

Essay on do gender, status, class, and race affect sentencing in the criminal jus...

[Law](#), [Criminal Justice](#)



Introduction

Asked to stereotype a criminal, many people are likely to go for a certain gender (usually male), a certain social class (usually low class), a certain race (usually black) and a certain age (usually under the age of 30). In the early days, courtrooms exclusively comprised of white decision makers. Today there is more racial diversity in the composition of judicial benches. In spite of this progress; race, class and gender still play a critical role in numerous criminal justice outcomes. The role of these issues usually comes in handy in the sentencing of convicts. More than 40 studies have been conducted in regard to these issues. Areas of research involve examinations on the lengths of sentences for different races, the impacts of social class on the sentencing, impacts of age on sentencing, comparative studies on judicial processes in regard to certain crimes (such as drug felonies) and the racial disparities therein. In most studies race has been selected as the main subject of study with age and social class being some of the variables under study. In these studies, the court system and judges have been shown to adhere to a certain racial biases and trends when choosing punishments for crimes committed by multicultural and multiracial offenders.

- Studies showing there is discrimination

There are numerous studies to show that discrimination is rife in judicial processes. A 2003 study of the Maryland capital punishment system found that alleged killers of white victims were three times more likely to receive a death sentence as compared to killers of non-white victims (Kansal, 2).

Another study by Cassia Spohn produced for the National Institute of Justice revealed that discrimination is rife in the courtrooms. The study found out

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that young Black and Latino males especially those that are unemployed are usually subject to harsh sentencing as compared to other populations of offenders (Kansal, 2). This latter study corroborates that on the Maryland capital system by affirming that black defendants who were convicted of harming whites received harsher sentences as compared to blacks who were convicted of harming fellow blacks or Latinos.

Kansal also quoted a 1998 study by the Pennsylvania State Correctional System which revealed that, for similar crimes, black convicts received harsher sentences as compared to white convicts; young convicts were sentenced for longer periods as compared to older offenders while males received harsher sentences as compared to female convicts. For instance the study indicated that white men aged 18-29 years old were 38% less likely to be sentenced to serve terms in prison as compared to black men of the same age (Kansal, 7). White men from the same age bracket were found to serve prison terms that were three months shorter than those served by their black colleagues. Black men of that age were also four times more likely to be sentenced to prison as compared to white men aged more than 50 years (Kansal, 7). A 1991 study in the two counties from Florida revealed that social-economic status also affected sentencing. Unemployed black men were 5.2 times more likely to be incarcerated as compared to employed whites (Kansal, 7).

Real cases and examples of discrimination

There are several real cases and examples to affirm that discrimination is rife in the courtrooms. In 1990, a Texas Police officer told a Black man called

Clarence Brandley “ one of you is gonna hung for this. Since you are a nigger, you’ are elected!” (Dieter). Mr. Brandley had been charged with the murder of a white high school girl. He was later exonerated of the crime after spending 10 years in jail!

In Missouri, a judge named Earl Blackwell issued a press release while presiding over a capital punishment case against a black man stating that the Democratic Party places extra emphasis in representing, “ people who do not want to work and those with a skin color that’s any color but white” (Dieter). The judge refused to excuse himself from the trial and went ahead to sentence the defendant death.

In yet another case, during the 1997 election campaign for the Philadelphia District attorney, an assistant attorney running for the Pennsylvania position of District urged attorneys in his office to exclude blacks from high profile criminal cases. He targeted exclusion of black women from the jury stating that “ young black women are very bad” and that “ black people from low-income areas are less likely to convict” (Dieter). After reading and research, there are multiple cases where higher economic status and race give a reduced sentence, while men receive higher sentences than females. Many variables affect sentencing especially prior offenses and family situations.

Research for discrimination

A) First example of disparity in justice system

1) Method

A study by Mustard examined 77, 236 federal offenders that were sentenced under the Sentencing Reform Act of 1984. The data was collected based on

the federal sentences done by the United States Sentencing Commission (USSC) of 1984 (Mustard). The study analyses the sentences were generated based on the sentencing tables. Although the USSC was set up to ensure that sentencing is not based on gender, race, ethnicity and income do not affect the length of a sentence, discrimination in sentencing is said to have gone up since the inception of the law.

2) Results

The results of the study indicate that blacks who have low levels of education and whose incomes are also low receive longer sentences.

Disparities from the law are created by departures from it and not differential sentencing within the guidelines. Such departures produce about 35% of the black-white differences and 70% of the differences in sentencing among males and females (Mustard). Drug trafficking causes the largest difference between black-white sentencing.

3) Analysis of their conclusion

Its primary conclusion is that after including more exhaustive controls than any previous study, large differences in the length of sentence exist on the basis of race, gender, education, income, and citizenship. These disparities occur in spite of explicit statements in the guidelines that these characteristics should not affect the sentence length. B) Second example for disparity in justice system 1) Method

In order to obtain data for the study titled The effects of gender, family status, and race on sentencing decisions Freiburger sent factorial surveys to 360 courtroom plea judges who presided over criminal court cases in the state of Wisconsin. The survey questions sought to establish the influences

of family roles, gender and race on the judge's sentencing decisions. 51% of the target respondents responded.

2) Results

The results indicate that defendants who had females had a highly reduced chance of incarceration while caretaker roles insignificantly affected the chances of offenders being incarcerated. The reduction in the likelihood for a defendant to be incarcerated for being a care taker was larger for males than for females (Freiburger, 388). Having family roles reduced the likelihood of incarceration for white and black females. Having family responsibilities had a significantly greater decrease in the likelihood of incarceration of Black men than for white men (Freiburger, 390).

3) Analysis of their conclusion

Primary conclusion is that gender remained significant, with female defendants less likely than men to receive a sentence of incarceration. The variables for "no care for children" and "financial provider only" failed to have a significant impact on likelihood of incarceration. Neither of the social control variables (i. e., living situation and employment) reached significance. Living with a spouse was actually in the opposite direction, indicating that those living with a spouse were more likely to be incarcerated than those not living with a spouse (Freiburger, 382). Both caregiver roles ("caregiver only" and "caregiver as well as financial provider") resulted in significant decreases in defendants' likelihood of incarceration (Freiburger, 383). Performing both the caretaker and financial provider roles also resulted in a significantly reduced likelihood of being incarcerated. In fact, performing the role of sole emotional and economic caretaker resulted in a greater

decrease in likelihood of incarceration than any of the other family role variables.

In addition to the significant variables discussed above, offense type, the prior record score, and suburban jurisdiction were significant in the model. Offense type (i. e., drug or property) was the strongest predictor of sentencing likelihood in the model, with drug offenders having a greater likelihood of incarceration than property offenders (Freiburger, 384). The prior record variable was also significant, showing that as a defendant's prior record score increased their likelihood of conviction also increased. Suburban judges were also significantly less likely to incarcerate a defendant than rural judges.

- Real case studies of gender, race, and status affecting sentencing regarding death penalty

These case studies were compiled by Richard Dieter who was serving as the executive director of Death Penalty Information Center in June 1998.

1) Study 1- The first study was on the race of people who received death penalty

This study was conducted by leading researchers on capital punishment, Professor David Baldus and George Woodworth- a statistician and their colleagues in Philadelphia between 1983 and 1993. The researchers settled on investigating the linkage between race and the death penalty in the city of Philadelphia which has only 14% of the state's population yet it accounts for more than half of all death row convicts in the state of Pennsylvania (Dieter). The examination considered nit only mere raw figures of death row sentences but also factors like backgrounds of the accused, deliberate

infliction of pain, multiple victims among others.

The study found out that black people were significantly more likely to get death sentences as compared to other defendants who had been accused of similar murders. Raw data for the number of defendants sentenced to death between 1983 and 1993 showed that black people had a 40% higher rate of receiving the death penalty when compared to defendants from other races (Dieter). The sentencing rate; or the number of people from one group as compared to the total number of cases from that group eligible for a similar sentence revealed glaring racial disparities. Black people had a death sentencing rate of 0.18 while other races had a combined rate of 0.13 (Dieter). This means that for every 100 black people eligible for the death penalty, 18 of them were sentenced to death while only 13 out of an eligible 100 defendants from all the other races were sentenced to death. Overall, the odds for a black person to receive a death sentence were 3.9 times higher than other similarly placed defendants. Baldus and Woodworth estimated the results of the bias against black people in Philadelphia to be in excess of 38% in death sentences for blacks as compared to all other defendants accused of similar crimes.

Linked to the Philadelphia study was a review of empirical studies by the General Accounting Office (GAO). Congress asked GAO to review the studies after Sister Helen Prejean requested it to do so in the late 1980s. 82% of the studies showed that race influenced the likelihood of a defendant being sentenced to death with blacks the most vulnerable (Dieter). The review of studies also found out that people who murdered whites were more likely to be sentenced to death than those who murdered blacks.

2) Study 2- Race of prosecuting attorneys

The assertions of the “ races of prosecuting attorneys” stems from a study published in the Cornell Law Review which indicated that almost all the prosecutors involved in making a key decision on whether a death penalty will be sought are white. The study was conducted by Professor Jeffrey Pokorak from St. Mary’s University School of law who collected data on the race and gender of government officials who were mandated to prosecute criminal offenses and in particular capital offense cases in all the 38 states that use the death penalty. The study was completed and its results released in February 1998 (Dieter). Pokorak showed that 98% of all prosecutors responsible for death penalty decisions were white. Black and Hispanic prosecutors responsible for the death penalty made up 1% each of the total number of prosecutors responsible for the death penalty.

The implications of race of the prosecutors go far beyond the figures shown above. In the Chattahoochee Judicial District, prosecutors faced with crimes within their communities are said and confirmed to have consulted with the families of the victims on whether they should invoke the death penalty. Pokorak stated that, in case a victim’s family is prominent, white and very likely to support him in the next election the prosecutor was likely to push for the defendant to be sentenced to death if that was the wish of the victim’s family. On the contrary, prosecutors failed to meet the families of African-Americans who had been murdered.

Senior white judicial officials also actively sideline black people from inclusion into prosecution teams. In Philadelphia, Jack McMahon who was an assistant District Attorney, while campaigning for the District Attorney

instructed new prosecutors in his office on the importance of keeping black people from high level criminal cases. In his training video for prosecutors he said, “ young black women are very bad” and added that, “ blacks from low-income areas are less likely to convict” (Dieter). This shows the perception senior judicial have of black people and primarily gives the reason for the conspicuous absence of black people in prosecution teams especially those that deal with capital offenses.

3) Analysis of conclusion

The new study reveals through the report add to an overwhelming body of evidence that race plays a decisive role in the question of who lives and dies by execution in this country. Race influences which cases are chosen for capital prosecution and which prosecutors are allowed to make those decisions. Likewise, race affects the makeup of the juries which determine the sentence. Racial effects have been shown not just in isolated instances, but in virtually every state for which disparities have been estimated and over an extensive period of time.

- Real case studies of gender, race, and status affecting sentencing regarding drugs

This study titled “ Race, drugs and Law Enforcement in the United States” was conducted by Jamie Fellner- a senior counsel in the US. The study was then published in the Stanford law and Policy Review in 2009. The study investigated drug use, arrests, conviction and incarceration among different races.

1) What races are engaged in drug offences?

Asked to envision a drug offender, Americans pictured an unkempt young

African-American slouched in an alley or hanging around urban street corners. However statistics over the last twenty years indicate that whites have engaged in drug abuse at a rate higher than African Americans (Fellner). Surveys conducted by the federal Substance Abuse and Mental Health Services Administration (SAMHSA) in 2006 estimated that 49% of whites and 42.9% of blacks aged more than 12 years have used drugs in their lifetime (Fellner). 14.5% of blacks and 16% of whites used drugs in the between 2005 and 2006 while 8.5% of whites and 9.8% of blacks used drugs in the month preceding the survey (Fellner).

Fellner asserts that since the white population is six times more than that of blacks, the number of whites using drugs is far greater than the number of blacks using drugs. Out of the 111,774,000 Americans aged more than 12 years that SAMHSA estimates to have used drugs in their lifetime, 82,587,000 of them were white and only 12,477,000 were black! SAMHSA estimates that 5.5 million whites have used crack cocaine as compared to 1.5 blacks who have used the drug. Blacks represent 13% of people who have used an illicit drug with whites representing 8%. In 2007, 1.6% of all blacks surveyed said that they had sold drugs while 2.8% of the whites surveyed admitted to the offense. In summation, Blacks made up an estimate of between 13 to 20% of the total number of drug offenders (Fellner).

2) Statistics of incarceration regarding race and gender

Taking it that all factors are constant, if blacks make up about 13-20% of total drug offenders in the country then their incarceration rates should be proportionate to the number of blacks charged with drug offenses (Fellner).

This is however not the case. Data from varied sources constantly

demonstrates that blacks remain more likely to be charged incarcerated for drug offenses as compared to white drug offenders. Statistics indicate that between 1987 and 2007 more than 25 million arrests related to drugs were made in the United States. The percentage of black people arrested for drug offenses increased from 27% in 1980 to 42% in 1993 before declining to the current rate of 35% (Fellner). In 1980, black people were arrested for drug-related offenses at a rate almost thrice (2.9) the rate of arrests for white drug offenders. By 1993 the rate of blacks arrested for drug offenses was 3.9 times that of white drug offenders (Fellner).

In spite of their relatively low numbers in terms of arrests and drug use as compared to whites, their incarceration rates are significantly high. Blacks make up 43% of all the persons convicted of drug felonies while whites make up 55% of persons convicted of similar crimes. Blacks make up 53.5%, while whites make up 33.3% of all persons incarcerated in state prisons for drug offenses! (Fellner). Though the rate of arrests for blacks suspected of drug offenses has subsided they remain the racial group most targeted by drug swoops, arrests, convictions and incarcerations.

3) Analysis of conclusion

The significantly higher rates at which blacks are arrested and incarcerated on drug charges relative to the rates of whites raises strong questions. The rates of arrest bear no relationship to rates of offending; to the contrary, the evidence is clear that whites engage in drug offenses with relative impunity compared to blacks. The underlying motivation of the war on drugs was infused with racial views and concerns adverse to blacks. If the goal of combating drug abuse were untainted by racialized concerns, the means

chosen to achieve that goal-heavy law enforcement in minority neighborhoods-is hardly an adequate or necessary response, much less consistent.

Conclusion

Evidence indicates that racial bias continues to happen in the U. S. criminal justice sentencing system. Usually, the effects of this bias are somewhat hidden, and become most apparent for certain types of defendants, such as young minority males, or for certain types of offenses, such as drug and property crimes, or may even have less to do with the race and gender of the defendant than with the race and gender of the victim, as the evidence suggests in sexual assault and capital punishment cases. The evidence clearly indicates that it remains a very real part of the sentencing process. Sentencing is but one phase of the criminal justice process, and outcomes in this area are reflective of decisions made at prior points in the system. Thus, efforts to reduce racial disparity at sentencing must also pay attention to law enforcement arrest decisions, and prosecution charging practices. Reducing racial disparity in the criminal justice system is important in order to produce fairness and to uphold the ideals upon which the system based upon. Unless the justice system is perceived as fair and just, trust and understanding will disappear and public cooperation with the system will diminish.

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