



SHOCKING DISPARITIES

Race & sentencing

Marc Mauer

A recent study by the Sentencing Project, following up research completed in 1990, reveals an increase in what had been already shocking disparities in the criminal justice system. It found that now nearly one in three (32.2%) of young black men in the United States is under criminal justice supervision on any given day. In addition our study *Young Black Americans and the Criminal Justice System: Five Years Later* also documented the fact that black women have experienced the greatest increase in criminal justice control of all demographic groups, with their rate of criminal justice supervision rising by 78% since 1989.

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These dramatic rates of involvement in the criminal justice system are already having a substantial impact on the life prospects of many black men. Beyond that, we can only speculate on the long-term impact this may have on the African-American community generally. For the next generation of children, though, the vision of massive numbers of black males passing through the prison system clearly cannot be one that inspires a sense of hope for the future.

While current political rhetoric might suggest that rising violent crime rates among blacks are responsible for this situation, in fact the data provide little support for this. Although African-American arrest rates for violent crimes - 45% of all arrests - are disproportionate to their share of the population, this proportion has not changed substantially for twenty years.

If we look instead at drug policies, we find a more significant explanation for the rise in criminal justice populations. We see this taking place through two overlapping trends: first, a dramatic rise in drug arrests, convictions and incarcerations, and second, the

disproportionate impact of drug policies on African-Americans.

Looking at the 10-year period 1983-1993, the number of incarcerated drug offenders nationally increased by 510 per cent, rising from 57,000 to 353,000. Today, about one in four inmates is either awaiting trial or serving time for a drug offence. At the same time, the black proportion of drug arrests has increased substantially, rising from 24% in 1980 to 39% in 1993.

These disparities become more pronounced if we focus only on drug possession, not trafficking. All things being equal, drug possession arrests should be somewhat correlated with drug usage among the population. Although national survey data have some limitations, the best indicators are that African-Americans constitute about 13% of monthly drug users, just above their 12% share of the population. Yet African-Americans make up 35% of arrests for drug possession, 55% of convictions, and 74% of prison sentences. Blacks and Hispanics combined now constitute nearly 90% of all offenders sentenced to state prison for drug offences.

Why is this happening?

How do these disparities arise? Much evidence in recent years points to decision making both by policymakers and practitioners. This begins with federal priorities that put nearly two-thirds of anti-drug funds into law enforcement and only one third into prevention and treatment. It then moves to police practices that target inner-city communities for intensive drug enforcement and finally to prosecutorial and sentencing policies that have been found to affect African-Americans disproportionately.

Does this mean that the criminal justice system is fraught with racism? While some of what emerged from the O J Simpson trial demonstrated racism at its worst, many of these disparities result from more subtle decision making, often representing a combination of race and class effects. Again, this is readily apparent in regard to drug policy. How many middle-class parents, for example would opt to turn over their drug-abusing



teenager to the local prison system rather than avail themselves of a high-quality treatment program? Yet when it comes to low-income communities, where blacks and Hispanics are disproportionately represented, national policies emphasise a law enforcement response as the primary means of problem-solving.

These problems have been exacerbated in recent years. Proposals adopted by Congress, such as 'three strikes and you're out' and 'truth in sentencing', will not only increase prison populations but will quite likely result in increasingly disproportionate racial impacts.

A rational response

Much of the necessary response for confronting these enormous disparities lies, of course, in addressing long-term social and economic issues. The combination of inner-city economic dislocation, the allure of the drug trade, and the ready availability of guns have taken a great toll on many communities. But there are also a variety of policy and programmatic options to address these problems that could be enacted much more readily. These include:

- **Revising national drug spending priorities.** Since the mid-1980s, two-thirds of the United States' federal anti-

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drug funding has been devoted to law enforcement and just one-third to prevention and treatment. Funding requests by the Clinton administration to increase treatment in the criminal justice system have been largely denied by Congress. This has taken place despite research demonstrating that treatment is seven times more cost effective than supply control programs in reducing cocaine consumption. Failure to increase treatment access for low-income persons ensures that we will maintain a two-tiered system of justice - treatment for the wealthy, incarceration for the poor.

● **Eliminating mandatory sentencing and other sentencing policies that have had a disproportionate impact on women and minorities.** The injustices caused by mandatory sentencing and its failure to have an impact on crime have been well-documented. In a recent report, the US Sentencing Commission clearly articulated the racial disparities created by distinguishing between crack and cocaine powder, and the mandatory penalties enacted for crack; cocaine powder is a more expensive, largely middle class drug, while in the form of 'crack', it is a cheaper drug, used mainly by the inner city poor.

● **Adopting legislative racial/ethnic impact statements.** Legislative bodies should be required to prepare racial/ethnic impact statements for pending sentencing policy legislation, in order to consider any adverse or unanticipated consequences on minorities. If a proposed policy were shown to have such an impact, policy-makers would be free to decide if the impact was warranted or if an alternative policy might accomplish the same objective without creating such a disparity.

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Juvenile delinquency in the United States: a look toward the 21st century

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Despite media portrayals and overall public perceptions to the contrary, crime rates in the United States have steadily declined over the past several years. Nevertheless, two significant and disturbing trends are of major concern. Violent crime among youthful offenders aged ten to eighteen is on the increase; the age of first-time offenders is getting younger. Whereas overall rates of violence including murder, forcible rape, aggravated assault, and robbery are down 2.2% since 1990 (murder rates are down 4.3% over that same period), violent crimes committed by youths under the age of 18 have increased a whopping 26% since the beginning of the decade, and murders committed by the under 18 age group have increased 14.6%.

Moreover, while it used to be quite unusual for the juvenile justice system to see violent offenders under the age of 16, it now routinely must deal with 14 and 15 year olds. In 1994 alone, US courts dealt with almost three-quarters of a million youths under the age of 18 almost half of whom were under the age of 15 (300,423). Almost 40,000 of those under the age of 15 were arrested for serious violent offences (379 for murder alone). And, although still somewhat rare, there are increased instances of children under the age of 10 committing violent offences. Youthful violence is still predominantly a male activity with females accounting for only about 14% of arrests (which is only a negligible increase over the past 5 years), and is still committed by more Whites (53.4%) than minorities, although minority arrests for violence far exceed their proportional representation in the general population (FBI, Uniform Crime Reports, 1995).

Some criminologists predict even more dire circumstances in the future, suggesting that a rising tide of youthful homicides lurks on the horizon as we enter the 21st century (e.g., see Fox, 1992). Others, myself included, believe that current violent crime rates among youths will probably stabilise over the next few years as the 'Baby Boomers' babies grow out of their crime-prone

adolescent and young adult stages. Nevertheless, even the most optimistic criminologists realise that youth violence is increasingly problematic in the United States, and that Americans cannot rely on demographics alone to resolve the serious problem of juvenile delinquency.

Some solutions

The question arises, then, 'What can and should be done?' I offer the following suggestions. (For elaboration of these points, see Bynum and Thompson, 1996).

1. **Reduce/eliminate the marginality experienced by American adolescents.** Current social practices in the United States tend to trap American teenagers in a cultural 'no-man's land', somewhere between the life stages of child and adult. Despite their biological and physical maturity, they are granted neither the legal and social rights nor the responsibilities that accompany adulthood. Conversely, because they are no longer considered to be children, they are held accountable for their actions and also are not accorded the wide range of tolerance for norm-violating behaviour that children enjoy. Simultaneously told to 'grow up and act their age' as well as 'you're too young', or 'adults only', American adolescence produces a sense of frustration and social marginality rarely experienced during any other stage of the life course. The American legal system compounds this confusion by alternately imposing ridiculously lenient criminal sanctions for serious violent offences committed by youths, and extremely harsh penalties for relatively minor youthful indiscretions. A juvenile justice system that may incarcerate a youth the same amount of time for pre-meditated murder as it does another youth for habitual truancy makes no sense to anybody - least of all, the offenders.

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2. **Standardise the age of legal accountability across the United States.** Current practices allow each of the 50 states and the District of Columbia to determine at what age a youth becomes legally defined as an adult. Consequently,



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in one state a youth may become an adult on his/her 16th birthday and if involved in a criminal offence would be handled by an adult criminal court, and if convicted, sentenced to an adult prison. Yet, if that same youth, resided only a few miles away in a neighbouring state, he/she would still be considered a child and would be handled through a separate

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juvenile justice system that cannot impose the same criminal penalties. This has prompted several states to enact statutes to all juvenile courts to 'certify' some youths as 'adults' and remand them to adult criminal courts while other offenders of the same age remain 'children' and are dealt with by the juvenile courts. This sometimes arbitrary and capricious practice contributes to confusion, frustration, and perceived inequity in the juvenile justice system. A uniform age criterion for achieving adult status across the nation would alleviate much of this problem.

3. Abolish all status offences (those acts that are illegal due solely to the youth's age that will become legal when the youth reaches the age of majority - usually somewhere between 16 and 18).

Once a nationwide uniform age for adulthood has been established, people over that age should be accorded all the legal rights and responsibilities of adulthood. If they commit crimes, they should be held legally accountable in adult criminal courts and subjected to adult criminal sanctions for their behaviour. They also should be allowed to participate in adult behaviours such as dropping out of school, leaving home, smoking, drinking, and being sexually active - at least without criminal penalties for doing so. This does not mean that these undesirable but non-criminal behaviours would be ignored. Rather, they would be handled by families, churches, and social agencies instead of by law enforcement officials



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and the courts.

4. Abolish juvenile courts

If the first three reforms are implemented the need and rationale for separate juvenile courts no longer exists. Family matters regarding children could be handled by families, social agencies, or if courts must intervene, by family and chancery courts. Criminal matters involving youths who have reached the age of adulthood, however, would be handled by criminal courts.

5. Abolish separate juvenile correctional facilities and substantially overhaul adult corrections.

The abolition of separate juvenile statutes and juvenile courts eliminates the need for separate correctional facilities for juveniles. The adult correctional system, however, needs to be significantly modified. Rather than separating criminal offenders primarily on the basis of age as is the current practice, it would be more logical to separate offenders on the basis of offence. Non-violent property offenders between the ages of 16 and 21 for example, probably share more common characteristics with older non-violent offenders than they do with rapists, muggers, and murderers in their same age group. This would not preclude, however, the possibility of separating youthful non-violent offenders from older non-violent offenders, as well as young violent criminals from their older counterparts. It simply means that if young and old offenders are housed in the same institution, that the nature of the

offence should be a more significant criterion for their grouping than mere chronological age.

While many of these proposals are not new, these reforms have not been tried in their entirety. Here, I have necessarily been brief, but I do not mean to imply that their implementation would be either easy or an all-encompassing solution to the delinquency problem in the United States. One thing is abundantly clear, however, as we enter the 21st century; while there is widespread disagreement among parents, educators, clergy, law enforcement officials and criminologists about what should be done to resolve America's delinquency problem, virtually all agree that the current system of juvenile justice is not the answer.

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