

Differential Black/White Arrest Rates: Offending Behavior or Discretionary Justice

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Introduction

The higher prevalence of black arrests relative to whites has initiated controversy concerning whether the Criminal Justice System is biased towards minorities. Considerable attention has been centered around two essential questions: 1) Is the disproportionate number of blacks being arrested due to their discretionary formal or informal organizational practices?; and 2) Is the higher prevalence of black arrests directly related to their participation in serious criminal conduct? (Walker, et al., 1997). The most provocative explanations derive from social organizational theories, particularly those emphasizing consensus and conflict, which are most interesting because they postulate contradictory judicial outcomes for behaviors related to social order.

Consensus and conflict perspectives have macro-level implications concerning the application of social control by the legal system. Since aggregate level arrest data reflect an essential component of social control (Liska and Chamlin, 1984:394; McCarthy, 1991), this research tested one contending hypothesis by analyzing racially differentiated arrest rates for 442 cities with a population of 25,000 and over for 1980 and 435 for 1990 in the United States. (Sources of data were taken from 1980 and 1990 Census and Uniform Crime Reports).

Consensus Theory contends that social order in a democratic society is possible because the neutral state operates to protect itself from threatening behavior. One of the state's primary concerns is to support moral beliefs by sanctioning those behaviors that violate criminal laws presumably based on near universally accepted values. Hence, the police will arrest only those who are suspected of actually committing acts that violate criminal laws (Chambliss, 1976:3-5). In addition, those acts that endanger and/or threaten the value system, eliminate, harm or incapacitate functioning members of society will likewise be sanctioned (Tittle, 1994:25).

Conflict Theory postulates that social order is maintained through a value laden state that functions for the benefit of the ruling class at the expense of subordinates. In order to maintain their privileged status and access to power and resources, rulers use repressive social control on subordinates (Tolnay and Beck, 1992). Supposedly, rulers constrain and coerce subordinates because subordinates are presumed to be threatening in their real or imagined struggle to acquire the political power, economic success, social status and resources of the ruling class (Blalock, 1967; Chambliss, 1976:5-7). Law enforcement agents may practice discretionary justice on minorities because the presence of minority groups heightens rulers' perceptions of threat and fear of crime. Relationships between legal agents (e.g. police officers) and minorities will be oppressive because police dispositions favor the interests of the rulers (Chambliss and Seidman, 1971:53). Thus, police decisions to arrest minorities may be independent of actual conduct and more dependent upon their subordinate group status (i.e. discrimination based on group characteristics).

Hypothesis

If consensus theory is correct, racial arrest rates should be significantly related to illegal conduct

(non-discrimination). However, if arrest rates do not appear to be independent of extra-legal variables (i.e. demographic or social status characteristics), then some discussion of discriminatory elements related to conflict theory would be more appropriate. Hence, the hypothesis to be tested is: arrest rates¹ for whites and blacks will vary by the amount and seriousness of criminal behavior² each group commits.

Methods and Results

Hypothesis 1, arrest rates for whites and blacks will vary directly by the amount and seriousness of criminal behavior each group commits, required two equations. First, I regressed the dependent variable, black arrest rates (black arrests divided by the black population), on the independent variable, overall actual estimated rate and seriousness of crime for blacks, controlling for region. Second, I repeated this analysis using white arrest rates (white arrests for index crimes divided by the white population) as the dependent variable and actual estimated rate and seriousness of crime for whites as the independent variable, controlling for region. The analysis was repeated for four individual index crimes. Results are reported in table 1.

Table 1: Standardized Regression Coefficients Representing The Effects of Actual Estimated Criminal Conduct on Black and White Arrest Rates for 4 Crimes.

| | <u>1980</u> | <u>1990</u> |
|--|--------------|--------------|
| | Black | White |
| | Black | White |

¹ Black arrest rate=number of black arrests divided by the black population. White arrest rate=number of white arrests divided by the white population.

²I estimated race specific criminal conduct from a regression equation predicting overall crime rates from crimes known to the police, as well as total crime rates in each of the four categories reflecting crime seriousness, from a series of demographic variables describing the total population of each city (e.g. proportion of population between ages 15-24, proportion of population of males 16 and over in the labor force, proportion of working mothers, proportion of female headed households, and mean family size). This predictor equation yielded five coefficients that were then used to weight those same demographic variables for each race separately for each city (Cureton, 1997). Then I developed a crude general weighting scheme to adjust for the amount and seriousness of the total estimated crime for each race. The most serious offense category includes murder and non-negligent manslaughter (multiplied by 4--seriousness gradation score); the second most serious is forcible rape (multiplied by 3--seriousness gradation score); the third most serious is robbery (multiplied by 2--seriousness gradation score); and the least serious encompasses larceny theft, excepting motor vehicle theft (multiplied by 1--seriousness gradation score). The total estimated seriousness index reflects the summation of each category. Each offense category was analyzed separately to provide a check for potential error in the overall estimated seriousness crime index. The seriousness gradation score and rankings stem from rankings from national surveys (Newman, 1976; Sellin and Wolfgang, 1964) and qualitative dimensions on a crime continuum (Hagan, 1994).

| | | | | |
|--------------|------|------|------|------|
| Index Crimes | .13* | .15* | .04 | .01 |
| Murder | .12* | .01 | .04 | .06 |
| Rape | .13* | .11* | -.01 | -.02 |
| Robbery | .12* | .08 | .05 | .09 |
| Larceny | .12* | .15* | .05 | .02 |

(*)=Tests of statistical significance conducted at the $p < 0.05$ level.

Data for 1980 indicate that blacks' overall rate and seriousness of crime has a significant effect on arrest rates (beta=.13*). This effect is consistent for all 4 offenses.

The data also indicate that whites' rate and seriousness of crime has a significant relationship (beta=.15*) with white arrest rates. Specifically, criminal participation in rape (beta=.11*) and larceny (beta=.15*) significantly affect arrest rates, although murder (beta=.01) and robbery (beta=.08) apparently do not. Data for 1980 imply that the validity of the first hypothesis is dependent on type of crime, although the results are generally consistent with the hypothesis.

Results for 1990, however, show no significant relationship between arrest rates and estimated rate or seriousness of crime for either race or for any offense. The fact that the coefficients for 1990 are relatively small suggests that something more than criminal behavior might have affected race-specific arrest rates. Perhaps a change in city demographic composition and/or political philosophies significantly affected racial arrest rates.

Discussion

My primary objective was to gain some insight regarding the extent to which the initial formal processes (arrests) of criminal justice is more consistent with a consensus (non-discriminatory, offensive behavior) or conflict (police discretion in decisions to arrest based on extra-legal, discriminatory predictors such as subordinate group characteristics) argument. The evidence points toward both consensus (non-discriminatory) and conflict (discriminatory) oriented effects on racial arrests. The evidence does not provide full support for either theory because sometimes results were inconsistent for various offenses examined at a given point in time. For example, the results suggest that in 1980, arrest rates were not due to discrimination, as arrests were significantly related to offensive behavior. In 1990, arrest rates were independent of offensive behavior, which suggests that some other variables above and beyond illegal conduct affected arrest rates. Perhaps, those variables were conflict oriented. It could be that in 1990, group characteristics (i.e. percent black in cities, percent poor, level of segregation) were significantly related to racial arrest differentials (Cureton, 1997).

The most surprising element of this research is that the findings were not consistent for two points in time. Thus, some speculation concerning this inconsistency is necessary. Refinement of both consensus and conflict perspectives provide some explanation for the differences in findings from 1980 and 1990. For example, one version is the Formal and Informal Social Control Perspective. It assumes that social order stems from both formal (legal sanctions) and informal (educational, religious, and family institutions, and communities) social control. In this theory, formal sanctions compensate for inadequate informal controls (Black, 1976). Perhaps informal social control was stronger in minority communities in 1980 than in 1990. If so, the weaker informal social control allowed the state to become more involved with sanctioning blacks. This may have increased the

opportunities for discretionary justice unfavorable to blacks in 1990.

Another refinement of the conflict perspective that might possibly explain some of these findings is the generational differences in the Social Learning argument. Turk (1969) argues that generational replacement requires potential elites and subordinates to learn and re-learn their respective roles. New generation elites must learn how to rule and maintain power by sometimes offering concessions to subordinates who, in turn, must learn how or when to concede or defer to elites. It is possible that the change in determinants of arrest between 1980 and 1990 reflect new-generation elite/subordinate relations in which new-generation elites have failed to learn when to offer concessions to new-generation subordinates who no longer defer to authority. Perhaps these new-generation subordinates are more likely to be disrespectful, impolite, or hostile and to display a harsh demeanor, which consequently increases their probability of arrests (Black, 1971; Black & Reiss, 1970; Klinger, 1994; Klinger, 1996; Lundman, 1994; Piliavin & Briar, 1964; Smith & Visher, 1981; Sykes & Clark, 1975).

Similarly, an additional consensus theory refinement, called the Social Organization of Criminal Justice Perspective, implies that the Criminal Justice System is comprised of impartial written laws but that the legal agents who carry out those laws are imperfect vessels with social psychological defects (Akers, 1997; Hagan, 1994). Thus, decisions to arrest will be discriminatory when police officers are prejudiced. Variation in determinants of arrest from 1980 to 1990 could be explained by increased employment of legal agent's with adverse negative philosophies and stereotypes relative to blacks.

Conclusion

In light of the findings presented here, it is safe to suggest that the extent of discretionary justice or discrimination can not be totally denied or confirmed. Perhaps theoretical refinement of macro level theories, integrated with micro level theories of interaction and exchange and a methodological procedure that accurately measures theoretical concepts will bring us one step closer to better understanding the relationship between race and legal processing through the Criminal Justice System.

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