

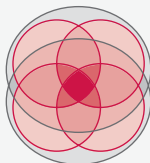
Two Lenses, One Goal

Understanding the **Psychological** and **Structural Barriers** People of Color Face in the **Criminal Justice System**

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AT THE KIRWAN INSTITUTE FOR THE STUDY OF RACE AND ETHNICITY, our mission is to ensure that all people and communities have the opportunity to succeed. As part of this mission, our Institute recognizes two barriers to opportunity that people of color may face while interacting with various systems or institutions. These two barriers are **Race and Cognition** and **Structural Racialization**.

By viewing interactions of the criminal justice system through the lens of each of these barriers, we can identify how each uniquely contributes to racial inequity in incarceration outcomes. In tandem, these lenses can serve as a tool for explaining how racial inequity can persist in the absence of intentional prejudice or discrimination.



KIRWAN INSTITUTE
for the Study of Race and Ethnicity

“WE HAVE THIS LONG HISTORY OF RACISM IN THIS COUNTRY, AND AS IT HAPPENS, THE CRIMINAL JUSTICE SYSTEM HAS BEEN PERHAPS THE MOST PROMINENT INSTRUMENT FOR ADMINISTERING RACISM. BUT THE RACISM DOESN'T ACTUALLY COME FROM THE CRIMINAL JUSTICE SYSTEM.”

TA-NEHISI COATES¹

As a pillar of American society, the criminal justice system is guided by principles of equity and fairness. However, its operations remain susceptible to the same biases evident within our broader society. In some instances, this system can even exacerbate inequity. This is particularly evident in the case of racial disparities in incarceration.

An immense body of research has demonstrated the adverse experiences and outcomes related to the criminal justice system involvement for marginalized groups. Expanding this conversation, we highlight how these adverse experiences can be the result of (1) unconscious discrimination; and/or (2) historic policies and related structural dynamics. As a first step to understanding how the criminal justice system perpetuates racial inequities in incarceration, we must consider both the psychological and structural barriers along this pathway.

These barriers to justice for communities of color can manifest both preceding contact and during interactions within the criminal justice system, thereby influencing the likelihood of conviction, incarceration, and sentencing. The following pages highlight key points of contact between people of color and the criminal justice system where racialized barriers are likely to be present.

RACE AND COGNITION

The role of individual-level thoughts and actions in maintaining discrimination. Rather than focusing on explicit, intentional racism, the Kirwan Institute highlights the importance of implicit racial bias as a potential barrier to opportunity in the criminal justice domain. Generally, implicit bias can be understood as the automatically-activated evaluations or stereotypes that affect an individual's understanding, actions, and decisions in an unconscious manner.² All humans possess biases, and having implicit biases does not necessarily reflect an intent to cause harm.

STRUCTURAL RACIALIZATION

Considers the influence of our country's racial history on policies, practices and values that perpetuate racial inequity.³ Although our society has made efforts to address racism in many forms, structural racialization acknowledges the legacy of legally endorsed discrimination that many of our contemporary institutions are still rooted in today. For example, the effects of redlining, which purposefully devalued homes in minority neighborhoods by limiting access to financing, remain present in the current housing landscape.

Note: While Race and Cognition and Structural Racialization are delineated separately in this piece, these barriers may operate in conjunction rather than independently, thereby reinforcing effects. Also, while we focus on these two barriers, we do not want to minimize the presence and impact of explicit racial biases (such as overt racial profiling and racial violence) that may be operating concurrently.

External Factors*

Our understanding of how communities of color experience the criminal justice system does not begin in a police station or a courthouse. Rather, the external or contextual factors leading up to the initial contact with the criminal justice system must be considered. Thus, this portion examines the contribution of two external factors: the **criminalization of racial minorities** and **traffic stop interactions**.

RACE AND COGNITION

STRUCTURAL RACIALIZATION

CRIMINALIZATION OF RACIAL MINORITIES

The criminalization of individuals based on their racial identity has a long and sordid history in the United States. This trend is fueled by individuals' implicit and explicit attitudes, as well as laws, policies and major events; for example, there was a major shift in negative stereotypes and attitudes toward Arabs following 9/11.⁴

There is some evidence suggesting a link between racial criminalization and dehumanization, particularly for Black males. For instance, one study found that the implicit dehumanization of Blacks as measured by a modified Implicit Association Test (IAT) predicted the tendency for civilian and police participants to overestimate the age and culpability of Black male youth compared to their White and Hispanic counterparts. Moreover, for police this tendency to implicitly dehumanize Black boys was correlated with their likelihood of having a record reflecting more use of force instances with Blacks than other races.⁵

Another study that utilized the IAT explored the link between race and weapon identification. They found that the majority of test takers were more likely to implicitly associate images of weapons with Black faces than White faces.⁶

Implicit racial bias may affect people's perceptions of neighborhood crime. One study showed that participants' perceptions of dangerous neighborhoods were more related to the percentage of Black males in the area than the recorded crime rate.⁷

The popular narrative that Blacks were innately dangerous was often used as a justification of slavery and as a basis for White on Black violence during the Jim Crow era.⁸

Even after the Civil Rights Act of 1964 outlawed discrimination based on race, color, religion, sex, or national origin, discriminatory acts (e.g., racial profiling) and the underlying ideology that minority neighborhoods required police surveillance remained.⁹ As such, the emphasis on criminalizing drug use disproportionately influenced communities of color.¹⁰ Policies that were purportedly tough on drugs led to an increase of police in poor, urban neighborhoods and the adoption of more aggressive street tactics (e.g., stop and frisk). A disproportionate amount of these targeted neighborhoods were mostly comprised of minority residents.¹¹

TRAFFIC STOPS

Traffic stops and searches are stressful experiences, which can also be accompanied by racial animus or anxiety. This is particularly true for Blacks who experience a disproportionate likelihood of being stopped and searched, leading to the creation of phrases such as "driving while Black" used to convey the perceived additional risk.¹²

When searches take place at traffic stops, illegal items (e.g., weapons or drugs) are no more likely to be found among Black drivers than Whites.¹³ However, analyses of traffic stop data across the country have revealed large racial disparities. As one example, a 13-year analysis of 250,000 recorded traffic stops in Durham, North Carolina revealed that Black males were stopped and searched at double the rate of White males and ten times the rate of White and Black females; in general, women were stopped considerably less than males.¹⁴

This tendency to disproportionately stop and search people of color during routine traffic stops has historic roots. In fact, studies have documented disparate search rates for White and Black drivers for multiple decades.¹⁵ These trends are exacerbated in affluent, White neighborhoods where cops are more likely to racially profile when patrolling.¹⁶

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Internal Factors*

Research affirms that the experience of a person of color while in the custody of the criminal justice system is often distinct from the experience of a similarly situated White individual. The following portion includes research insights on how the operation implicit bias and historic racism maintain this inequity in the areas of **plea bargaining** and **sentencing**.

RACE AND COGNITION

STRUCTURAL RACIALIZATION

PLEA BARGAINING

During the plea bargaining process the defendant has the opportunity to plead guilty to a charge, often in exchange for a reduced sentence. Although not much research has been conducted on this topic, some evidence suggests Black and Hispanic defendants are more adversely impacted by this process than Whites.¹⁷

Public defenders are not immune to possessing implicit biases against their clients. Even capital punishment defense attorneys showed negative implicit attitudes toward Blacks comparable to those of the general population.¹⁸

The current legal environment places many public defenders in situations such as time constraints, high subjectivity, and distractions that increase their likelihood of relying on implicit factors in decision-making.¹⁹

Not all defendants can afford to hire a private attorney. This is especially true for Black and Hispanic defendants who are often overrepresented in areas of high poverty due to a variety of historical and economic factors such as segregation and redlining.

Public defenders perform a vital service by filling this need but are often left to shoulder the weight of enormous caseloads.²⁰ Considering the occupational difficulties that public defenders face, scholars have suggested that Black and Hispanic defendants' increased likelihood for obtaining a public defender may be one of the reasons why they may receive less favorable pleas than White counterparts.²¹

Moreover Black and Hispanic defendants were less likely than White and Asian defendants to receive a sentencing bargain—a less common type of plea bargain where the defendant is sentenced to probation, fines, or community service instead of jail time.²²

JUDGE AND JURY VERDICTS AND SENTENCING

Whether the ruling is determined by a judge or a jury, there are implicit and historical racial biases that can influence the decision-making process.

Research suggests that aspects of a defendant's identity, such as skin tone, can implicitly affect jurors' assessment of evidence as well as perceptions of guilt.²³ The same holds true for judges who, like the general population, may hold implicit racial biases that impact their sentencing outcomes, particularly if they are overconfident in their ability to be impartial.²⁴

An analysis of sentencing records showed that after controlling for criminal history, defendants with more Afrocentric features (e.g., broad nose, thick lips, curly hair) than their same-race counterparts were more likely to have received harsher sentences.²⁵ To illustrate, White inmates with more Afrocentric features received longer sentences than White inmates with less Afrocentric features. The same was true of Black inmates. These results point to the presence of stereotypes between Afrocentric features and criminality that were outside of the judges' conscious control.²⁶

For most of the 20th century, racially discriminatory sentencing laws were the norm. This is most evident in the early decades where racial violence and Jim Crow laws were frequently upheld, especially in the South. Moreover minorities were typically tried by all-White juries, and Blacks who committed crimes against Whites were given the harshest sentences.²⁷

Research demonstrates the persistence of these unequal sentencing practices to present day. Specifically, Black and Hispanic offenders are more likely to be sentenced to prison compared to similar White offenders.²⁸ Additionally, minorities are more likely to receive longer sentences than Whites. This dynamic is exacerbated if the minority defendant is tried for drugs, has a public defender, and if they were detained prior to trial.²⁹

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Recommendations

Encouraging Criminal Justice Reform through Civility and Empathy in Dialogue

This piece illustrates the need for reform in our criminal justice system to interrupt these unintentional, yet troubling and persisting sources of inequity. As compelling as this data may be, how we choose to communicate about these injustices can be more even more important than the evidence alone to bring about change. Thus, before we can bring communities together to solve mass incarceration, we need to recognize that *all stereotypes* involved in the discourse paint a poor picture of reality: not all police, judges, or jurors discriminate, and not all people of color engage in criminal behavior. Nevertheless, these characterizations often dominate how we talk about the criminal justice system and contribute to the defensiveness and divisiveness surrounding the issue. Thus, we urge that this data speak to the need for empathy and compassion as people with various ideologies and identities engage in conversations to address mass incarceration and disparities in the criminal justice system.

Some recommendations for moving this conversation forward are as follows:

Acknowledge that racial discrimination (whether implicit or explicit) in the criminal justice system causes widespread suffering. This is not a White-Black or officer-civilian issue. All people involved or in the periphery of this discrimination are harmed and subjected to additional stereotypes as the debate around criminal justice reform grows and evolves. Moreover, as incarceration rates remain high, many Americans who are outside of this system can still experience the emotional burden associated with knowing someone who is incarcerated. According to a recent research article, 6% of White men and 12% of White women have someone close to them—whether family, friend, or neighbor—in prison.³⁰ These percentages are significantly higher for Black men and women, at 32% and 44%, respectively.³¹ As such, many Americans have connections to this criminal justice system and experience some form of suffering as a result.

Emphasize the humanity of those who are involved in the criminal justice system. This data is about people, not politics. We must all be concerned about the biases in the system instead of merely thinking punitively and characterizing those who are affected as less deserving of justice.

Don't choose a "side." These examples illustrate complex interactions between individual perceptions and system dynamics; the system itself needs reformed with a united effort. Vilifying any actor based on race or position in the system will impede progress for everyone.

Consider your own biases. Before adding to this conversation, take time to acknowledge how your own biases may influence your perceptions of the events or issues at play. A good starting point can be assessing your implicit attitudes through the Implicit Association Test (IAT), available at: www.implicit.harvard.edu/implicit/takeatest.html.

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For More Information

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