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978-0-521-13475-0 - Justice in America: The Separate Realities of Blacks and Whites

Mark Peffley and Jon Hurwitz

Excerpt

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I

Introduction

This case has been portrayed by the news media as being about race. But the case is not, and never has been, about race. It is about finding justice for an innocent victim and holding people accountable for their actions.

Jena, Louisiana, District Attorney Reed Walters, explaining his decision to charge six African-American high school students with attempted murder after they beat a White student but declining to charge White students, who hung nooses from a school yard tree, with hate crimes¹

If you can figure out how to make a school yard fight into an attempted murder charge, I'm sure you can figure out how to make stringing nooses into a hate crime.

Latese Brown, protesting District Attorney Walter's decisions in Jena²

On August 9, 1997, Abner Louima, a Haitian immigrant, was arrested outside of the Rendez-Vous Club in Flatbush, Brooklyn, where police arrived to break up a fight. On the way to the police station, the officers beat Louima. Unfortunately, this treatment became far more sadistic when, upon arrival at the 70th Precinct Police Station, one officer (Justin Volpe) sodomized him with a toilet plunger rod.

¹ Taken from <http://cnn.com/video/#/video/us/2007/09/19/jena.6.da.press.conference.cnn> (accessed September 21, 2007).

² "Protest in Louisiana Case Echoes the Civil Rights Era," *New York Times*, September 21, 2007, A15.

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Although Volpe is currently serving a thirty-year sentence, the other three officers had their convictions overturned in February 2002 by a federal appeals court for lack of evidence. Louima later settled with the city of New York for \$8.7 million.³

Less than two years after the Louima episode, four New York policemen searching for a rape suspect knocked on the door of Amadou Diallo in order to question him. When Diallo reached inside his jacket, the police shot him forty-one times, hitting him with nineteen bullets – at least some of which were fired postmortem. Although the officers feared that Diallo was reaching for a gun, it turned out to be his wallet.

As reported in the *Washington Post*, “The four White New York City police officers charged with murder for shooting down an unarmed Black man in a hail of 41 bullets were acquitted today on all counts *in a case that has become a rallying cry for racial justice*.”⁴ In remarks to guests at a Democratic National Committee dinner shortly thereafter, President Bill Clinton denounced the racial overtones of the incident, claiming “... I know most people in America of all races believe that if it had been a young White man in a young all-White neighborhood, it probably wouldn’t have happened.”⁵

Despite the president’s claim, there is considerable evidence that “people in America of all races” do *not* look at such incidents identically. Several years earlier on the west coast, for example, racial divisions in response to a series of high-profile criminal incidents were unmistakable. On April 29, 1992, a mainly White jury in Simi Valley, California, voted to acquit four White police officers charged with the beating of Rodney King, an African American. The response in nearby Los Angeles was swift and intense, as massive rioting broke out in the north-central section of the city, resulting in hundreds

³ In addition, two police officers and a former colleague were found guilty of conspiring to obstruct justice for lying about the colleague’s role in the torture of Abner Louima (*Washington Post*, March 7, 2000, A03).

⁴ Duke, Lynne. February 26, 2000. “Jury Acquits 4 N.Y. Officers; Panel Rules Police Acted Reasonably in Slaying of Amadou Diallo,” *Washington Post*, A01 (emphasis added).

⁵ Remarks by President Clinton to the Democratic National Committee, San Francisco, March 3, 2000. Amadou Diallo’s parents later sued the New York City police department for \$81 million, or \$1 million for each of 41 shots fired and \$40 million for pain and suffering.

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of injuries and millions of dollars of property damage. One of the casualties was Reginald Denny, a White truck driver who was pulled from his vehicle by angry rioters and severely beaten. On October 18, a mostly African-American jury acquitted the two Blacks accused of beating Denny on virtually all counts. Racial divisions over this verdict were stark: a *Los Angeles Times* poll found Whites almost twice as likely to disagree with the verdict as Blacks (67% vs. 38%), with Whites more than twice as likely to express “anger” over the outcome (48% vs. 19%).⁶

These differential racial responses should have, but did not, adequately prepare the nation for the extraordinary responses to the 1995 O. J. Simpson jury decision, in which a jury composed predominantly of African Americans acquitted the defendant of two counts of homicide. News coverage that evening inevitably consisted of contrasts between reactions of mainly joyous Blacks and mainly appalled Whites – the former believing the system to have (finally) served justice, the latter perceiving a system unable to handle racial disputes in a fair fashion.

A more recent reminder culminated in an estimated 15,000 to 20,000 civil rights sympathizers converging from across the country on the tiny town of Jena, Louisiana. On September 20, 2007, they arrived to protest the charges brought against six African-American students who allegedly beat Justin Barker, a White student who was treated for multiple injuries at a local hospital and released the same day. Parents of the six students claimed they were provoked by Barker’s use of racial epithets – a charge that Barker denied.

But this case was about far more than a school yard incident. It began in September 2006 when several Black students at the predominantly White Jena High School asked permission from the vice principal to sit under an oak tree on school property where Whites typically

⁶ The 1992 riots led the city of Los Angeles to empanel a commission to make reform recommendations. Ten years after the commission issued its recommendations, most of them had still not been fully implemented, prompting the city to recruit and hire the police commissioner of New York City, William Bratton. As the police chief of Los Angeles, Bratton has successfully implemented many, but not all, of the remaining recommendations. Unfortunately, as an indication of the prevalence of these problems, Chief Bratton assumed responsibilities after the 2005 incident in which a Los Angeles police officer shot and killed Devin Brown, an unarmed 13-year-old African American who was joyriding in a stolen automobile (Murr 2005).

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gathered. The next day, three nooses were found hanging from the tree. Even though the principal recommended expulsion for the White students found responsible for the noose incident, the school district subsequently overruled the expulsion and, instead, ordered brief suspensions.

Shortly after the December 4 beating of Barker, District Attorney Reed Walters formally charged the six Black students with attempted murder and conspiracy to commit murder – charges that many believed to be far too draconian in nature. Mychal Bell was the first to be convicted (on a reduced charge of aggravated battery) and served eighteen months in prison.⁷

The Barker incident was only one element of a much broader pattern – a pattern either ignored or unrecognized by many Whites and increasingly infuriating to many Blacks, even to the degree that they (accompanied by many Whites) came from across the entire country to protest. Consider the comments of Jena resident Terry Adams: “We are not a racial town. We get along with each other. We get along fine. This is something that got out of proportion. It really has.” Or the explanation by Jonny Fryar, a member of the LaSalle Parish School Board who supported suspension rather than expulsion, of the White students who hung the nooses: “I hate to see people label us something we are not. Because we have black students and white students playing football together. They shake hands, get along.”⁸ As if in thorough agreement with District Attorney Walters, such Whites find it inconceivable that race factored into any of the decisions pertaining to these incidents.

Needless to say, Blacks interpreted the incidents through starkly different lenses, essentially as if Jena is nothing less than a microcosm of all instances of racial injustice bundled into a brief period of history. Reverend Jesse Jackson, one of the organizers of the protest, derided Walter’s actions as “that’s not prosecution, that’s persecution.”

⁷ Two years after the incident, the other five defendants pleaded to a charge of simple battery, with seven days of unsupervised probation, a \$500 fine, and restitution to Justin Barker. Through their attorney, they also had to acknowledge that Barker had done nothing to provoke the attack, express sympathy for Barker, and admit that the prosecutors had enough evidence for a conviction.

⁸ Quotes taken from “Thousands ‘March for Justice’ in Jena, Court Orders Hearing on Teen.” <http://www.cnn.com/2007/us/law/09/20/jena.six/index.html> (accessed December 23, 2009).

Interviews with African Americans were replete with references to pre-civil rights movement discrimination, chronic unfairness in the criminal justice system, and pervasive bigotry among police officers, judges, and prosecutors.⁹

These incidents served to expose an enormous racial chasm in responses toward the U.S. criminal justice system – a chasm that dwarfs the divisions typically uncovered in the analysis of public opinion data.¹⁰ The historical origins of this “race gap” are long-standing, clearly predating our ability to measure it. Undeniably, African Americans have had fundamentally different experiences with the justice system during the entirety of their existence in the United States, having to submit to the brutalities of slavery and to witness the “blind eye of the law” in regard to White-on-Black vigilantism and lynchings (Kennedy 1997). In more recent years, discrimination against racial minorities has continued, with African Americans being far more likely to be apprehended, incarcerated, subjected to vehicular stops, and more.

To generalize only slightly, most of what we know about the reactions of Whites and Blacks to racial matters comes from one of two sources. The first is media coverage. The second is scholarly studies. The strength of the first is the weakness of the second; the strength of the second, the weakness of the first. Media coverage has thrown a spotlight on the enormous divide between Black and White

⁹ What is most revealing, from our perspective, are the wildly varying interpretations of such events on the part of citizens and leaders – from and outside of Jena. It is essential to keep in mind that the Barker beating, and the subsequent charges brought against the “Jena 6,” constituted only one part of the unfolding story. Although it is impossible to recap everything that transpired, certain incidents are essential elements in the drama. Approximately 2.5 months after the beating, e.g., the main academic high school building was torched – an action widely assumed to be racially motivated. One week later, Justin Sloan, a 22-year-old White man, broke a bottle of beer over the head of a 17-year-old Black student. Sloan received only a probationary sentence. Very shortly thereafter, a White high school student encountered three Black students in the parking lot of a Jena convenience store; claiming fear of the students, he went to his car to retrieve a shotgun, which was wrested from him by the three. Although no charges were ever brought against the White student, the Black teenagers were charged with aggravated battery, assault, disturbing the peace, and theft of the weapon.

¹⁰ Differences between men and women (the “gender gap”) regarding issues pertaining to certain defense and social (e.g., abortion) policies are often cited as examples of large demographic splits in public opinion. Compared to interracial differences on many issues, however, gender differences appear almost trivial.

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Americans. It has documented that at the heart of this “race gap” lays the profound belief of many African Americans that the criminal justice system is, to its core, profoundly unfair – a belief that is, to say the least, not shared by many Whites.

Although journalistic surveys have been invaluable for underscoring the depth of the racial cleavage, they are also severely limited in two important respects. First, by highlighting the cleavage between Blacks and Whites in the foreground, they have obscured the differences of views *within* both Black and White communities. We know, for example, that Whites display substantially more favorable views of the justice system (relative to African Americans), but very little is known about the diversity of judgments among individuals of either race, particularly among Blacks. The tendency among pollsters has been to assume that the political opinions of African Americans constitute an undifferentiated and monolithic mass. However, a variety of academic surveys has uncovered important differences of opinion within the Black community regarding a range of racial and economic issues.¹¹

Second, the journalistic work tells us very little about the *genesis* of distrust among African Americans (or, for that matter, about the genesis of the more sanguine beliefs held by Whites). Media surveys, for the most part, are highly focused and extremely limited in terms of the quantity and breadth of questions that are included. As a result, they are not useful for the purpose of investigating either the sources or the consequences of these beliefs. From these journalistic surveys, we cannot understand either why African Americans differ from Whites in their views toward the justice system or why these differential views matter.

Scholarly literature provides a much richer and more nuanced picture of the variety of views of the justice system within the White and the Black communities. Much of the work in criminology and sociology, for example, has documented the extraordinarily high levels of discontent and cynicism prevalent among many African Americans.¹²

¹¹ See, e.g., Allen et al. 1989; Sigelman and Welch 1991; Dawson 1994; Hochschild 1995; Kinder and Sanders 1996; Bobo 1997; Schuman et al. 1998; Gay 2002; Tate 2003.

¹² E.g., Curran 1977; Peek et al. 1981; Hagan and Albonetti 1982; Hawkins 1986; Parker, Onyekwuluje, and Murtry 1995; Sampson and Bartusch 1998.

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In contrast, the relatively rare studies in political science exploring race and crime have focused largely on Whites. A particularly germane strand of this work has examined the link between racial prejudice and crime, examining the degree to which real prejudice bolsters support for “get tough” policies on crime. Implicit in this work is the question: how much is the demand for more punitive solutions to crime really a demand for getting tough with Blacks?¹³

Although these, and a handful of other studies in political science, may be useful in their ability to shed light on the antecedents and consequences of Whites’ views of crime and punishment, they are severely limited in two important respects. First, and most obviously, they have focused almost exclusively on the attitudes of Whites (cf. Dawson 1994). Second, they do not tell us anything about why Blacks and Whites differ in their judgments of the justice system, nor do they tell us anything about the meaning of these differential judgments. Comparatively few broad, systematic investigations of public thinking regarding criminal justice issues exist.¹⁴

The “state of our knowledge,” then, primarily consists of a number of journalistic accounts whose strength lies in the documentation of division between White and Black Americans regarding their orientation toward the justice system, but whose weakness is in its inability to explore anything intraracial in nature, or from the scholarly literature, which presents a mirror image – that is, its strength and weakness tend to be its ability to explore intraracial differences and its inability to explore interracial differences, respectively.

Our primary purpose in this book is to delve into interracial differences in Americans’ experiences with, perceptions of, and beliefs about the U.S. criminal justice system. Using responses from a national probability survey of approximately six hundred White and six hundred African-American respondents, we examine how individuals of both races see the system – whether they believe it has treated them fairly, whether they believe it treats both races

¹³ E.g., Soss et al. 2003; Peffley and Hurwitz 2007.

¹⁴ Aside from a widely cited national survey study by Stinchcombe et al. (1980) and a handful of recent in-depth interviews with a small number of subjects (Gaubatz 1993; Sasson 1995), there have been comparatively few comprehensive efforts to study what drives Americans’ attitudes toward crime (see Roberts and Stalans [1997] for a review of this literature).

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equitably, and what they see as the strengths and weaknesses of the system. We also ask respondents about their policy beliefs in regard to issues ranging from the death penalty to the three-strikes laws to racial profiling. In the end, we believe that we have a reasonably complete picture of the racial differences in the criminal justice domain.

But merely documenting these differences between Whites and Blacks is the easy part of our job. The challenge is to understand the differences between them. Paradoxically, in order to understand why Blacks and Whites differ, it is necessary to understand why Blacks and Whites differ among themselves. We need to know the reasons why some citizens (both Black and White) evaluate the justice system so much more favorably than others. We need to appreciate the reasons why some Blacks distrust the police more than other Blacks, and why some Whites support capital punishment more than other Whites. Only when we understand the antecedents of individuals' beliefs – that is, what drives our beliefs – can we begin to understand why Whites and African Americans see the U.S. criminal justice system in such profoundly different ways. Although our primary focus may be on interracial differences, we will explore intraracial differences intensively, as well.

One reason for undertaking this study is to correct popular misconceptions about the racial divide in the justice domain. Because public impressions are based primarily on sensationalized news coverage of high-profile events (e.g., the O. J. Simpson verdict, the Los Angeles riots, and controversial incidents of police shootings and beatings), Blacks and Whites often view each others' reactions as being motivated by a reflexive form of in-group favoritism and out-group prejudice. Without appreciating the broader context of an incident, many Whites view Blacks as simply wanting to “protect their own,” with little regard for the police, with little regard for the rule of law and punishing lawbreakers, and as unwilling to punish Black offenders. Many Blacks view Whites' unwillingness to acknowledge, let alone redress, a blatantly biased justice system as being motivated by racism. Perhaps inevitably, African Americans wonder why else Whites would use their control of the justice system to continue to intimidate, demean, and imprison so many in the Black community.

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Our study shows that one cannot fully understand the differences in the way Whites and Blacks view the justice system by focusing on racial prejudice alone. We gain much greater insight into how the races respond to events and policies in the justice domain by focusing on how they view the *fairness* of the justice system. We understand more of how the races *use* their fairness beliefs to guide their responses by using survey experiments to randomly assign respondents to different question wording groups, asking them, for example, about a Black or a White police-brutality victim. What emerges from our study is not just the insight that Blacks view the justice system as unfair and Whites do not, but also that Blacks, understandably, do not typically think about questions of fairness without considering race, and that Whites almost never think about fairness by taking race into account. The racial cleavage in views of fairness that we uncover is profound, consequential, and disturbing, but it is not as simplistic as popular conceptions lead one to believe.

THE IMPORTANCE OF BELIEFS ABOUT CRIME
AND THE JUSTICE SYSTEM

We have emphasized the vacuum of knowledge. Scholars, particularly in political science, have paid little attention to public opinion in the criminal justice domain. Often the explanation for such neglect can be found in the subject – a subject that is alleged to be neither terribly interesting nor terribly consequential. On one level, justice-related beliefs *are* inconsequential, at least in a way that is often defined by political scientists: with only rare exceptions, the vote choice, and therefore electoral outcomes, is seldom influenced by how citizens feel about crime and punishment. Crime is a valence issue in the sense that everyone is opposed to it. Candidates, therefore, cannot possibly diverge in their positions in a way that is necessary for citizens to base their votes on such a criterion.

But this is an exceedingly narrow definition of *consequence*, if for no other reason than that candidates *do* differ in the *emphasis* that they place on law and order, as evidenced during the 1988 presidential campaign when Democratic Party candidate Michael Dukakis was constantly criticized for a stance that some felt was insufficiently “tough” on crime or, in 1968 when Richard Nixon (as well as third-

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party candidate George Wallace) based much of his campaign on law and order appeals.¹⁵

But even while ignoring any electoral implications, public opinion about the criminal justice system matters in ways that are often subtle yet enormously powerful. Given the nature of the issue, it would be surprising to learn that these opinions are irrelevant. Carmines and Stimson (1980) would classify crime-related attitudes as “easy” in the sense that the topic is easy to comprehend and constantly on the agenda. As such, these attitudes should be, and are, unusually crystallized and salient in the minds of the mass public (Roberts and Stalans 1997). In almost every year since Gallup first asked the questions, the percentage of Americans who thought that there was “more crime in the U.S. than a year ago” outnumbered those who felt there was less crime (1989–2009), and a majority of the public described crime in the United States as either a “very” or “extremely” important problem (2000–7).¹⁶ From 1994 to 1998, “crime/violence” ranked as the single “most important problem” in the Gallup survey, with between 20 and 37 percent of respondents selecting it among all other issues.¹⁷ When asked about the “biggest problems facing public schools,” “fighting violence/gangs” is consistently mentioned as a chief concern. When combined with those who mention drug use in schools, crime in schools almost always trumps any other issue as the most substantial problem faced in the educational system, surpassing funding, discipline, overcrowding, and teacher quality.¹⁸ Quite clearly, Americans have a concern with crime that makes the issue hypersalient – at least in recent years.

¹⁵ On the importance of crime in the 1968 election, see Asher 1980. Among others, Pomper et al. 1989 and Abramson et al. 1991 address the issue in the 1988 election.

¹⁶ With the exception of 2002, when approximately equal proportions of Americans thought there was “more crime” vs. “less crime” than a year ago, far more respondents felt there was “more crime” in every other year the question has been asked. Jeffrey M. Jones. “Americans Perceive Increased Crime in U.S.” <http://www.gallup.com/poll/123644/Americans-Perceive-Increased-Crime.aspx> (accessed December 29, 2009).

¹⁷ In 1999 “crime/violence” was barely edged out by “ethics, moral, family decline” as the most important problem, and in 2000 it came in a close fourth to “ethics, moral, family decline,” education, and “high cost of living.” See <http://www.albany.edu/sourcebook/pdf/t212008.pdf> (accessed January 2, 2010).

¹⁸ See Gallup surveys from 1988 to 2002 reported in *Sourcebook of Criminal Justice Statistics Online*. <http://www.albany.edu/sourcebook/pdf/t242008.pdf> (accessed January 2, 2010). After 2002, issues such as funding and overcrowding began to take on more salience.