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RACIAL DISPROPORTION IN US PRISONS

MICHAEL TONRY*

Outside the United States, probably the best known characteristics of America's correctional system are that capital punishment continues in use and that American incarceration rates are four to 15 times higher than those in other developed countries. Within the United States, the most notable characteristics are the absolute numbers in confinement and that they are disproportionately black. Blacks in 1991 made up 12 per cent of America's population but 48 per cent of both prison and jail inmates.¹ Forty per cent of the occupants of 'death row' on 31 December 1991 were black. In public juvenile facilities in 1989, 48 per cent were black. Americans of Hispanic origin, by contrast, America's second largest minority group, in 1991 constituted 9 per cent of the general population, 13 per cent of the prison population, 14 per cent of the jail population, and 8 per cent of the death row population.

America's incarceration rates² are seen by many as evidence of draconian criminal justice policies. The overrepresentation of black offenders is seen by many as evidence of racial bias. Both critiques have merit; the latter rests, however, in part on a misconception that racial disproportion in prisons is markedly worse in the United States than elsewhere. This appears not to be the case.

Four findings stand out when incarceration rates are disaggregated by race in Australia, Canada, England and Wales, and the United States. First, the white American incarceration rate, compared with those in other English-speaking countries, is not as much higher as is generally believed. Secondly, patterns of differential incarceration by race in England and Wales (white and black), Australia (non Aboriginal and Aboriginal), and Canada (white and native) resemble American patterns. In all these countries, members of disadvantaged visible minority groups are seven to 16 times likelier than whites to be confined in correctional institutions.

Thirdly, when the different racial compositions of national prison populations are taken into account, apparent differences in national rates of incarceration diminish. Table 1, shown later in this essay, presents disaggregated incarceration rates for blacks, whites, and others for America and for England and Wales. It invites intriguing comparisons. If, for example, America's 1990 general population were, like England and Wales's in 1991, 94.1 per cent white and 1.8 per cent black, America's jails and prisons in 1990 would have housed 759,632 black and white inmates (the actual black and white total was 1,133,820). This assumes that incarceration rates by race would be the same as in 1990 (see Table 1). The national incarceration rate (assuming the 1990 rate of 241 per 100,000 for the residual 4.1 per cent 'other') would fall from 474 per 100,000 to 315.

When the opposite exercise is carried out, if England and Wales's black/white

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¹ With some exceptions, prisons hold convicted offenders serving terms of one year or longer; jails hold pre-trial detainees and convicted offenders serving terms up to one year.

² 'Incarceration rate', as used in this essay, refers to the numbers confined on a census date, or the average daily confined population, per 100,000 residents.

general population percentages were America's, the results would be more striking. In 1990, combining remand and sentenced prisoners, England and Wales incarcerated 77 whites per 100,000 whites and 547 blacks per 100,000 blacks. If the general population were 80 per cent white, 12 per cent black, there would be 30,732 white and 32,748 black prisoners and an overall incarceration rate (attributing the current 164 per 100,000 rate to the remaining 8 per cent of prisoners) of 140 per 100,000. England and Wales would have more black than white prisoners and its national incarceration rate would be more than 50 per cent higher (140 versus 89). This assumes that a sixfold increase in the black population would not be accompanied by heightened racial tensions that would exacerbate existing racial disproportions in confinement decisions and patterns (e.g., Hood 1992).

Fourth, racial disproportion in prisons within countries is distributed in ways not commonly recognized. In 1988, for example, black-white incarceration rate differentials in some southern American states were relatively low (4 to 1 in Mississippi, South Carolina, and Tennessee). In some states traditionally considered politically liberal and governmentally progressive, like Wisconsin (12 to 1), Iowa (16 to 1), Connecticut (17 to 1), and Minnesota (19 to 1), the differentials were much higher. Similar patterns exist in Australia where Aboriginal-non-Aboriginal differentials ranged from 3.4 to 1 in Tasmania to 19.7 to 1 in Western Australia in January 1993.

This essay examines racial differences in incarceration, mostly in the United States but with occasional mention of other English-speaking countries. To anticipate the conclusion, a large part (but by no means all) of the long-term incarceration rate differential by race in the United States results from racial differences in participation in the kinds of crime, like homicide, robbery, and aggravated assault, that typically result in prison sentences; a recent short-term worsening of racial incarceration differences results from foreseeable discriminatory effects of conscious policy decisions of the Reagan and Bush administrations in launching and conducting the federal 'War on Drugs'. More generally, rough comparability in majority and minority group incarceration patterns in Australia, Canada, England and Wales, and the United States exposes the failure of social policies aimed at assuring full participation by members of minority groups in the rewards and satisfactions of life in industrialized democratic countries.

One caveat concerning data reliability needs mention. Analyses such as this one that depend on unadjusted general population census data share the limits of the data. In the United States, for example, the decennial population survey conducted by the US Bureau of the Census undercounts members of minority groups. With a complete general population census, the black population count would be higher, which would make black denominators in incarceration rates larger and the resulting black rates lower. Similarly, after blacks, whites, Native-Americans, and Asians are counted, the 1990 census reports nearly 10,000,000 respondents as 'others', which distorts denominators, and rates, in unknown ways. Likewise, the prison and jail censuses report residual 'other, not known, or not reported' categories which necessarily lend imprecision to these data. In this essay, I rely on official black and white counts and generally do not adjust for estimates of the racial composition of 'other' groups, except in Figure 1 showing long-term trends where Hispanics are included within black and white counts.

Here is how this essay is organized. Part 1 (Long-term Trends) describes long-term patterns of racial differences in incarceration rates in the United States. Part 2 (Cross-

national Comparisons) examines American and other countries' comparative reliance on incarceration. Part 3 (Sub-national Comparisons) shows American state-by-state comparisons. Part 4 (Explanation of Minority Over-representation) examines the underlying causes of both long-term patterns and recent worsening of racial differentials in incarceration rates. Part 5 (Redressing Racial Imbalance) suggests lessons for criminal justice and social welfare policies that derive from those differences.

Long-term Trends

That members of ethnic and racial minority groups are disproportionately involved in common law crimes and disproportionately ensnared in the American criminal justice system, by itself, is neither unprecedented nor especially worrisome. These patterns typically characterize low-income immigrant groups and typically abate as subsequent generations are assimilated into American economic and social life.

America's first national crime commission, the US National Commission on Law Observance and Enforcement (1931), concentrated on two subjects—prohibition and 'crime among the foreign-born'. The commission's final report examined patterns of criminality among the foreign-born in general and Mexican immigrants in particular. The fundamental findings were that crime was less common among the foreign-born than among either non-immigrants or the immigrants' children and grandchildren. The relatively low involvement by immigrants in crime should come as no surprise. Most chose the uncertainties and dislocations of immigration and were determined to work hard and succeed. For many, material conditions of life in America as immigrants compared favourably with conditions in the natal homeland.

The problem of immigrant crime was preponderantly among the second and third generations to whom English was a native tongue, to whom worse conditions in the old country were mere words, and on whom relative deprivation could have a corrosive effect. Victims too often of ethnic stereotyping and discrimination, enjoying fewer legitimate opportunities than did assimilated middle-class and working-class youth, second and third generation immigrants were especially susceptible to the allure of juvenile gangs and especially likely to exploit illicit opportunities when legitimate opportunities were few, unattractive, or blocked (Glazer and Moynihan 1963).

Mass immigration declined after the 1930s. From 1900 to 1930, the United States received nearly 19 million people, thereafter falling to 1.5 million from 1930 to 1950 and 2.5 million during the 1950s (Bureau of the Census 1992, table 5). By the 1950s, the phrase 'crime and the foreign-born' had an archaic if not xenophobic ring, and had disappeared as a major symbol of crime problems.

In retrospect, 'crime and the foreign-born' as a prominent public policy problem in the 1920s and 1930s was a foreseeable, and foreseeably temporary, product of the transition of newly arrived immigrants into what was once called a 'melting pot'. Similar patterns appeared among southern black farm labourers and tenant farmers, made technologically obsolete by the mechanization of agriculture, who migrated to northern cities in the 1950s and 1960s. Employment rates were higher, and welfare dependency was lower among southern-born black migrants in the 1960s and 1970s than among northern-born blacks (despite the higher average education among the northern-born) (Wilson 1987: 55–6; Katz 1989: 203). Participation in crime by adult

migrants was less extensive than was that of their children. Recent reports of developing Asian youth gangs look like a variation on a familiar story, as the children of Asian immigrants of the 1970s and 1980s face the problems confronted by children of eastern and southern European immigrants early in the twentieth century.

Unfortunately, the migration-is-comparable-to-immigration hypothesis is at best a partial explanation of modern patterns of crimes and punishments of American blacks. If the immigration analogy were apt, crime among Northern American blacks should be little more salient today, 45 years after the beginning and 25 years after the end of the major South-to-North migration, than was crime among Southern and Eastern Europeans in the 1950s.

The American pattern of social and economic progress by blacks is much more complicated. Something akin to Disreali's two nations is appearing within the American black community. A large portion of the black population is becoming much more fully assimilated into American economic and social life; black/white gaps in education, household income, residence patterns, and various public health measures are closing. By some measures—e.g., personal and household incomes of college-educated younger blacks, especially females—some groups of blacks are doing as well or better than their white peers (Jaynes and Williams 1989; Hacker 1992; Jencks 1992).

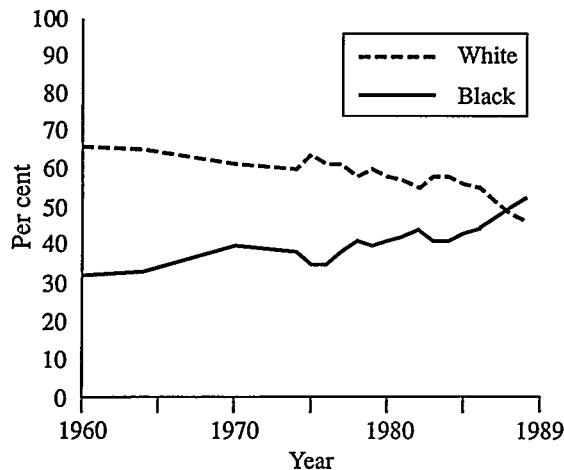
However, a minority of blacks, disproportionately located in 'Rust belt' and 'Snow belt' cities, are not making progress and by many measures—welfare dependence, labour force participation, illegitimacy, single-parent households, crime victimization, criminality—are doing worse. It is from this group, sometimes (and sometimes controversially) called the black urban underclass, that black offenders and prisoners grossly disproportionately come.

For the urban black underclass, at least, the immigration hypothesis does not appear to explain social conditions or criminality. Explanations abound and range from conservative 'culture of poverty' and 'welfare dependence' (Murray 1984) arguments to centrist social and structural accounts that emphasize the flight of unskilled jobs and the black middle class from the inner city and general economic conditions (Wilson 1987) to liberal 'legacy of racism' (Lemann 1991) and radical 'contemporary racial discrimination' explanations. Whatever the ultimate reasons, and those mentioned here are but a few among many that have been offered, American blacks' involvement in crime and their presence in jails and prisons remain high.

Figure 1 shows demographic trends in selected American correctional populations. Because of variation in statistical and reporting systems, data for different populations cover different periods. Recent changes and inconsistencies in reporting of data on Hispanics complicate some trend reports. Until 1980, Hispanics generally were included in black and white counts, sometimes with separate supplementary counts of Hispanics alone. More recently, some reports count non-hispanic whites, non-hispanic blacks, Hispanics, and others (sometimes reporting data on Asians and Native Americans). When possible, I have included Hispanics within racial groupings.

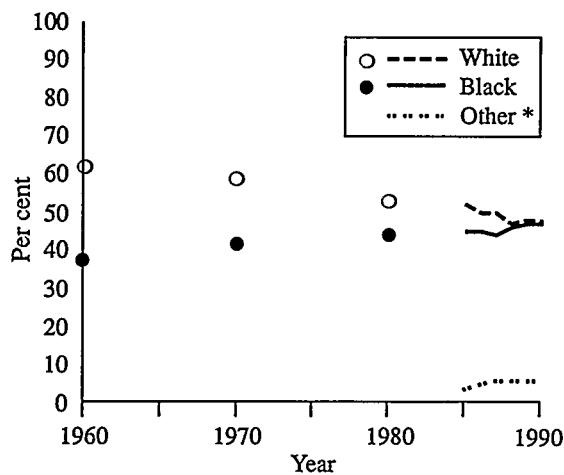
Figure 1a shows admissions to state and federal prisons by race from 1960 to 1989, the most recent date for which national admissions data on race have been published. White percentages declined and black percentages increased continuously. Between 1986 and 1989, the racial mix reversed, from 53 per cent white, 46 per cent black to 53 per cent black, 46.5 per cent white. The black proportion has probably continued to

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Hispanics are included in black and white populations

FIG. 1a Admissions to Federal and State Prisons by Race, 1960–89 (Langan 1991; Gilliard 1992; Perkins 1992; Perkins and Gilliard 1992)

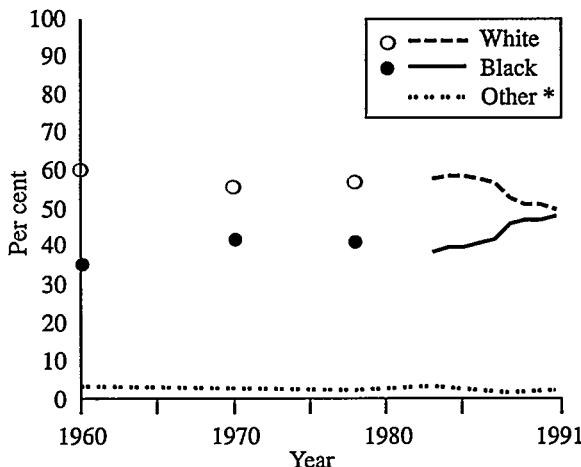


* Hispanics in many states, Asians, Native Americans

FIG. 1b Prisoners in State and Federal Prisons on Census Date, by Race, 1960–90 (for 1960, 1970, 1980: Calahan 1986, table 3.31; for 1985–90: Bureau of Justice Statistics 1987, 1989a, 1989b, 1991a, 1991b)

grow (as is shown for selected states in part 4 (Explanation of Minority Overrepresentation)).

Figure 1b shows the racial composition of state and federal prison populations on census dates for selected years from 1960 to 1980 and successively from 1985 to 1990. The continuous trend is one of decreasing white and increasing black percentages. By



* White and black figures for 1988 and 1991 are estimated; white non-Hispanic, black non-Hispanic, and Hispanic reported; Hispanic racial breakdown assumed to be the same as in 1990 for which racial data were reported.

FIG. 1c Jail Inmates at Mid-year, by Race, 1960–91 (for 1960–83: Calahan 1986, tables 4.15, 4.21; for 1984–91: Bureau of Justice Statistics 1984, 1985, 1991c, 1992)

1990, American prisons housed as many blacks as whites. Reported black numbers in recent years are an understatement because many Hispanics, some of whom are black, are reported as 'race unknown' by some states, including Florida and Texas, which have sizeable Hispanic populations.

Figure 1c shows the composition on census dates of jail populations for selected years from 1960 to 1978 and for successive years from 1983 to 1991. The trend again is one of continuing white decrease and black increase in population composition, reaching near parity in 1991 when 50 per cent were white and 48 per cent black.

The patterns shown in Figure 1 for adult offenders also characterize juveniles. The proportion of whites in custody in public juvenile facilities fell from 70 per cent in the 1950s to 60 per cent in the late 1970s. By 1980, 42 per cent of confined juveniles were black, 40 per cent were white, and 15 per cent were Hispanic (if adult patterns hold, roughly two-thirds are white and one-third are black). Between 1987 and 1989, the number of confined white juveniles fell by 5 per cent, while the number of confined black juveniles grew by 14 per cent (Calahan 1986, tables 5–30, 5–31; Allen-Hagen 1991; Krisberg and DeComo 1992).

Most people are instinctively uneasy about black rates of incarceration that appear to be three to four times higher than white rates. The uneasiness is warranted but the disproportion is far greater than three or four to one. The initial tendency to compare American blacks' proportion of the general population, 12 per cent, to their presence in the prison and jail populations, 48 per cent, is understandable, but wrong, and it greatly underestimates the scale of the problem. The better comparison is between racially disaggregated incarceration rates measured as the number of confined persons of a racial group per 100,000 population of that group. By that measure, black incarceration rates are six to seven times higher than white incarceration rates. Table 1

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shows racially disaggregated jail and prison incarceration rates for the United States and for England and Wales for 1990.

Hereafter, in this article, racially disaggregated incarceration rates, and their ratios, as illustrated in Table 2, are regularly used as indicators of racial patterns in the criminal justice system.

TABLE 1 Black, White, and Other Incarceration Rates, 1990

| | | General population | Prison population | Jail population | Prison+Jail population | Rate per 100,000 |
|-------------------|-------|--------------------|-------------------|-----------------|------------------------|------------------|
| United States | White | 199,686,000 | 369,485 | 206,713 | 576,198 | 289 |
| | Black | 29,986,000 | 367,122 | 190,500 | 557,622 | 1,860 |
| | Other | 19,038,000 | 37,768 | 8,106 | 45,874 | 241 |
| | Total | 248,710,000 | 774,375 | 405,319 | 1,179,694 | 474 |
| England and Wales | White | 46,946,751 | 36,300 | — | — | 77 |
| | Black | 898,025 | 4,910 | — | — | 547 |
| | Other | 2,045,501 | 3,350 | — | — | 164 |
| | Total | 49,890,277 | 44,520 | — | — | 89 |

Note: UK numbers do not equal column total in original source.

Sources: Jankowski 1992, tables 2.1, 2.3, 5.6; Home Office 1991, table 7; Bureau of the Census 1992, table 16.

TABLE 2 Ratios of Racial Incarceration Rates 1990

| | Black | White | Ratio |
|-------------------|-------|-------|-------|
| England and Wales | 547 | 77 | 7.10 |
| United States | 1,860 | 289 | 6.44 |

Cross-national Comparisons

Racial disproportions in the United States among jail, prison, and juvenile inmates, awful as they are, are not radically different from those in Australia, Canada, and England and Wales.

The conventional cross-national comparisons of incarceration rates, limited and methodologically flawed as they are, show gross American incarceration rates to be much higher than those for other countries. Table 3, for example, shows one recent estimate of incarceration rates in 22 countries in the late 1980s.

Cross-national comparisons are best seen as crude order-of-magnitude indicators and not as anything more precise. Different countries handle and report pre-trial detainees and short- and long-term prisoners in different ways. In Canada, for example, sentences of two years or longer are served under the authority of the national prison system; sentences under two years are administered by the provinces. In the

TABLE 3 *Incarceration
Rates for 22 Countries, 1989*

| Country | Rate per 100,000 |
|------------------|------------------------|
| United States | 426 |
| South Africa | 333 |
| Soviet Union | 268 |
| Hungary | 196 |
| Malaysia | 126 |
| Northern Ireland | 120 |
| Hong Kong | 118 |
| Poland | 106 |
| New Zealand | 100 |
| United Kingdom | 97 |
| Turkey | 96 |
| Portugal | 83 |
| France | 81 |
| Austria | 77 |
| Spain | 76 |
| Switzerland | 73 |
| Australia | 72 |
| Denmark | 68 |
| Italy | 60 |
| Japan | 45 |
| Netherlands | 40 |
| Philippines | 22 |

Source: Mauer 1990.

United States, pre-trial detainees and convicted offenders are distributed among federal, state, and local authorities. The US Bureau of Prisons handles all federal confinement, including pre-trial. In most states, the state prison system houses offenders sentenced to terms of one year or longer and county institutions house pre-trial detainees and under one year sentenced offenders. There are, however, exceptions. Some states, like Connecticut and Delaware, have unified state departments of corrections that house detainees and all convicted offenders. In other states, local jails house offenders serving longer sentences; Pennsylvania's county facilities, in which terms up to five years can be served locally, are the extreme case.

The organization of corrections in the United States presents problems for counting offenders. If, for example, a count of all confined convicted offenders is wanted, data must be obtained from the Federal Bureau of Prisons, 50 state departments of corrections, the District of Columbia, and upwards of 3,312 county jails.

The most accessible source of population data is a series entitled 'Prisoners in America', which is compiled and reported semi-annually and reports all confined offenders under the jurisdiction of the Federal Bureau of Prisons and the departments of corrections of the 50 states and the District of Columbia. Counts are provided for total populations on a census date (including detainees and short-term prisoners in unified systems) and prisoners serving sentences of one year or longer. Jail populations are less reliably known. There have been a number of special censuses (in 1972, 1978, 1983, and 1989) and since the early 1980s, an annual 'Jail Inmates' report, based partly on estimates, has been published.

The only feasible way to calculate national incarceration rates is to combine the census-date population data reported for a given year in 'Prisoners in America' and 'Jail Inmates'. So calculated, both aggregate and racially disaggregated incarceration rates climbed steadily between 1972 and 1991.

It appears that patterns of differential incarceration by race in Australia, Canada, England and Wales, and the United States are much more similar than differences in their gross incarceration rates suggest. As noted earlier, the ratio of black to white incarceration rates in England and Wales in 1990 was 7.10:1, slightly higher than America's 6.44:1. Differential incarceration of Aboriginal people in Australia makes these patterns appear modest. The Royal Commission into Aboriginal Deaths in Custody (1990) found that 'for Australia as a whole, adult Aboriginal people are 15.1 times more likely than adult non-Aboriginal people to be in prison, but they are only 8.3 times more likely to be serving non-custodial correctional orders'. Biles (1993b) shows that, among persons 17 years and older, Aboriginals were 18.2 times likelier than non-Aboriginals to have been incarcerated on 30 June 1991. Comparisons with Canada are especially difficult because most Canadian jurisdictions, including Ontario, have prohibited the collection and dissemination of racially disaggregated statistics, except concerning the native population. Data obtained privately, excluding Quebec, from the Canadian Centre for Justice Statistics, a division of Statistics Canada, indicate that in 1986-7 natives were admitted to correctional institutions at a rate of 2,662 per 100,000 native population, compared with 315 non-native admissions per 100,000 non-native population (Birkenmayer 1992). Although these are admissions rather than population data as for the other countries, the admission ratio of 8.45:1 native to non-native is not unlike the population ratios of the other countries.

There seems to be general agreement that violent crime rates are higher in the United States than in other developed countries and that property crime rates are among, but not invariably, the highest. World Health Organization and Interpol comparisons of officially recorded crimes show American crime rates that are much higher than other countries' (Kalish 1988). Cross-national comparisons of official crime records are, however, subject to even more measurement problems than are incarceration comparisons. Just as national governments increasingly look to victimization surveys for an independent measure of crime that is less subject than police records to variability in reporting and recording, efforts have been made to obtain cross-national victimization data. The most ambitious effort to date concluded that victim-reported crime in the United States was higher than in most developed countries but that, for some offences, American rates were lower than elsewhere, and that the differences between American and other countries' rates were much lower than is revealed by official-rate comparisons (Van Dijk, Mayhew, and Killias 1990; Van Dijk and Mayhew 1993).

When America's higher crime rates are taken into account, three findings stand out. First, relative to crime rates, America's incarceration rates are closer to other countries' rates than might otherwise be expected. Secondly, relative to white incarceration rates, or absolutely, America's black incarceration rate is shockingly high. Thirdly, relative to white incarceration rates, Australia, Canada, and England and Wales handle their most prominent visible minority groups no less differentially harshly than does the United States.

The overriding problem turns out not to be a unique American problem of

overreliance on incarceration but a general problem in English-speaking white-dominant countries that minority citizens are locked up grossly out of proportion to their numbers in the population.

Sub-national Comparisons

Another way to look at comparative incarceration rates is to stop the analytical lens down to focus on sub-national incarceration rates. England and Wales make up one unitary legal system, unlike the federal systems of Australia, Canada, and the United States. I lack provincial data for Canada, but state-level incarceration data are available for the United States and Australia.

Table 4 shows racially disaggregated incarceration rates and racial ratios for males in 1988 for 49 states and the District of Columbia. These data encompass state prisons only and do not count persons confined in county jails or in federal facilities. Thus, these data are not comparable to the inclusive England data. None the less, England and Wales's white incarceration rate of 77 per 100,000, its black rate of 547, and its racial ratio of 7.10 are not greatly different from what those of a number of American states would be if adjustments were made for non-comparability of the data. A few American states have lower white male incarceration rates than in England and Wales, some have lower black male incarceration rates, and many have lower racial ratios.

Table 5 shows Australian national and state incarceration numbers, rates per 100,000 population, and ratios for Aboriginals and non-Aboriginals in January 1993. The national ratio of rates was 12.8, nearly double the black/white ratio in the United States.

These data, which because of their inclusiveness are more comparable than American data to those from England and Wales, show that England and Wales incarcerate proportionately more whites than most Australian states and proportionately fewer blacks than is the case with Aboriginals in Australia.

England and Wales's middling location in these measures relative to the United States and Australia suggests that disproportionate black incarceration is a much greater problem in England than is commonly acknowledged, an oversight made possible only by the small number of blacks in England's general population.

Explanations of Minority Over-representation

Among numerous questions presented by the preceding data on incarceration of members of minority groups, three stand out. What causes the broad long-term patterns of overincarceration of blacks? Why do some not conspicuously punitive jurisdictions—Minnesota, Wisconsin, Victoria—have racial incarceration ratios that are especially unfavourable to blacks? Why has racial disproportionality in American prisons worsened in recent years? Although these same questions appear to apply equally to Australia, Canada, England and Wales, and the United States, my comments here concern the United States; appropriately adapted they may also apply to other countries.

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*TABLE 4 Ratio of Black-to-White Incarceration by State,
1988*

| State | Incarceration Rates | | Black/White Ratio |
|-------------------|----------------------|----------------------|----------------------|
| | White per 100,000 | Black per 100,000 | |
| Hawaii | 190 | 530 | 2.79 |
| Maine | 104 | 311 | 3.00 |
| North Dakota | 63 | 199 | 3.14 |
| Alaska | 349 | 1,296 | 3.72 |
| Tennessee | 108 | 402 | 3.72 |
| South Carolina | 217 | 829 | 3.82 |
| Mississippi | 135 | 562 | 4.16 |
| Idaho | 157 | 712 | 4.52 |
| Alabama | 164 | 757 | 4.62 |
| New Mexico | 213 | 983 | 4.62 |
| Georgia | 148 | 686 | 4.64 |
| New York | 165 | 781 | 4.74 |
| North Carolina | 136 | 665 | 4.88 |
| New Hampshire | 90 | 472 | 5.22 |
| Arizona | 329 | 1,725 | 5.25 |
| Montana | 136 | 714 | 5.26 |
| West Virginia | 72 | 382 | 5.33 |
| Indiana | 155 | 830 | 5.34 |
| Arkansas | 139 | 745 | 5.37 |
| Louisiana | 159 | 903 | 5.68 |
| Kentucky | 146 | 829 | 5.69 |
| California | 218 | 1,266 | 5.81 |
| NATIONAL | 155 | 965 | 6.24 |
| Virginia | 116 | 738 | 6.38 |
| Colorado | 148 | 994 | 6.69 |
| Nevada | 279 | 1,954 | 7.01 |
| Oklahoma | 200 | 1,406 | 7.02 |
| Florida | 147 | 1,045 | 7.11 |
| Missouri | 145 | 1,033 | 7.14 |
| Delaware | 235 | 1,722 | 7.34 |
| Maryland | 114 | 873 | 7.67 |
| Texas | 109 | 874 | 8.05 |
| Ohio | 140 | 1,137 | 8.13 |
| South Dakota | 115 | 952 | 8.28 |
| Michigan | 145 | 1,224 | 8.46 |
| Kansas | 156 | 1,382 | 8.83 |
| Oregon | 180 | 1,657 | 9.22 |
| Washington | 86 | 856 | 9.97 |
| Illinois | 74 | 739 | 9.96 |
| New Jersey | 95 | 946 | 9.98 |
| Massachusetts | 72 | 775 | 10.82 |
| Nebraska | 98 | 1,099 | 11.24 |
| Wisconsin | 84 | 966 | 11.52 |
| Pennsylvania | 72 | 940 | 12.97 |
| Wyoming | 174 | 2,302 | 13.23 |
| Rhode Island | 132 | 1,752 | 13.24 |
| Dist. of Columbia | 150 | 2,143 | 14.31 |
| Utah | 105 | 1,503 | 14.35 |
| Iowa | 85 | 1,395 | 16.33 |
| Connecticut | 83 | 1,383 | 16.58 |
| Minnesota | 42 | 797 | 19.01 |

Sources: Probant 1991; Bureau of the Census 1992; Flanagan and Maguire 1990.

TABLE 5 *Aboriginal and Non-Aboriginal Incarcerated Populations, January 1993*

| | Non-aboriginal prisoners | Rates 100,000 | Aboriginal prisoners | Rates 100,000 | Ratio of rates |
|--------------------|-----------------------------|------------------|-------------------------|------------------|-------------------|
| New South Wales* | 5,388 | 86.2 | 614 | 868.5 | 10.1 |
| Victoria | 2,123 | 47.4 | 121 | 728.9 | 15.4 |
| Queensland | 1,685 | 56.1 | 422 | 629.9 | 11.2 |
| Western Australia | 1,201 | 71.7 | 566 | 1,415.0 | 19.7 |
| South Australia | 938 | 63.9 | 169 | 1,056.3 | 16.5 |
| Tasmania | 251 | 54.9 | 16 | 183.9 | 3.4 |
| Northern Territory | 124 | 101.1 | 308 | 804.2 | 8.0 |
| Australia | 11,710 | 67.1 | 2,216 | 861.3 | 12.8 |

Source: Biles 1993a from Australian Institute of Criminology data.

Long-term racial disproportion

Much, not all, black over-representation in American prisons over the past 20 years appears to be associated with disproportionate participation by blacks in the kinds of crimes—‘imprisonable crimes’ like homicide, robbery, aggravated assault, rape—that commonly result in prison sentences. Alfred Blumstein some years ago (1982) analysed black and white incarceration patterns in relation to arrest patterns (and, from victim surveys, victims’ identifications of assailants’ races, when known) and concluded that 80 per cent of the disproportion appeared to result from blacks’ participation in imprisonable crimes. The remaining 20 per cent, he speculated, included some mixture of racially discriminatory discretionary decisions and other, arguably legitimate, sentencing considerations like prior criminal record. Hood (1992) in his study of Crown Courts in the English Midlands similarly concluded that 80 per cent of black-white incarceration differences ‘can be accounted for by the greater number of black offenders who appeared for sentence . . . and by the nature and circumstances of the crimes they were convicted of’ (p. 205).

Blumstein’s conclusion that involvement in crime, not racial bias, explains much of the black disproportion among prisoners in the early 1980s is consistent with most recent reviews of empirical research on discrimination in sentencing (Wilbanks 1987). Most analyses of the past 15 years using multivariate techniques do not reveal racial bias as a major predictor of sentencing outcomes.

Most likely, however, if Blumstein’s study were redone today, his imprisonable crimes analyses would be less powerful (e.g., Hawkins 1986). As noted below, drug offenders make up a steadily increasing proportion of prisoners, and they are even more disproportionately black than are other felony offenders.³ Although I see no reason to believe that court processing is more racially biased than in recent years, both the national policy decision to launch a War on Drugs and local police decisions to focus on street trafficking foreseeably increased black arrests, prosecutions, convictions, and incarcerations.

The absence of research evidence of invidious discrimination is not evidence of its absence. Bias no doubt remains common—sometimes as a matter of conscious ill-will,

³ More recently Blumstein (1993) analysed 1991 data and concluded that 76 per cent of the variance could be explained on the basis of arrests (the decline resulted from black over-representation among the greatly increased numbers of those arrested for drug offences).

more commonly as a result of unconscious stereotyping and attribution by middle-class and white officials of special dangerousness to underclass minority offenders. Moreover, all but the most sophisticated studies can be confounded by cross-cutting biases that result in harsher treatment of some black offenders and less harsh treatment of offenders (generally black) whose victims are black. Another complication is that many of the arguably legitimate bases for distinguishing among offenders, such as the nature of a criminal record, systematically adversely affect blacks (whose average first arrest is at a younger age than the average first arrest for whites and who, controlling for age and offence, are likely to have accrued more prior arrests and convictions, which may themselves result from earlier conscious and unconscious discrimination against blacks). None the less, at day's end, there is relatively little empirical basis for concluding that all or a large portion of the long-term disproportion in prison numbers results from invidious racial discrimination in processing of cases once arrests have been made.

Variations in racial ratios

That Minnesota and Wisconsin, generally considered among America's most socially and politically progressive states, and leaders in setting enlightened sentencing and corrections policies, have the most racially disproportionate incarceration rates in the country may strike many as surprising. They achieved that dishonour not only in the data reported here but in earlier analyses using 1979 (Hawkins 1985) and 1982 (Blumstein 1988) data.

At least three considerations partly explain the seeming anomaly. First, in jurisdictions in which blacks constitute a small percentage of the population, like Minnesota and Wisconsin (and England), the minority population is typically concentrated in urban areas. Crime rates are higher in urban than in suburban and rural areas; that a preponderantly urban black population experiences higher rates of criminality and incarceration than do groups that are more widely dispersed geographically is to be expected. In states like Georgia, Mississippi, and South Carolina, blacks live throughout the state and thus come from low, moderate, and high crime areas.

Secondly, black Americans are likelier than whites to be unemployed, ill educated, and to have been raised in single-parent households and impoverished circumstances (Jaynes and Williams 1989). All of these things are associated with increased participation in crime and, not unnaturally, are also associated with heightened arrest and incarceration probabilities (Blumstein *et al.* 1986).

Thirdly, in states like Minnesota, Iowa, and Wisconsin that have relatively low incarceration rates, prison spaces are principally used for persons convicted of violent and otherwise especially serious crimes. If the black populations of such states are small in number, concentrated in urban areas, and socially disadvantaged, they are disproportionately likely to be involved in serious crimes. By contrast, in states like Georgia, Alabama, California, and Texas, in which imprisonment rates are high, reflecting incarceration of many persons convicted of less serious crimes, larger proportions of white offenders are imprisoned and racial disproportions are less.

No doubt racial discrimination, especially in unconscious forms related to stereotyping and attribution of threatening characteristics to minority offenders, also plays a role in the extreme racial incarceration ratios in states like Minnesota. None the less, much

of the variation appears explicable in terms of crimes committed and previous criminal records.

The short-term worsening of racial ratios

Racial disproportion has worsened markedly in recent years, as is shown both by Figure 1 and by a series of recent analyses showing that one in four black American males aged 20 to 29 is in jail or prison, on probation or parole (Mauer 1990) and that in the District of Columbia (Miller 1992a) and Baltimore (Miller 1992b), 42 and 56 per cent, respectively, of black males aged 18 to 35 were under the control of the criminal justice system.

The recent worsening is the result of deliberate policy choices of federal and state officials to 'toughen' sentencing, in an era of falling and stable crime rates, and to launch a 'War on Drugs' during a period when all general population surveys showed declining levels of drug use, beginning in the early 1980s (e.g., National Institute on Drug Abuse 1991).

At every level of the criminal justice system, empirical analyses demonstrate that increasing black disproportion has resulted from the War on Drugs—in juvenile institutions (Snyder 1990), in jails (Flanagan and Maguire 1992, table 6.49), and in state (Flanagan and Maguire 1992, table 6.81; Perkins 1992, tables 1–5) and federal (US Sentencing Commission 1991) prisons. The experience in several state prison systems is illustrative.

Figure 2 shows black and white admissions per 100,000 same-race population to North Carolina prisons from 1970 to 1990. White rates held steady during the entire period. Black rates doubled between 1980 and 1990 from a higher starting point, increasing most rapidly after 1987. According to Stevens Clarke, the foremost scholar

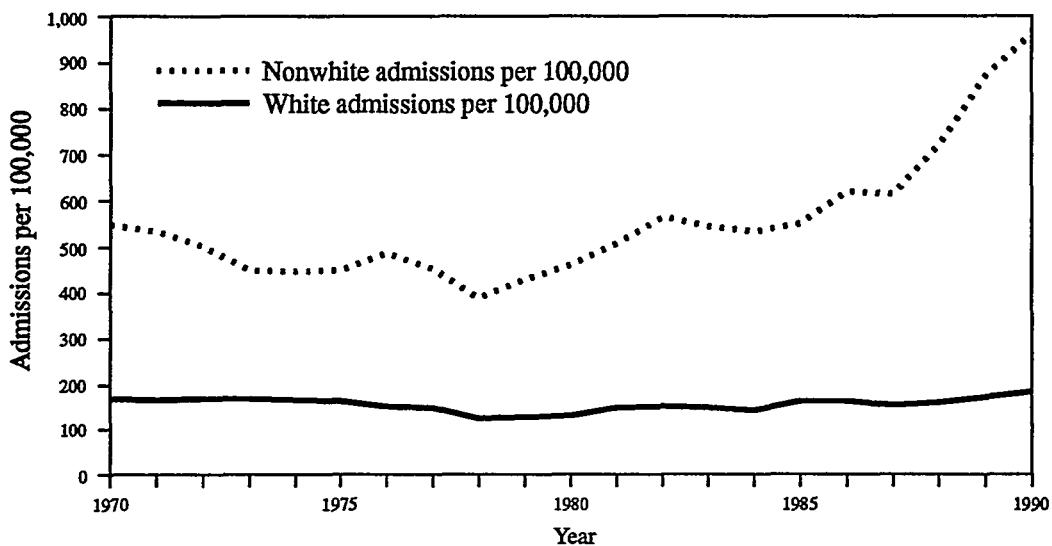


FIG. 2 Prison Admissions per 100,000 General Population, North Carolina, by Race, 1970-90 (Clarke 1992)

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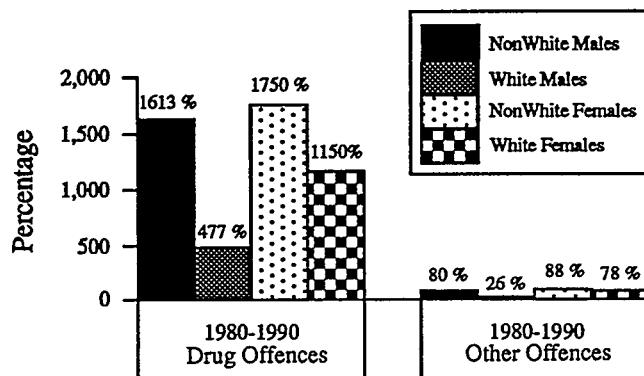


FIG. 3 Percentage Growth in Prison Commitments in Pennsylvania, by Race, Sex, and Offence, 1980–90 (Clark 1992)

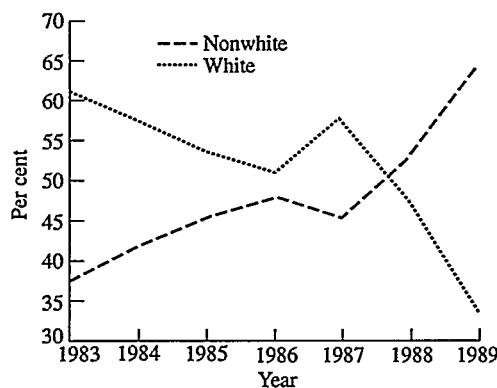


FIG. 4 New Drug Commitments in Virginia, by Race, 1983–9 (Austin and McVey 1989)

of North Carolina sentencing and corrections trends, the War on Drugs has increasingly targeted blacks: 'in 1984 about twice as many whites (10,269) as blacks (5,021) were arrested for drug offenses . . . By 1989, annual drug arrests of blacks had grown by 183 per cent, reaching 14,192; drug arrests of whites increased only by 36 per cent (to 14,007)' (Clarke 1992: 12).

Figure 3 shows increases in prison commitments in Pennsylvania for 1980–90 for drug and other offences by race and sex. Drug commitments of black males increased by 1,613 per cent during the decade; white males by 477 per cent. The pattern for females was similar, though the differences were less dramatic. In 1990, 11 per cent of Pennsylvanians were black; 58 per cent of state prisoners were black (Clark 1992).

Figure 4 shows white and non-white drug commitments to Virginia prisons from 1983 to 1989. Sixty two per cent of drug offenders committed in 1983 were white, 38 per cent were non-white. By 1989, those percentages had more than reversed; 65 per cent of drug commitments were non-white, 35 per cent were white. Drug commitments have continued to rise since 1989; current data would show worse racial disproportion.

Phrased most charitably to the officials who launched and conducted America's latest War on Drugs, worsening of racial incarceration patterns was a foreseen but not intended consequence. Less charitably, the recent blackening of America's prison population is the product of malign neglect.

Redressing Racial Imbalance

Problems of race and punishment in America are both more severe than is generally recognized and yet, controlling for crime rates, not all that much worse than in other English-speaking countries. Although increasing numbers of American blacks are moving into the middle-class, for a sizeable minority the traditional pattern of assimilation of in-migrants is not working. In any case, the immigration analogy patently does not hold for black residents of southern states. In the black urban underclass, rates of unemployment, illegitimacy, single-parent households, delinquency, and other correlates of social disorganization are far higher than in other population groups.

These patterns pose formidable—if obvious—policy problems. Concern for victims' rights to live their lives free from fear, assaults, and property loss obliges the state to respond to predatory crime and criminals. Because much crime is intra-racial, concern for minority victims necessarily occasions criminal justice system intervention in the lives of minority offenders. In so far as predatory crime is concentrated in the inner cities and predatory criminals disproportionately come from groups that lack opportunities, resources, and social supports, blacks are likely to continue to be disproportionately present among arrestees and defendants.

None the less, there are things that could be done to diminish racial disproportion. First, although the criminal law cannot acknowledge extreme social adversity as an affirmative defence, at all stages from prosecution to sentencing and parole, adversity can be recognized as an informal mitigating circumstance to justify diversion from prosecution and avoidance of prison in all possible cases and to justify provision of drug and alcohol treatment, remedial education, vocational training and placement, and supportive social services to minority and other disadvantaged offenders.

Secondly, designers of law enforcement policies should take account of foreseeable racial effects of alternative policy choices. Although American constitutional law sometimes distinguishes between actions taken with the purpose of discriminating against blacks, and actions taken for other purposes but with knowledge that they will systematically disadvantage blacks, policymakers should generally treat purpose and knowledge as moral equivalents (as they are in criminal law *mens rea* doctrines). The decision heavily to favour law enforcement over prevention and treatment strategies in the American War on Drugs, for example, was pre-ordained to affect young black males especially severely and for that reason alone (there are others) the 'War' should never have been launched.

Thirdly, policy makers generally should begin to look to delinquency and criminality as diagnostic markers of group social distress. Among recent immigrant groups, those in which offending is conspicuously more common than in other contemporaneous immigrant groups should be targeted for social services and supports. South-east Asian tribal immigrants in the United States like the Meo and the Hmong, for example, were less well-situated than the Vietnamese, many of whom were educated

urban dwellers, to succeed in America's capitalist economy. If second and third generation Meo and Hmong people demonstrate unusually high levels of criminality (it is too soon to tell), that will be powerful evidence that, as a group, they are having particular difficulty adjusting to life in a new country and, accordingly, that the state should allocate resources to help them overcome barriers to assimilation.

American blacks are the paradigm case of an identifiable subgroup that needs special aid in entry into full participation in American life. Fewer than 30 years have passed since discrimination against blacks in many settings ceased to be legal and full legal rights have only slowly, and as yet imperfectly, been institutionalized in day-to-day life. All American blacks suffer from the legacy of slavery and legal racism and many, especially southern agricultural migrants and their children and residents of inner city underclass areas, have suffered from inadequacies in education, employment opportunities, and health care. American social policy since the 1970s has not provided adequate educational programmes, housing, and income support to disadvantaged blacks, and their disproportionate participation in crime is in part the result. The War on Drugs has worsened the prospects for disadvantaged blacks by giving a majority of young urban black males criminal records, thereby diminishing prospects for jobs, marriage, and law-abiding material success. Conversely, the deteriorating life chances of underclass black males have made them less promising prospects as life partners of black women and are contributing to declining marriage rates and accelerating illegitimacy and single-parent households among black women.

Americans have a remarkable ability to endure suffering by others. Racially disaggregated incarceration patterns show that black Americans are suffering severely. Whether the recent presidential election will produce a more caring government and a more compassionate climate, prepared to deal seriously with the problems of disadvantaged American blacks, remains to be seen. If not, the intolerable racial disproportion in America's prisons and jails is likely long to continue.

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