

Chapter 15

Euro-Americans

The Unanswered Question

Jerome G. Miller

Jerome G. Miller describes how sensationalized criminal events by the media create nothing but a "state of moral panic." According to Miller, biased and stereotypical depictions of racial minorities by the media receive minimal attention by criminal justice scholars. This neglect by the academic community leaves uncontested stereotypes that link race and ethnicity to crime. Miller proposes that humility and advocacy are needed to resolve the problem of racial discrimination. Unfortunately, both appear to be absent in academia and journalism.

The early twentieth-century American composer Charles Ives left a haunting piece. In it, a solo trumpet introduces a plaintive theme. It goes unanswered by the sustained strings that grow more frenetic with each recapitulation. Over and over, the question is posed—the orchestra eventually drifting off into cacophony—leaving the trumpeter to repeat his sad theme to no avail.

A similar dynamic plagues our democracy as it enters the twenty-first century, a question continually repeated in the press, never to be answered: "Does the American criminal justice system discriminate?" For a long time, the question was virtually ignored. Now it is asked in forms that ensure no response.

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The answer may be self-evident to the poor and disenfranchised who come with damning stories and compelling cases to prove their point. But then, as if from a parallel world, an alternative leitmotif sounds. Not only is there no discrimination in the criminal justice system toward African Americans—but they are in fact, afforded more breaks.¹ Police, prosecutors, and judges bend over backwards to avoid the appearance of bias. It is a coda of sorts with its own set of embellishments, trills, and accents.

I did not come naïvely to this arena. Having spent 40 years wandering the contentious confines of academic criminology or negotiating the surreal worlds of what we have come to euphemistically label juvenile and adult "criminal justice," I formed some strong opinions on the issue.²

It should probably be no surprise that I cast my lot with those who see the specter of racial discrimination in virtually every police station, courthouse, and prison. In some ways, it relegated me to the paranoid edges of the world. Paradoxically, however, that made little difference. When it comes to the question of whether racial discrimination drives criminal justice, neither research data, nor political declarations, nor personal experience matters very much. Racial bias has a momentum all its own. The criminal justice system provides ideal staging for what is, in effect, a self-generating exercise in social iatrogenesis.³

Listen to "Stanley" an Irish delinquent boy relegated to a series of Illinois "youth reformatories" in the 1920s:

Niggers out there were no better than brutes. Here they were given the hardest work, the worst cells, and subjected to the most brutal punishment. Everybody, especially the guards, are prejudiced against them.⁴

Stanley's assessment continues to carry contemporary resonance. Though the culture may advance and the standards of living progress, it is always worse for African Americans. Discrimination in the criminal justice field is best judged in light of the con-

ditions that accompany those of privileged race or circumstance who by fluke or accident find themselves caught up in the criminal justice labyrinth.

When we were jailing white offenders in the South, we were whipping and maiming recalcitrant black slaves. When we were putting white offenders on chain gangs in the 1920s, we were lynching putative black offenders.⁵ When we doubled sentences for white drug offenders in the 1980s, we increased them ten-fold for black drug offenders. When we increased community-based programs for white delinquents, we filled brutal state-run reform schools to overflowing with black adolescents. When we restarted the machinery of death and began executing white murderers, we managed to find grossly disproportionate numbers of black offenders fit for killing.

The media followed in lockstep—offering the prepackaged horror stories given to them by those with a stake in maintaining the system. Formerly, it was likely to be a prosecutor or sheriff. As we entered the twenty-first century, its more apt to be an ideologically inspired “think tank” or a liberal professional preening for an “expert” role on a ratings-driven 24/7 cable news channel. Their images have shifted from the “rape-prone” black men, to the “super-predator” black youth, to the dark-skinned terrorists destined for interminable internment.⁶

Meanwhile, the media are increasingly immersed in a shared mind-warp transcending accepted rules of reporting, fact-finding, and debate. They are engaged in a prolix game of scrabble—points accrue to whoever crafts the labels and sound bites that will best disguise the uncomfortable realities that trundle on unexamined—often constituting a perpetual state of moral panic.

In an earlier version of this piece, I predicted that the chic issue among liberals at the time—so-called racial profiling—would soon quietly recede. However, it would soon resurface Dracula-like under new auspices—rising from the grave under a rubric of “terrorism”—a label carrying the virus that rationalizes inhumane treatment and torture, guaranteeing ersatz public safety for a while. Indeed, racial profiling is melded to

doomsday scenarios that far outstrip any simple criminal profiling of past eras.

Divining racial discrimination in the criminal justice system is not simply a matter of exposing unacceptable practices. Would that were true. Confronting racial profiling is less a matter of identifying it at a particular time and place than of conceding some element of shared responsibility in its existence.

The dynamic was recently at play in the “spin” given to otherwise objective data. It came to light recently that a U.S. Justice Department-funded study on racial profiling was packaged so as to conceal its major finding, which suggested gross bias. The director of the office was demoted for objecting—eventually quietly resigning. It provided a rare glimpse of the conflicts that suffuse criminal justice at all levels—mostly ignored, and only occasionally acknowledged.⁷

One might more profitably turn to Teresa of Avila than Leon Radzinowicz or choose Augustine over Max Weber as a preferred guide to plumbing the basic problem—a near-congenital inability to confront uncomfortable realities not only in our politics, but also in ourselves. When it comes to exposing discrimination in the criminal justice system, we are mired in a kind of “dark night of the soul.”

The scholars of the Middle Ages did not spend all their time ascertaining how many angels could dance on the head of a pin. They dealt as well with some profound human issues—later alluded to by the likes of Freud, James, and Huxley—the interplay of passion and objectivity in human activity.

The dilemma affects newsrooms as surely as it haunts the halls of academic criminology. It is not a matter of being *unable* to discover the level of racism that permeates our criminal and juvenile justice systems at virtually every level. *Rather, it is a near-pandemic disposition to ensure that our ignorance is kept pristinely untouched. We prefer not knowing those wrenching realities that, in a democracy, saddle us with unwanted responsibilities.*

We replay the ancient distinction between invincible ignorance and vincible ignorance.

The person who suffers from *invincible ignorance* is the individual who doesn't have access to the information necessary to understand a particular reality. He or she therefore has no responsibility for his or her ignorance and is therefore blameless for whatever follows.

Those who, Pollyanna-like, settle into a state of *vincible ignorance* (by definition, having access to the data but assiduously avoiding it for fear that in the knowing, they would be burdened with moral responsibilities they don't wish to assume) are culpable for whatever might follow—particularly in a democracy.

This, of course, is nothing new. The same "American dilemma" afflicted our Founding Fathers and has been alluded to by observers over two centuries. From Tocqueville to Gunnar Myrdal to Andrew Hacker—we compulsively protect those divisions that separate the overseers from the overseen. It is less a matter of inadequate knowledge than of skewed values—less a matter of education than of ethics. It requires virtues that are always in short supply. It speaks to humility, personal fortitude, and finding simple victories in the midst of an abiding tendency to nurture self-delusion. Only in recognizing these realities will the question be posed that allows an answer.

Notes

1. William Wilbanks, *The Myth of Racist Criminal Justice System* (Contemporary Issues in Crime and Justice Series) (Wadsworth Publishing Company, 1988).
2. In the mid-1990s, the Edna McConnell Clark Foundation afforded me the time to study the matter over a three-year period, surveying the relevant literature and interviewing the major actors in the drama culminating in a book on this experience, *Search & Destroy: African American Men in the Criminal Justice System* (Cambridge University Press, Oxford & New York, 1995).
3. i-at-ro-gen-ic [i àttre jénnik]: "caused by a doctor: used to describe a symptom or illness brought on unintentionally by something that a doctor does or says iatrogenic disorders." *Encarta © World English Dictionary © & (P) 1999 for Microsoft Corporation for*

Microsoft by Bloomsbury Publishing Plc (Redmond, WA: Microsoft Corporation).

4. Clifford R. Shaw, *The Jack-Roller: A Delinquent Boy's Own Story* (Chicago: University of Chicago Press, 1930), 137.
5. Richard Maxwell Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism* (New York: Oxford University Press, 1975), 210.
6. It all came full circle with the "discovery" in 2005 that black Muslim prison inmates constituted a potential terrorist recruiting threat "[O]fficials said they want to make sure the dozens of other prisoners and parolees are not aligned with Jamiyyat Ul Islam Is Saheeh or JIS, given the FBI's growing concern that disaffected inmates drawn to radical Islam could become a source of terrorist activity across the country." Jenifer Warren & Gre Krikorian, "Prisons Weigh Threat of Radical Islamist Gangs," *Los Angeles Times* (Sept. 4, 2005), B1.
7. Eric Lichtblau, "Profiling Report Leads to Clash And a Demotion," *New York Times* (August 24, 2005), A1. "Bush administration is replacing Lawrence A. Greenfeld as director of Bureau of Justice Statistics following his complaint that senior political officials at Justice Department played down data on aggressive police treatment of black and Hispanic drivers; demotion caps more than three years of simmering tension over alleged political interference at agency and compromising of key law enforcement analysis. . . . Greenfeld was reportedly ordered by the administration to delete references to disparities in how racial groups are treated after police stops."

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