The Convergence of Race, Ethnicity, Gender, and Class on Court Decisionmaking: Looking Toward the 21st Century

by Marjorie S. Zatz

ABSTRACT

Substantial attention has been paid in recent years to the effects of race and gender on criminal justice processing and sanctioning. Far less consideration has been given to the multiple and often subtle ways in which race, ethnicity, gender, and class converge to influence decisionmaking and to the competing and shifting demands that shape this process. This chapter begins with a review of the major findings from studies with singular emphases on race, gender, or class, outlining the key themes that have emerged in the theoretical and empirical literature. Next, research that explicitly considers the interaction of two or more of these dimensions is addressed, again focusing on both substantive and methodological concerns. Having laid this groundwork, I use the prosecution of crack mothers and the murder trial of O.J. Simpson to exemplify the crucial importance of simultaneously considering the race, ethnicity, gender, and class status of both the offender and the victim. Continuing this theme, I examine three contemporary crime control policies—the war on drugs, the war on gangs, and the automatic transfer of youths to adult court—to illustrate how policies and the court decisions based on them may be racialized, gendered, and classed.

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The second part of the chapter turns toward the future, exploring some central controversies and questions facing criminologists as we enter the 21st century. These include a range of conceptual and methodological issues, including the distinctions between race/ethnicity and culture and between sex and gender, the crucial importance of how we define discrimination, and measurement issues such as how best to code race, ethnicity, and class. The ramifications of crime control policies and criminal justice decisions for poor communities of color are also emphasized in this last section of the chapter. Finally, I conclude with a set of recommendations for policymakers, practitioners, and researchers.

ABSTRACT

As we enter the 21st century, one of the consuming questions that our Nation faces is whether the criminal justice system and other societal institutions are fair, or whether they are biased along racial, gender, and/or class lines. Although overt racial discrimination is unconstitutional today, the legacies of slavery and of genocide against American Indians continue to haunt us. Women are now visible in every profession but still earn less than men overall. And although many Americans are enjoying economic success, the pool of chronically unemployed adults and children living in poverty is far from receding. Set within the context of these larger societal divisions and inequalities, this chapter examines the narrower realm of race, gender, and class in court processing and sanctioning.

Considerable attention has been paid to the effects of race on criminal justice decisionmaking. Criminologists have also developed a substantial literature examining sex effects, and there has been some attention to the class-based nature of court decisions. Most studies emphasize only one of these dimensions at a time, however, and generally they focus solely on the defendant. Nevertheless, a few researchers have developed more complex analyses of the subtle and dynamic ways in which race, gender, and class converge. This chapter contributes to these broader, more encompassing endeavors, exploring the multiple ways in which the defendant's and victim's class, gender, race, and ethnicity interweave to influence criminal court decisionmaking and speculating about what these patterns and controversies suggest for the future.

In the first part of this chapter, I review the major findings from studies with singular emphases, drawing heavily from review articles. Given the scope of the topic, this is not intended to be a comprehensive review of all relevant publications. Rather, I explore major themes that have emerged in the theoretical and empirical literature. Although some of the studies discussed in this first section consider interaction effects, they clearly emphasize one variable. In the second part of the chapter, I turn to research that explicitly focuses on multiple variables. These analyses tend to concentrate on the interaction effects of two or more factors, treating them as interrelated exogenous variables and discussing their main and interaction effects. Third, I present examples of areas of inquiry that cannot be understood fully without simultaneous consideration of the race, ethnicity, gender, and class status of the offender and the victim. Drawing from critical race feminism as well as feminist criminology, I explore the prosecution of crack mothers and the murder trial of O.J. Simpson to illustrate this convergence. Continuing this theme, I next examine the ways in which crime policies, including but not limited to the war on drugs and court decisions based on those policies, are racialized, gendered, and classed.

Finally, I turn to some new and ongoing controversies and questions as we enter the 21st century. These include our conceptualization and measurement of race and ethnicity to better fit the reality of a multicultural, multiracial society; our definitions and assessments of discrimination; the relationships among race, ethnicity, and culture in the courtroom and in court-ordered programs; the construction of gender and attributions about race, gender, and class in criminal case processing and sanctioning; when and why class matters, including the gendered effects of poverty; and the ramifications of crime control policies and criminal justice decisions for poor communities of color.

Major Findings of Studies With a Singular Emphasis: Race, Gender, or Class

Race and ethnicity

The last quarter of the 20th century was marked by substantial attention to the effects of race on criminal justice processes and sanctions. Although Spohn's comprehensive review of scholarship published in the 1970s, 1980s, and 1990s (see Spohn in this volume) is the most recent, others have also conducted important reviews (e.g., Bortner, Zatz, and Hawkins 2000; Chiricos and Crawford 1995; Crutchfield, Bridges, and Pitchford 1994; Hagan and Bumiller 1983; Kleck 1981; Klepper, Nagin, and Tierney 1983; Mann 1993; Miller 1996; Tonry 1995; Walker, Spohn, and DeLone 1996; Zatz, 1987a). These studies cover a wide range of substantive and methodological issues, including how best to measure discrimination, the indirect and inter-action effects of the offender's and victim's race, and the effects of sample selection bias on assessments of race and decisionmaking. We have learned much from them, yet debates continue to rage. These disagreements are largely due to differences in theoretical framework, methodological sophistication, regional diversity, and jurisdictional variation in data collection strategies.

Much of the research has focused on determinate sentencing, sentencing guidelines, and mandatory sentencing systems, all of which were supposed to make sentencing decisions race neutral. We have found that the main effects of race generally do disappear under these systems, but powerful and pervasive indirect and interaction effects remain. That is, the effects of race become *contingent* on the interaction of race with other legally legitimate (e.g., prior record, bail status, offense type) and illegitimate (e.g., gender, type of attorney, employment status) factors (see Daly 1994; Hagan 1974; Hagan and Bumiller 1983; Hawkins 1987; Klepper, Nagin, and Tierney 1983; Mann 1993; Miethe and Moore 1985; Petersilia 1983; Peterson and Hagan 1984; Spohn, Gruhl, and Welch 1981; Zatz 1985b, 1987a).

Many earlier decisions influence which cases reach these final stages and how they are charged. Sentencing is the result of a long series of decisions that impact on one another. These include police decisions about where to focus their surveillance efforts and when an arrest is warranted rather than a warning; the prosecutor's decision to accept or reject a case and which of several potential criminal charges to file; the judge's decision about whether to release a defendant pending trial and, if so, the bail amount and other conditions of release; the prosecutor's and defense attorney's decisions regarding plea bargains and other negotiated sentences; and the judge's or jury's decision about guilt in trial cases.

Although the patterned effect of the victim-offender racial dyad is clearest and strongest in homicide and rape cases, the generalized threat that black males are thought to pose has resulted in significantly harsher outcomes for blacks convicted of other offenses, such as larceny and burglary, which are likely to have white victims.

These multiple decision points can affect sentencing in several ways. Sometimes indirect effects are visible through a simple path, such as the effects of race and class on sentencing through the intermediate step of pretrial detention. At both the adult and juvenile levels, poor people and people of color are most likely to be detained pending trial, and pretrial detention results in harsher sentencing outcomes (Lizotte 1978; Zatz 1985a). Other times we are seeing the cumulative effects of many earlier processing decisions, beginning with the police decision to arrest. Research has fairly consistently shown that small effects of race and class that may not be statistically significant at any one point add up across multiple stages. The general resulting pattern is that white and middle class defendants are more likely to be filtered out of the system at earlier decision points than are poor defendants and defendants of color, both at the adult (Donziger 1996; Mann 1993; Walker, Spohn, and DeLone 1996; Zatz 1985b) and juvenile levels (Bishop and Frazier 1988; Dannefer and Schutt 1982; Fagan, Slaughter, and Hartstone 1987b; Fagan, Forst, and Vivona 1987; Singer 1996).

Considering the type of case, the empirical literature demonstrates clear race effects in lower level felonies—those that are serious but not particularly heinous. These borderline cases allow prosecutors the greatest latitude in initial charging and in plea bargaining. Accordingly, attributions held by prosecutors and other social control agents (e.g., police, probation officers, judges) about defendants and their offenses carry substantial weight (Albonetti 1986, 1991; Spohn, Gruhl, and Welch 1981; Unnever and Hembroff 1988). Race also appears to be consistently important in the least serious contexts, such as

offenses that do not involve a gun or injury, or when the defendant has no prior felony convictions (Spohn and Cederblom 1991). In contrast, in the most heinous cases, race has less of an effect. Although limited, the extant literature suggests that attributions are perhaps even more salient in juvenile court. For example, Bridges and Steen (1998) demonstrate that probation officers tend to attribute delinquent acts of African-Americans to negative attitudinal and personality traits, while the delinquent acts of whites are attributed to their social environment. As a result, African-American youths appear less amenable to reform than do white youths, and so receive harsher outcomes.

Yet another key pattern evidenced at the end of the 20th century involves the race of the victim. In capital murder cases, the race of the victim is the paramount factor determining whether the most extreme penalty will be invoked (Baldus, Pulaski, and Woodworth 1983; Paternoster 1984; Radelet and Pierce 1985). The study of Georgia murder cases conducted by David Baldus and his colleagues became the central element for the defense in the 1987 Supreme Court death penalty case, *McCleskey* v. *Kemp* (107 Sup. Ct. 1756 [1987]). Controlling for a large number of relevant nonracial variables, Baldus, Pulaski, and Woodworth (1983) demonstrated that persons charged with killing white victims were 4.3 times more likely to receive a death sentence than those charged with killing blacks. The race of the victim is also crucial in rape cases (Crenshaw 1989, 1991; LaFree 1980, 1989). Again prosecutorial discretion is a key consideration, with both prosecutors and jurors according more value to white than to black victims.

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1995; Hawkins 1995; Mann and Zatz 1998; and Miller 1996). The "criminal-blackman" is a composite of white fears of black men's criminality. It may become so strong and so widespread that it allows for racial hoaxes, in which a white offender blames an African-American, usually male, for the offense in question and is readily believed by criminal justice agents and/or the general public (Miller and Levin 1998; Russell 1998).

Criminologists have been very attentive to this historical pattern of unfairly singling out African-Americans for harsh punishment when the victim is white. Yet most street crime is intraracial, and victimization rates for blacks are much higher than for whites, for both men and women. The result is multiple, and at times competing, demands on criminal justice officials to treat minority defendants fairly while also ensuring the safety of poor blacks and Latinos living in high-crime areas. Esther Madriz (1997) offers a particularly thoughtful analysis of women's fears about crime, both for themselves and for the men in their lives. She concludes that African-American women and Latinas, especially those living in urban areas, worry about their sons, brothers, cousins, fathers, and uncles because their rates of violent victimization are so high, yet they also worry that their loved ones will be treated unfairly by the police and courts.

Social context is another critical element in understanding race effects (Myers and Talarico 1986, 1987; Myers 1989; Peterson and Hagan 1984; for recent summary reviews, see Chiricos and Crawford 1995 for adults, and Bortner, Zatz, and Hawkins 2000 for juveniles). Context includes both time and place. For example, Myers (1989) and Peterson and Hagan (1984) found that racial differences in drug cases peaked at the height of the drug war when dealers and traffickers were targeted instead of simply drug users. Similarly, Zatz (1987b) and Humphries (1999) have argued that moral panics about Latino gangs and crack mothers mushroomed when immigration (for gangs) and welfare and drugs (for crack mothers) became major regional and national issues. Studies of context also draw our attention to the importance of region (e.g., race effects are generally strongest in the South), and the racial composition, racial income inequality, and index crime rates of the sentencing counties (Myers and Talarico 1986, 1987).

The racial/ethnic and gender compositions of the court have also been examined as potentially important aspects of social context (Holmes et al. 1993; Spohn 1990). Generally, researchers have found few differences in sentencing patterns based on the sex and ethnicity of the judge, suggesting that under determinate sentencing or sentencing guidelines there is very little room for judicial discretion and that the process of legal training and socialization results in relatively similar perspectives about cases and defendants emerging, regardless of the judge's race or sex.

Level of aggregation is related conceptually to context, yet it also raises another, methodological concern. Some studies aggregate at the level of the county, others the State, and still others the region or Nation. Crutchfield, Bridges, and Pitchford (1994) replicated earlier studies of expected and observed incarceration rates by race conducted by Blumstein (1982) and Langan (1985). While Blumstein and Langan took State-level data and aggregated them into a national dataset, Crutchfield and his colleagues disaggregated the same data to allow comparisons by States and regions. They found that aggregating State data to the national level masked "dramatic and substantively important differences" (1994, 174). For example, although approximately 90 percent of the racial disparities in incarceration could be explained by arrest data when all 50 States were combined into one aggregate dataset, disaggregating the data by region showed that arrest data only account for 69 percent of the disparity in the northeastern States. Variation across States was even stronger, leading Crutchfield and his colleagues to conclude, contrary to Blumstein's and Langan's findings, that "in some areas, the unwarranted disparities are substantial and that the statistical relationship between arrest and imprisonment rates is quite weak" (1994, 174). Further, they assert, "As long as there is significant variation across states in crime rates, arrest rates, imprisonment rates, and the ratios created with them, combining states to measure the extent of racial disproportionality in imprisonment or to consider theoretical explanations for any differences is inappropriate" (p. 174).

The reliance on white-black or white-nonwhite comparisons in many studies also leads to misleading findings. For example, Latinos and Latinas, American Indians, and Asian-Americans are excluded from many datasets. Consequently, we do not know how ethnicity influences criminal justice decisionmaking and are left with only the simplest of race effects. In other datasets, including Federal sources, Latinos and Latinas are coded white, thus artificially inflating the number of whites in those samples. In addition, Spanish-speaking Afro-Caribbeans are sometimes coded on the basis of Spanish surname (in which case they would be coded white) and, at other times or in other jurisdictions, on the basis of appearance (in which case they would be coded black). Also, due to the history of Spanish colonization of North America, many American Indians have Spanish surnames. Particularly if American Indians are arrested in urban areas, they may be coded as Hispanic, and then further collapsed into the white category.

Studies that include Latinos as a separate racial/ethnic category have repeatedly demonstrated that there are important differences in the court processing and sanctioning of whites, blacks, and Latinos (Holmes and Daudistel 1984; LaFree 1985; Petersilia 1983; Welch, Spohn, and Gruhl 1985; Zatz 1985b). Moreover, the few analyses of the experiences of American Indians and Asian-

Americans suggest tremendous variation between and within these groups (see Deloria and Lytle 1983; Hawkins 1995; Lujan 1995; Mann 1993; Mann and Zatz 1998; Takaki 1993; Walker, Spohn, and DeLone 1996).

The difficulty, indeed often the impossibility, of unpacking socioeconomic status from race is a final critical inadequacy of many of the datasets used in the latter part of the 20th century. Most data come from the courts, and courts generally do not collect good economic indicators. One consequence is the common assumption that people of color are all poor and that white defendants are all middle class. Second, some of the racial differences found in processing and sanctioning decisions may be attributable to class differences in access to resources. That is, if middle-class defendants have more resources available to them than do poor defendants (e.g., psychiatric resources, legal aid, knowing how to arrange for and being able to pay for drug and alcohol treatment or alternative schools), then class may explain some racial disparities in pretrial release, diversion, and type of sanction (Bridges and Steen 1998; Fagan, Slaughter, and Hartstone 1987).

Sex and gender

Sex and gender are sometimes used interchangeably. As I use these terms, *sex* refers to the classification of people as men or women on the basis of biological criteria; *gender* refers to socially learned aspects of human identity. Thus, gender is not simply a category, attribution, or role, it is a dynamic process of constructing particular ways of being masculine or feminine (see similarly Martin and Jurik 1996).

Gender was largely ignored by criminologists until the late 1970s and 1980s, and even then attention spotlighted sex differences in crime commission and sanctioning rather than questioning the gendered nature of crimes by men and of the criminal justice system's response to men's crimes (Daly and Chesney-Lind 1988; Simpson 1989). Nevertheless, a growing body of scholarship has coalesced around the question of sex differences in sentencing. This research examines *whether* sex differences exist, *how* gender conditions leniency, and *why* sex differences arise.

The first question concerns whether sex differences arise. The most comprehensive recent summary of this research is provided by Daly and Bordt (1995). They analyzed published findings from 50 court datasets to assess whether significant sex differences favoring women were related to the statistical procedures used, court contexts, sample composition (including race), and how the research was conceptualized (e.g., gender focused or not). Approximately half of the studies found results favoring women, with another one-quarter reporting

mixed results or no significant effects. Overall, sex differences favoring women are most visible in studies of felony offenses, among cases prosecuted in felony courts, and in courts located in urban areas. Sex differences are also most pronounced in the decision (not) to incarcerate, rather than in sentence length. For example, Daly (1994), Farnworth and Teske (1995), Steffensmeier, Kramer, and Streifel (1993), and Ulmer and Kramer (1996) found substantial gender gaps—of about 10 percentage points—in the likelihood of incarceration for men and women during the mid-1980s, even after controlling for many relevant factors.

As was the case for race, sentencing guidelines and determinate sentencing were supposed to eradicate sex differences in sentencing. This has not occurred, however, at least under California, Pennsylvania, Minnesota, and Federal guidelines. For example, Nagel and Johnson (1994) examined drug, larceny, and embezzlement cases in Federal court after the guidelines went into effect, finding that favorable treatment of female offenders persists. This effect was particularly pronounced for drug offenses, with 14.3 percent of female drug offenders receiving downward departures under Federal guidelines compared with 6.7 percent of male drug offenders (p. 219).

The question of whether women and men should receive the same or different treatment has sparked considerable debate in recent years. An emphasis on sameness minimizes differences between men and women and advocates equal treatment based on gender-neutral implementation of the law. The standard against which all defendants are held, however, continues to be males. Nagel and Johnson (1994) exemplify the sameness perspective, arguing that equality requires that men and women be treated strictly the same, with any leniency seen as a reflection of unwarranted paternalism. The result has been tremendous increases in the rates of incarceration of women and in their confinement for longer periods of time than in the past, without any equality in the programs available to male and female inmates or in their health care while in prison (Belknap 1996; Richie 1996).

The difference framework emphasizes women's special needs while pregnant and caring for small children, and women's experiences as victims of rape and battering. This perspective also takes males as the standard, and advocating for special protections risks reinforcing patriarchal dominance and stereotypic images of women. However, special protections also open the door to drug treatment and other nonincarcerative options. Most feminist research today tries to move beyond this dichotomy, examining instead how the criminal law reinforces gender inequality and contributes to women's economic and social deprivation through its support of patriarchal interests (Daly and Chesney-Lind 1988; Roberts 1994; Scales 1986; Simpson and Elis 1995; Smart 1989). As Roberts suggests:

> The aim of eliminating preferential treatment for women wrongly assumes that the sentencing system is basically fair. Uniform sentencing is not fair, however, if embedded in sentencing schemes is a male-based model that presumes a potentially violent criminal who is not the primary caretaker of young children. (p. 13)

A second major emphasis evidenced in the literature is the attempt to determine exactly how gender conditions leniency—among which women and under what circumstances. The answer seems to be women with families, but two different reasons have been posited. The first, articulated most clearly by Candace Kruttschnitt, points to gender-based family roles. Kruttschnitt proposed that incarceration is less necessary to control the behavior of women than men because women's economic dependence on their husbands and other relatives affords families additional, informal mechanisms of social control (Kruttschnitt 1984; Kruttschnitt and Green 1984). The second approach, which has been most clearly presented by Kathleen Daly (1987, 1989), emphasizes a familial-based paternalism that distinguishes between female defendants with and without children, and then grants greater leniency to those women who have children because of the practical expenses (e.g., foster care) of incarcerating women with children (see also Daly 1994; Steffensmeier, Kramer, and Streifel 1993; Ulmer and Kramer 1996).

Bickle and Peterson (1991) explored these two theses in their study of Federal forgery offenders. Like Daly (1989), they found that race helped explain the effects of the family variables, but they also found that for black women having children is not sufficient—they must also be seen as *good* mothers to receive leniency based on family variables. More specifically, "black women do not benefit from simply occupying this central family role; they must perform it well" (1991, 388). Bickle and Peterson also add to Kruttschnitt's thesis, finding that the sentencing advantages of being married are greater for black women than for white women, and that white women but not black women are penalized for living alone (pp. 386, 388). They conclude, "[t]he significance of the influence of family role variables cannot be described or interpreted in terms of either race or sex alone. Patterns of interaction encompass both race and gender" (p. 390). These findings suggest that the courts are making decisions not solely based on women's family status but also on prosecutors' and judges' assumptions about black and white families and about black and white women's relationships with their children.

A third key question that continues to plague research on sex and gender concerns *why* sex effects favor women. Daly and Bordt (1995) outline three potential interpretations. First, sex effects may reflect unknown and perhaps unwarranted sources of gender disparity. These may include favoritism toward

women and protection of women from the hardship of jail. This interpretation is also known as the "chivalry" hypothesis (Bishop and Frazier 1984; Farnworth and Teske 1995). The second explanation holds that sex effects are not real, but rather are an artifact of poor data and statistical models, including inadequate controls for prior record, the nature and severity of men's and women's offenses, the defendant's role in committing the offense and relationship with the victim, and the circumstances surrounding the offense. The third interpretation acknowledges the importance of offender and offense context raised by the second explanation, while also recognizing that sex effects may reflect *warranted* sources of gender disparity and *legitimate* sentencing goals, such as not separating children from their parents. As Daly and Bordt note, the most recent and sophisticated research supports this third interpretation. For example, Steffensmeier, Kramer, and Streifel (1993) found that judges departed from sentencing guidelines in Pennsylvania in ways that favored women who did not have a violent prior record, had mental or health problems, were caring for dependent children or were pregnant, played only a minor role in the offense, and showed remorse.

These findings suggest the crucial importance of gendered attributions on the part of judges and prosecutors. Steffensmeier, Kramer, and Streifel (1993), Daly (1994), and others have presented strong evidence that judges see women as less blameworthy than men, that they are concerned with the practicalities of incarcerating mothers, and that they recognize the blurred boundaries between women's experiences as victims and as offenders. As will be discussed later in the context of crack mothers, however, these decisions may well rest on judicial and prosecutorial attributions of who is a "good" mother, with such attributions likely linked to race and class. Following Daly and Bordt (1995), any conclusions must consider the

> complex configurations of offense seriousness, the defendant's history of lawbreaking, the victim-offender relationship and the defendant's role in the offense, the victim's degree of fear due to the defendant's actions, the size of the offender group, the defendant's history of being in a battering relationship, the degree of reform potential that judges envisioned for some defendants, and the degree to which the defendant seemed committed (or not) to "the street life." (p. 162)

These positive forms of disparity are, in Daly and Bordt's words, the justice system's recognition of gender difference "refracted through layers of culture and social institutions" (p. 164).

Yet even though the likelihood of incarceration remains lower for women than men, incarceration rates for women rose at a staggering pace during the 1980s

and 1990s. More than 10 percent of the jail population and more than 6 percent of the prison population now consists of women. In 1970, there were about 5,600 women in State and Federal prisons (E. Currie 1998); by 1997, there were 75,000 (Gilliard and Beck 1998). Another 35,000 women were incarcerated in jails, for a total of more than 100,000 women behind bars "on any given day" in the 1990s (Donziger 1996, 147). Of these, a disproportionate number are women of color. The Sentencing Project reported in 1990 that 1 in 37 young African-American women aged 18–29 and 1 in 56 young Latinas in the same age group were under the control of the criminal justice system, compared with 1 in 100 young white women in the same age group (Mauer 1990). Much of this increase is due to mandatory incarceration for drug use and sales. Most incarcerated women are poor, three-fourths are mothers, half ran away from home as youths, a fourth had attempted suicide, more than half were victims of physical abuse, and more than a third were victims of sexual abuse (Donziger 1996, 150; Snell 1994).

Class

Class is one of the paramount sociological variables, yet our measures of it in criminal justice data are abysmal. As a result, we end up guessing about the extent to which type of attorney, bail status, and even race serve as proxies for class. The Uniform Crime Reports does not include any class or income measures. The *Sourcebook of Criminal Justice Statistics* shows only household income categories for victims, by type of crime. We do know from prison surveys, however, that only about one-half of the Nation's jail and prison inmates were employed full time prior to being incarcerated and that the incomes they were earning were generally low. Similarly, Miller (1996), Donziger (1996), Tonry (1995), and others writing about the massive incarceration of African-American males all point to the structural problems caused by long-term unemployment and pervasive poverty.

Compared with the expansive literature on race and sex effects, there are few studies of economic status and sentencing, although a few aggregate analyses of crime rates and arrest rates consider economic indicators (e.g., Chiricos 1987; Kovandzic, Vieraitis, and Yeisley 1998; LaFree and Drass 1996; Sampson and Wilson 1996). There is general recognition among scholars that some of the race effects that have been found may be due in part to class effects. Yet Crawford, Chiricos, and Kleck's response is typical:

> Our data make it impossible to control for class, income, or even employment status. But it should be noted that at the sentencing stage of the judicial process, class is virtually constant. There are likely few defendants eligible for habitual offender sentencing who are not low

> income and "working class" or part of a labor surplus that is either unemployed or not in the labor force. (1998, 502)

Thus, two problems arise when scholars attempt to examine the relationship between class and criminal court sentencing: first, the lack of good indicators of economic status in court data, and second, the lack of variation. That is, the case filtering that goes on throughout the criminal justice system reduces variation at each stage, from police surveillance through charge and plea bargaining, resulting in very little economic variation left to be explained at sentencing.

Of the indicators related to class, we have the best data on employment status. We know, for example, that defendants who are employed appear to be better candidates for pretrial release than similar defendants who are unemployed. Miethe and Moore (1985) found that the effect of employment status on the sentencing of felons was reduced in Minnesota after sentencing guidelines were introduced, but indirect effects of employment status continued to be found. Controlling for relevant case attributes, gender, age, and race (which also evidenced indirect effects through offense type and criminal history), employment status indirectly influenced sentencing decisions through its effect on charge bargaining and the defendant's ability to successfully negotiate jail time rather than prison. In addition, in contrast to the intent of the sentencing guidelines, education had a greater impact on the decision to incarcerate after the guidelines went into effect than it had before they were introduced. Miethe and Moore concluded that these social and economic biases "are slightly more subtle, but no less real, after the implementation of Minnesota's determinate sentencing system" (1985, 358). In another key study, Chiricos and Bales (1991) found that the interaction of race and unemployment significantly increased the likelihood of incarceration for both African-Americans—particularly young African-American males—and unemployed defendants.

Again, though, the conceptual distinctions between employment status and class status must be stressed. Two defendants may both be employed full time yet their life circumstances and experiences will differ dramatically if one was born into poverty and the other was born a millionaire. Yet aside from studies of white-collar criminals, economic status and other measures of class are rarely analyzed by criminologists. Moreover, although most white-collar crime studies focus on the activities of middle- or upper-class white males, this race-class-gender nexus is rarely considered.

I turn next to those studies that explicitly examine the convergence of race, gender, and/or class. Most of this research focuses on the joint effects of race and

gender, with very little attention to class. Once again, the lack of good socioeconomic data precludes the detailed scholarship we might otherwise expect to see.

Major Findings of Studies With Multiple Emphases

Although scholars have acknowledged the importance of considering race, gender, and class jointly, few have done so until recently. This void in the literature is due in part to criminologists having only lately begun to pay theoretical attention to the ways in which these multiple statuses intersect in people's lives, and in part to problems with the datasets we use. Nevertheless, we now know some of the ways in which race and gender, if not always class or ethnicity, interact in their influences on case processing and sanctioning. Bickle and Peterson (1991), Daly (1987, 1989, 1994), and Farnworth and Teske (1995) examined the interaction effects of gender and race on sentencing decisions to ascertain whether and how race conditions gender and family status effects. Ulmer and Kramer (1996) also found significant differences in sentence severity associated with going to trial, race, gender, and court size. Drawing on racialized and gendered attributions, they suggest that "substantively rational concerns, such as court actors' perceptions of offender dangerousness, rehabilitative potential, practical organizational constraints, and practical consequences for offenders, are likely to be intertwined with race, age, gender and mode of conviction" (p. 385). Moreover, stereotypic images of defendants based on their race and economic class interact with defendant resources and behavior to influence case processing and decisionmaking, especially in departures below the guidelines (Ulmer and Kramer 1996; see also Kramer and Steffensmeier 1993; Kramer and Ulmer 1996).

Steffensmeier and his colleagues (1998) took this effort a step further, using Pennsylvania data from 1989 to 1992 to investigate the interaction of race, gender, and age in sentencing decisions. They sought to better understand how each of these statuses might contextualize the effects of the others. Like other researchers, Steffensmeier, Ulmer, and Kramer found that young black men are most likely to receive the harshest penalties. This was a very robust finding, holding for both the decision to incarcerate and the length of sentence. Breaking this finding down, they report that older black males and older white males received similar sentences, although younger black males received significantly harsher sentences than younger white males. Age effects were negligible for females, however, and race effects persisted across all ages for females. That is, younger as well as older black females were sentenced more harshly than their white counterparts (p. 786).

Steffensmeier, Ulmer, and Kramer (1998) supplemented their quantitative data with interviews with judges to further contextualize their findings. Drawing on the extant literature previously discussed, Steffensmeier and his colleagues explored how organizational decisionmaking and attribution theories help us to understand three focal concerns that criminal justice actors use in reaching sentencing decisions: offender's blameworthiness and the degree of harm caused the victim, protection of the community, and the practical implications of sentencing decisions (p. 766). Considering their quantitative and qualitative data jointly and noting the similarities between their findings and those of Daly (1994), they posit:

> Younger offenders and male defendants appear to be seen as more of a threat to the community or not as reformable, and so also are black offenders, particularly those who also are young and male. Likewise, concerns such as "ability to do time" and the costs of incarceration appear linked to race-, gender-, and age-based perceptions and stereotypes. The latter also bear on perceptions of whether defendants' social histories show greater victimization at the hands of others and whether their current circumstances suggest somewhat more conventionality. (p. 787)

Recalling that sex effects favoring women may be warranted or unwarranted, one of the unwarranted forms has come to be known as the chivalry effect. As Belknap (1996, 70) notes, "chivalrous treatment is usually a bartering system in which women in general are viewed as being less equal. This bartering system is extended only to certain kinds of females, according to their race, class, age, sexual orientation, demeanor, and adherence to 'proper' gender roles." As a consequence, women of color may not receive the chivalry accorded white women, younger women may not be treated as chivalrously as middle-aged women who may be especially polite and deferential to police and judicial officials, and poor and less educated women may not appear and behave in ways perceived by men as deserving of protection, relative to better educated middle-class women (Farnworth and Teske 1995; Visher 1983).

Expectations about "proper" behavior for women is very much in evidence in rape cases, and these show clearly how expectations are classed and raced as well as gendered. Although poor white women who do not act "properly" are not seen by prosecutors or jurors as "good" rape victims (Bumiller 1998; Estrich 1987), historically and contemporaneously, the rape of black women has been given the least weight of all by criminal justice officials. Under slavery, black women could not legally be raped by their white masters because they were the slave owners' property. With emancipation, black women's lives and bodies continued to be devalued. Rape of a black woman was not and is

not treated as seriously as rape of a white woman, whether the rapist is white or black. Few black women would dare to charge a white man with rape, yet rape of white women by black men, which historically was the excuse for lynching, continues to be treated as among the most heinous of crimes, and the myth of the black male rapist lingers (see Crenshaw 1989, 1991; Fishman 1998; Harris 1990; LaFree 1980, 1989; Miller and Levin 1998; Roberts 1994; Rome 1998).

Also, the excuses that are sometimes made for white women who kill (e.g., they are mentally ill or victims of battering) generally are not extended to African-American women or Latinas (Miller and Levin 1998). One of the risks of the battered woman defense is that it draws on a particular, stereotypic image of "the battered woman." When real people do not fit the stereotype, there is a loss of sympathy for them (Richie 1996; Smart 1992).

In all of these myriad instances, then, we see that being female is not in and of itself sufficient to explain how a woman who commits a crime or who is victimized will be perceived and the official reaction to her. Rather, it is a complex set of factors, including attributions about why she acted as she did (e.g., her blameworthiness and history of victimization), the extent to which she fits particular images of proper feminine behavior (e.g., not drinking, polite and deferential to male authority figures), and her appearance and demeanor (including age, dress, and hairstyle). These are all, ultimately, linked to race, culture, and class as well as gender.

We live our lives as raced, classed, and gendered beings. Certainly, in some circumstances, particular aspects of who we are become most salient, but as scholars we risk creating limited views of the world if we focus on only one or two of these relationships.

Criminologists and court officials have not been very attentive to the linkages between racial and ethnic oppression, patriarchal domination, and culture. As a consequence, even when they try to be sensitive to race, gender, and culture, they may blunder. For example, Razack (1994) shows how efforts to be sensitive to culture may reinforce patriarchy. In her analysis of sexual assaults involving Native peoples in Canada, Razack suggests that when culture is brought up as a defense it often ignores the harm done to Native women. She discusses cases in which a white male Canadian judge chose to send Native men who had sexually assaulted women back to the community for disposition and healing instead of incarcerating them. In one such case, the man had assaulted two of his daughters, and in another case, the defendant had

assaulted a number of local boys. The Yukon Association for the Prevention of Community and Family Violence strongly criticized this set of decisions, stating that this offender-centered version of justice left victims of sexual assault without remedy, forced to see their assailant on a daily basis. As Razack observes, "cultural sensitivity rests on a highly gendered and unsophisticated view of culture and . . . on a gendered view of the impact of colonization" (p. 901).

Thus, although the number of studies that explicitly examine the interaction of race, gender, and/or class is growing, researchers too often continue to treat these social relations simply as exogenous variables, rather than affording detailed analyses of how racial, class, and gender hierarchies are experienced by real people and how they both influence and are supported by criminal justice policies and practices.

The Intersections of Race, Gender, and Class

We live our lives as raced, classed, and gendered beings. Certainly, in some circumstances, particular aspects of who we are become most salient, but as scholars we risk creating limited views of the world if we focus on only one or two of these relationships. Generally, feminist legal scholars, particularly critical race feminists (e.g., Crenshaw 1989; Harris 1990; King 1988; Matsuda 1992; Montoya 1994; Williams 1991; Wing 1997) do a far better job of assessing the convergences among race and gender (and sometimes class and sexual orientation) than do criminologists. This concern for what Kimberlè Crenshaw (1989) calls "intersectionality" lies at the heart of critical race feminism, and greater attention to this field could benefit criminologists. In particular, we are apt to essentialize "woman" to mean white, middle-class woman, and "race" to mean blacks or, more specifically, black men (see Spelman 1988 and Hurtado 1996 for excellent critiques). For example, the earlier discussion about race and rape is informed by Crenshaw's thoughtful analysis:

> The singular focus on rape as a manifestation of male power over female sexuality tends to eclipse the use of rape as a weapon of racial terror. When Black women were raped by white males, they were being raped not as women generally, but as Black women specifically: Their femaleness made them sexually vulnerable to racist domination, while their Blackness effectively denied them any protection. This white male power was reinforced by a judicial system in which the successful conviction of a white man for raping a Black woman was virtually unthinkable. (1989, 158–159)

Lately, however, criminological theorizing about the confluence of gender, race, and class is improving. Although most scholarship that looks at gender and crime or gender and court processing continues to treat gender as a fixed attribute of individuals or as a patterned role, new work in this area stresses how gender emerges through social interaction in a given social context. Informed in large part by sociological work by Candace West and her colleagues (West and Fenstermaker 1995; West and Zimmerman 1987), James Messerschmidt (1997, 1993) has taken the lead in demonstrating how gender relations and images of masculinities and femininities are related to crime. His structured action theory of crime seeks to keep race, class, and gender constantly in mind, treating them as interlocking sets of social relations. This approach allows us to look more carefully at how crime is gendered within a given social and historical context (e.g., the antebellum South, urban drug and sex markets). By considering masculinities and crime as well as femininities and crime, we are better able to see how racial and class hierarchies join together with gender hierarchies to influence how and why a person might choose to commit a particular crime in a given situation.

A growing number of criminologists (e.g., Miller 1998; Newburn and Stanko 1994; Simpson and Elis 1995) are borrowing from West and her colleagues in looking at the *construction* of gender as an emergent process and at crime as a useful resource for this construction. Similarly, Martin and Jurik (1996) consider how particular forms of masculinity and femininity emerge and are shaped on a daily basis by those working in the criminal justice system. Yet to my knowledge, no one has used this framework to examine how gendered images and assumptions are developed, reinforced, or altered in the context of court processing and sanctioning. Rather, we fall back on simpler understandings of gender as an attribute or as a patterned behavior.

Examples of intersectionality: Crack mothers and O.J. Simpson

When we look at policies as racialized, gendered, and classed, we are recognizing not only that they have effects that differ along these dimensions, but also that they operate in ways that produce and reproduce particular social constructions of race, gender, and class. Two recent examples demonstrate this convergence. One concerns the representation of "crack mothers," the other is the murder trial of O.J. Simpson.

By the late 1980s, crack mothers had come to epitomize all that was wrong with our society. Gender and discourses about motherhood, specifically good and bad mothers, converged with racial realities and stereotypes and with economic status at the historical moment when attacks on welfare and abortion

were rampant, the war on drugs was lavishing huge profits for shareholders of private prisons, and drug treatment—particularly residential treatment for pregnant women or women with children—was far more difficult to find than a prison bed (Gómez 1997; Humphries 1999; Kasinsky 1994; Roberts 1991). By 1990, 52 women had been prosecuted for transporting drugs to their babies via the umbilical cord. Of these, 35 were black, 14 were white, 2 were Latina, and 1 was Native American (Roberts 1991, 1421).

Given the context and prosecution patterns, two major questions have arisen. First, is crack cocaine significantly more harmful to a fetus than other drugs and risk factors associated with poverty, and second, is prosecution of crack mothers racially and class biased? Unfortunately, it is difficult to determine whether crack cocaine is significantly worse for the fetus than powder cocaine, heroin, or other drugs, especially when drug use occurs in the context of poverty. It is especially hard to untangle the effects of crack cocaine from other factors that might harm a fetus, since most actively imbibing crack addicts do not maintain a nutritious diet, regular patterns of sleep, and routine and adequate prenatal medical care. Even if they were not addicted to crack, poverty alone can make it difficult for pregnant women to eat a nutritious, balanced diet. In addition, though, addicts may be reticent to go to clinics for prenatal medical care if they fear that their doctors will report them to criminal justice authorities (Humphries 1999).

The second question goes to the heart of the intersection between poverty and race. Ira Chasnoff and his colleagues conducted research on drug testing and reporting of pregnant women in public and private hospitals in Florida (Chasnoff, Landress, and Barrett 1990). They found that the use of alcohol and illicit drugs was fairly common among pregnant women, regardless of race and socioeconomic status, with white women tending to use marijuana and black women cocaine. Chasnoff's study demonstrated clear racial and class biases in drug testing of pregnant women in both public and private hospitals and in the reporting of test results. Due to a combination of stereotypes about African-American women and a reluctance on the part of private physicians to report their paying, middle-class white patients, Chasnoff and his colleagues found that African-American, pregnant drug users were 10 times more likely than white drug users to be reported. Moreover, almost all of the women whose drug use was reported, whether black or white, were poor.

As Dorothy Roberts notes, poor, black, drug-addicted women were probably not singled out for prosecution based on a *conscious* devaluation of their motherhood, but rather as "a result of two centuries of systematic exclusion of Black women from tangible and intangible benefits enjoyed by white society" (1991, 1454). That is, "[p]oor Black women are the primary targets of prosecutors, not

because they are more likely to be guilty of fetal abuse, but because they are Black and poor" (p. 1432), and "[t]he State's decision to punish drug addicted mothers rather than help them stems from the poverty and race of the defendants and society's denial of their full dignity as human beings" (p. 1481).

At the other end of the spectrum is the trial of Orenthal J. Simpson for the murder of his ex-wife, Nicole Brown Simpson, and her friend, Ronald Goldman. Simpson escaped his poverty background to become extremely rich and popular in two forums traditionally open to black men—sports and entertainment. The woman he married, battered repeatedly, and was accused of murdering was white. When a primarily black female jury determined that reasonable doubt as to his guilt existed, in large part because the primary police officer involved in the case had a history of racist and illegal actions, the myriad ways in which this case reflected the multiple cleavages in our society crystallized (Chancer 1998; Weston 1997). Many whites in America accused the defense team of "playing the race card" and the jury of engaging in nullification on the basis of race (see Morrison and Lacour 1997). That is, they assumed that the jury thought Simpson was guilty but wanted to teach the Los Angeles Police Department a lesson. The case leaves many questions open to speculation: Would the same charges of jury nullification have been raised had the victims been black? Why is pointing out longstanding patterns of racial bias within a police department considered to be "playing the race card?" What was the relevance, both to the general public and the jury, of the history of battering that emerged during the trial? Why was this history not a focal point of the trial? How would the trial have been different if an equally wealthy and popular white man was charged with the same crime? If the victims had been black?

One of the most disturbing aspects of this case for many people was the extent to which it reflected deeply polarized views of the criminal justice system. It is well known among criminologists that African-Americans and whites hold very different views about whether the system is fair (Currie 1985; Hagan and Albonetti 1982; Meares 1997). What seems to have startled some, however, was the extent to which many African-Americans, and particularly African-American men, saw the trial as yet one more instance in which racist police were willing to plant evidence to bring down a black man, especially one who lived far more comfortably than the white police officers. From this perspective, the fact that a black man actually was acquitted of murdering two white victims was a major step forward. Even if the vast majority of African-Americans could never afford Simpson's "dream team" defense, the acquittal meant that it was possible for a black man to win. Equally startling to some was the extent to which many whites, and especially white women, saw Nicole Brown Simpson's murder as one more instance in which a batterer ultimately

killed his ex-wife. For them, Simpson's money and race were immaterial. This was a case of yet another batterer getting away with murder. Of course, many people crossed these polarizing lines for various reasons. For example, many white sports fans were delighted to see an athlete win in yet another venue. And questions were raised about whether or not Simpson's wealth allowed him to transcend race, and whether Nicole Brown Simpson's fun-loving lifestyle and marriage to a black man lessened the extent to which she could symbolize white femininity (see the excellent collection of essays on this topic in Morrison and Lacour 1997).

As I have tried to demonstrate, full analysis of both the murder trial of O.J. Simpson and the prosecution of crack mothers is impossible without being attentive simultaneously to the race, class, and gender of all of those involved. Next I turn to a brief discussion of some of the most recent crime control policies that have operated in ways that are racialized, gendered, and classed. Although some discussion of the policies themselves is necessary, my emphasis is on the ramifications of these policies when the cases reach the courts.

The war on drugs and other racialized, gendered, and classed policies

The movement in the last quarter of the 20th century to limit judicial discretion while simultaneously demonstrating how tough we are on crime has given legislators, especially, and prosecutors and police tremendous power. Rather than judges determining what is fair and just and who has a chance of being rehabilitated, State legislatures are making sweeping stipulations. These include the war on drugs and the war on gangs, both of which target racial/ethnic minorities, and the automatic transfers of certain categories of youths to adult court.

The war on drugs

It is widely recognized that the war on drugs has led to tremendous increases in incarceration rates for young black males living in inner cities (Donziger 1996; Lusane 1991; Miller 1996). It has also swept up large numbers of African-American women and Latinos and Latinas. These efforts are gendered not only in the numbers of men and women arrested and incarcerated but also in the meanings that are given to drug use by men and women. The gendering of the war on drugs is especially clear in the ways in which drug-addicted pregnant women are depicted by the media, and in media and courtroom representations of who is a good or bad mother (see further Gómez 1997; Gustavsson and MacEachron 1997; Humphries 1999; Roberts 1991). The war's impact is also linked with economic class, both in the choice of drug to target and in the locations where police surveillance is the greatest.

The battle lines have been drawn around crack cocaine, which is a drug of choice among poor people, particularly poor people of color. Wealthier drug users tend to prefer powder cocaine, methamphetamine is a favorite of poorer whites, and alcohol and marijuana are widely used across races and economic classes. Yet under Federal law and many State laws, crack and powder cocaine carry vastly different penalties, resulting in what has come to be known as the 100:1 ratio. Under the Federal Anti-Drug Abuse Act of 1986, a person possessing with intent to distribute 50 grams or more of crack cocaine must be sentenced to no less than 10 years in prison (21 U.S.C. § 841(b)(1)(A)(iii)[1986]). For powder cocaine, this same 10-year mandatory minimum comes into play only when a person possesses with intent to distribute at least 5,000 grams of powder cocaine (21 U.S.C. § 841(b)(1)(A)(ii)(II)[1986]). And, under the Anti-Drug Abuse Act of 1988, a person caught possessing from 1 to 5 grams of crack cocaine is subject to a mandatory minimum sentence of 5 years in prison (21 U.S.C. § 841 (b)(i)(B)(iii)[1988]).

Enforcement of the drug laws has had staggering consequences for our criminal justice system, prisons, and cities. The Washington, D.C.-based Sentencing Project reports that incarceration of drug offenders increased by more than 500 percent between 1983 and 1993. In the 5-year period from 1986 to 1991, the number of African-Americans incarcerated in State prisons for drug offenses increased by 465 percent. By 1994, African-Americans and Latinos constituted 90 percent of all drug offenders in State prisons. Nationwide in 1994, one in three black men between the ages of 20 and 29 was under some form of correctional supervision, up from one in four in 1989. In contrast, for white men in the same age group, 1 in 16 was under correctional supervision in 1989 (Mauer 1995).

The war on drugs has also dramatically increased incarceration rates for women. The number of African-American women incarcerated for drug offenses in State prisons increased by 828 percent between 1986 and 1991 (Mauer 1995, 1997). Using a longer timeframe, the National Women's Law Center (1997) reports that the female prison population more than tripled between 1980 and 1993. Looking at the female prison population nationwide, 46 percent of the incarcerated female population is African-American and another 14 percent is Latina, for a total of 60-percent black or Latina. In contrast, only 36 percent of the incarcerated female population is white.

To put these figures into the context of relative numbers of drug users, the Sentencing Project reports that approximately 13 percent of the total population and about 13 percent of all drug users are African-American. Yet African-Americans constitute 35 percent of arrests for drug possession, 55 percent of convictions for possession, and 74 percent of prison sentences for drug possession (Mauer 1995). Miller (1996, 81) reports similar statistics from 1992 U.S.

Public Health Service estimates, which revealed that 14 percent of illicit drug users in the United States were black, 8 percent were Latino, and 76 percent were white. Cocaine use patterns differ only slightly, with whites constituting two-thirds of cocaine users and the other third split fairly evenly between blacks (17.6 percent) and Hispanics (15.9 percent).

Michael Tonry (1995) has argued that those persons responsible for our current drug policies, particularly the huge disparity in sanctions for crack and powder cocaine, knew or should have known that the effects of these laws would decimate African-American communities. In Tonry's words:

> Anyone with knowledge of drug-trafficking patterns and of police arrest policies and incentives could have foreseen that the enemy troops in the War on Drugs would consist largely of young, inner-city minority males. . . . Any conventional ethical analysis would hold them accountable for the consequences of their policies. (p. 4)

While considerable attention has been paid to the war on drugs, we also need to consider whether other pieces of legislation appear race-neutral, gender-neutral, and/or class-neutral on their faces but have significantly disparate impacts. One such example is the growing number of antigang statutes being promoted across the country.

Similarly, Judge Clyde S. Cahill, who invalidated the sentencing regime in a Missouri case in which the defendant possessed 50 grams of crack cocaine, argued "Although intent *per se* may not have entered Congress' enactment of the crack statute, its failure to account for a foreseeable disparate impact which would affect black Americans in grossly disproportionate numbers would nonetheless violate the spirit and letter of equal protection" in *U.S.* v. *Clary* (846 F. Supp. 768, 782 [E.D. Mo. 1994], rvd, 34 F. 3d 709 [8th Cir. 1994], cert. denied, 115 S.C. 1172 [1995]). He went on to assert, "If young white males were being incarcerated at the same rate as young black males, the statute would have been amended long ago" (*U.S.* v. *Clary*, 792). The U.S. Sentencing Commission also recommended in May 1995 that the crack/powder differential be eliminated, in large part because of its racially disproportionate impact.

Yet it must also be recognized that others disagree with these recommendations. For example, Judge Cahill's decision was overturned and the U.S. Congress ignored the Sentencing Commission's recommendation, retaining the distinction between crack and powder cocaine. A few African-American

scholars also support the continued distinction in penalties for crack and powder cocaine and incarceration of drug offenders. Most notably, legal scholar Randall Kennedy has argued that crack is more addictive and thus destructive of black communities than is powder cocaine. According to Kennedy, "imprisonment is both a burden and a benefit—a burden for those imprisoned and a good for those whose lives are bettered by the confinement of criminals who might otherwise prey upon them" (1998, 375).

The war on gangs

While considerable attention has been paid to the war on drugs, we also need to consider whether other pieces of legislation appear race-neutral, gender-neutral, and/or class-neutral on their faces but have significantly disparate impacts. One such example is the growing number of antigang statutes being promoted across the country. As Miller (1996), Muwakkil (1993), Zatz and Krecker (2000), and others have noted, huge numbers of young men and women of color are being identified as gang members by police. For example, Zatz and Krecker cite juvenile court estimates that 75 to 95 percent of the youths identified as gang members in Phoenix are Latino or Latina. Miller reports that almost half of all black men ages 21–24 in Los Angeles County in 1992 were identified by the district attorney's office as gang members (p. 91). In Denver, two-thirds of the African-American boys and men ages 12–24 were on the police department's list of suspected gang members. Fifty-seven percent of the citizens on the gang member list were African-American, even though they constituted only 5 percent of Denver's population. Another one-third of the youths on the list were Latino or Latina, while whites, who made up 80 percent of Denver's population, accounted for fewer than 7 percent of the suspected gang members (Miller 1996).

Making it onto the Gang Squad list can add substantially to a person's sentence. Many States have already passed antigang legislation, and other States and the Federal Government are contemplating such legislation. These statutes provide sentence enhancements for offenses committed for the benefit of a gang. For example, under Arizona law, certain misdemeanors are raised to felonies if they are done for the benefit of a gang. Also, if a person is convicted of a felony offense with the intent of promoting, furthering, or assisting a criminal street gang, then the presumptive, minimum, and maximum sentences for the offense are increased by 3 years, in addition to any other sentence enhancement that may be applicable (Arizona Revised Statutes 13–604(T)). If identification of individuals as gang members is linked to race, then these apparently race-neutral statutes also become racialized in their application and effects. The growing attention to female gang members (Chesney-Lind and Hagedorn 1999; G. David

Currie 1998; Joe and Chesney-Lind 1995) means that girls and young women who in the past had been assumed simply to be girlfriends or accomplices of male gang members are now far more likely to receive much harsher court sanctions than ever before. And as is the case for males, most of the females who will be sentenced under antigang statutes are African-American or Latina.

Automatic transfers of youths

The automatic, legislative transfer of youths to adult courts based on offense type is a third example of racialized and gendered policies. Most States have passed laws reducing the discretion of juvenile court judges regarding waivers to adult court, relying instead on automatic transfers of youths charged with particular offenses and/or who meet minimum age criteria. If they are sentenced to prison or jail, these youths are incarcerated in adult facilities under the slogan, "Do adult crime, do adult time." Amnesty International (1998) reports that 3,500 children, mostly boys, have been convicted as adults and are now being housed with adult inmates where they are especially vulnerable to physical and sexual abuse.

Variation exists in exactly how transfers work, but this is a significant move away from the judicial decisionmaking that had characterized most waivers to criminal court in the past (Fagan and Zimring 2000). Although stipulations based on age tend to be relatively race-neutral in their effects, statutory stipulations based on crime type net disproportionate numbers of young men of color, and increasingly of young women of color, who are charged with violent or drug offenses (see further Bortner, Zatz, and Hawkins 2000). The antigang statutes contribute further to these disparities. In many States, offenses that would normally be misdemeanors are reclassified as felonies if they were committed for the benefit of a gang, and are thus eligible for automatic transfer, and most youths arrested for gang-related crimes are black or Latino.

In sum, the renewed emphasis on legislating sentences (illustrated by the war on drugs, the war on gangs, and automatic transfers of certain categories of youths to adult court) strips judges of much of their discretion, handing it instead to prosecutors and police. In the next section, I speculate as to the potential ramifications of these policies and new patterns that might emerge in the 21st century. I also offer suggestions for how we might improve our conceptualization and measurement of key constructs to better fit the reality of a multicultural, multiracial society.

Looking to the Future: Continuing Controversies and Questions

We will enter the 21st century with vastly improved theoretical paradigms and methodological skills compared with the past. Yet controversies and questions continue to plague our understandings of how race, ethnicity, gender, and class influence criminal court processing and sanctioning decisions. We also must be concerned with the consequences of contemporary crime control policies in the near future. In this section, I will briefly discuss seven of these continuing controversies.

Methodological issues: Data collection, coding, and analysis

First, in terms of general methodology, the personal computer has revolutionized our quantitative and qualitative data analysis techniques. It is generally expected within criminology that quantitative research should be attentive to: (1) sample selection bias; (2) proper model specification, including assessment of indirect and interaction effects as well as direct/main effects; (3) jurisdictional differences in data collection and coding strategies, including regional variation and central city-suburban-rural variation; (4) level of aggregation; and (5) appropriate use of cross-sectional and longitudinal data.

We also need to collect more detailed ethnographies of the courts and of peoples' experiences in court, prison, and on the streets. We can then think about what the ethnographies tell us as we analyze our quantitative data, and vice versa, to better develop and assess theoretical paradigms capable of reflecting the complexities of people's lives and the multiple factors that influence criminal justice decisionmaking.

Our data collection strategies are improving, although not as quickly as our analytic techniques. Development of good indicators of our concepts and consistent coding so that cross-jurisdiction comparisons can be conducted continues to be a central problem. For example, as was noted earlier, the Uniform Crime Reports (UCR), which is one of the most popular datasets available for measuring crime rates, does not include indicators of class. And, it is impossible to control for race and gender simultaneously with UCR data. Thus, we can gather race-specific or sex-specific data from UCR for a given crime, but not race-sex combinations (see similarly Belknap 1996, 47). National youth and victimization surveys also must develop better questions about race, ethnicity, and class. Sampling strategies should be redesigned so that the homeless, undocumented immigrants, and people living on remote Indian reservations

have a greater chance of inclusion in household and individual surveys. The U.S. Census Bureau is devoting considerable effort to improving its outreach to these communities, and criminologists should consider borrowing from the Census Bureau's strategies.

As we move into the 21st century, the relevance, power, and authority of the media in our lives is expanding exponentially. In the past, criminologists and the general public looked at court records and newspaper accounts as key sources of information about crime, but this is changing rapidly. Television, movies, infotainment, the Internet, and computer games all reflect and refract images of crime and violence (Cavender and Jurik 1998; Fishman and Cavender 1998). The ready availability and sharp visual impact of these media will likely lead the next generation to hold very different expectations and assumptions about the world than their parents and grandparents held. We need to be attentive to the images that these new media create and reinforce—images that are far from being race-, gender-, or class-neutral. For example, they can be expected to reinforce the salience of certain issues (e.g., teen violence) and stereotypic images (e.g., black and Latino youths as violent) for judges, prosecutors, and jurors. Researchers will need to give serious thought to how best to analyze such influences and how to assess their effects on case processing and sanctioning decisions.

Conceptualizing and measuring race and ethnicity in a multiracial society

Conceptualizing and measuring race and ethnicity in ways that better conform to the realities of a multicultural, multiracial society is a daunting task (Ford 1994; López 1996). We must expand our thinking about race beyond white-nonwhite or white-black. Latinos and Latinas were included in some analyses of the criminal justice system in the 1980s and 1990s, yet the majority of studies were limited to black-white differences without consideration of Latinos, American Indians, or Asian-Americans/Pacific Islanders. Coding is also quite inconsistent. As has already been discussed, Latinos and Latinas have been coded as white in many datasets. Within one dataset, I have seen the same person identified as Chicano, Mexican, white, and American Indian (see further Zatz 1987a).

Coding that includes categories beyond white-nonwhite, or even white-black-Hispanic, is a start, but these categories do not allow for multiracial and multiethnic identifications. The Census Bureau is tackling the problem of racial classification as it prepares for the year 2000 census. The Bureau's approach is to ask *all* respondents if they are of Hispanic origin, defined as Spanish/Hispanic/Latino (U.S. Bureau of the Census 1998). If so, they are asked additional questions about their group membership. Everyone is then asked to identify their race,

with race clearly related to ethnic origin. American Indians and Alaska Natives are asked to name the tribe in which they are enrolled or their principal tribe. Asian-Americans and Pacific Islanders choose from 10 categories or record their "race" (this is the term used on the form, although "ethnic origin" might be more appropriate) if they check "other Asian" or "other Pacific Islander." Respondents may check as many racial/ethnic origin categories as they deem appropriate to indicate mixed racial heritage. Those respondents receiving the long form (every sixth household) also answer an open-ended ancestry question in which they may claim multiple ancestry or ethnic origin (e.g., Irish, Jamaican, and Egyptian). Long-form respondents will also specify the country in which they were born and the primary language spoken at home. The data that result should be far better than ever before, although coding of the open-ended questions will be a nightmare, particularly deciding when to collapse responses that are similar but not identical.

How might criminal justice agencies and researchers borrow from the census? Should, and can, they mimic the Census Bureau's classification in their codings of race and ethnicity, or should they develop a different system? I suggest that they mirror the Census Bureau to the greatest extent possible to enhance comparability. Researchers and policymakers often wish to contrast criminal justice populations to the overall population (whether local, State, or national), and census data are the standard for such comparisons. At a minimum, I suggest that police, courts, and correctional institutions, as well as researchers, record Hispanic origin separately from race so that Latinos and Latinas are not lumped into the white category.

A key question will be *who* should identify the race/ethnicity of victims and defendants. Individuals may self-identify in very different ways from how legal decisionmakers, victims, and witnesses would identify them. For example, an individual may self-identify as Afro-Caribbean, Puerto Rican, and white, be identified by the victim or police as black, and be coded Hispanic by a clerk of the court responding to a Spanish surname. These disjunctures between self and other identification result in inconsistencies across databases (e.g., police, self-report, victimization, courts). We need to keep in mind the vantage point and knowledge base of the decisionmaker, recognizing that sometimes decisions are made solely on the basis of appearance and sometimes based on additional sources of information. Supplemental information could be derived from detailed probation reports, crime scene data in police reports (e.g., ethnic composition of the neighborhood, language spoken at the scene), the victim's or defendant's surname or appearance, and other sources. Then, we need to think more systematically about what to make of these data. We can start by examining how the racial/ethnic designations were applied in a given dataset and the potential effects of these designations in different contexts, including type of offense, the

jurisdiction of the court, whether the victim and offender are male or female, and the stage of court processing (see, for example, Frohmann 1991). Observational studies and surveys may be particularly useful for assessing whether and how decisions change with different information on the defendant's and the victim's race/ethnicity. Toward this end, the victim's and defendant's self-identifications are also important sources of information, and they should be encouraged to acknowledge mixed racial and ethnic identities. Finally, it must be recognized that in cases involving American Indian or Alaska Native offenders or victims, tribal affiliation also has jurisdictional consequences. Depending on the type of offense, where the crime occurred, and whether the offender and the victim are tribal members, cases could be processed in tribal, State, or Federal court (Zatz, Lujan, and Snyder-Joy 1991).

Defining and measuring discrimination: Legal standards and statistical tests

We need to give further thought to our definitions and measurements of discrimination. Does discrimination require a person to act on the basis of a prejudicial attitude? Is intent a necessary prerequisite for a finding of discrimination? Or is disparate impact sufficient for concluding that a policy or procedure is discriminatory? The five-to-four decision of the U.S. Supreme Court in *McCleskey* v. *Kemp* (107 Sup. Ct. 1756 [1987]) was particularly important in this regard. The Court determined that the defense must show that the Government acted *because of,* not simply despite, the foreseen racial consequences of some action. The majority position rested on the belief that individual decisionmakers—whether prosecutors, judges, or jurors—must have acted with discriminatory *purpose* for there to be a legal finding of discrimination. Unambiguous, statistically significant patterns demonstrating clearly that the death sentence correlated with the race of the victim and of the offender were deemed inadequate.

It would be difficult to find a criminal justice official today who would publicly acknowledge acting on the basis of discriminatory intent. Intentional discrimination is clearly unconstitutional, and intent has become an impossible standard. Moreover, the intent standard ignores the presence of institutionalized racism. Our problems today lie less with intent than with the somewhat subtler realm of disparate impact. *McCleskey* v. *Kemp* (107 Sup. Ct. 1756 [1987]), among other cases, reminds us that the law is structured not to see discrimination as systemic and institutional. How we conceptualize discrimination, in turn, determines how we will measure it. Measurement includes considerations such as whether we will accept statistically significant aggregate patterns as evidence in individual cases, whether our conclusions will rest solely on main or direct effects of

race or sex controlling for other relevant factors, or whether we will also recognize indirect and interaction effects as potential evidence of discrimination.

A related issue is how we will conceptualize and measure hate crimes. How should we classify and sanction crimes that occur partially or wholly because of the victim's race, gender, national origin, religion, sexual orientation, or some combination of these statuses? Gender is not included in most hate crime statutes (Jenness and Broad 1994). If it was, policymakers, criminal justice decisionmakers, and researchers would have to determine whether or not to prosecute rapes and domestic assaults as hate crimes. Coding questions also arise, particularly if a given offense can only be counted as based on one type of hatred even if it was aimed at, for example, someone who was African-American, American Indian, and lesbian. Legal determination of whether the crime was based on hatred of members of a particular group is also sometimes difficult. Must the perpetrator admit that he or she was acting on the basis of discriminatory intent? If so, we return to the problem posed by *McCleskey* v. *Kemp*, although to a slightly lesser degree, as members of the general public might not be quite so aware as criminal justice officials that they should never state publicly an intent to discriminate. Finally, we must consider what effect changes in the ethnic composition of our society might imply for the amount and viciousness of hate crimes as we move into the 21st century.

Race, ethnicity, and gendered aspects of culture

We must always consider race, ethnicity, gender, culture, and class, but do the politics of one dimension ever supercede the politics of another? Some of the commentary during and following the O.J. Simpson trial concerned whether race was "trumping" gender (Morrison and Lacour 1997). I suggest, however, that this is one example of a case that cannot be fully understood without the simultaneous consideration of the defendant's race, gender, and class position; the race, gender, and class of the victims; the race, gender, and class of the jurors; and the race and gender of the various prosecution and defense attorneys and the judge. If only one set of actors, or if only race or only gender or only class is considered, we cannot fathom the verdict, the media spins on the case and the verdict, or the controversies that the case engendered (see similarly Chancer 1998).

Most researchers who study race and ethnicity stop short of considering culture. I suggest the importance of considering more fully the relationship between race, ethnicity, and culture in the courtroom and in court-ordered programs. For instance, because looking an authority figure in the eye is a sign of disrespect for traditionally raised Latinos and many American Indian tribes, deferential Latino and Indian defendants will likely gaze downward when

being interrogated by police, prosecutors, or judges. Yet in the dominant Euro-American culture, not looking an authority figure in the eye suggests the opposite—that one is lying. Cultural and gender-based variation within a particular ethnic group (e.g., American Indians) is to be expected, yet assumptions often are made based on limited understandings of the culture (see, for example, Melton 1998; Razack 1994; Zatz, Lujan, and Snyder-Joy 1991). As was discussed earlier, Razack makes a compelling argument that sometimes efforts to be culturally sensitive (e.g., by sending sexual assault cases back to the community for disposition) may rest on male interpretations of the culture and wind up simply reinforcing patriarchy (e.g., by forcing victims to interact on a daily basis with their assailants, many of whom have considerable power over the victims within their families and/or community).

Too often, ethnicity and culture become entangled. It is important for court actors to recognize that within the same racial and ethnic group, important cultural differences may exist, and these may lead to incorrect attributions. For example, Zatz and colleagues assert:

> Depending on the individual's tribal background, she or he could either appear too aggressive or too quiet. Plains tribes (e.g., Sioux) tend to be more aggressive and assertive in demeanor, in contrast to members of some Southwestern tribes (e.g., Pueblos, Navajos, Hopi, Pima), who are typically more reserved. Consequently, a Plains Indian may be viewed by police and court officials as a threat to the community, while a Southwestern Indian may be viewed as sullen and unrepentant. (1991, 109)

Finally, legal decisionmakers are likely to consider how defendants with prior records performed if they received probation or some form of diversion. Most of these court-ordered programs were developed with white or black males in mind, however, and may not be appropriate for women, especially for women with different cultural orientations (see further Belknap 1996; Chesney-Lind and Sheldon 1998; Sarri 1987). Recent studies have found compelling evidence that culturally specific programs are more effective, at least for juveniles, than are generic programs (Botvin et al. 1995; Chesney-Lind and Sheldon 1998; Marín 1993).

Attributions and constructions of race, gender, and class

Attributions about race, gender, and class in criminal case processing and sanctioning and the ways in which gender and race are socially constructed in the courtroom are of crucial importance. This includes assumptions and attributions about who is a worthy victim, who is a good mother, and what kinds of crimes

are "normal" for men and women (Daly 1994; Madriz 1997; Roberts 1991; Simpson and Elis 1995; Smart 1992). As David Cole has noted:

> At every point in the criminal process, decisionmakers are vested with discretion, in large part so that the system's responses can be tailored to the myriad individual circumstances that each case presents. . . . In a world of incomplete information, stereotypes, especially racial stereotypes, inevitably affect such judgments. (1995, 2566)

As a consequence, even though "the vast majority of African-Americans are law-abiding . . . any association of race and crime will by definition extend an assumption of guilt to many innocent persons" (p. 2567).

The primary reason for the massive increase in incarceration rates for women is our mandatory policy of incarceration for many drug offenses. Yet drugs are not the only cause of increased incarceration rates for women. Police, prosecutors, judges, and criminologists are increasingly willing to recognize that women engage in violent acts, and not only as pawns for men (see, for example, Chesney-Lind and Hagedorn 1999; Maher and Curtis 1992; Messerschmidt 1997; Miller 1998; Simpson 1991), and arrests of girls and women, especially those who are African-American, for violent offenses have surged in recent years.

Thinking critically about class

We must also pay far more attention to when and why class matters, including the gendered effects of poverty. The drug trade is tied to the larger political economy. Some poor women in inner cities see few viable, legitimate options for supporting themselves and their families outside of the sex and drug trades. Yet even the drug trade is run largely by men, with women working primarily as lookouts and carriers and selling small amounts to support their own habits. Local sex markets do not offer much better options for women, at least in the long term, and can be extremely dangerous because of violence from clients and pimps and the rising rates of HIV infection (Maher and Curtis 1992).

How best to conceptualize economic status and the relationship between economic indicators and measures of racial inequality adds another dimension to our understanding of the workings of class in contemporary America. Are we concerned with absolute or relative indicators of economic standing? Are we looking at inequalities in income or in wealth? Oliver and Shapiro (1995) argue powerfully that there is an important analytical distinction between wealth and other, more traditional measures of economic status such as income, occupation, and education. Wealth, they note, "is what people own, while income is what people receive for work, retirement, or social welfare . . . the command

over resources that wealth entails is more encompassing than is income or education, and closer in meaning and theoretical significance to our traditional notions of economic well-being and access to life chances" (p. 2). Linking race and class, Oliver and Shapiro contend that, "Conceptualizing racial inequality through wealth revolutionizes our conception of its nature and magnitude" (p. 2). Their conclusion, like that of Hacker (1995), is that whites and blacks constitute two distinct nations within contemporary America.

Research on income inequality and arrest rates suggests that key variables must be disaggregated by race if they are to be meaningful. For example, LaFree and Drass (1996) found that the relationship between education and crime is contingent on levels of intraracial income inequality. Similarly, we might expect that the ability to present oneself favorably in court, thus enhancing the likelihood of probation rather than incarceration, may well rest on racialized indicators of class. For instance, stable employment, relatively high earnings, owning one's home, and other economic measures may greatly influence the sorts of attributions that judges, attorneys, and probation officers associate with individual defendants and their rehabilitative potential. Future research is needed to explore these and related questions.

We still need to explore basic issues such as whether and how income and wealth influence prosecution and sentencing. Considering property offenses specifically, we do not yet know how wealth and income shape the type of property crime a particular person is likely to commit and the sanctions handed down for those offenses if she or he is convicted. How do larceny or robbery compare with large-scale embezzlement and financial scams that cost the general public billions of dollars (Calavita, Pontell, and Tillman 1997; Reiman 1995; Weisburd et al. 1991)? Does it matter whether the wealthy person is white and male, or do wealthy white women and wealthy people of color also enjoy class privilege (see, for example, Calavita, Pontell, and Tillman 1997; Carlen 1988; Morrison and Lacour 1997)? We also need to think about how economic standing, race, and gender in combination influence the quality and extent of protection against victimization (e.g., quick police response time and other types of public resources). Can we disentangle the effects of class, race, and gender, and is doing so a reasonable approach, given that individuals experience events, including crime commission and victimization, as raced, classed, and gendered beings?

The ramifications of policies and court decisions for poor communities of color

Finally, we must be attentive to the ramifications of crime control policies and the court processing and sanctioning decisions that result for poor communities

of color (see further Zatz 1999). One of the controversies that continues to besiege us as we move into the 21st century is what has been termed the "dual frustration" (Meares 1997) of inner-city residents. Both crime and crime control fall disproportionately on poor blacks and Latinos. Some social and legal scholars (see, for example, Kennedy 1998; Meares 1997, 1998; Sampson and Wilson 1996; Wilson 1987) argue that efforts to reduce crime help poor people of color because they are victimized in disproportionate numbers. Some argue further that although black parents do not want their children to be harassed by the police and do not think that the criminal justice system is fair, they want their neighborhoods to be free of drugs and crime. Thus, they are frustrated both by crime in their neighborhoods *and* by the police response that targets young men of color. Yet at times, this position seems to merge a macrosocial approach to poverty and race with more individualized blaming of those who have not succeeded. For instance, Randall Kennedy takes the stance that law-abiding black citizens benefit from the large-scale incarceration of black criminals who might otherwise victimize them.

Wilson's (1987, 1996) proposed policies for improving the plight of poor inner-city residents stress the lack of opportunities for black men and problems caused by family disruptions (see similarly Sampson 1987; Sampson and Wilson 1996). This emphasis reinforces gendered notions of work and family and may undermine efforts of battered women to leave their abusers. Greater attention to the lack of employment and educational opportunities for women, drug treatment programs for women (including more residential programs that accept pregnant women and women with small children), and affordable child care would bring to the fore issues of crucial concern to poor women.

A 1993 Gallup poll found that three-quarters—74 percent—of blacks but only one-third—35 percent—of whites thought blacks were treated more harshly than whites by the criminal justice system.

Based on interviews with 140 women, Esther Madriz concludes that many African-American and Latina mothers fear that their sons will be the victims of street violence *and* fear that they will be the victims of police brutality (1997, 51–52). In addition, Madriz notes that although the middle-class women in her sample reported feeling safer when the police were present, most Latinas and black women did not feel safer when the police were nearby and, in fact, felt intimidated by them (p. 144). Similarly, Regina Austin (1992) and David Cole (1995) urge the black community to move beyond what Austin calls a "politics of distinction" between lawbreakers and law-abiding blacks. As Cole argues, "Especially in the inner city, where poverty, crime, and drugs are most prevalent, many families are likely to have friends and

relatives who have been victimized by crime *and* friends and relatives who have been subject to the criminal justice system" (p. 2559–2560; emphasis in original). The choice between giving criminal justice agents free reign to arrest, prosecute, and incarcerate huge numbers of poor African-Americans or becoming the victim of crime is, Cole argues, a false dichotomy. It should be possible, he asserts, to count on the police to respond to calls and not have to fear that they will arrest your child. Similarly, pregnant women should be able to obtain good prenatal care and drug rehabilitation without being transformed into "bad mothers" and risk losing custody of their child because they dared to ask for help.

In part, the controversy can be attributed to differential emphases on race or class. Kennedy and Meares, for example, are strongly influenced by Wilson's (1987, 1996) writings on the underclass. This singular emphasis on poverty ignores the entrenched, institutionalized racism that is a major concern for Cole. Austin (1992) and Madriz (1997) take what I consider to be the most complex approaches, considering how class, gender, and race/ethnicity converge, particularly as seen in the efforts of mothers to keep their children safe from street violence and from police brutality.

We find ourselves faced with a situation in which a sizable portion of our citizenry is politically disenfranchised, experiences long-term unemployment, has little reason to respect the criminal justice system, and views prison rather than college as the place where one becomes an adult.

Another important consequence of our decisions to incarcerate huge numbers of poor people of color is their loss of voting rights. The enormous numbers of people of color, especially African-American men, who are being incarcerated translates also into massive numbers of disenfranchised citizens. Richey (1998) estimates that 13 percent of the country's black adult males were excluded from the political process in 1998. In seven States, more than one-quarter of black adult males are permanently barred from voting. In 10 States, convicted felons lose their voting rights forever, and in another 2 States, they are permanently disenfranchised after 2 felony convictions. Thus, huge numbers of African-American men are cut off from making changes through the ballot box. What does this imply for our sense of ourselves as a democratic society if such large numbers of men who, as a group, only gained the right to vote a few decades ago have now lost this right?

The final effect that I want to mention is the loss of respect for the criminal justice system on the part of many blacks who feel that it is unfair. A 1993 Gallup poll found that three-quarters—74 percent—of blacks but only one-third—35

percent—of whites thought blacks were treated more harshly than whites by the criminal justice system. In contrast, only 5 percent of whites thought whites were treated more harshly than blacks (McAneny 1993, 34). More recently, a *New York Times* poll conducted in October 1997 found that 82 percent of African-Americans and 71 percent of Latinos did not think the police treated white and blacks in New York City with equal fairness (Amnesty International 1998). In sum, then, we find ourselves faced with a situation in which a sizable portion of our citizenry is politically disenfranchised, experiences long-term unemployment, has little reason to respect the criminal justice system, and views prison rather than college as the place where one becomes an adult.

Residential drug treatment programs cost less than prison, address the root cause of much crime, and are less divisive for families and communities, especially when the addict is a woman with young children.

Conclusions

Several scholars have developed comprehensive sets of recommendations for reducing crime and creating a fairer criminal justice system as we move into the next century, one that reduces the gender, racial, and class biases still evident in today's system (Currie 1993; Daly 1995; Donziger 1996; Mann and Zatz 1998). I will briefly discuss two sets of general recommendations and speculate as to how additional research might contribute to improvements in these areas, and then I will conclude with a few additional suggestions for future research.

First, many of the recommendations have been directed at policymakers and practitioners suggesting, for example, a reduced reliance on mandatory sentencing statutes and an increase in the use of alternatives to incarceration, particularly for drug-related offenses. Residential drug treatment programs cost less than prison, address the root cause of much crime, and are less divisive for families and communities, especially when the addict is a woman with young children. Moreover, research has demonstrated that culturally appropriate drug treatment programs are more effective than generic programs and that treatment needs vary for men and women, and for teens and adults. Additional research can help probation officers and judges determine which programs will be most beneficial for particular offenders.

A second set of recommendations focuses on changes in our political and economic institutions as well as in our housing, health, and education systems. Many of the problems that have been discussed in this chapter are related to

drug addiction, shortages of jobs in inner cities, substandard housing, and inadequate schools. Related recommendations point to the need for better working relations between local communities and criminal justice agencies, and for neighborhood mediation councils, local diversion programs for minor offenders, and more battered women's shelters. Again, additional research on race, ethnicity, gender, class, and culture would contribute enormously to the development of specific cooperative arrangements that would be most helpful to neighborhood residents, reduce crime, and allow court officials to more comfortably rely on a range of community-based mediation and diversion programs.

Third, researchers must be much more thoughtful in how we conceptualize, code, and analyze race and ethnicity, given the multiracial, multiethnic composition of our society. I suggest that criminologists and criminal justice agencies follow coding strategies developed for the year 2000 census to the extent possible to enhance comparability of datasets. We also need to give serious thought to the ramifications of legal decisionmakers, victims, and defendants defining race/ethnicity in different ways. The problem is not simply inconsistent coding but rather that attributions are being made on the basis of perceived race/ethnicity, and we do not have good data on these myriad perceptions and attributions, or their consequences.

Fourth, better data on class are sorely needed, including indicators of both income and wealth. With better data, we can begin to disentangle some of the race and class effects on court processing and sanctioning, from the initial police surveillance and decision to arrest through sentencing. Use of a wide range of quantitative and qualitative data will also help us to explore these issues by providing rich, detailed, and contextual information.

Finally, I urge researchers to conceptualize the confluence of race, ethnicity, gender, and class more fully, considering how they are constructed within particular social and historical contexts. Race, gender, and class are the central axes undergirding our social structure. They intersect in dynamic, fluid, and multifaceted ways. The conundrum we face as we enter the next century will be how to conceptualize and assess these interlocking social relations so that we may best explore the ways in which court decisionmaking is raced, classed, and gendered, and then to use that information to make the system operate in the fairest way possible—for defendants and for victims.

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