Contemporary Issues in Criminal Justice & Psychology with Applications to Seattle

Introduction

In the aftermath of the shooting of Michael Brown in Ferguson, MO, and the many similar cases of unarmed black youth killed by police highlighted in the media since, it is becoming clearer to many that there are serious problems with the way the U.S. criminal justice system works (or does not work). From police brutality to stop-and-frisk laws to disparities in drug arrests and lengths of sentences, criminal justice is an arena where many feel some of the deepest inequities in our society persist. Until recently, these disparities have largely remained outside of public consciousness.

Several questions are raised by this landscape. First, why have we as a society permitted (and even promoted) such unequal practices in the way we police, sentence, incarcerate, and treat the formerly incarcerated? Second, what can be done to move toward a more just justice system? I argue that the fields of social and cognitive psychology can help us to better understand both of these questions, pointing us in the direction of reforming our systems in the name of equity. The literature that has developed on retributive, procedural, and restorative justice, system justification theory, and intergroup relations can help us address both why we have landed where we have as a society with little protest and also how we might move forward. In this paper, I provide a broad overview of major contemporary issues in the U.S. criminal justice system that disproportionately affect people of color, provide a summary of the literature in social and cognitive psychology that I argue can be used to understand and address those issues, followed by a closer look at a local Seattle campaign to prevent the building of a new youth detention center as a case study to explore more specifically how we can apply the theories presented in the literature.
What’s Wrong with Criminal Justice in America?
In short, a lot. As an entry point into a discussion of how psychological research can help us better understand and address these problems, I begin with an overview of some of the major issue areas that have, at moments, crept into the public consciousness in recent months and years. These issues have received growing attention due to events such as efforts to eliminate the practice of “stop-and-frisk” in New York City last year, the exoneration of those responsible for the deaths of Trayvon Martin and Michael Brown, and Michele Alexander’s The New Jim Crow hitting bestseller status.

**Stops & Arrests**
Individuals’ experience with the criminal justice system begins with an interaction with a police officer. Practices such as stop-and-frisk impact whole communities who grow weary of constantly being questioned, assumed to be criminal until proven otherwise. The New York Civil Liberties Union reports that “from 2002 to 2011, black and Latino residents made up close to 90 percent of people stopped, and about 88 percent of stops – more than 3.8 million – were of innocent New Yorkers.” This is true even in predominantly white neighborhoods: “In 2011, Black and Latino New Yorkers made up 24 percent of the population in Park Slope, but 79 percent of stops” (New York Civil Liberties Union, n.d.).

Surveys from the late 1990s revealed that whites used and sold drugs at the same rates as people of other races and ethnicities, but blacks were detained on drug-related charges at more than twice the rate of whites (Holman & Ziedenberg, 2006). Michelle Alexander explains the War on Drug police practices that have promoted such disproportionate stops and arrests: “When police go looking for drugs, they look in the ‘hood…. The hypersegregation of the black poor in ghetto communities has made the roundup easy” (Alexander, 2012, p. 124). Given the incentives for police forces to make more arrests and the lack of political backlash against such arrests from those in power, police take advantage of the fact that “black and Latino drug users are more likely than white users to obtain illegal drugs in public spaces that are visible to the police, and therefore it is more efficient and convenient for the police to concentrate their efforts on open-air drug markets in ghetto communities” (Alexander, 2012, p. 125).

**Who Goes to Jail**
Since the 1980s, the US penal population has risen from 300,000 to over two million, making ours the highest incarceration rate in the world, even as crime rates have actually declined. Alexander (2012, p. 6) notes that “no other country in
the world imprisons so many of its racial or ethnic minorities. The United States imprisons a larger percentage of its black population than South Africa at the height of apartheid.” In some states, black men have been imprisoned on drug charges at rates 20-50 times greater than those of white men, despite equal rates of drug use and selling of drugs among whites and people of color (Alexander, 2012, p. 7). Here in King County, in 2013, black youth were nine times more likely to be incarcerated than their white counterparts, despite the fact that King County’s population is only around seven percent Black, with similar trends for Latino and Native American youth (Kelety, 2014). These disparities outlive the sentences given to the convicted, as those with criminal records will be “subject to legalized discrimination for the rest of their lives” (Alexander, 2012, p. 7).

Long Sentences and Execution
The Equal Justice Initiative (EJI) reports that more than half of the 3,095 people on death row in the U.S. are people of color, and 42% are African American. Further, a defendant is more likely to get the death penalty if the victim is white than if the victim is black, and the key decision makers in death penalty cases across the country are almost exclusively white. Each year in Alabama, where EJI is based, nearly 65% of all murders were of black victims, yet 80% of the people currently awaiting execution in Alabama were convicted of murdering whites (Equal Justice Initiative, 2014). In his book, Just Mercy, EJI founder and director Bryan Stevenson (2014) tells the story of Walter McMillian, who was wrongly convicted of murder and placed on death row. Stevenson illuminates the deep prejudice that can affect every step of the process from arrest to execution. In a study of death penalty sentencing, Eberhardt et al. (2006) find that the more stereotypically black a defendant appears, the more likely they are to be sentenced to death.

School-to-Prison Pipeline
With the coining of the phrase “school-to-prison pipeline,” awareness has grown about the impacts of disproportionate disciplining of students and the strong connection of disciplinary action to entering the criminal justice system. In Washington State, students of color in 177 school districts were on average 1.5 times more likely to be disciplined than white students, and Native Hawaiian/Pacific Islanders, American Indian/Alaska Natives, and African Americans were more than twice as likely to be disciplined (Washington Appleseed, 2012). Washington Appleseed reports that “zero-tolerance policies coupled with heightened police presence in schools has led to increased student arrests on school premises and a spike in direct student referrals to the juvenile court system, often for non-criminal offenses.” The trend starts early; the majority of moderate and high risk juvenile offenders in
WA in 2007 were first suspended by the time they were 13 years old. The school-to-prison pipeline can in fact be a vicious cycle; for some youth who return to their communities after a period of incarceration, having a juvenile record can trigger an emergency expulsion before they even come back to school. At the same time, numerous studies have demonstrated that school engagement after incarceration is an essential protective element in keeping youth from re-engaging in criminal behavior (Washington Appleseed, 2012).

How Can Psychology Help Us Understand and Address What’s Wrong?

While the problems outlined above can seem overwhelming, lessons from the cutting edge of psychological research can help us understand why these problems have persisted and also gain insight into what could be done to solve them. The following areas of literature provide helpful insights on a variety of criminal justice issues.

**Procedural Justice**

We tend to discuss justice in terms of outcomes – a jury’s verdict, a judge’s sentence. But the literature on “procedural justice,” which began taking hold in the 1970s led by John Thibaut and Laurens Walker, suggests that people are concerned not only with the outcomes they receive, but also with how decisions are made (Tyler, Boeckmann, Smith, & Huo, 1997, p. 75). The substantial research that has developed within this literature has shown that people react to the fairness of procedures in many arenas, including trials, plea bargaining and mediation, and police-citizen interaction as well as in organizational, political, and educational settings (Tyler, Boeckmann, Smith, & Huo, 1997, p. 82).

The current debate about the killing of Michael Brown, Eric Garner, and others affirms these findings. While a large part of the anger of protesters stems from the very fact of the deaths, the procedure by which the white officers responsible for the killings were evaluated and then exonerated appears just as much in the public discourse. The suggestion that the prosecutor in the grand jury proceedings in Brown’s case, Bob McCullough, served as president of an organization that raised money for the Darren Wilson Defense Fund and the fact that McCullough’s father was killed in the line of duty by a black man were among the many complaints with the grand jury process that have been raised to question the legitimacy of the outcome (Driscoll, 2014). The racial makeup of the grand jury in the Brown case (three black and nine white – comparable to St. Louis County but the reverse of
Ferguson’s own demographics) add motivation to protests on the grounds of procedural justice (CBS, 2014). Alexander (2012, pp. 119-123) details the history of discrimination in jury selection dating back to slavery through today, when prosecutors circumvent Supreme Court rulings against explicit race-based jury selection such that all-white juries deciding cases involving black defendants continue to be commonplace.

Procedural justice can also help us to understand why in most cases and in most times, lack of fairness in criminal justice systems does not result in widespread protest. Tyler et al. (1997, pp. 101-2) describe that the “fairness heuristic” leads us to believe that procedures must have been fair, and thus we accept the outcome. Due to the common belief that “the procedures for allocating resources involve, at least in theory, a free and open contest in which those with intelligence and ability can rise to the top through their personal efforts,” the poor and marginalized do not revolt, despite what appear to be quite unfair (or at least unequal) outcomes.

System Justification Theory

Another area of literature that helps us to understand why those harmed by the status quo do not protest against it is “system justification theory.” Gary Blasi and John Jost (2006) review research that has shown how system justification operates through both “victim-blaming” and “complementary stereotypes.” That is, that we both assign negative characteristics to victims to justify to ourselves why they have received the outcomes they have, while at the same time assigning complementary characteristics, causally unrelated to those outcomes, to assuage our guilt about their lot. For instance, we stereotype blacks as lazy, thus justifying their lower economic status, but also as friendly and fun-loving or physically attractive to make us feel better about their life experience.

Blasi and Jost (2006) explain that “justifying the status quo satisfies several needs, including epistemic needs for consistency, coherence, and certainty, and existential needs to manage various forms of threat and distress and to find meaning in life.” Threats to the current system that do not have the perceived potential to overthrow the status quo and replace it with a new system instead “stimulate defense of the existing system and vengeance against those who threaten it.” Blasi and Jost describe system justification as a “coping mechanism” both for those who benefit from and those who are disadvantaged by the status quo, “reducing anxiety, uncertainty, and distress and promoting positive rather than negative affect.”
Thus this literature can help us further understand how communities of color have suffered relatively quietly until recently under a criminal justice regime of great disparity and also understand the passionate backlash among whites — and some blacks — against the current wave of protest under the rallying cry of #blacklivesmatter. Because these protests question the legitimacy and fairness of our current system, they provoke a strong need to justify it in order to maintain a self-understanding that those of us who are advantaged deserve what we have and to solve the cognitive dissonance that would be created if we were to accept that the protests were credible.

**Intergroup Relations**

Research pioneered by Henri Tajfel in the early 1970s has shown that people have a strong tendency to discriminate against “outgroup” members and prefer “ingroup” members even when those groups are defined arbitrarily. Tajfel (1970) shows that members of a group are inclined to punish members of another group even when the punishment comes at a cost to oneself. Rather than maximizing total utility for all, the “maximization of difference” was revealed to be most important to participants in his experiments. Social identity theory has shown that we approach others by categorizing them, identifying others and ourselves in relation to group identity, and comparing ourselves favorably to the other group (Hall, 2014).

More recent research suggests that even if we believe that discrimination against outgroups is wrong, we do not accurately predict what our response will be to discriminatory acts, e.g. expressions of racism (Kawakami, Dunn, Karmali, & Dovidio, 2009). While we believe that when faced with racist actions we will intervene, we over-predict the extent to which we actually do so. Adding to the difficulty in cross-race interactions, researchers have found that different racial groups tend to have different — and conflicting — underlying interests and motivations when engaging in cross-race interactions. For example, while blacks tend to most desire being respected by whites they communicate with, whites instead are most driven by the desire to be liked when interacting with blacks (Bergsieker, Shelton, & Richeson, 2010).

The development of the Implicit Association Test (IAT) has helped to reveal how our racial biases are embedded, contrary to our explicitly stated beliefs. One of the creators of the IAT, Anthony G. Greenwald, reviews the findings produced by IAT and shows that even small IAT effects can have significant societal implications (Greenwald, Banaji, & Nosek, 2015, in press). This review suggests that IAT measures can be used to predict discrimination in decisions in the arenas of personnel,
law enforcement, criminal justice, education, and health care by identifying those who are especially prone to committing discrimination and to understand system-level discrimination.

The research on intergroup relations can and should be used in a variety of ways to understand and address the many mechanisms of disparity in our criminal justice system, from policing practices to court proceedings and sentencing. For one, greater awareness among those who are employed in criminal justice institutions (police, judges, prosecutors, etc.) about implicit bias may help to discuss the problems with a more scientific, and thus more acceptable, frame. That is, by presenting research that shows these are tendencies we all succumb to, despite our best intentions, officers and other actors may be more likely to ease off of their defensive reactions against perceived claims that they are being called “racists.”

Case Study: Applying Lessons from Psychology to Seattle’s Juvenile Detention Center

In order to make more concrete the possibility of applying research insights from the bodies of literature summarized above, below I use a current issue in Seattle – activism focused on preventing the building of a new youth detention center – as a case study for how this could be done in other arenas of criminal justice problems. I begin with an explanation of the context – a proposed new youth detention center and the “No New Youth Jail Campaign” led by social activists to protest its construction. Then, I offer some potential paths, informed by what we have learned from behavioral decision research, toward addressing the concerns raised by the No New Youth Jail Campaign.

Juvenile Detention Center in Seattle’s Central District and Activism to Oppose It

The Juvenile Detention Center that has provoked this debate is managed by the King County Juvenile Division and is located at 12th and Alder in the Central District of Seattle. According to the county, state law requires that King County provide a juvenile detention facility, and the county uses it “sparingly and only for the most serious or violent crimes and high-risk offenders” (King County, 2014). In 2012, voters in King County narrowly approved (with 55% in favor) a levy to raise $210,000 to fund the rebuilding of the deteriorating jail along with a mixed-use development on the land currently occupied by the facility. While both supporters and opponents of the levy agreed that the conditions of the jail are in decline, deep disagreements continue to exist on the question of what should be done about it
Recent activism spearheaded by several youth-led organizations in Seattle, including Youth Undoing Institutional Racism (YUIR) and Ending the Prison Industrial Complex (EPIC), has focused the debate on the fundamental question of whether youth should be detained in the first place, the disproportionality in who is detained, what we could achieve if we invested the funds into social services and support programs for youth rather than a new jail, as well as concerns about gentrification caused by the mixed-used developments in the county’s plan (Washington Incarceration Stops Here, n.d.). As noted earlier, black youth in King County are nine times more likely to be incarcerated than their white counterparts (Kelety, 2014). Statewide, black youth make up 6% of the Washington population, but they make up 21% of youth sentenced to the state Juvenile Rehabilitation Administration (Task Force on Race and the Criminal Justice System, 2012). As the overall number of youth detained in King County has declined - the current center is typically less than half full – disproportionality persists (Cohen, 2014).

Improving Procedural Justice through Use of Restorative Justice Practices

Learning from insights of the literature on procedural justice to create a viable alternative to the status quo of youth detention, we must focus on the processes that lead to juvenile arrests and sentences. Addressing the procedures that lead to particular outcomes for youth will both change the outcomes themselves and address concerns about how youth and their families are treated by the system. An alternative pathway that has shown promise in other cities and internationally is the use of restorative justice models for responding to youth misbehavior. Restorative justice is

“a process that takes values such as healing, apology and forgiveness seriously, as well as practical prevention of recurrence…. where all the stakeholders in a crime have the opportunity to discuss what harm has been done and what needs to be done to repair that harm, prevent it from happening again, and meet the needs of the stakeholders” (Braithwaite, 2007).

Braithwaite (2007) describes the capacity of restorative justice practices and policies to have both a “bubbling up” and “filtering down” impact. For example, Braithwaite shares the story of a network of volunteer ombudsmen who used restorative justice practices in exit meetings at nursing homes in Oklahoma. Their influence
in state- and nation-wide coalitions ultimately led the transformation of US nursing home law in the 1990s, showing the potential for restorative justice to “bubble up” into the law. School programs based in restorative justice have shown the potential for “filtering down” from policy into “the justice of the school community” by engaging administrators, teachers, students, parents and staff in conversations about acceptable behavior. Braithwaite points out that while success has been seen in programs implemented in schools in the US, the same tools have been much less commonly adopted in criminal justice systems than has been the case in other countries.

In fact, the City of Seattle has already begun experimenting with the use of restorative justice through a pilot program in its East Precinct. In the Seattle Police Department (SPD)’s 2014 budget, a full-time staff member was added “to explore alternative crime responses designed to avoid harm and violence escalation during police interaction and empower communities to restore public trust” (Seattle Police Department, 2013). Andrea Brenneke, director of the City of Seattle’s Restorative Justice Initiative, describes the program as “a dialogue where all parties can come together and understand what was done, and the significance and the meaning of that. What the harm was, and what the underlying meaning is behind that act. It would be a practice where we can learn from conflict instead of being torn apart” (Nickerson, 2013).

Successful reform efforts in other US cities affirm the idea that addressing procedural justice concerns by involving the community and families in decision-making is key to creating a more just system. A report on “The Dangers of Detention” published by the Justice Policy Institute shares that cities and counties that have enacted reform measure their progress in part by their acceptance in the community. For example,

“Cook County engaged system kids and their parents for advice about how to improve the system, and persevered (and supported the staff) through some daunting complaints. In the aftermath, the probation department adjusted its office hours and locations, changed the way it communicated with clients and their families, and institutionalized feedback mechanisms. Now community members are genuinely engaged in decisions including policy formulation, program development, and even hiring” (Holman & Ziedenberg, 2006).
Learning from these efforts as well as its own pilot program, Seattle has the potential to chart a new path for its youth. Regardless of whether the new detention center is built or not, the debate its proposal has sparked may help to provide the necessary pressure to cause Seattle and King County officials to take reform efforts seriously. If the Restorative Justice Initiative pilot project is successful, the No New Youth Jail Campaign and its advocates will likely be a ready constituency to support its expansion.

**Lessons from System Justification Theory:**

**Creating a New System to Justify**

While system justification theory may at first glance lead us to despair, given the strong inclination of both advantaged and disadvantaged groups to defend the status quo and respond harshly to threats to current systems, it may also provide lessons about how to make lasting change. Blasi and Jost (2006) explain that people will eventually accept change that they once viewed as untenable. They write, “when a new status quo is clearly established (e.g., by a court ruling, a new law, an election, a coup d’etat, or military victory), people perceive the emerging social arrangements in increasingly favorable terms and begin to justify and rationalize the new regime,” because defending the former system no longer offers psychological benefits. We have seen evidence of this in the past few years in the US, in the wake of new state laws to protect equal marriage and legalize marijuana. Before such laws were passed, campaigns focused on those issues seemed purely aspirational and faced tremendous resistance. As more states have voted in favor of the new status quo, these issues are now all but taken for granted as the right way to govern. Thus social movements targeted at major changes to the criminal justice regime may eventually be able to establish new systems and end justification of the old ones. In fact, the current criminal justice system as shaped by the War on Drugs was once met with resistance from the very local law enforcement agencies that now defend it (Alexander, 2012, pp. 72-3). In response to such resistance to his proposed War on Drugs, President Reagan pushed congress to provide millions of dollars of aid to local law enforcement and to allow for keeping of seized property. By changing the incentives, Reagan managed to create a new status quo to be defended rather than resisted.

The literature on system justification can also help us consider the importance of framing and priming. According to Blasi and Jost (2006), system justification theory suggests that “advocates should craft strategies that respond to the psychological need to reduce dissonance among competing system justification motives” by framing the issues in a way that evokes the preferred system. They point to
an example of affirmative action programs that are framed as “properly designed to ameliorate or reduce implicit biases” rather than as strategies to redress past discrimination. Framed this way, classic anti-affirmative action arguments based on an “unwarranted preferences” frame are flipped upside down, “leaving opponents to explicitly justify existing implicit preferences that disadvantage women and people of color.” This type of framing could be used well in the context of addressing disproportionality in criminal justice systems in general and in the fight to redirect the new youth jail project in particular.

While they caution that such moments are exceptional rather than the norm, Blasi and Jost (2006) also note that “on occasion, justification of an ascendant (or perhaps utopian) system can replace justification of the current system.” The work that local youth activists are doing to build a movement not just against the youth jail but also toward an inspiring vision of a more just future could have the potential to counteract justification of the current system. In fall of 2014, the No New Youth Jail Campaign hosted a “Night of Creative Vision,” which organizers described as an event meant to “center youth-of-color’s artistic activism and their creative expression for creating a world without prisons that cage our youth” with the goal to “redirect funding away from the mass incarceration of youth of color and towards community-based prevention, intervention and diversion services and programs” (Epic Seattle). The evening featured performances by local artists presenting poetry, spoken word, rap, dancing, and speeches about life in a racialized society (Kelety, 2014). These kinds of cultural events could have the potential to create a strong enough vision of an alternate, aspirational system to overcome system justification of the status quo.

**Combating Bias with Data-based Systems**

The literature on intergroup relations makes clear that we have little control over our own cognitive and behavioral reactions to other people. Our biases shape how we act whether we like it or not. Various findings in behavioral decision research have shown that we are indeed subject to “bounded ethicality” (Bazerman & Moore, 2013, pp. 143-5). Bazerman & Moore (2013) as well as other experts in the field (Dawes, Faust, & Meehl, 1989) have suggested that using data-based decision-analysis tools can help us make better and less biased decisions, which can have a significant impact for an entire institution (e.g. the King County Juvenile Division).

King County and the City of Seattle have already made a step in the right direction by agreeing to activists’ demands to conduct a racial impact assessment of the new facility, a process which will start in early 2015 (Kelety, 2014). While activ-
ists were unsuccessful in convincing the Seattle City Council to deny the land use bill proposed to enable the building of the new detention center, they did convince the councilors after a show of large numbers and passionate voices at a city council meeting to amend the bill, delaying implementation of the zoning changes until a racial impact study could first be completed (Cohen, 2014). If done well and in a way that centers community voices, the assessment could help city and county officials identify ways in which the new jail may unintentionally have disproportionate impacts on people of color and provoke questions that could alter the original plans to be more equitable.

A nation-wide juvenile detention reform program has shown positive results in efforts to reduce the number of youth needlessly or inappropriately detained by implementing data-based, institutional systems to make better decisions. The Juvenile Detention Alternatives Initiative (JSAI) is a public-private partnership that includes Santa Cruz County, California, Multnomah County in Oregon, Bernalillo County in New Mexico, and Cook County in Illinois (Holman & Ziedenberg, 2006). Several of its eight core strategies (as outlined in Holman & Ziedenberg’s 2006 “Dangers of Detention” report) respond effectively to bias concerns raised in behavioral decision research, including “reliance on data” and “objective admissions screening.”

These strategies provide a model for how Seattle and King County might use the lessons of psychological research to ensure that its goals of racial equity and fairness in its juvenile system are achieved. By relying on data and objective procedures rather than the discretion of individual decision-makers who are unconsciously shaped by their own social identities and biases toward other groups, the city and county may be able to avoid some of the greatest pitfalls of the current system. Offering alternatives to secure confinement as an option at sentencing also could benefit from the lessons of research on defaults if the alternatives actually become the first option provided (Johnson & Goldstein, 2003). Strategies that are explicitly focused on race are necessary because otherwise the biases of decision-makers may easily lead to overlooking disparities or justifying them as produced by a fair system.

**Conclusion**

I have argued here that major contemporary issues in the US criminal justice system leading to stark racial disparities can be understood and addressed in part through the lens of key literatures within psychology. Research on procedural justice, system justification theory, and intergroup relations all provide important in-
sights both into how we have gotten to where we are today and also how we might be able to move in a more just and equitable direction. In taking a closer look at a particular criminal justice issue currently facing Seattle, I proposed that expanding restorative justice practices, focusing activist strategies on frames that evoke an alternative, more just system, and using data-based decision-making procedures could help shape a more positive, less racially discriminatory future for the King County Juvenile Detention Center.

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References


