810, 812*t*, 814, 815*t*, 817*t*
 - in Japan, 747–748, 747*t*, 754
 - in NYC, pre-WW I, 489–491
 - political action against, 60
 - UCR inclusion of, 111
 - U.S.-Mexican border towns, 493
- Protection Judicaire de la Jeunesse* (PJJ); French national probation service), 839
- Provine, Doris Marie, 537
- Public Law 83–280, 115
- Public opinion, 70–98
- about reception of immigrants, 683, 684*t*–685*t*, 686
 - about the death penalty, 52, 71, 73, 81
 - concerns about crime polls, 43
 - core concepts, measurement of, 78–86

- data collection methods, 76–78
 empathetic identification, punitiveness,
 74–75
 group-based threats, 72–74
 Latinos and, 34
 liberalism and, 61
 mass incarceration, research review, 95–96
 Mexican migration and, 31
 partisan shifts in, 54
 racialization/core hypotheses, 75–76
 Transatlantic Trends survey, 683, 685*t*, 686,
 699*n*8
- Public opinion, research designs
 core concepts, measurement of, 78–86
 data collection methods, 76–78
 survey data sources, 76
- Public opinion, research review
 criminal justice system, perceptions of,
 88–90
 death penalty, 86–87
 election of Barack Obama, 94–95
 getting tough on corporate crime, 91
 racial resentments, crime control, 93–94
 racial stereotypes, crime control, 91–93
 racialized mass incarceration, 95–96
 root causes of crime, 90–91
 war on drugs, 87–88
- Public policies, for incorporating immigrants,
 686–688. *See also* Migrant Integration
 Policy Index
- Public policies, for social justice, 689. *See also*
 Social Justice in the OECD
- Public Use Microdata Samples, 562
- Puerto Ricans (in the U.S.). *See also*
 Disadvantaged neighborhoods, Boston
 inner-city boys (case study)
 alcohol abuse rates, 565
 homicide victimization rates, 522, 522*f*
 marijuana use data, 119
- Punishing Race: A Continuing American
 Dilemma* (Tonry), 57, 59
- Punishment (punitive actions)
 for crack cocaine users, 76
 against Latinos, 32
 politicians' pursuit of, 59, 73
 public opinion and, 74–75
 religion's influence on attitudes about, 75
 three-strikes legislation, 33, 47, 84, 168, 173,
 186
 white attitudes about, 52–53, 70
- Punishment theory (Durkheim), 794
- R v. Gladue* court-based initiative (Canada),
 375–376
- Race, Crime and Public Opinion Survey
 (RCPOS), 76, 88
- “Race and Ethnic Standards for Federal
 Statistics and Administrative Reporting”
 (OMB), 23–24
- The Race Card* (Mendelberg), 53
- Race in the Making of American Liberalism*
 (Horton), 44
- Race-oriented advertising, 41, 46, 50
- Racial animosity hypothesis, 76
- Racial caste system, 57–58, 217
- Racial divide hypothesis, 75–76
- Racial profiling
 of African Americans, 7, 21, 89, 90, 107, 114
 of African Canadians, 301–304
 of Canadian Aboriginals, 301–304, 310
 “driving while black” example, 114
 in France, 714–715
 search and seizure inclusion, 143–144
- Racial threat hypothesis, 72, 142, 149–150
- Racial/ethnic disparities. *See also* Police/
 policing, racial and ethnic disparities
 citizens' perceptions of police, 152–153
 in crime reporting, 115–116
 debate about reasons for, 135, 151–152
 differential offending hypothesis, 146–147
 differential processing hypothesis, 148–151
 in discretionary searches, 143
 in drug arrests, 178, 195–196, 198–199, 200*t*,
 201, 201*f*, 202*t*, 205, 209–215
 future research directions, 153–155
 Human Rights Watch on, 199
 in incarceration, 5, 7, 107, 111, 176–179
 noncapital cases, sentencing and
 punishment, 167, 168, 172–173, 179–181
 in policing, 137–145
 in pretrial decision making, 169–175
 in prosecution, sentencing, punishment,
 11*n*1, 166–187, 175–185
 research on African Americans, 4

- Racial/ethnic disparities (*Cont.*)
- in searches and seizures, 136, 140, 143–144
 - theories of, 145–152
 - tolerance of, in criminal procedures, 630
 - Uniform Crime Report, 115–116
 - in use of deadly force, 141, 304–305
 - in vehicle stops, 142
 - violent crime self-reporting, 115
 - war on drugs and, 111n1
- Racialization
- Bracero Program, 27–29
 - dual goals of, 72–73
 - immigrant visa limits, 29
 - of Latinos, in the U.S., 10, 21–37
 - of mass incarceration, 95–96
 - mechanics of, 22–23
 - of Mexicans, 24–30
 - new era of, 28–35
 - of opinions about crime control, 93–94
 - of people with African origins, in the U.S., 22–23
 - of public opinion, 75–76
 - research support for, 70–71
- Racialization thesis
- African Americans and, 91–92, 96
 - core assumption, 78, 96
 - described, 96
 - Hispanic category, 79
 - research data support for, 70–71
 - tests of, 78–86
 - whites and, 96
- Racism. *See also* Jim Crow laws (Jim Crow racism)
- African Americans beliefs about, 73–74
 - aversive racism theory, 80
 - color-blind racism, 80
 - democratic racism, in Canada, 283, 309–312
 - empirical measures of, 80
 - European Monitoring Centre on Racism and Xenophobia, 332
 - group position-group threat racism, 80
 - Jim Crow racism, 79–80
 - laissez-faire racism, 80
 - modern racism, 80
 - “post-racial racism” era, U.S., 217
 - by Prison System, in England and Wales, 322
 - racialization thesis and, 78
 - structural racism, 49
 - symbolic racism, 49, 80
 - under-investment in prevention, 45–46
 - war on drugs and, 49
 - white racism, 63–64
- Racketeer Influenced Corrupt Organizations (RICO) statute, 33–34
- Radelet, Michael, 184
- Rainichi* foreigners. *See under* Japan
- Ramirez, Roberto R., 128n2
- Rape
- of American Indian women, by whites, 399
 - blacks as perpetrators, 146
 - colorblindness and, 49–50
 - Dukakis, Michael, and, 46
 - France, juvenile offending case study, 848*t*
 - gang rape, 254–255
 - gender equity and, 60
 - incarceration-arrest imbalance, 179
 - “rape prone” vs. “rape free” study, 255
 - Scottsboro Boys Case, 166–167
 - as a “social thing among hanging partners,” 252
 - UCR data, 110–112, 113*t*, 115, 116*t*
 - victimization data, 122–123, 124*t*
- Raudenbush, Stephen, 509, 551
- RCIADIC. *See* Royal Commission into Aboriginal Deaths in Custody
- RCPOS. *See* Race, Crime and Public Opinion Survey
- Reagan, Ronald, 45
- expressed stance against crime, 46
 - illegal immigration stance, 31
 - mandatory detention policies, 649
 - war on drugs of, 196
- Reception of immigrants, contexts of, 683–689
- public opinion, 683, 684*t*–685*t*, 686
 - public policies, for immigrant incorporation, 686, 687*t*, 688
 - public policies, for social justice, 689
- Reckless, Walter, 488
- Red Dust Healing (Australia), 403n5
- Red Scare (U.S.; 1918–1921), 26
- Redburn, Steve, 466, 467
- Reeve, Arthur, 499
- Rehavi, M. Marit, 214
- Reid, Lesley, 530, 589
- Reinarman, Craig, 197

- Reiner, Robert, 339–340
- Reinforced Educational Centers (CER; France), 839
- Reisig, Michael D., 141
- Religion/religious beliefs
- American South and, 619
 - anarchist criminals and, 493
 - Canada and, 284, 286, 295
 - England/Wales and, 327, 333, 339, 344
 - France and, 709, 710, 722
 - Germany and, 886
 - Italy and, 803
 - Pew Forum on Religion and Public Life, 863
 - punitive attitudes influenced by, 75
 - security studies and, 867
 - Supreme Court decisions and, 171
- Rennison, Callie, 115
- Report of the Aboriginal Justice Inquiry of Manitoba* (Canada), 368
- Report of the Special Body of Experts into the Traffic in Women* report (ASHA), 492, 500
- Report on Crime and the Foreign Born* (Wickersham Commission), 460, 487–488
- Report on the Causes of Crime* (Wickersham Commission), 488
- Republican Party (U.S.)
- crime, race, law and order concerns of, 43–44
 - periodic dominance of, 44
 - race-specific framing of crime, 56, 59
 - tough-on-crime policies, 197
 - vs. Democrats, on crime-fighting issue, 45
 - “Willie Horton” imagery creation by, 46, 52–53, 73
- Residence Contract Proposal (Italy), 800
- “Rethinking Crime and Immigration” (Sampson), 529
- Reuter, Peter, 466, 467
- Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity* (OMB), 109
- Rhodes, Henry T. F., 500
- RICO statute. *See* Racketeer Influenced Corrupt Organizations (RICO) statute
- “The River.” *See* Norway, black cannabis dealers in a white welfare state
- Roberts, Julian, 447–448n5
- Rockefeller, John D., 490–491
- Rodriguez, Cristina, 475
- Roots of Youth Violence Review (Canada), 311
- Rosenfeld, Richard, 517, 587
- Ross, Luana, 399
- Royal Commission into Aboriginal Deaths in Custody (RCIADIC; Australia), 366–367, 370
- Royal Commission on Equality in Employment (Canada), 285
- Rudin, Jonathan, 448n6
- Ruedin, Didier, 688
- Rumbaut, Rubén G., 510, 523, 541, 542, 559, 562, 563, 572, 575–576, 593
- Safe Streets Act (1999), 56, 62
- Samaniego, Roxana Y., 510
- SAMHSA drug use surveys. *See* Substance Abuse and Mental Health Services Administration (SAMHSA) drug use surveys
- Sampson, Robert J., 509, 511, 512, 529, 551, 586, 587, 588–589
- San Diego, California, Latino crime and immigration data, 587–593, 596
- Sanctuary cities, 538
- Sanday, Peggy Reeves, 255
- Sangerman, Joseph, 497
- Sarkozy, Nicholas, 284, 663, 734n8, 849
- Sayad, Abdelmalek, 801
- SB 1070. *See* Support Our Law Enforcement and Safe Neighborhoods Act
- Scandinavian countries. *See* Denmark; Finland; Sweden
- Scarman Inquiry (England and Wales), 321
- Scheingold, Stuart, 54
- Schengen Agreement (Italy), 802
- Schmitt-Rodermund, Eva, 568
- Schuck, Peter, 470
- Schudson, Michael, 240
- Scottsboro Boys Case, 166–167
- Searches and seizures
- 1929–30, drug seizures, 210–211
 - race-based policing disparities, 136, 140, 143–144
 - Stuntz’s observations about, 210
 - Supreme Court ruling, 647

- Second-generation immigrants (in the U.S.)
 achievement motivations of, 509
 “second generation decline” phenomenon, 507
 vs. first-generation, crime rates, 6, 551–552, 554, 556, 596
 vs. native-born population, crime rates, 554
 vs. third-generation, for violence
 perpetration, 509
The Secret Policeman (BBC documentary), 343
 Secure-Communities initiative (Alabama), 601
 See Illegal Immigration Reform and Enforcement Act (Georgia; H.B. 87), 607–612, 614–617
 Seemungal, Florence, 336
 Self-report data, 117–122
 by black Americans, 7, 79, 146–147
 black vs. white differences, 108, 194
 of drug use, 108
 of ethnicity, 351
 of gang membership, 296
 Integrated Correctional Services Survey, 289
 Monitoring the Future survey, 108, 117, 118–122
 offending studies, 333, 349
 police data matching with, 5
 reporting of crime and, 115
 of sexual assault, 274n8
 sources of, 108
 2000, 2010 censuses, 109
 UCR vs. self-report measures, 118, 122
 variation within an ethnicity, 79
 of violent offending, 146, 448–449n8, 599
 by youth, 117–118, 146–147, 273n5, 302, 509, 510, 561, 564–566, 782
 Sellin, Thorsten, 459, 461, 488, 489
 Senate Bill (SB) 1070 (Support Our Law Enforcement and Safe Neighborhoods Act; Arizona), 476–477, 585, 594–595, 600–603, 607, 609, 611, 619, 620n8
Sentencing Act (2002; New Zealand), 373
 Sentencing and punishment practices, 175–185. *See also* France, sentencing violent juvenile offending (case study); Punishment (punitive actions)
 Aboriginal Canadians, 375–378
 African Americans vs. whites, 108, 111–112, 111t, 179
 Australia, indigenous population, 373–375
 capital cases, racial/ethnic disparities, 182–185
 direct race effect, 181
 in France, 723–724
 future research directions, 187
 in incarceration, 176–179, 176t, 178t
 Indigenous justice practices, 373–375
 in Japan, 756–758, 756t, 758f
 life without parole sentences, 176–177
 New Zealand Maōri, 378–379
 noncapital cases, 167, 168, 172–173, 179–181
 noncapital cases, race-based disparities, 167, 168, 172–173, 179–181
 policy recommendations, 186
 pretrial decision making, 169–175
 rates of imprisonment, 167
 Scottsboro Boys Case, 166–167
 Sentencing Commission (U.S.)
 crack use, racial data, 207
 on exaggeration of crack’s putative effects, 197
 study/deal favoritism, white vs. blacks, 173, 214
 Sentencing Project, 167, 176, 198, 199–200
 Sentencing Research Panel (National Research Council), 180
 September 11, 2001, terrorist attack (U.S.), 34, 462, 467, 537, 606, 650
 Sewell, Tony, 349
 Sexual harassment
 against foreign suspects, 720t
 against women, in disadvantaged neighborhoods, 254, 261, 263–266, 273n7
 Sexual violence. *See also* *Getting Played: African American Girls, Urban Inequality, and Gendered Violence* (Miller)
 male-dominated organizational settings and, 256
 pervasive nature of, 254–255
 Sandy, Peggy, study of, 255
 social contexts for risks of, 255–256
 Sharp, Clare, 334, 353n7
Shaughnessy v. United States ex rel. Mezei (1953), 649
 Shaw, Clifford R., 461, 488, 590

- Shen, Haikang, 518, 570–571
- Shute, Stephen, 336
- Silbereisen, Rainer K., 568
- Simmel, Georg, 794
- Simon, Jonathan, 45–46, 62
- Simon, Rita, 773
- Singh, Gopal K., 570
- Single Act on Foreigners (*Testo Unico sulla condizione dello Straniero*; TUS) (Italy), 799–800, 805, 819, 826n42
- Skogan, Wesley G., 538
- Smith, Barbara Ellen, 614
- Smith, David J., 334, 346, 347–348
- Smith, Mapheus, 488
- Sniderman, Paul M., 92
- Snow, William, 492–493
- Social conditioning model, 149
- Social construction
of images of typical offenders, 74
of race, 22–24, 284
- Social control, race-based, 58
- Social control theory (Hirschi), 767
- Social disorganization theory, 253, 460–461, 511, 515
- Social justice
hypocrisies related to, 395
immigrant incorporation and, 668, 697
measurement of, 699n11
public policies for, 689
varying policies promoting, 668
- Social Justice in the OECD*, 689, 696–697, 700n11
- Song, John Huey-Long, 299
- Sorenson, Susan B., 518, 560–561, 570–571, 578n5
- Soskice, David, 674
- Southern (U.S.) style immigration, in the American South, 605–607
- Southern Poverty Law Center (SPLC), 608
- Southern United States, politics of immigration. *See* American South, politics of immigration
- Spain, population percentage with immigration background, 671f
- Spanish Caribbean, immigrant population, 23
- Special Committee on the Participation of Visible Minorities in Canadian Society, 285
- “Special Report on General Statistics of Immigration and the Foreign-Born” (U.S. Industrial Commission), 556
- Spohn, Cassia, 171, 180–181
- St. Louis, MO. *See* *Getting Played: African American Girls, Urban Inequality, and Gendered Violence* (Miller)
- Stacey, Michele, 517
- Staring, Richard, 779
- Starr, Sonja B., 214
- State Legislators for Legal Immigration (SSLI), 537
- Statham, Paul, 672
- Steffensmeier, Darrell, 170, 178–179
- Stereotyping
of African Americans, 82, 92
and blacks-crime connection, 52–53
of criminals, in the U.S., past and present, 458–465
exacerbation of difference by, 1
of Italian Americans, 459
of Latinos, 92, 97
Lee and Fiske studies, 34–35
Nixon and, 44
pejorative racial stereotypes, 82
- Stofflet, E. H., 558
- Stowell, Jacob I., 513, 588, 589–591, 596
- Strain theories, on immigration-crime nexus, 461, 767
- Street capital. *See also* Norway, black cannabis dealers in a white welfare state
benefits of having, 409, 410–413
of cannabis dealers, in Norway, 408
conversion to economic capital, 415–418, 426
cultural capital comparison, 409–410
described, 409–410, 421, 426
development of, 419–420
as distinction, 410–413
gangster discourse and, 426–427
as status and power, 413–415, 418, 420, 426–427
street habitus conversion to, 420
types of, 410–418, 422, 426
- Subcultural explanations of criminality, in the Netherlands, 777–778
- Substance Abuse and Mental Health Services Administration (SAMHSA) drug use surveys, 203–204, 205f–208f

- Sundquist, James, 43
- Support Our Law Enforcement and Safe Neighborhoods Act (Arizona; SB 1070), 476–477, 585, 594–595, 600–603, 607, 609, 611, 619, 620n8
- Supreme Court decisions
- Arizona immigration law struck down by, 476
 - Arizona v. United States* (2012), 477, 642
 - Brown v. Board of Education* (1954), 167
 - Chy Lung v. Freeman* (1875), 639, 640
 - Flores-Figuero v. United States* (2009), 652–653
 - Fong Yue Ting v. United States* (1893), 466
 - Georgia Latino Alliance for Human Rights v. Deal*, 641
 - Gregg v. Georgia* (1976), 182–184, 183
 - Henderson v. Mayor of New York* (1875), 639, 640
 - jus soli* citizenship, 690, 695–697
 - McCleskey v. Kemp* (1987), 182
 - Miranda v. Arizona* (1966), 647–648
 - Norris v. Alabama* (1935), 166
 - Padavan v. United States* (1996), 639
 - Padilla v. Kentucky* (2010), 651–652
 - Powell v. Alabama* (1932), 166
 - searches and seizures, 647
 - Shaughnessy v. United States ex rel. Mezei*, 649
 - Tennessee v. Garner* (1985), 140–141
 - Texas v. United States*, (1997), 639
 - United States v. Alabama* (2011), 641
 - United States v. Arizona* (2010), 601
 - United States v. Brignoni-Ponce* (1975), 641
 - United States v. Clary* (1994), 198
 - Wong Wing v. United States* (1896), 634
 - Zadvydas v. Davis* (2001), 651
- Surinamese immigrants, in the Netherlands, 677, 766, 770–772, 783, 767699n16
- Sutherland, Edwin, 554, 556–558
- Sweden
- citizenship laws, 553
 - minority group arrest rates, 6
- Switzerland
- foreign inmates data, 578n1
 - immigrant generational crime data, 566–567
 - restrictive naturalization laws, 8
- Symbolic racism, 80
- Systematic social observation (SSÖ), 144
- Taft, Donald, 529, 557–558, 578n3
- Tanner, Julian, 297
- Tator, Carol, 310–311
- Temporary aid for needy families (TANF), 465
- Tennessee v. Garner* (1985), 140–141
- Terrill, William, 141
- Terrorism Act (England; 2000), 322, 340, 343–344
- Texas v. United States*, (1997), 639
- Thompson, Debra, 284–285, 294
- Thongniramol, O., 509, 561
- Thornton, Sarah, 413
- Three Hundred Thousand International Student Plan (Japan), 759–760
- Three-strikes legislation (U.S.), 33, 47, 84, 168, 173, 186
- Tonry, Michael, 57, 60, 178, 345, 573–574, 638–639, 855
- Toronto Region Statistics Canada Research Data Centre (RDC), 448n8
- Toronto Youth Crime Victimization Survey (TYCVS), 296–297, 296t
- Tough on crime policies
- growth of, 197
 - of politicians, 46, 47, 49, 73, 197, 515
- Traffic and pedestrian stops, race-based
- policing disparities, 142–143
- Trafficking
- of drugs, 171, 174, 195, 197, 210, 297, 424, 497–501, 644–645, 719, 783, 785
 - of women/humans, 337, 484–485, 489–493, 500–502, 718, 766–767, 779, 780t, 781
- Trafficking in Persons Report (U.S. Department of State), 750
- Transatlantic Trends survey, 683, 685t, 686, 699n8
- Tribalat, Michèle, 838
- Tribe, Laurence, 218
- Trujillo, Rafael, 23
- The Truly Disadvantaged* (Wilson), 224
- Tuch, Steven A., 74, 86
- Turkish immigrants
- in Germany, 4, 5, 9, 567, 879–897
 - in the Netherlands, 552, 577, 766–767, 769–773, 778, 782–783
- 287(g) program (U.S.), 466, 472–474, 532, 535–536, 538, 585, 594, 601, 612, 646

- UN Committee on the Elimination of Racial Discrimination, 218, 286
- UN Convention on the Rights of the Child, 729
- UN Declaration of Rights of Indigenous Peoples, 402
- UN Permanent Forum on Indigenous Issues, 393
- Undocumented immigrants
- in Alabama and Georgia, 600–601, 603–619, 620n1
 - analysis of deportees, 475
 - California Proposition 187 crack down, 459
 - in Central America, 32
 - Criminal Alien Program, 473
 - as criminals, 457, 458, 459, 472–476
 - detention vs. punishment, 475–476
 - EBSVERA legislation enactment, 468
 - enforcement policies, 32
 - in Georgia (U.S.), 603
 - in Italy, 683, 792–793, 798–700, 802–805, 808, 811–813, 817, 820
 - lack of protections for, 37
 - Latino migrants, 32, 33, 35
 - Mexicans, 32, 33, 35, 466, 469, 541
 - from Mexico, in the U.S., 32, 33, 35, 466, 469, 541
 - 1980s, 1990s, 639
 - NSEERS legislation enactment, 468
 - population diversity data, 22
 - post-1965 period, 21, 29–30, 465–468
 - voluntary departure vs. deportation, 466–467
- Uniform Crime Reports (UCR)
- arrest data (post-WW II-2010), 110–112, 114–117
 - criticisms of measurement methods, 114
 - drug use arrest collection system, 219n3
 - ethnic categories, 114–115
 - immigrant homicide/theft, negative association, 512
 - limited police bias influences, 114
 - misleading arrest rate data, 178–179
 - NCVS comparison, 123, 125
 - police data compilation, 108
 - racial/ethnicity disparities in, 115–116
 - self-report data vs., 118, 122
 - victimization data, 116–117
- United Kingdom (UK). *See also* England and Wales
- availability of data in, 287
 - black offending rates, 345
 - blacks/ethnic minority overrepresentation, 837
 - Eastern European immigrants in, 325–326
 - education-immigrant connection, 673
 - emigration to the Netherlands, 771
 - ethnic minority distribution, 326
 - female arrests, 337
 - foreign-born composition in prisons, 666*t*
 - Gillan and Quinton v. United Kingdom*, 343
 - Indian/Pakistani immigrants in, 325
 - in-flows of foreign population, 678*t*
 - jus soli* citizenship, 695
 - juvenile victimization, 331
 - migration by legal status, 682*f*
 - MIPIX score, 687*t*
 - Operation Trident initiative, 351
 - penal research investments, 837
 - population percentage with immigration background, 671*f*
 - position on ethnic minorities, 837
 - public attitudes towards immigrants, 684*t*
 - rioting (summer, 2011), 323, 332
- United States (U.S.). *See also* African American entries; Alabama; American Indians; American South, politics of immigration; California; Chicago, Illinois; Congress; Democratic Party; Disadvantaged neighborhoods, Boston inner-city boys; Georgia; Hispanics (in the U.S.); Immigrants in the U.S., crimes committed by and against; Immigration and crime, in U.S. communities; Laws on immigration and crime, in the United States; Los Angeles, California; Mexico-U.S. border; New York City; Republican Party
- anti-immigrant sentiment, 26, 30–31, 34, 340
 - assassination attempts in, 494
 - citizenship laws, 690, 691*t*, 695
 - civil rights movement, 4, 28, 37, 43, 55–56
 - communities, immigration and crime in, 529–547
 - “crime in the streets” campaign, 43, 49, 56
 - crimes by and against immigrants, 505–524

- United States (U.S.) (*Cont.*)
- criminalization, negative impacts, 393
 - decreasing crime rates and immigrants, 551
 - drug law history, 196
 - England and Wales data similarity, 8
 - European immigration to, 2
 - E-verify system, 607
 - extensive research accumulation, 9–10
 - first- vs. second-generation crime rates, 551–552
 - foreigner crime rates, 746
 - General Social Survey, 31–32
 - immigrant population size, 669
 - immigrant quota, 29
 - immigrants, beliefs about, 457
 - Indian subcontinent immigrants, 6
 - Japan's "gentleman's agreement" with, 25
 - Jim Crow laws, overturning of, 28
 - jus soli* citizenship in, 690, 695–697
 - Latinos, racialization of, 21–37
 - "law and order" campaign, 42–43, 49
 - laws on immigration and crime in, 628–654
 - Los Angeles, California data, 560, 571, 571530
 - Mexican-American War, 24
 - Miami, Florida, Latino crime and immigration data, 587–593
 - 9/11 terrorist attack, 34, 344, 462, 467, 537, 606, 650
 - "post-racial racism" era in, 217
 - pre-World War I, immigration and crime, 489–493
 - pre-World War II, immigration and crime, 484–502
 - quota laws for Eastern Europe, 26, 635
 - race-based riots in, 298
 - race/crime, post-mid-1900s, 7
 - race/crime, role in politics, 41–63
 - race/ethnicity data availability, 8
 - southern states, politics of immigration in, 600–621
 - stereotypes of immigrants, past and present, 458–465
 - three-strikes legislation, 33, 47, 84, 168, 173, 186
 - value-added policies in, 673
 - violent crime reductions of Latinos, 586
 - white slave trafficking, 489–493
 - WW I labor recruitment program, 25–26
- United States (U.S.), politics of immigration and crime, 457–480. *See also*
- Undocumented immigrants; United States (U.S.), politics of immigration and crime; individual immigration acts
 - ABA on immigrant-crime relationship, 459–460
 - Anti-Terrorism and Effective Death Penalty Act, 33, 472, 515
 - Arizona/Alabama criminal statutes, 476–478
 - Bracero Program, 27
 - conflation of illegality and criminality, 464
 - Criminal Alien Program, 473
 - criminal immigrant stereotype, past and present, 458–465
 - cultural theories, 461
 - future research directions, 478–479
 - General Social Surveys data, 462–463, 463f, 464f
 - Illegal Immigration Reform and Immigrant Responsibility Act, 465, 472, 480n1, 515, 535, 585, 607, 630
 - Italian American stereotypes, 459
 - mass incarceration/mass immigration, 468–472
 - National Origins Act, 507
 - Page Act (1875), 459
 - PATRIOT Act (2001), 34, 467–468, 472–473, 630, 650
 - possible immigrant-crime rate influence, 462t, 463f–464f
 - post-1965 era transformations, 458, 465–468
 - post-1965 immigration policy shift, 29
 - present day attitudes, 461–462
 - "Report on Crime and Foreign Born," 460
 - social disorganization theory, 460–461
 - state level politics, 476–478
 - strain theories/immigrant-crime nexus, 461
 - study conclusions, 458
 - 287(g) program, 466, 472–474, 532, 535–536, 538, 585, 594, 601, 612, 646
 - undocumented as criminals, 472–476
 - Violent Crime Control and Law Enforcement Act, 471
 - welfare/immigration reform, 465
 - United States, Arizona v.* (2012), 477, 642

- United States, Flores-Figuero v.* (2009), 652–653
- United States, Fong Yue Ting v.* (1893), 466
- United States, New Jersey v.* (1996), 639
- United States, Padavan v.* (1996), 639
- United States, Texas v.* (1997), 639
- United States, Wing Wong v.* (1896), 634
- United States v. Alabama* (2011), 641
- United States v. Brignoni-Ponce* (1975), 641
- United States v. Clary* (1994), 198
- United States v. State of Alabama* (Alabama Federal District Court; 2011), 478, 544
- Unnever, James D., 71, 73–75, 81, 82, 83, 84, 86–87, 90, 93, 94, 97
- Urban inequality. *See Getting Played: African American Girls, Urban Inequality, and Gendered Violence* (Miller), research findings
- U.S. Border Patrol, 26, 30, 32. *See also* Mexico-U.S. border
- U.S. Bureau of Immigration and Customs Enforcement (ICE), 532–533, 536–537, 594, 630, 645–648, 650. *See also* 287(g) program
- Enforcement and Removal Operations program, 475
- future research directions, 478–479
- intergovernmental agreements, 474–475
- Memorandum of Understanding with police, 537
- mission of, 473
- 287(g) controversy, 473–474
- U.S. Bureau of Justice Statistics (BJS), 187n1, 214, 468
- U.S. Bureau of Prisons, 63
- U.S. Bureau of Social Hygiene, 490–491
- U.S. Census Bureau
- addition of Hispanic origin description, 23–24
- incarceration, generational differences, 558, 562, 563–564
- Mexican category creation, 27
- NCVS administration by, 122
- 1918 “Negro Population” report, 175
- parental nativity question, 572
- race categories, 109
- race/ethnicity measures, 109
- 2010 racial and ethnic classifications, 109*t*
- U.S. Department of Homeland Security, 466, 517, 534, 650
- U.S. Department of Justice, 534
- U.S. Department of Treasury, 497
- U.S. Immigration and Naturalization Service (INS), 28, 30–31, 468, 473, 475, 534, 649
- U.S. Industrial Commission, 2, 508, 556
- USA PATRIOT Act (2001), 34, 467–468, 472–473, 630, 650
- Van Gemert, Frank, 777
- Van Kalmthout, Anton, 784
- Van San, Marion, 777, 782
- Varsanyi, Monica, 782
- Vermette, D’Arcy, 370
- Victims and victimization. *See also* Canada, black homicide victimization in Toronto, Ontario (case study); Homicide victimization
- of Aboriginal Canadians, 8–9, 294, 369, 388, 432–433
- of African Americans, 124, 124*f*, 146, 430
- of African Canadians, 294–295
- of American Indians, 8–9, 108, 123, 124*f*, 125, 128n9, 388
- of Australian indigenous population, 1, 4, 6, 8–9, 387–390, 388–389
- British Crime Survey (BCS) data, 329–332
- in England and Wales, 8, 329–332, 330*t*, 345–350
- in France, 714, 716–723
- household property, 128n9
- in Italy, 819–820
- juveniles, in the UK, 331
- of Latinos, in the U.S., 506, 570
- of Mexican immigrants, in the U.S., 506, 522–523, 522*f*
- National Crime Victimization Survey data, 115, 122–125
- in the Netherlands, 730*t*, 778
- in New Zealand, indigenous population, 1, 4, 6, 8, 387–390
- post-1990s data, 108
- of Puerto Ricans, in the U.S., 522, 522*f*
- rape data, 122–123, 124*f*
- Toronto Youth Crime Victimization Survey, 296–297, 296*t*
- UCR data, 116–117
- U.S. vs. Western Europe, generational differences, 568–571

- Vietnam War, 43
- Viña, Gustavo de la, 31
- Violence-proneness
 - African American stereotypes, 82
 - economics of/racial stereotyping, 92
 - Latino stereotypes, 97
 - white ratings of groups, 83
- Violence/violent crime. *See also* Homicide
 - victimization; Rape
 - African American involvement, 7
 - arrest percentages, 113*t*
 - in disadvantaged neighborhoods, 228–237, 240–241, 256
 - immigration and lowered rates of, 512–513
 - lowered rates of Latinos, 586
 - post-1990s victimization data, 108
 - reasons for not reporting, 116*t*
 - self-reporting disparities, 115
 - against young women, 252
- Violent Crime Control and Law Enforcement
 - Act (1994), 471
- Violent Crime Control and Law Enforcement
 - Act (1994; U.S.), 635
- Visas, use of “preference system,” 29
- Wallace, George, 43
- War on drugs
 - arrest/incarceration rates, 194, 199
 - black communities concentration, 638–639
 - black-crime connection and, 49
 - carceral state and, 57
 - changes caused by, 139
 - harsher anti-blacks treatment in, 175
 - minority neighborhoods focus, 197
 - 1980–2000 data, 87–88
 - political conservatives launching of, 55, 196, 636
 - racial disparities in, 111*n*, 49, 57, 71, 198
 - U.S. efforts and ending discrimination of, 218
 - white blindness to inequities of, 217
- Wardak, Ali, 348
- The Washington Post*, 76
- Weaver, Vesla M., 56, 59
- Webster, Colin, 331, 347
- Weenink, Don, 781
- Weitzer, Ronald, 74, 86
- Welch, Kelly, 83, 84, 92, 93, 537
- Western Europe. *See* Immigrants and their children, U.S. vs. Western Europe
- Wetzels, Peter, 568
- White Australia Policy, 363
- White Paper on Crimes (Japan), 744, 745, 748, 752, 756*t*
- White Slave Traffic Act (1910), 489
- White slave trafficking (U.S.), 484, 485, 489–493, 500–502
- White-collar crime, 71, 84, 86, 91, 297, 716, 739
- Whites. *See also* African Americans vs. Whites
 - alcohol, substance abuse, 118–119
 - attacks on Mexican day laborers, 516
 - beliefs about minorities, 83
 - blacks, beliefs about, 7, 48, 70, 71, 93
 - Census Bureau classification, 109*t*
 - crime control beliefs, 96
 - crime-related media portrayal, 50–51
 - criminal justice system beliefs, 85
 - death penalty support, 86
 - drug offense convictions data, 70
 - drug offenses (2000–2009), 203*t*
 - drug use, high school seniors, 119*t*
 - Latinos, beliefs about, 93
 - marijuana use data, 119
 - non-Hispanic white, self-identification as, 109
 - punitive attitudes of, 52–53, 70
 - Race, Crime, and Public Opinion Study, 76
 - Race, Crime and Public Opinion Survey, 76, 88
 - racial animosity hypothesis and, 76
 - violence-proneness ratings survey, 83
- Wickersham Commission, 2, 460
 - immigrants and their children report data, 557
 - immigration-crime nexus examination, 508
 - Report on Crime and the Foreign Born*, 487–488
 - Report on the Causes of Crime*, 488
- Wieviorka, Michel, 713
- Wilbanks, William, 152
- Williams, Toni, 308
- Wilson, David B., 140
- Wilson, George, 92
- Wilson, Pete, 31

- Wilson, William Julius, 224
Wistrich, R., 722
Wittebrood, Karin, 782
Wolfe, Scott E., 478
Women, trafficking of, 337, 484–485, 489–493, 502, 718, 766–767, 779, 780*t*, 781
Wong Wing v. United States (1896), 634
Wood, Justice (Australia), 371–372
Woods, Arthur, 499
World Prison Brief (International Centre for Prison Studies), 698*n*2
World War I. *See* Pre-World War I, immigration and crime
World War II. *See* Pre-World War II, immigration and crime
Wortley, Scott, 297, 300
Wray-Lake, Laura, 541
Wuff, Christian, 663
Youdell, Deborah, 349
Youth crimes. *See* Disadvantaged neighborhoods, Boston inner-city boys (case study); France, sentencing violent juvenile offending (case study); Juveniles
Youth Level of Service Inventory (YLSI), 394
Zadvydas v. Davis (2001), 651
Zatz, Marjorie, 180
Zhou, Min, 561
Zion, James, 395
Zolberg, Emilio, 34

