

Reassessing and Redirecting Research on Race and Sentencing*

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Abstract

A large portion of research on criminal sentencing over the past few decades has focused on the role of defendant race. The modal approach has encompassed regression-based studies of whether defendant race exerts a main effect on imprisonment decisions. Recent studies have employed more sophisticated statistical models, have incorporated information on both race and ethnicity, and have increasingly emphasized a possible conditional role of these defendant attributes on sentencing outcomes. While these enhancements have yielded some noteworthy insights into how race and ethnicity may shape sentencing decisions, there are notable conceptual and methodological problems inherent in the modal research strategy that limit its overall utility. This paper takes stock of what we have learned to date from standard approaches to studying race and sentencing, outlines what appear to be the major underlying themes that have motivated that research, and proposes some new research directions that may help us to address those themes in different and possibly more direct ways.

Reassessing and Redirecting Research on Race and Sentencing

Overview

Research on the factors that shape criminal sentencing decisions has long been a vibrant area of scholarship in the field of criminology (e.g., Blumstein, Cohen, Martin, and Tonry, 1983; Hagan, 1974). This area of inquiry often has been defined broadly to include the multitude of decisions made as cases meander through the criminal justice system, from initial police contacts through prison release decisions. However, in practice the modal research approach has focused on the analysis of the back-end of the process, namely decisions about the type and severity of sanctions imposed on samples of convicted defendants (Bushway, 2009; Frase, 2009). Many of the earliest studies of sentencing with this focus have been rightly judged as theoretically shallow and empirically insufficient for drawing definitive conclusions (e.g., Hagan and Bumiller, 1983; Kleck, 1981). Nonetheless, this early work set the stage for multiple waves of research that have become increasingly more sophisticated – theoretically and methodologically – and have advanced our understanding not only about the sentencing process in general, but also about additive and multiplicative effects of specific factors, including both “legal” and “extra-legal” attributes of cases, crimes, defendants, and victims (see Zatz, 1987, 2000). This research has focused on sentencing in Federal courts and a relatively small sample of state courts (e.g., Georgia, Florida, Ohio, Minnesota, Pennsylvania, and Washington). It has attended to a multitude of possible factors that might shape sentencing outcomes in these contexts, and a good deal of it has addressed important policy questions such as whether the implementation of sentencing guidelines affects demographic disparities in sentences received (Spohn, 2000).

As elaborated below, this body of sentencing research is voluminous, variable in methodological rigor, and typically ambiguous in its conclusions. Two things seem clear, though. First, despite its imperfections, the extant research on sentencing has slowly but surely made significant strides in advancing our understanding of the criminal sentencing process. Indeed, a strong case can be made that it continues to contribute in positive ways to identifying the specific situations under which given factors, including

defendant demographic attributes, community social context, and a variety of legal and organizational constraints, are most relevant to yielding certain sentencing outcomes. Second, despite its progress and continued relevance, there appears to be a sentiment among many scholars – notably many of those who have contributed to this literature – that making significant headway on what appear to be the key underlying questions motivating most research on sentencing decisions (e.g., assessing group disparities, detecting discrimination, modeling legal decision-making, and evaluating the efficacy of specified policies) is going to require a broader-based research strategy that supplements in a meaningful way the current predominant research focus on sentencing outcomes among convicted offenders. This was the general tone that emerged during a discussion amongst several sentencing researchers at a recent American Society of Criminology (ASC) meeting (Bushway, 2009), and as elaborated below, it was an often voiced message conveyed to me during interviews of a random sample of sentencing scholars with whom I consulted about this and other matters relevant to the issues addressed herein. This is not a new message; it largely echoes the primary conclusions drawn from a comprehensive review of accumulated research and knowledge on sentencing more than 25 years ago by a National Research Council panel of eminent scholars (Blumstein et al., 1983). As that panel commented on the standard quantitative analysis of archival data on convicted defendants, “[this approach] alone cannot adequately capture or control for many features of social interaction, the importance of the subjective dimension of behavior, the need to tap the meaning of a situation in shaping decisions made by actors in the criminal justice system, and the effects of subtle behavioral cues...we urge vigorous efforts to broaden the range of methods used in the study of sentencing... A mixed research strategy is needed to increase understanding of the determinants of sentences” (pp. 259-264).

Against this backdrop, Professor Shawn Bushway solicited and received funding from the National Science Foundation (NSF) and other sources to bring together a community of scholars with hopes of helping to “reinvigorate empirical research on sentencing.” He and the other organizers of the symposium on “The Past and Future of Empirical Sentencing Research” – Professors Kevin Reitz, Sara Steen, Brian

Forst and Allison Redlich – subsequently invited me to contribute a paper on race and sentencing. I enthusiastically agreed to do so, though I must confess that I saw the task then (and still see it now) as a highly daunting one given the breadth of conceptual, methodological, and policy issues encompassed within the area of race and sentencing, coupled with the depth of coverage that ought to be applied to each dimension alone – race, on the one hand, sentencing on the other – as well as how they intersect in the criminal justice system. All the pertinent issues cannot be sufficiently covered in a short essay like this, of course, but hopefully what follows can at least begin some fruitful discussions of ways we can advance our understanding of possible connections between race and sentencing.

My two specific charges for this paper were (1) to provide a relatively brief overview and critique of the existing literature on race and sentencing, with an emphasis on what the symposium organizers identified as the modal approach in this area (studies of sentencing outcomes among convicted defendants); and (2) to lay out some additional directions for empirical research in this area. My first steps in tackling these challenges were to reach out to the collective community of scholars who have helped shape the literature on race and sentencing, and to engage in a systematic assessment of the most pertinent studies. With the help of two outstanding student colleagues – Ashley Arnio and Jenisse Lopez – a comprehensive search was conducted to identify empirical studies of race and sentencing published in refereed journals or in other outlets since the late 1990s, an effort that built on and updated several other recent reviews of the literature in this area (e.g., Mitchell, 2005; Pratt, 1998; Spohn, 2000). These studies were evaluated and coded systematically in some limited ways to support conclusions drawn here and there in the paper about the nature and results of recent research (a list of these studies is available upon request). Additionally, a sample of authors was drawn from this recent body of research and from the papers highlighted in Spohn’s (2000) comprehensive review of research on race and sentencing published in the 1980s and 1990s. The sampled authors were then interviewed to gauge their views on several issues, including their assessment of existing research on race and sentencing and their views on potentially

fruitful avenues of future inquiry.¹ Where relevant, I weave in the collective conscience of these scholars, noting when called for important areas of apparent heterogeneity in their views.

Addressing the two issues to which I was directed in a meaningful way requires first an appraisal of the underlying motivations or rationales for contemporary research on race and sentencing. In essence, what are we ultimately trying to discern from this body of work? As I already have hinted, my view on this is that most research on race and sentencing is directed, explicitly or implicitly, at one or more of the following objectives: (a) detecting racial disparities; (b) detecting racial discrimination; (c) evaluating whether a given policy intervention has modified observed racial disparities or discriminatory outcomes; and (d) assessing how race influences legal decision makers and/or legal decisions. There may be other ancillary goals of the extant research on race and sentencing, but based on a systematic review of stated rationales in the research published during the 2000s, one or more of these underlying issues were typically identified as key.² Thus, after outlining some broader conceptual and empirical considerations for the study of race and sentencing in an initial section of the paper, I turn my attention to a summary and assessment of the utility of recent research on race and sentencing in light of these meta-goals.

Fortunately, there have been several previous overviews of the empirical research on race and sentencing (e.g., Chiricos and Crawford, 1995; Hagan, 1974; Kleck, 1981; Mitchell, 2005; Pratt, 1998; Sampson and Lauritsen, 1997; Spohn, 2000; Sweeney and Haney, 1992), so I came to see my first charge as primarily one of updating and summarizing the accumulated knowledge on race and sentencing, and then to step back from it and provide some perspective on what the underlying research can and cannot tell us.

The next section of the paper turns attention to how we might better address the underlying issues that seem to drive our interest in studying race and sentencing. Again, it is fortunate that there have been over the past few decades some well-articulated ideas about how we might enhance the contemporary

¹The specific questions posed to these researchers are displayed in Appendix A. The questions were e-mailed to sampled authors, followed by a phone interview during which the questions were discussed. To facilitate candid responses, the respondents were promised that their identities would not be revealed.

²More than three-quarters of the studies we evaluated during this period mentioned one or more of these issues as an underlying “warrant” for the research.

research agenda on race and sentencing. Most notably in this regard is the classic 1983 National Research Council (NRC) panel review recommendations (Blumstein et al., 1983) that we appear to have largely ignored. I was reminded about this report when reading the narrative from a more recent NRC (2010) study devoted, in part, to describing ways data and research on sentencing and criminal justice processing might be enhanced. This report signaled many of the same issues as the 1983 report. There also are several potentially useful parallels in the broader social science literature that focus on different outcomes but which address the issues outlined above that seem to underlie most studies of race and sentencing. Thus, my recommendations for future research on race and sentencing are, admittedly, largely reiterations of past wisdom, mixed in with what I offer as reasonable and potentially fresh additional suggestions borrowed from other disciplines. Before turning to my assessment of existing research on race and sentencing and suggestions for ways to advance that body of literature, some preliminaries are in order to properly situate those discussions.

The Complexity and Significance of Race and Sentencing

The subject of race and sentencing encompasses a very complex maze of issues. Sentencing is multifaceted, and the factors that influence it are not easily pinned down. Sentences handed down in criminal courts are the product of a series of decisions made by law makers and criminal justice agents across multiple stages of processing who share tremendous caseloads, but often have unique goals and possess different degrees of discretion (Bushway and Piehl, 2001; Klepper, Nagin, and Tierney, 1983; Reitz, 1998). Race is also multidimensional in how it shapes life both within and outside of the criminal justice system (Blalock, 1967; Hacker, 1995; Hawkins, 1987; Kinder and Sanders, 1996; National Research Council, 2004; Sellin, 1935). In the latter domain, race³ is a status attribute of victims and defendants, as well as those who participate in the creation and application of criminal laws – attorneys, judges, jurors,

³I use the terms “race” and “racial” to simplify the prose, but I have in mind throughout the paper a broad conception of group-identity that encompasses race and ethnicity. While I anchor a good deal of the discussion with reference to black-white comparisons, largely because they have dominated the literature and have an extensive history in America, for much of the coming discussion the points made are relevant regardless of the specific groups

legislators, and sentencing commission. It co-varies with other status attributes (e.g., socioeconomic status) that are associated with offending rates, access to attorneys and political influence, and other factors (e.g., bail and pre-trial detention) that can yield differential sentencing outcomes. But, of course, race often is something more than merely a demographic attribute when laws are made and legal decisions are weighed. At least in America, race has a subjective history and meaning associated with stereotypes and biases that are at times and places closely linked – both explicitly and unconsciously – to crime, fear, anxiety, disorder and, ultimately, a yearning for more laws, stepped-up enforcement, and harsher sanctions that are felt disproportionately by racial and ethnic minorities (Bonilla-Silva, 2006; Brewer and Heitzeg, 2008; Unnever and Cullen, 2009). All the while, America is a nation built upon, among other things, a principle of equality under the law, and setting aside for the moment *the practice* of legislation and legal decision-making, the presumption is that law should be *in theory* created and applied without reference to race.⁴

The issue of whether laws are, in fact, created and applied in a race-neutral fashion is significant on a number of grounds that have implications across many domains. Several prominent scholars have linked perceptions of racial bias at sentencing to broader images of perceived illegitimacy of legal institutions (e.g., Blumstein, 1982; Kennedy, 1997; Tonry, 1995), and an impressive literature suggests that the perceived illegitimacy of law and the application of criminal sanctions may have profound consequences for crime rates, the deterrent capacity of the criminal justice system, strained race relations, and the

one has in mind. I concur whole-heartedly with the many scholars who have emphasized the importance of moving beyond simple “black-white” comparisons in sentencing, and the need to expand our horizons to consider other racial and ethnic group contrasts as well (see Johnson and Betsinger, 2009).

⁴This rests in part on an assumption that the influence of race on criminal justice decisions would be inherently disadvantageous to minority groups. Interestingly, in part as a response to the substantial overrepresentation of Aboriginals in its prisons, the Canadian Supreme Court ruled more than a decade ago that sentencing judges should explicitly consider race as a sort of mitigating circumstance in arriving at punishment decisions (Gladue, 1999). As Roach and Rudin (2000: 355) explain, this ruling pushes judges “to consider the unique systemic factors that may have brought a particular aboriginal offender before the courts and to consider the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular aboriginal heritage or connection.” In parts of Canada, such considerations are now formalized in specialized courts (Gladue Courts) in which written reports are prepared by caseworkers outlining the life circumstances of Aboriginal offenders and recommending sentences that should be considered in light of those circumstances.

generation and reproduction of social inequalities (Anderson, 1999; Gottschalk, 2008; Klinger, 1994; LaFree, 1998; Russell, 1998; Ruth and Reitz, 2003; Tyler, 1990; Western, 2006). The problematic nature of each of these potential outcomes of racial bias in the creation and application of law is significant when viewed in isolation, but their likely consequences are especially troubling given that they tend to be intricately linked. Anderson (1999) and LaFree (1998) argue, for example, that the perceived illegitimacy of law has been a key factor fueling violence in urban areas for the past several decades, especially among African Americans. To the extent that this is the case – the evidence is persuasive but admittedly somewhat anecdotal and empirically sketchy – it suggests a vicious cycle whereby perceived illegitimacy of the law may increase racial disparities in offending, which can yield a variety of negative consequences for the communities in which the offending takes place (e.g., Bursik and Grasmick, 1993; Skogan, 1990) and is likely to generate racial disparities in negative contacts with the criminal justice system, thereby further undermining perceptions of legitimacy and fueling beliefs that the law is applied in an unjust manner (e.g., Stewart et al., 2009; Weitzer and Tuch, 2005). The possibility of unwarranted racial disparities in the creation and application of law is thus a highly significant social issue.

Perhaps not surprisingly, Americans are highly divided in their views on whether laws are created and applied in a race-neutral fashion. Much like perceptions of the economic system, whites tend to see the criminal law as applied in a fair and race-neutral way, while blacks do not (Hagan and Albonetti, 1982; Hurwitz and Peffley, 2005; D. Johnson, 2008; Messner, Baumer, and Rosenfeld, 2006). These stark differences are likely due in part to significant differences in structural conditions to which many blacks and whites are exposed throughout their lives, but also to the realities of an historical experience in America that includes the participation of criminal justice representatives in the lynching of African Americans, a highly suspicious early track record with respect to racial neutrality in American courts and prisons during the post-civil war years, and direct and vicarious experiences with the criminal justice system that has shaped sentiments among many members of the contemporary African American community (Blackmon, 2008; Brunson, 2007; Lane, 1997; Patterson, 1997; Sommers and Ellsworth, 2001;

Sampson and Bartush, 1998; Stewart et al., 2009; Tolnay and Beck, 1992; Unnever, 2008).

Identifying the historical and structural roots of the racial division in public perceptions of whether law is created and applied in a just and unbiased manner is an important area of inquiry that deserves greater attention (see also Hagan, Shedd, and Payne, 2005). More central to the matter at hand, though, is that irrespective of public perceptions and in fact what likely are key factors that drive contemporary views is that there are some highly visible and large racial disparities in the application of laws and legal sanctions in America. There are a variety of persuasive anecdotal accounts to that affect (e.g., Brewer and Heitzeg, 2008), but also concrete figures that give a strong impression of race differences in the creation and application of laws, including the often-cited crack/powder cocaine sanction disparities (Kennedy, 1997), well-documented racial disparities in the application of death sentences (e.g., Baldus et al., 2008), and aggregate racial disparities in imprisonment rates (e.g., Keen and Jacobs, 2009). Perhaps the most vivid example is observed in comparing race-specific imprisonment realities. Figure 1 shows black-white male disparities in aggregate “stock” incarceration rates (i.e., the ratio of black-to-white male incarceration rates) since the late 1800s (Reitz, 2006). As the figure illustrates, there has been a significant racial disparity between black and white men in prison incarceration rates during the whole of the past century; black rates were nearly four times higher than white rates at the turn of the last century, and a hundred years later the disparity had approximately doubled, with black rates exceedingly high and about 8 times those of whites. Setting aside for a moment the myriad ways in which this pattern might be interpreted (c.f., Blumstein, 1982; Mann, 1993; Tonry, 1995; Wilbanks, 1987) – I return to this issue below – its symbolic importance should not be understated or under-appreciated. It serves as a powerful summary and visual reminder of the stark racial inequalities that exist in America and it fuels perceptions of the *possibility* of racial bias in the application of law that have profound reverberations throughout society. For these reasons, the aggregate pattern displayed in Figure 1 augers loudly for rigorous scientific research to help unpack its sources, inform the public discussion about race, crime, and punishment, and point to ways those observed race differences can be ameliorated. A solid, empirically-based understanding of the underpinnings for the

pattern shown in Figure 1 will not resolve racial conflicts or remedy race relations of course, but its implications are nevertheless potentially far-reaching.

Figure 1 about here

In fact, social scientists have studied for several decades whether laws are created and applied in a race-neutral fashion, especially with regards to imprisonment. Some studies have been directed explicitly at trying to identify the factors that have driven trends in racially disparate incarceration rates (e.g., Keen and Jacobs, 2009; Sabol, 1989), while others have focused on decomposing the sources of these patterns at particular cross-sections, both nationally and in selected jurisdictions (e.g., Blumstein, 1982; 1993; Keen and Jacobs, 2009; Langan, 1985; Frase, 2009; Harris et al., 2005). Decomposing aggregate patterns like those shown in Figure 1 is essential in my judgment because it can serve as a guide to the sources of the observed racial disparities and, hence, where our research efforts might best be directed. I therefore begin my review of the literature with an assessment of the evidence on this issue. While I ultimately conclude that we need to substantially increase attention to this important foundational work, the available findings support the idea that what has emerged as the modal approach to studying race and sentencing – regression-based studies of whether defendant race exerts a main effect on whether or not convicted persons are sentenced to confinement and, if so, for how long – is indeed relevant to advancing our understanding of the connection between race and sentencing. However, these decompositions also reveal that, to bolster our understanding of how race influences sentencing (broadly defined), a wider-based research strategy is needed that evaluates the role of race in shaping decisions across the various points in the system that can shape sentencing outcomes (see Reitz, 1998). Given this, after briefly exploring the meaning of aggregate racial disparities in incarceration, I then take stock of what we have learned to date from standard approaches to studying race and sentencing in light of the meta goals (including overall racial disparities in incarceration), and propose some new research directions that may help us to address those themes in different and possibly more direct ways.

Identifying Sources of Racial Inequality in Sentencing Outcomes

As illustrated in Figure 1, there are clear racial disparities in incarceration rates. Advancing understanding of this pattern is, it would appear, one of the meta-goals underlying much of the contemporary research on sentencing outcomes among convicted defendants, the body of research that I and others have referred to as the current modal form of research in this area (Bushway, 2009). Of course, the racially disparate pattern shown in Figure 1 is open to a wide variety of interpretations. At one extreme, it could reflect racial differences in criminal participation and no bias in the application of criminal law; at the other, it could reflect racial equality in the prevalence, incidence, and nature of offending, yet significant racial bias in how the law is applied to offenders. In this latter scenario, bias can come in many forms and can be exercised by many different actors (see also Frase, 2009). There is no support of which I am aware for either of the extremes just noted; instead, there is evidence that the racial disparities in overall incarceration rates reflect a complex and uncertain mix of race differences in offending and arrest, on the one hand, and the probability that arrested suspects are prosecuted, convicted, and sentenced to prison for varying lengths (including both new commitments and revocations), on the other.

Before delving in to this issue in greater detail, it is important to acknowledge that there are significant data limitations that impede our ability to fully decompose aggregate racial disparities in incarceration rates (Tonry and Melewski, 2008). Part of this is due to the lack of systematic data on race differences in offending, but even if we focus just on trying to parse out the relative contributions of post-offense factors and decisions, the data landscape still looks pretty barren. Indeed, this was one of the key observations of an NRC panel charged with assessing the current data portfolio of the Bureau of Justice Statistics (BJS). As the panel noted, an integral data infrastructure need in America is to begin tracking in a systematic way criminal cases as they progress into and ultimately exit the criminal justice system (NRC, 2010). Such data have been gathered in some locations and for some offenses – one good example is the BJS Murder Database gathered in the late 1980s from 33 urban counties – but the absence of

comprehensive data of this form remains a major gap in our data infrastructure. This type of case ‘flow’ data not only would be useful for decomposing aggregate statistics on rates of incarceration, but potentially could also enable us to better study legal decision-making at each of the major stages of the system by providing the needed data and enhancing our knowledge of how cases are selected into (or excluded from) them.

With this apology for data limitations in mind, crude comparisons between arrests statistics and incarceration rates provide some insights into the relative contribution of differential offending/arrest rates and differential post-arrest outcomes to the large gap in incarceration rates observed between blacks and whites, for example. Based on such comparisons, during the 1970s and 1980s a majority of the racial disparity in incarceration rates appears to have been due to differential selection into the criminal justice system. As summarized in Panels A and B of Table 1, Blumstein’s (1982, 1993) classic decomposition analyses suggest that during this period approximately 75-80 percent of the racial disproportionality observed nationally in state prisons could be explained by racial disparities in arrests, which reflect to a largely unknown degree, racial disparities in offending and police arrest practices (see also Langan, 1985; Harris et al., 2010). There are important nuances and caveats to these conclusions, though, and apparent differences across places and over time. For instance, Tonry and Melewski (2008) update the analysis reported by Blumstein with data from the early part of the 2000s and show that during this period the percentage of the racial disproportionate representation of blacks in prison explained by racial disparity at the arrest stage had fallen to about 60 percent. I obtained similar figures when replicating as best I could for 2004 the decomposition reported by Tonry and Melewski (2008) and also updating the calculations based on 2008 data. Table 1 displays the findings of these – admittedly imperfect – decompositions, summarizing the figures reported in Blumstein’s research (1982, 1993) and for the more recent period (2004, 2008) based on my own calculations using the same method. As the table shows, the contribution of arrest rate differences to black-white incarceration disparities has declined substantially across the period represented, approximating 55 percent in the present decade. Clearly, while race-based arrest

disparities continue to play an integral role in shaping race-based imprisonment rate disparities, several other factors are relevant as well.⁵

Table 1 about here

Decompositions such as those presented in Table 1 identify the possibility of “post-arrest” racial bias in aggregate incarceration rates, but they cannot tell us where the portion of this racial bias unaccounted for in race arrest disparities may arise. In theory, it could occur in a wide variety of ‘locations’ and for a variety of reasons. To illustrate, consider the heuristic model displayed in Figure 2 (non-race influences – individual, family, situational, and jurisdictional -- have been omitted from the figure for clarity, but they are obviously important for identifying the types of relationships displayed). The criminal justice system is complex and variable across jurisdictions and sentencing structures (Reitz, 1998), but this figure captures the essence of most of the pertinent stages and potential mechanisms through which race may influence sentencing outcomes. I shall have more extensive comments related to this figure below in the context of an overview of the modal research approach to race and sentencing, but here I simply point to a few pertinent issues.

Figure 2 about here

As illustrated in the boxed portions of the figure, there are several possible stages through which suspect race could yield race-based differences in incarceration rates. This includes the often-cited decision-making points such as prosecutorial screening, pre-trial bail and detention, the likelihood of conviction (via trial or plea), the probability of imprisonment (via new commitments or revocations), and sentence length. But it also includes less frequently noted stages such as the conglomerate of decisions through which penalties are prescribed or mandated. As noted by the double-headed curved arrow,

⁵As documented in Appendix A, we also posed to our sample of sentencing scholars the possible meaning of contemporary racial disparities in aggregate incarceration rates. While most of them acknowledged that those disparities probably reflect disparities across the gamut of possible sources (disparities from offending through sentencing, for example), the vast majority also cited Blumstein’s (1982, 1993) published figures in support of the idea that the vast majority of such disparity are thought to lie in offending/arrest differentials. The updated decomposition presented here therefore provides a slight revision to the conventional read of the available evidence on the matter, as it pertains to the current decade.

suspect race is likely to be correlated with pre-defined penalties to the extent that race is correlated with the commission of offenses (or being charged with such crimes) that increase the chances of or length of imprisonment (i.e., weapons offenses, drug offenses, third strikes).

An additional noteworthy feature of Figure 2 is that, as shown in the bolded sections, race can influence outcomes at these stages in multiple ways, both in terms of the source of the racial influence and its meaning. Suspect race is one possible source, but the social science literature also has emphasized the potential importance of the race and racial attitudes of those who create and apply the law and of the residents of the location in which the law is created and applied (e.g., Johnson, 2006; King, Johnson, and McGeever, 2010; Mitchell et al., 2005; Myers and Talarico, 1986; Sommers, 2006, 2007; Ulmer and Johnson, 2004). And, all else equal, each of these potential sources of racial influence can yield race-based disparities in incarceration rates (or other criminal justice decision outcomes) either because members of different races are treated differently due to their race (differential treatment discrimination) or because they are treated equally but the procedures or rules (e.g., nature of the offenses for which a suspect has been charged, prescribed or mandatory sentences) favors one group over the other (disparate impact discrimination) (National Research Council, 2004; Pager and Shepherd, 2008). Although these two potential bases of discrimination are routinely highlighted in literature focused on other institutional domains (e.g., employment, housing, credit markets), much of the sentencing literature tends to focus on identifying the former while controlling for the latter.

Both of these potential forms of racial bias emerge as important when we attempt to identify in more detail the sources of contemporary non-arrest based contributors to race disparities in incarceration rates. In short, the observed race differences in incarceration rates not accounted for by race differences in arrests could arise from racial bias in decisions about who is prosecuted, who is convicted, or who is imprisoned, and/or for how long convicted persons are sent to or kept in prison (i.e., disparate impact discrimination). We do not have good national-level data on the probability that arrested persons are prosecuted or that prosecuted persons are convicted, but as illustrated in Figure 3, the available evidence

from the Offender Based Transaction Statistics (OBTS) and the National Judicial Reporting Program (NJRP) suggests a contemporary racial disparity in the probability of imprisonment that has grown over the past two decades.⁶ Thus, this could be part of the story, and this underscores the potential importance of contemporary research on race and sentencing, much of which has focused on evaluating the differences shown in Figure 3 in multivariate contexts.

Figure 3 about here

An additional explanation of the observed racial disparities in aggregate incarceration rates unaccounted for by arrest differentials, as Tonry and Melewski (2008) point out, is that such racial disparities could arise from the adoption of laws and policies that establish mandatory and longer prison sentences for offenses for which blacks tend to have a higher probability of being selected into the system (i.e., serious violence, drug, and weapons offenses), or that define situations in which blacks tend to more often find themselves (e.g., more extensive criminal records). A quick return to Table 1 suggests support for the former possibility, as blacks have over time comprised an increasing fraction of persons arrested for drug crimes. Also, consistent with the latter argument, Frase's (2009) comprehensive analysis of Minnesota criminal case processing data suggests that seemingly race-neutral sentencing policies – in the form of guidelines that give heavy consideration to prior criminal record – may be responsible for a non-trivial portion of the contemporary black-white disparities in incarceration rates in that jurisdiction.

Overall, three key features emerge as relevant to the task at hand from this brief assessment of the decomposition of aggregate racial disparities in incarceration rates. First, it would be useful to periodically and carefully decompose aggregate racial disparities in incarceration rates. The data available to do so in a fully satisfactory way are not currently available in most jurisdictions, so reorganizing ongoing data capture systems to provide such data would be a worthwhile pursuit (see also NRC, 2010). Second, a significant portion of the observed racial disparities in incarceration rates appears to be due to race differences in

⁶The results presented in Figure 3 are based on my own calculations from a pooled database of OBTS and NJRP data constructed from yearly files obtained through the Interuniversity Consortium for Political and Social Research (ICPSR).

offending rates and/or arrest practices, as well as the adoption of laws and policies that have differential racial impacts, such as mandatory minimums and sentencing guidelines defined by features that may be highly correlated with race (e.g., offense and prior record). Studying how race influences these outcomes falls outside of what has emerged as the major focus of research on race and sentencing, but we would be wise to devote more of our attention to these key issues if we have as a goal to advance our understanding of the ways racial disparities in sentencing outcomes can arise. Third, given that contemporary race differences in incarceration rates appear to be due in part to disparate racial impacts of *decisions made by legislators and sentencing commissions*, and in part to *decisions made by criminal justice actors*, it is important not only that we study both issues but also that we try to distinguish between these different types of race effects in analyses of archival data on race and sentencing (see also Bushway and Piehl, 2001), a point to which I return below.

Summarizing the Modal Approach to Studying Race and Sentence

There is little disagreement among scholars about whether there is racial inequality in sentencing outcomes. As illustrated in the previous section, there are considerable racial inequalities that are highly visible in the final sentencing stages, and these inequalities are quite large. As many scholars have noted, though, there is a good deal of uncertainty about the meaning of these inequalities. Based on limited data and with the caveat that additional research is needed, I reviewed evidence above suggesting that the observed racial inequalities in incarceration rates appear to be larger than we would expect on the basis of selection into the criminal justice system (i.e., larger than arrest disparities) (see also Tonry and Melewski, 2008). There are a variety of potential sources from which, and stages at which, such racial inequalities might arise. Racial bias in the sentencing process, defined by many to encompass the initial prosecutorial screening decisions, adjudication and sentencing decisions, and post-sentencing release decisions are all viable candidates in this regard. What does the research literature in this area tell us? Is there evidence of significant defendant racial disparities in these outcomes?

A comprehensive review of the available evidence across all of the major stages of the criminal justice process during which race can influence outcomes is beyond the scope of this paper, and it is also largely unnecessary since others have provided competent overviews of relevant research.⁷ However, there are some notable general themes that emerge clearly from this overall body of work. First, there is too little attention devoted to the analysis of archival data on race effects on pre-trial decisions, plea bargaining, and trial decisions (see also Sampson and Lauritsen, 1997). It is perhaps understandable that there is a dearth of studies that have focused on how defendant race can influence actual trial outcomes since a relatively small fraction of criminal cases are adjudicated at trial. The other two outcomes mentioned here are highly relevant in their own right, though, and also are consequential for outcomes downstream. Thus, it would be useful to focus more of our attention on the role of race at those stages (e.g., Demuth, 2003; Schlesinger, 2005). Indeed, studying case outcomes across multiple stages would provide insight into the commonly mentioned but rarely tested assertion that disparities and disadvantages accumulate as cases pass through the system. Second, while there are active and meaningful archived-based research agendas on the influence of defendant race on prosecutorial decisions and on imprisonment decisions (e.g., in/out, and prison sentence length), both of which are important areas of inquiry, the latter outcomes have received the greatest amount of attention by a long margin. Additional research designed to study prosecutorial decision-making would be useful, especially with respect to prosecutor roles in guiding sentencing outcomes (i.e., charge and sentence bargaining). Third, the overwhelming focus of race/sentencing studies has been on *defendant race*. This is a limiting factor given that research on capital cases (e.g., Baldus and Woodworth, 2003), mock juries (e.g., Sommers, 2006, 2007),

⁷Comprehensive overview of studies that test for racial disparities in prosecutorial decisions can be found in Free (2002). Demuth (2003) summarizes and studies links between defendant race and pre-trial decisions. Albonetti (1990) and Frenzell and Ball (2008) review the literature on defendant race and plea negotiations. Sampson and Lauritsen (1997) comment on the limited research on defendant race and (actual) jury trial outcomes, and they also provide a comprehensive overview of research on the influence of defendant race on imprisonment probabilities among convicted defendants and sentence lengths among those incarcerated. More recent reviews of race effects on the latter two sentencing outcomes can be found in Zatz (2000), Spohn (2000), and Mitchell (2005). For reviews of racial disparities in capital cases that encompass decisions at multiple stages, see Baldus and Woodworth (2003), Paternoster and Brame (2008), Bowers, Steiner, and Sandys (2001), and Sommers (2007).

and selected other studies of non-capital cases (e.g., Baumer, Messner, and Felson, 2000; Britt, 2000; Fearn, 2005; Johnson, 2006; King et al., 2010; Spohn and Spears, 1996; Ulmer and Johnson, 2004) highlights the importance of many other dimensions of race in criminal justice processing, including victim race (especially in tandem with defendant race), and the race of judges, jurors, attorneys, and community members (see also Figure 2).

Each of the issues just noted draws attention to the need for a broader research agenda on race and sentencing that seeks a more expansive conceptualization of race across a wider range of decision-making points. Absent such a comprehensive approach from the contemporary research landscape, the symposium rightly identified the analysis of archival data on convicted defendants as the modal type of race/sentencing research that has been conducted over the past few decades. Several hundred of such studies had been published by the early part of the present decade (see Mitchell, 2005), and based on a thorough literature search we uncovered more than fifty additional studies published since that time. As others have documented (e.g., Hagan, 1974; Kleck, 1981; Sampson and Lauritsen, 1997; Zatz, 1987), a large fraction of the collective body of literature in this area suffer from serious methodological limitations (e.g., inadequate controls for prior record) that render them unfit for assessing whether, net of other well-established predictors of sentencing outcomes, there are significant racial disparities.

Several contemporary reviews of this literature have filtered through the pertinent studies and identified those that meet some basic methodological thresholds, typically defined in terms of having reported a measure of association between race/ethnicity and one or more indicators of sentence severity, the application of multivariate regression techniques, and explicit controls for crime seriousness and prior criminal record (e.g., Mitchell, 2005; Pratt, 1998; Spohn, 2000). Focusing on these more sophisticated studies, the general conclusions drawn across recent reviews that focus on slightly different time periods and apply different methods for synthesizing the results, ranging from general interpretive content analyses (Sampson and Lauritsen, 1997), to tabulations of the proportion of studies with significant race coefficients (Spohn, 2000), to formal meta analyses (Mitchell, 2005; Pratt, 1998) are quite consistent, but

open to multiple interpretations in terms of overall implications. The consistent finding from such overviews is that there are often relatively small but statistically significant direct race differences in the probability of imprisonment to the disadvantage of blacks (compared to whites), and typically comparatively smaller and statistically non-significant direct race differences in prison sentence lengths between these groups. Using words like “often” and “relatively small” casts a sheen of vagueness to this general assessment, but providing additional details unfortunately does not clarify things much because the broader story is that defendant race effects appear to be highly contingent on sample composition, crime type, model specification, and the jurisdiction from which they come, to name a few factors (Mitchell, 2005). Nonetheless, to put something more concrete on the line, Spohn’s (2000) review of studies published during the 1980s and 1990s indicates that of the 95 black-white race comparisons contained in the 40 state-level studies she reviewed, 43.2 percent yielded significant differences in which blacks received more severe sanctions than whites; the comparable figure that emerged from 22 estimates in 8 Federal-level studies was 68.2 percent. Spohn further showed that racial disparities in this direction were greater for the probability of imprisonment (i.e., the in/out decision) than sentence length determinations. This was also true in her replication of the analysis for Hispanic/white defendants, though the gap between these groups was smaller than those observed for blacks and whites (see especially Exhibit 2, p. 456).

Spohn (2000) does not formally evaluate effect sizes for the significant differences she observed, but this is the focus of the meta-analyses of black-white sentencing differences reported by Pratt (1998) and Mitchell (2005). These studies reveal evidence consistent with conclusions drawn from Spohn (2000) and many other overviews (e.g., Chiricos and Crawford, 1995; Sampson and Lantieri, 1997; Zatz, 2000): the influence of defendant race on sentence length appears to be relatively weak, the presence and magnitude of racial disparities in decisions about imprisonment vs. non-custodial sanctions is significant, relatively modest overall, and highly variable across studies (see also, Hagan, 1974). However, the recent overviews also illuminate that race effects are highly contingent on various other factors, especially age, gender, socioeconomic status, offense type, and jurisdictional location. The latter findings, which have

been referred to in the literature as interactive or subtle race effects are important and suggest that the assumption of main effects that is part and parcel to the whole enterprise of assessing racial disparities may be limiting.

A General Critique of the Modal Approach to Studying Race and Sentencing

As noted earlier in this paper, upon being asked to provide a review of recent research on race and sentencing, it seemed logical to update the efforts just summarized. In fact, early in the process I worked in collaboration with some outstanding student colleagues to do a comprehensive search of all studies published since 2000 (in any form, including electronically available working papers) that examine the influence of race on sentencing outcomes among convicted defendants. This effort identified more than fifty of such studies, which like in previous eras clearly varied in analytical rigor. We filtered through these studies and did some limited coding of them, including the typical rationale or underlying motivation provided for the study, the nature of the sample, the sample size, and key features of measurement and methods. We noticed immediately that, compared to previous eras, sentencing studies conducted during the present decade include data from a larger universe of jurisdictions, encompassed more diverse samples of defendants (e.g., Hispanic defendants), and was focused more on illuminating the nuances or contextualized nature of race and ethnicity effects. Many of the scholars with whom I spoke about the current state of research were pleased to see these angles being pursued.

As we meandered through both the earlier and more recent literature, including the available overviews cited above, we decided to abandon our formal efforts of updating the assessment of findings from recently published research. We did so, ultimately, because we concluded that until some fundamental conceptual and methodological issues are better addressed in the literature, it did not make much sense to summarize in a formal way the recent work in this area. Suffice it to say that, based on the limited assessment we did complete, it seems likely that we too would conclude that defendant race is (1) often a significant but relatively weak correlate of sentence severity overall, and (2) that it yields some

substantively meaningful conditional effects that should be further explored. Instead of devoting time and space to validating that through a formal meta-analysis, I concluded that it would be more productive to focus attention on identifying some problematic issues that seem far too frequently set aside in this literature and to suggest ways we can move past them. Two methodological issues seem especially pertinent – empirical misspecification (both under and over specification) and sample selection bias – and have been discussed extensively by others, so I mention them only briefly here. An additional limitation of much of the existing research is something I will refer to as conceptual ambiguity; which calls attention to the need for greater specification of the types of decisions (or decision makers) we are modeling in the modal type of analysis of race and sentencing among convicted defendants. This, too, is a point others have made (e.g., Bushway and Piehl, 2001) that warrants repeating but not extensive discussion. Finally, after reviewing these issues, I comment in a following section on a broader set of concerns I have regarding a mismatch I perceive between the modal approach to studying the effects of defendant race on sentencing outcomes and the underlying motivations for this research.

With respect to methodological matters, it will come as no surprise to those who have kept pace with the sentencing literature that many of even the most sophisticated studies of archival data on sentencing outcomes among convicted defendants omit some potentially very important confounders, including socioeconomic status, victim race and other attributes, jurisdictional context, and the nature and quality of the evidence. In theory, many of these things are likely to be correlated both with defendant race and sentencing outcomes, and Mitchell (2005) provides some empirical evidence that their omission is consequential for the assessment of racial disparities across different types of sentencing outcomes. I do not mean to be overly picky – no data set or study is perfect, and the omission of these indicators does not render the research meaningless – but it is important for us to acknowledge in a serious way that in many cases the coefficients we estimate for race in studies of sentencing may be significantly biased by not including some of these basic indicators. This is a perennial problem in a wide variety of social science areas in which race is studied. For instance, in many areas of inquiry omitting indicators of socioeconomic

status (SES) precludes a study from being taken seriously for what it can tell us about race differences. The implications of omitting SES from sentencing studies, which is all too frequent, may be less damaging to the bottom line but when considered together with the other indicators our data often do not encompass, it suggests to me that we may want to at least avoid drawing overall summaries about race effects from studies unless they meet a higher standard of empirical specification. Absent such higher standards, it is difficult to know what to make of existing overviews. For instance, the general finding reported in previous overviews is that some studies show significant racial disparities while others do not. This could be a highly meaningful pattern, or it could merely be picking up on differences across studies in empirical specification or, in other words, differences in residual variation.

A related methodological issue that warrants some additional thought prior to grouping collections of studies and drawing general conclusions also concerns misspecification, but in this instance in the form of over-specification and inattention to the underlying causal mechanisms through which race may influence final sentencing outcomes. To be sure, others have noted the potential importance of indirect effects of defendant race, yet the literature still appears to forge ahead with a focus on estimating either main or interactive effects, neither of which address the many indirect pathways through which defendant race may influence sentencing outcomes. Without explicitly and routinely specifying both direct and possible indirect effects of defendant race, we are likely to misrepresent its importance. There are several possible meaningful mediators through which defendant race may affect sentencing outcomes, including pre-trial detention and bail amounts, mode of adjudication, and the quality of legal representation. Too often, these factors are considered merely as controls that must be included to yield a meaningful estimate of the direct effect of defendant race. Greater attention to the mechanisms through which defendant race may matter in indirect ways is vital if we are to fully grasp its importance in shaping sentencing outcomes.

Another important issue in the analysis of archival data on sentencing outcomes among convicted defendants, of course, is sample selection bias. As others often point out, group-based comparisons of sentence duration decisions may be biased because of differential group-based selection into the sentence

length phase of the process (Blumstein et al., 1983). In fact, the issue of differential selection and the potential for selection bias exists throughout the different stages of the process, even though the matter is typically discussed only in the context of modeling sentence length. These issues are often mentioned but evidently poorly understood among many doing research on sentencing. Bushway et al. (2007) demonstrate this by reviewing more than two dozen studies published in *Criminology* during the past twenty years and showing that sample selection bias was often addressed in an inappropriate or incomplete manner. While their subsequent analysis of Pennsylvania data indicated that failing to properly account for selection bias in sentence length models is unlikely to significantly contaminate findings for race disparities, this may not be true in other jurisdictions or in other temporal periods. In any event, one implication of the findings reported by Bushway et al. (2007) is that some non-trivial fraction of the studies on race and sentencing during the past few decades (e.g., Mitchell, 2005; Spohn, 2000), including more recent studies as well, I suspect, do not properly test or adjust for selection bias in modeling sentence length and very few studies attend to the matter at all when modeling earlier decision-making points.

Concerns about model specification and selection bias made me uncertain about the utility of updating earlier reviews, or drawing general conclusion about what the more recent research has to say about the role of defendant race in shaping sentencing outcomes. Indeed, my overall assessment comes close to that of the NRC panel who reviewed the literature in the early 1980s: overall, much of the relevant research suffers from measurement error and sample selection problems that raise “the threat of serious biases in the estimates of [defendant race] effects” (Blumstein et al. 1983, 109). Putting these methodological concerns aside, there are some broader issues we should consider as we move forward with this and other programs of research designed to illuminate the role of race in shaping sentencing outcomes. One conceptual issue that seems particularly significant in my judgment is distinguishing between the various sentencing actors who might be influenced by defendant race. As typically modeled, the two sentencing outcomes considered in the modal research strategy on race and sentencing can be products of decisions made at different points in time and by a variety of people,

including legislators, sentencing commissions, prosecutors, defense attorneys, and judges.

Many observers have pointed out that it would be potentially useful to model in distinct ways the decisions of different actors within the criminal justice system (e.g., prosecutors, judges, and jurors), but as Bushway and Piehl (2001) note, an even more fundamental issue we should weigh is the importance of distinguishing between these internal criminal justice decisions and those from ‘outside’ the system that can dictate sentencing outcomes in potentially biased ways irrespective of how criminal justice personnel process cases. In most studies in this area, it is unclear whether any observed racial disparity reflects differential decisions across racial groups by prosecutors and judges, on the one hand, or legislative bodies or sentencing commissions, on the other. The latter decision makers prescribe or, in some cases, mandate the penalties associated with a given conviction charge and prior record, and thus part of the variation observed across cases in any given sentencing study will reflect variance associated with their choices (and not just judicial or prosecution choices) unless it is explicitly modeled. As noted earlier, it is important to enhance our understanding of how race might be linked both to sentencing guidelines/statutes and sentencing decisions made by criminal justice officials, but achieving the latter will require greater attention amongst researchers to the need to try and distinguish these decision sources. Indeed, Bushway and Piehl (2001) illustrate with data from Maryland that accounting for the “expected sentence” in any given case yields conclusions about defendant race that depart meaningfully from situations in which this issue is not addressed. Similar observations have emerged in research on sentencing from other guidelines states as well (e.g., Engen, 2000; Ulmer, 2000; Wooldredge, 2010), though this is not merely an issue in states with sentencing commissions. Judges and prosecutors in all states operate under some sort of statutory guidelines for sentencing in given cases, and where possible these constraints should be modeled explicitly to better isolate variation in sentencing outcomes that can be attributed to these actors.

The issues just outlined represent simultaneously limitations of many contemporary studies and areas future research on race and sentencing might consider and improve upon. To this list I could add, as others have, the need to further explore the various ways in which defendant race effects might be

conditioned by other defendant attributes, victim characteristics, features of cases, and jurisdictional context (Chiricos and Crawford, 1995; Spohn, 2000). Indeed, most of the sentencing researchers with whom I spoke expressed the sentiment that such “contingent” or “contextual” effects of defendant race had only recently been taken seriously in the extant literature, and thus they were excited about additional research along these lines. However, the majority of these researchers also were quite vocal about the need for new directions to enhance our understanding of race and sentencing, an issue to which I now turn.

Reassessing and Redirecting the Modal Paradigm of Research on Race and Sentencing

My comments thus far about the main paradigm of research on race and sentencing have been admittedly fairly mechanical, directed at issues that are relevant to consider if we want to continue along that path more effectively. Ultimately, though, I think it would be worthwhile to take a step back to consider some broader issues. In particular, is this paradigm well-suited to provide good answers to what appear to be the key underlying questions that motivate the study of race and sentencing? If it is not fully sufficient on those grounds, what potentially fruitful avenues might the community of scholars invested in research in the area take over the next several years? As I have argued above, addressing these broader questions requires first that the underlying motivations or objectives of this line of research be identified. Based on my reading of the literature, the meta-goals of this research agenda seems to include: (a) detecting racial disparities; (b) detecting racial discrimination; (c) evaluating whether a given policy intervention has modified observed racial disparities or discriminatory outcomes; and (d) assessing how race influences legal decision makers and/or legal decisions. In my judgment, the modal approach to research on race and sentencing outcomes – studying archival data on convicted defendants (only) using conventional regression approaches – is not particularly well-suited for addressing these more general concerns. At the least, we should supplement this approach with other efforts.

Detecting Racial Disparities

In theory, comparing outcomes among convicted defendants of different races is a reasonable approach to detecting racial disparities in sentencing. In this regard, a strong case could be made that the typical study of race and sentencing is well suited for addressing one of the key underlying motivations of doing this type of research. In practice, though, it is quite challenging to cleanly detect meaningful group disparities in sentencing, or most other outcomes for that matter, using the standard non-experimental regression approaches that have dominated the literature on race and sentencing. As discussed above, there are a wide range of threats to our ability to isolate whether there are statistically and substantively significant race differences in sentencing outcomes, including issues associated with empirical misspecification and sample selection bias. These issues are not unique to the sentencing literature. Indeed, they are part and parcel to the detection of group disparities with archival data across a wide range of domains (see NRC, 2004; Pager and Shepherd, 2008). But, ultimately, while I would conclude that the dominant approach to studying race and sentencing is capable of detecting disparities in outcomes across defendants based on group membership status, as I suggested above, current efforts to do so are limited in important ways.

Our ability to detecting meaningful racial disparities in sentencing outcomes based on the analysis of archival data on convicted defendants would be enhanced to the extent that we borrow more liberally from other areas of study. Interestingly, we do not have to look far to find some straightforward ways to improve our efforts. Comparable issues have been central to studies of racial bias in police stops and searches (e.g., Ridgeway, 2007) and, as it turns out, there is a significant gap in the methodological rigor between the modal sentencing study of non-capital cases and studies that focus on the application of death sentences (e.g., Baldus and Woodworth, 2003). Paternoster and Brame (2008) provide an excellent overview of the most pertinent methodological issues. They point out the potential significant biases that can emerge when trying to estimate group disparities from standard regression based modeling of case level data, and outline some of the other more suitable approaches that have been used to model race

effects on charging and sentencing in capital cases, including a multi-stage regression framework that has been applied by Baldus and colleagues (e.g., Baldus et al., 1998, 2002) and different forms of propensity score matching (e.g., Berk et al., 2005; Shonlau, 2006). Paternoster and Brame (2008) discuss at length the advantages and disadvantages of the different possible approaches to isolating race differences. In short, they make a convincing argument that what continues to be the dominant approach to estimating race differences in most non-capital sentencing studies – standard multivariate regression modeling – is inferior to other approaches, and their research along with Berk et al.’s (2005) analysis show that the different research strategies can yield different findings. Overall, this discussion suggests that it would be worthwhile to pursue additional types of analyses with existing sentencing datasets to, at a minimum, assess the robustness of findings across different approaches.

Beyond implementing enhancements to current methods of group comparison in sentencing studies, however, I suggest that it would be worthwhile to borrow more directly from lessons learned in other social science domains. Scholars of housing, labor, and consumer credit markets, for example, have long supplemented regression-based analyses of non-experimental data with a variety of other approaches that would be interesting to consider in the area of sentencing. In the early 1980s, Blumstein and colleagues (1983) encouraged scholars to supplement quantitative modeling of sentencing outcomes in large datasets with a range of experimental studies that might shed additional light on whether criminal justice decision makers are making decisions that vary across defendants due to (or correlated with) their race. I echo that call to action here, noting also that to my knowledge this advice has not been followed in a serious way over the past few decades. In other research areas, both laboratory and field experiments have been instrumental in advancing understanding of whether there are meaningful group disparities in specified conditions or outcomes. Our confidence in findings from non-experimental research would be bolstered by a greater investment in these kinds of studies in the areas of race and sentencing. Laboratory experiments of sanctioning practices were at one time quite prominent as a tool for understanding how defendant (and other) attributes shape punishment assessments, and such work remains vibrant in studies

of mock juries (Sommers, 2007; Sweeney and Haney, 1992). However, given the relatively rare occurrence of jury trials in the overall sentencing process, it would be useful to expand this work to other settings and strategically targeted legal actors (e.g., prospective members of the legal profession, such as law students, as well as actual members of different court communities). The latter possibility moves experimental sentencing research into the field, something that to my knowledge has not been done extensively.

While defendant race cannot in practice be experimentally manipulated, as others have pointed out (e.g., NRC, 2004), the perceptions of people who evaluate members of different racial groups can be randomized. Again, if we look to other areas of study, we see a long history of efforts that capitalize on this possibility in field experiments designed to estimate racial disparities in outcomes such as hiring and lending decisions, interactions in housing markets, and a variety of other outcomes (e.g., Goldin and Rouse, 2000; Pager, 2007; Ridley et al., 1989; Turner and Skidmore, 1999; Yinger, 1995). As Paternoster and Brame (2008: 979-80) suggest in the context of capital cases, although so-called “audit” or “paired-testing” designs have not been implemented to study race and sentencing, it might be possible to compare outcomes across cases in which decision makers are “racially blind” (see also, Black, 1989), and “it is not inconceivable to conduct an actual experiment in which prosecutors would be asked to decide whether they would seek a death sentence after reading a hypothetical case record of the homicide with the perceived race of the defendant and victim experimentally manipulated.” Although they are not without flaws (see Pager and Shepherd, 200), both types of analyses would be quite interesting to pursue in non-capital cases as well and would represent a significant enhancement to current efforts to detect racial disparities in sentencing outcomes. Several of the sentencing scholars with whom I spoke expressed some skepticism about the viability of this type of research, owing largely to perceptions that prosecutors and judges might be reluctant to participate. I concur that it would not be an easy sell, but I think given that the stakes are so high and that most legal professionals are sensitive to being perceived as racially biased (Tonry and Melewski, 2008), it certainly seems worthwhile to attempt such studies. While conducting a

full-scale audit-type study of the criminal justice system or parts of it might be a stretch⁸, some research I highlight below that assesses racial bias in a sample of judges enhances my optimism that we could achieving success in making more headway with more foundational types of experimental research in this area.

Detecting Racial Discrimination

Another apparent meta-goal of contemporary sentencing studies is the detection, and presumably the identification of conditions to ameliorate, racial discrimination. Many observers have acknowledged the important distinction between racial disparity and racial discrimination (see, e.g., Spohn, 2000). In short, the former can occur without the latter, a point that hat I believe summarizes a major limitation to the existing modal paradigm for studying race and sentencing. Whatever the merits of this body of research, and I think there are many, it is not well organized in my judgment to detect racial discrimination by legal decision makers. In part this is due to the same methodological deficiencies noted above that impede our ability to satisfactorily detect racial disparities in sentencing outcomes. To wit, in the standard regression-based framework that defines the modal research strategy, it is difficult to know for sure whether a significant positive association between defendant race (as a main or interactive effect) and sentence severity reflects racial discrimination by legal actors, disparate racial impact of a non-racially discriminatory feature of a case or the law, or empirical misspecification. Interestingly, one telltale sign of the weakness with the typical approach to race and sentencing in this regard that emerged in my review of studies published during the past decade is that almost none of the studies contain any serious discussion of racial discrimination in the closing remarks, even when studies yield significant effects of defendant race.

⁸This idea elicited a very wide range of reactions from the scholars with whom I spoke; some were intrigued by the idea and thought it might be plausible, others laughed it off as something that was highly unrealistic. I know of no previous efforts to try this type of study in the courts or among prosecutors, but given the high stakes of perceived racial bias in the justice system and potential utility of reducing those perceptions, this would be a highly significant endeavor if it could be pulled off.

Integrating experimental research, especially field studies, more centrally in the contemporary research agenda would help to provide greater insight into whether and where racial discrimination might be occurring. One recent example of the kind of experimental study that represents a good supplement to existing efforts to detect racial discrimination is Rachlinski et al.'s (2009) study of unconscious racial bias among trial judges. Rachlinski et al. (2009: 1196) discuss the possibility that implicit bias, or "stereotypical associations so subtle that people who hold them might not even be aware of them" may explain racial disparities seen at various stages of the criminal justice system. Specifically, Rachlinski et al. (2009) recruited judges from two urban jurisdictions (70 judges were recruited from a large eastern U.S. urban center, 45 judges were recruited in a large western U.S. urban center), in addition to a small sample of judges (n=18) drawn from a regional conference. They compare this sample to a non-judicial sample to test the idea that unconscious racial bias may operate among trial judges, suggesting that implicit bias may lead to harsher criminal justice penalties, despite a judge's professional commitment to hand down similar punishment to similar offenders, and regardless of an offenders' race, ethnicity, and gender. Using the Implicit Association Test (IAT), Rachlinski et al. (2009) find that trial judges score similarly to the general American population, with white trial judges revealing a strong "white preference" and black trial judges expressing no clear preference. Rachlinski et al. (2009) further examined the effect of the interaction between the judges' IAT preferences and judgments in mock cases and found that implicit bias among trial judges did affect their decision-making. However, when judges were made aware of their race group preference and the possibility of unconscious racial bias, they were able to suppress their racial biases. This finding ultimately demonstrates the professional commitment of trial judges' to egalitarian sentencing.

The Rachlinski et al. (2009) study illustrates nicely the kind of research that could enhance current scholarship on race and sentencing (see also Graham and Lowry, 2004). It serves as an example that this type of research is feasible, and it stimulates interest in applying similar approaches to other samples (e.g., prospective law professionals, prosecutors). Similar approaches have been applied to mock jury samples (Levinson, 2007; Levinson and Young, 2010) and post-hoc experimental assessments of actual capital

cases (e.g., Eberhardt et al., 2006). The latter study found, for instance, that black defendants convicted of murder and death penalty eligible who were perceived as more “stereotypically black” were much more likely than other blacks to be sentenced to death. These studies draw attention to important nuances about how racial discrimination might arise in the criminal justice system. Most discussions tend to focus on overt discrimination, which clearly has some historical relevance in studies of criminal justice in America, but may be less relevant today than forms of unconscious or implicit bias. Importantly, this line of research, and the tradition of work from which it flows (e.g., Amodio and Devine, 2006; Plant, Peruche, and Butz, 2005), is potentially useful in two additional ways. First, it recasts the study of racial discrimination and sentencing away from a purely adversarial tone, illuminating how discrimination may arise in settings even when subjects are unaware of it and eager to remedy it. And, second, this literature explicitly attends to identifying specific ways that implicit racial bias can be countered in practice. Thus, this expanded research agenda for race and sentencing may have important policy implications.

Understanding Decision-Making

A broader issue that emerges in the literature on race and sentencing concerns the factors that shape legal decision-making and, in particular, the process by which defendant (and or victim) race is translated into differential decisions. This issue was highlighted by several of the sentencing researchers with whom I spoke as a need for research that better captures how race operates in legal decision-making. While there is a rich body of research in psychology and law on the factors that shape legal decisions, much of it experimental in nature (see Diamond, 1995; Richter and Weiner, 2007), the current modal approach to studying sentencing is not ideal for advancing our understanding of how and why legal decisions are made, either with respect to the role that race may play or with respect to decision-making more broadly. For instance, most sentencing studies in the contemporary era are grounded in the “focal concerns” perspective, which encompasses many ideas from the broader race literature on stereotypes, racial attitudes, and the link between perceptions of race and crime. Yet few studies in the literature on

race and sentencing get very close to measuring how or what judges, juries, or prosecutors actually think about defendants of different races, much less how such thoughts might shape their sanctioning decisions. As Bridges and Steen (1998: 554) aptly note, despite extensive research built on the assumption that defendant attributes shape the decisions of prosecutors, judges, and juries, “little evidence exists on how court officials' perceptions of offenders influence their classification, assessment, and final recommendations for punishment.” To address this gap, Bridges and Steen (1998) analyze narratives of probation officers' written reports on youth offenders for evidence of negative assessments, and then evaluate whether such assessments help to mediate the effect of defendant race on sentence recommendations. Their results suggest that race is significantly associated with negative attributions among probation officers. The evidence is not strongly supportive of the idea that court official perceptions of youth from different racial groups mediate the influence of race on sentencing outcomes (in this case, recommendations), but this study nonetheless serves as a good example of the type of research that can help to advance our understanding of how the perceptions of racial minorities held by legal decision makers may influence sentencing outcomes.

An overarching recommendation that emerges from my review is that it would be useful for future research to explore more directly how racial attitudes shape legal decision-making. The dual foundations of this type of research are careful attention to the attitudes, perceptions, and attributions of legal decision makers, along with assessments for how these cognitive elements shape decisions. It could be pursued meaningfully using a wide variety of methodologies, including experiments with real and “mock” decision makers (e.g., Rachlinski et al., 2009; Sommers, 2007), quantitative coding and analysis of case narratives (Bridges and Steen, 1998), and rich qualitative research on how race-based focal concerns shape decisions (e.g., Eisenstein, Flemming, and Nardulli 1988; Harris, 2009; Ulmer 1997). Several of the researchers with whom I spoke specifically identified a need for detailed surveys of criminal justice decision makers. Additionally, future research on race and sentencing would benefit from a closer coupling with research from other disciplines, including recent contributions on the cognitive foundations and realities of legal

decision-making (Simon, 2004) and the role that neurological features may play (Buckholtz et al., 2008).

Policy Relevance

A final meta-goal I have associated with the so-called modal approach to race and sentencing is the evaluation of policy interventions geared toward modifying observed or assumed racial disparities. With the very notable exception of a small but growing number of state- and Federal-level assessments of the role of sentencing guidelines in shaping racial disparities in sentencing outcomes, the vast majority of studies on race and sentencing are largely disconnected from public policy. This is not inherently problematic or undesirable in my judgment. As I have noted throughout the paper, there are several legitimate motivations for studying the link between race and sentencing. But, this area of research seems especially ripe for inviting rigorous policy analysis (Tonry, 1995), and thus it would be beneficial if future studies pursued such themes more routinely. As Engen (2009) has lamented, research directed explicitly at evaluating different sentencing policies is relatively rare and limited in some respects. To be sure, there have been some important studies of changes in racial sentencing disparities within specific states and at the Federal level (Everett and Wojtkiewicz, 2002; Gorton and Boies, 1999; Hofer, 2007; Koons-Witt, 2002; Miethe and Moore, 1985; Shanzenbach, 2005; Ulmer et al., 2010; United States Sentencing Commission, 2010; Wooldredge, 2010; for succinct reviews, see Engen, 2009; Spohn, 2008). We need more of such studies.

Additionally, it would be useful to expand the range of policies explored in case-level sentencing studies. For instance, several states have enacted habitual offender laws during the past two decades (e.g., Arkansas, Florida, Maine, Maryland, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia, Washington, Wisconsin) and, while mandatory incarceration provisions have been around for some time, the volume of such laws implemented since the early 1990s has increased substantially and exhibits significant variability across states (Stemen et al., 2006). The precise nature of what their effects might be on racial disparities in sentencing outcomes is ambiguous. On the one hand, mandatory penalties and

habitual offender laws tend to be triggered more frequently for offenses and situations that are unequally distributed across racial groups. On the other hand, controlling for conviction offenses and prior record, mandatory penalties and habitual offender laws could reduce judicial discretion and, by doing so, they could reduce racial disparities. To my knowledge, past research has not examined the influence of mandatory penalties or habitual offender laws specifically on the probability of incarceration or the magnitude of any observed effect of racial disparities on that probability. Thus, this represents an additional area in which existing research on race and sentencing might be enhanced.

Conclusions

I have focused in this paper on providing an overview and critique of the modal approach that has emerged in the literature on race and sentencing (studies of sentencing outcomes among convicted defendants), and on outlining some additional directions for empirical research in this area. I did so through a particular lens, one that assumes that most research on race and sentencing is directed, explicitly or implicitly, at one or more of the following objectives: (a) detecting racial disparities; (b) detecting racial discrimination; (c) evaluating whether a given policy intervention has modified observed racial disparities or discriminatory outcomes; and (d) assessing how race influences legal decision makers and/or legal decisions. My goal was not to provide a final word on these issues, but rather to spark some discussion about potentially exciting ways to expand research on race and sentencing in criminology.

The breadth, depth, and complexity of race, sentencing, and their interconnections almost guarantee that I have left many important issues unaddressed. I will leave it to others to point those out and add to our collective discussion. Here, let me simply summarize some of the key points that emerged from my efforts. As I warned at the opening, many of these points will sound quite familiar to readers of the classic NRC report (1983) that outlined more than 25 years ago a research agenda for studying the effects of race on sentencing.

First, the long-held consensus view that black-white disparities in incarceration rates are due almost

fully to race differences in arrest and/or offending patterns requires some modification. I noted that we ultimately need better data to fully unpack these issues (see also NRC, 2010), but updated comparisons of race-specific arrest and incarceration patterns based on available data suggest that nearly half of the contemporary racial disparity we see in incarceration rates is unaccounted for by arrest/offense patterns. This leaves quite a lot of unexplained racial disparity to criminal justice policies and decisions, and one important task for future research is to more fully explore the sources of it.

Second, given that aggregate racial disparities in incarceration patterns in America appear to be driven by a wide array of sentencing-related decisions and processes (in addition to offense and arrest disparities), ranging from legislative/commission decisions about presumptive or mandatory penalties to prison-release decisions (e.g., Frase, 2009), research on race and sentencing should be equally broad in its reach. Too much of the contemporary research focuses on the final sentencing stages, and far too little on how race shapes the creation of laws that might have racially disparate impacts or perhaps be driven by racially discriminatory actions, prosecutorial decisions, pre-trial outcomes, and trial results. Ultimately, we would learn the most about the latter stages from analyses that track cases as they flow from system entry to system exit. This would enable us to learn important details about how cases are selected into different stages of the process, and it would better isolate decision makers so that we get a better sense of who is being influenced and by which factors (Bushway and Piehl, 2001).

Third, the modal paradigm to studying race and sentencing focuses heavily on *defendant* race, even though some research in this tradition and a lot of research on sentencing in capital cases, jury studies, and other related study domains highlight the potential importance of a much broader conception of race. This is not a new insight; it has frequently been pointed out that the role of defendant race is likely to be highly contingent on victim race, and that the race and racial attitudes of other participants in the process may be relevant as well. Future studies should more often incorporate such insights into their analyses.

Fourth, although the modal approach to studying race and sentencing has produced interesting and, in some case, highly relevant bits of information for theories of legal decision-making and for policy

makers, based on my review of this body of research it is not well-suited for addressing some of the underlying motivations that give rise to research in this area. As I elaborated above, despite considerable attention to issues of empirical misspecification and sample selection bias, these remain notable problems that, in my judgment, render it impossible to draw coherent conclusions from the literature about whether racial disparities exist, and if they do, whether they indicate racial discrimination. To be clear, this research continues to chip away at the sentencing process, providing valuable insights, and it illuminates sources of *potential* racial disparities. And, additional research along these lines that further clarifies the contexts within which “race matters” will contribute significantly to our knowledge base. At the same time, however, this line of research alone is not likely to yield definitive evidence about the existence of racial disparities at sentencing, about whether racial discrimination is operating, or about why or how any observed race effect arises.

Fifth, there are several ways we can supplement existing analyses of sentencing outcomes among convicted defendants that might better address the underlying themes I have extracted from the literature, while also providing more relevant information for policy makers. Some of the recommendations I outlined above are merely methodological enhancements to how comparisons of defendants of different races might be done; some call attention to the need for multiple methodologies to be used for assessing the thought processes of legal decision makers; and others call for a more central role of experimental work of various kinds. All of these are, in my view, supplements to rather than replacements of the existing quantitative analysis of archival data that currently dominates sentencing research.

Ultimately, my most important recommendation is for the next generation of scholars interested in studying race and sentencing is to engage deeply into the pertinent literatures related to the topic in sociology, psychology, law, economics, and other areas in which there are emerging studies of relevance (e.g., the intersection of neurology and law). In each of these areas there are existing parallels to what I have throughout this paper referred to as the modal way we currently study race and sentencing, and in each case there is a good track record of pushing beyond such an approach in exciting ways.

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Table 1. A Temporal Analysis of the Contribution of Differential Involvement in Arrest to Racial Disproportionality in Prison Statistics (1979, 1991, 2004, and 2008).

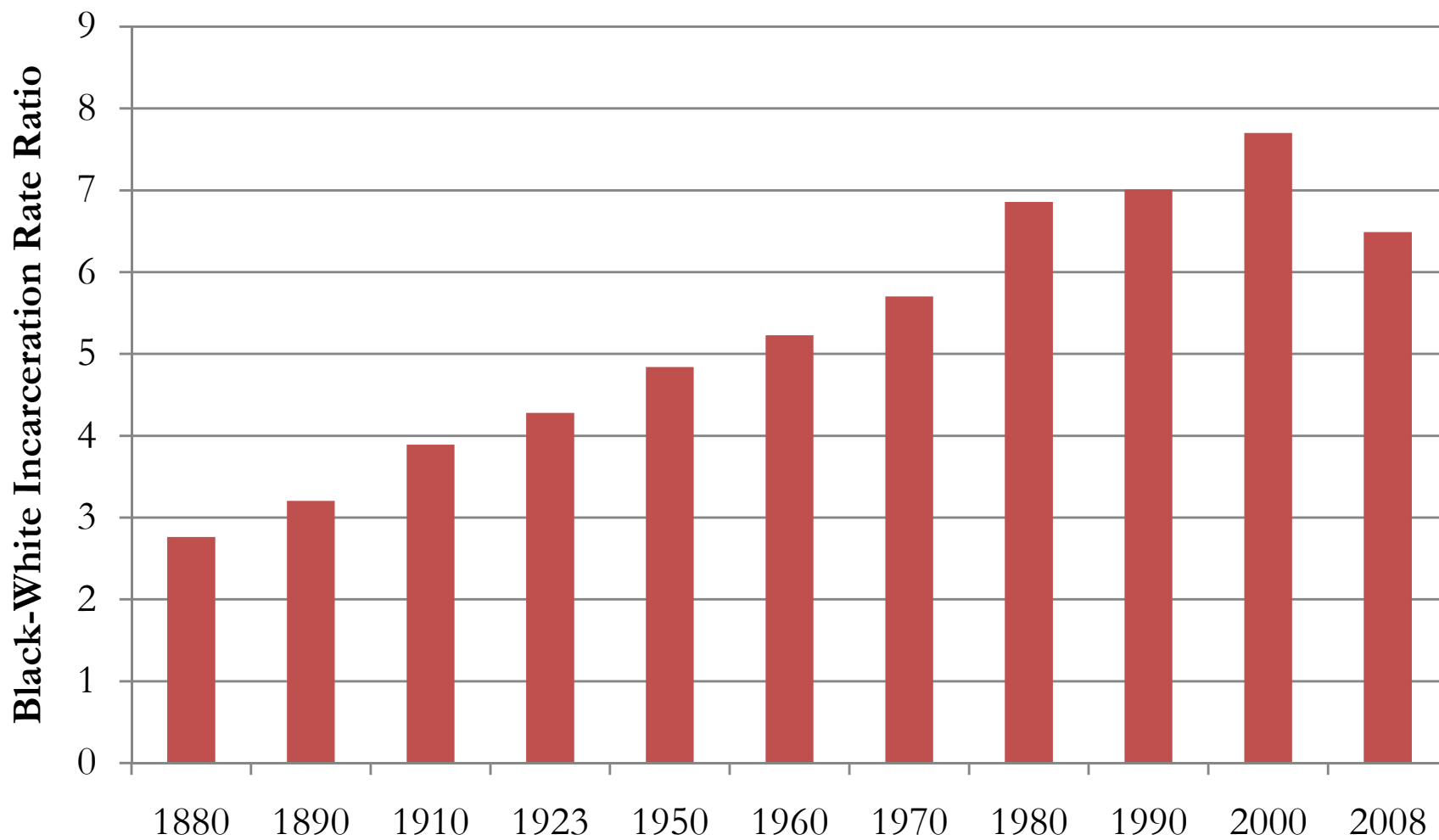
Panel A. 1979 (Replicating Blumstein's 1982 Published Analysis).

Crime Type	Prisoners		Arrests		Percent of Prisoners	Black Percentage of Prison Population	Black Percentage of Arrests	Percent Disproportionality Unexplained
	Black	White	Black	White				
Murder and Non-Negligent Manslaughter	24,577	22,399	8413	7882	17.68	52.32	51.63	2.72
Forcible Rape	6,261	4,852	11,134	11,709	4.18	56.34	48.74	26.31
Robbery	41,022	26,003	51,401	38,604	25.22	61.20	57.11	15.60
Aggravated Assault	9,193	12,516	85,236	123,210	8.17	42.35	40.89	5.81
Other Violent	2,924	3,310	237,932	370,621	2.35	46.90	39.10	27.33
Burglary	20,383	27,765	74,676	152,396	18.12	42.33	32.89	33.25
Larceny/Auto Theft	8,678	8,916	235,519	445,710	6.62	49.32	34.57	45.71
Other Property	7,313	13,239	127,464	240,986	7.73	35.58	34.59	4.25
Drugs	5,966	9,141	110,518	331,629	5.69	39.49	25.00	48.94
Public Order	4,028	6,413	81,331	183,938	3.93	38.58	30.66	29.60
Other/Unspecified	234	592	452,870	889,380	0.31	28.33	33.74	-28.82
Total	130,579	135,146				49.14	34.56	19.15

Panel B. 1991 (Replicating Blumstein's 1993 Published Analysis).

Crime Type	Prisoners		Arrests		Percent of Prisoners	Black Percentage of Prison Population	Black Percentage of Arrests	Percent Disproportionality Unexplained
	Black	White	Black	White				
Murder and Non-Negligent Manslaughter	33,085	29,347	10,645	8,312	597.95	45.54	56.15	-53.16
Forcible Rape	9,957	11,937	14,384	18,033	209.69	42.19	44.37	-9.30
Robbery	61,673	25,616	91,164	53,755	836.02	62.87	61.91	4.02
Aggravated Assault	27,303	18,404	154,838	235,126	437.76	49.24	39.71	32.12
Other Violent	6,102	8,205	246,002	542,026	137.03	41.21	31.22	35.25
Burglary	33,727	38,051	110,181	242,508	687.46	39.52	31.24	30.47
Larceny/Auto Theft	33,728	38,052	473,555	971,444	687.48	39.52	32.77	25.40
Other Property	13,491	14,425	207,505	463,759	267.37	43.64	30.91	42.22
Drugs	79,983	29,844	372,271	524,110	1051.88	58.11	41.53	48.79
Public Order	17,345	20,891	114,213	260,226	366.21	36.73	30.50	24.39
Other/Unspecified	1,284	1,243	1,401,092	4,196,191	24.20	45.86	25.03	60.57
Total	317,678	236,015				57.37	29.84	21.89

Figure 1. Black-White Incarceration Disparity Ratios, 1880-2008



Source: Reitz (2006, 2010)

Table 1. (Continued).

Panel C. 2004

Crime Type	Prisoners		Arrests		Percent of Prisoners	Black Percentage of Prison Population	Black Percentage of Arrests	Percent Disproportionality Unexplained
	Black	White	Black	White				
Murder and Non-Negligent Manslaughter	63,200	44,700	4,395	4,454	12.09	58.57	49.67	30.21
Forcible Rape	19,900	31,300	6,114	11,766	5.74	38.87	34.19	18.27
Robbery	94,800	38,100	40,993	33,070	14.89	71.33	55.35	50.18
Aggravated Assault	45,500	36,300	103,697	203,076	9.17	55.62	33.80	59.26
Other Violent	10,600	11,500	280,285	582,221	2.48	47.96	32.50	47.77
Burglary	46,200	58,000	56,050	143,889	11.68	44.34	28.03	51.10
Larceny/Auto Theft	23,700	28,100	271,818	621,125	5.80	45.75	30.44	48.11
Other Property	18,500	28,700	121,918	259,615	5.29	39.19	31.95	27.15
Drugs	126,000	64,500	381,006	770,430	21.35	66.14	33.09	74.68
Public Order	27,900	38,800	98,424	266,328	7.47	41.83	26.98	48.61
Other/Unspecified	2,200	3,100	1,206,070	3,827,119	0.59	41.51	23.96	55.59
Total	478,500	383,100				55.54	27.66	46.45

Panel D. 2008

Crime Type	Prisoners		Arrests		Percent of Prisoners	Black Percentage of Prison Population	Black Percentage of Arrests	Percent Disproportionality Unexplained
	Black	White	Black	White				
Murder and Non-Negligent Manslaughter	61,400	34,700	5,078	4,789	19.94	63.89	51.46	40.07
Forcible Rape	16,900	26,600	5,708	10,984	9.03	38.85	34.20	18.21
Robbery	91,500	37,500	54,774	40,573	26.77	70.93	57.45	44.67
Aggravated Assault	49,800	42,800	109,985	208,762	19.22	53.78	34.51	54.72
Other Violent	10,100	11,800	318,883	650,501	4.54	46.12	32.90	42.73
Burglary	53,600	68,700	68,052	156,442	25.38	43.83	30.31	44.25
Larceny/Auto Theft	24,700	34,200	293,495	665,836	12.22	41.94	30.59	38.97
Other Property	17,600	32,500	115,423	250,196	10.40	35.13	31.57	14.81
Drugs	117,600	72,100	485,054	880,742	39.37	61.99	35.51	66.23
Public Order	35,400	48,200	121,759	294,473	17.35	42.34	29.25	43.70
Other/Unspecified	3,300	1,400	1,424,849	4,262,980	0.98	70.21	25.05	85.82
Total	481,900	410,500				54.00	28.79	44.93

Table 1. (Continued).

Sources:

Panel A: Blumstein, 1982; Table 6. Other Violent was taken from other assaults and arson in the UCR.

Public Order was taken from a sum of vandalism, weapons offenses, sex offenses

Other/Unspecified was taken from prostitution, gambling, offenses against family, driving under the influence, liquor laws, drunkenness, disorderly conduct, vagrancy, suspicion, curfew, runaways, and all other except traffic.

Panel B: Prisoner Data: Correctional Populations in the United States, 1991; Table 4.2 - Most Serious Offense of State Prison

Inmates, by Race and Hispanic Origin, 1991 and 1986. Arrest Data: Crime in the United States, 1990. Arrests By Race, Total 1990.

Other Violent was taken from a sum of other violent, and arson, in the prisoner survey.

Other Property was taken from a sum of forgery and counterfeiting, fraud, embezzlement, stolen Property.

Public Order was taken from a sum of other property, weapons offenses, sex offenses

Panel C: Prisoner Data: Prisoners in 2004; Table 12. Estimated number of sentenced prisoners under State jurisdiction, by offense, gender, race, and Hispanic origin, yearend 2004. Arrest Data: Crime in the United States, 2003. Table 43 - Arrests by Race, 2003.

Other Violent was taken from other assaults and arson in the UCR. Public Order was taken from a sum of vandalism, weapons offenses, sex offenses. Other/Unspecified was taken from prostitution, gambling, offenses against family, driving under the influence, liquor laws, drunkenness, disorderly conduct, vagrancy, suspicion, curfew, runaways, and all other except traffic.

Panel D: Prisoner Data: Prisoners in 2008; Appendix Table 15. Estimated number of sentenced prisoners under State jurisdiction, by offense, gender, race, and Hispanic origin, yearend 2006. Arrest Data: Crime in the United States, 2007, Table 43 - Arrests by Race, 2003.

Other Violent was taken from other assaults and arson in the UCR. Public Order was taken from a sum of vandalism, weapons offenses, sex offenses. Other/Unspecified was taken from prostitution, gambling, offenses against family, driving under the influence, liquor laws, drunkenness, disorderly conduct, vagrancy, suspicion, curfew, runaways, and all other except traffic.

Figure 2. Heuristic Model of Racial Influences on Sentencing Outcomes.

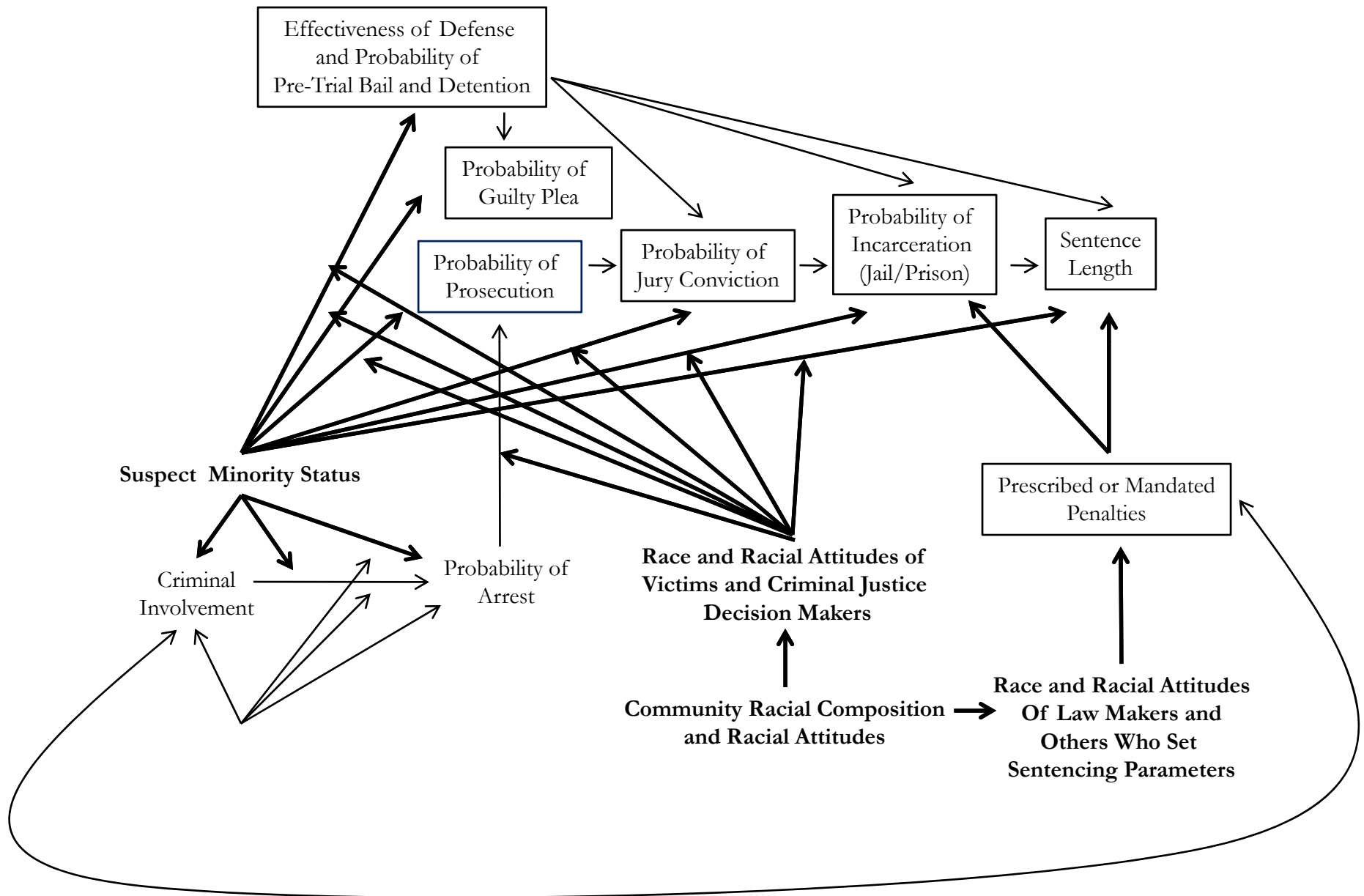
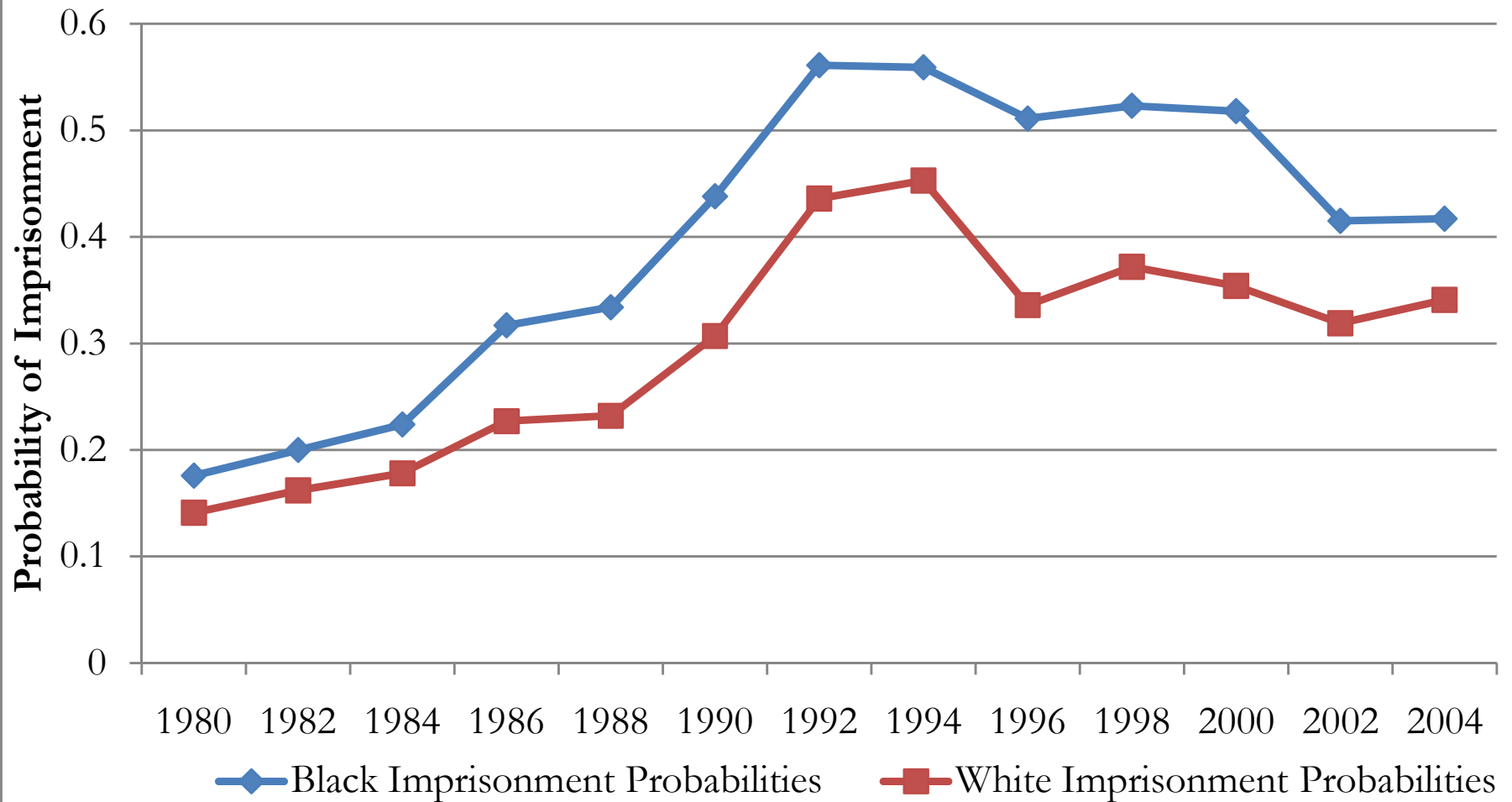


Figure 3. Probabilities of Imprisonment for Black and White Convicted Felons, 1980-2004 (OBTS and NJRP).



Appendix A. Invitation Letter Distributed to Sample of Scholars who have Published on Race and Sentencing Outcomes.

Dear Professor:

Hello, I hope this note finds you doing well. I am writing to request your input on the past, present, and future of research on race and sentencing. The National Science Foundation (NSF) has funded an upcoming symposium on sentencing, one focus of which is to sketch out some fruitful avenues of future inquiry for race and sentencing research (full details on the symposium can be found at <http://www.albany.edu/scj/SentencingSymposium.htm>). I have been asked to write an essay that focuses on this issue, and I am eager to provide a snapshot of the collective wisdom of those who have been active researchers in the area. In my judgment, your research on race and sentencing has been influential and I would appreciate and benefit from your input. Would you be able and willing to spare 5-10 minutes over the next few weeks for a brief phone conversation to chat about the following five questions?

1. Much research on race and sentencing seems to be motivated by well-documented disparities in levels of incarceration between blacks and whites; by some estimates, incarceration rates among blacks are seven times greater than incarceration rates among whites. To date, what is your assessment of the accumulated scientific evidence on the meaning of these disparities? In other words, in your judgment what do the observed race disparities in incarceration rates reflect?

2. One of the dominant approaches to studying race and sentencing during the past few decades has been to analyze data on persons who have been convicted of one or more crimes and estimate whether there is a statistically significant race difference in the likelihood of incarceration and/or the sentence lengths received. At a recent ASC meeting, several members of an ad hoc working group on sentencing research suggested that, although this line of research has made many positive contributions, it had become stalled and that it was time to consider alternative ways of advancing knowledge on the connections between race and sentencing. What are your thoughts on this issue? Specifically, do you agree that the contemporary approach to studying race and sentencing has run its course and, more generally, what do you see as the major strengths and weaknesses of this approach?

3. In your judgment, is there any ongoing research on race and sentencing that you see as particularly innovative?

4. What, if any, current research on race and sentencing do you see as highly relevant to policy-makers?

5. As you think about the future on race and sentencing, what strikes you as some useful new directions that researchers interested in race and sentencing might pursue?

I know your time is precious, so I promise to keep our phone conversation brief, focusing on your general sense of these issues rather than an exhaustive account. Would you kindly let me know by replying to this e-mail (fsu.sentencing@gmail.com), indicating when and at what number it would be convenient for me or one of the two graduate student colleagues with whom I am working (Ashley Arnio and Jenisse Lopez) to call and get your input on the above mentioned issues? If you are not in a position to speak briefly by phone, I would very much appreciate your responses to the above

listed issues via e-mail. Either way, your comments will not be linked to you in any way during the course of this research or made public with reference to your name. With your permission, though, I would like to aggregate your thoughts on these issues with the input I get from others to characterize the overall sense of the research community.

Sincerely,

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