

ARTICLES

FEAR AND FAIRNESS IN THE CITY: CRIMINAL ENFORCEMENT AND PERCEPTIONS OF FAIRNESS IN MINORITY COMMUNITIES

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[I]n any context, such a standard—the community’s attitude—is usually unknowable. It resembles a slithery shadow, since one can seldom learn, at all accurately, what the community, or a majority, actually feels.¹

INTRODUCTION

Blacks in central city neighborhoods are more likely than any other group to perceive crime as a problem.² They have the highest rates of violent crimes victimization³ and they are seven times more likely to be murdered than whites.⁴ Grim statistics like these, along with impassioned

1. *United States v. Rosenberg*, 195 F.2d 583, 608 (1952), *cert. denied*, 344 U.S. 838 (1952).

2. See CAROL J. DEFRANCES & STEVEN K. SMITH, U.S. DEP’T OF JUSTICE, SPECIAL REPORT: PERCEPTIONS OF NEIGHBORHOOD CRIME, 1995 [hereinafter DOJ, PERCEPTIONS OF NEIGHBORHOOD CRIME].

3. See CALLIE MARIE RENNISON, U.S. DEP’T OF JUSTICE, NATIONAL CRIME VICTIMIZATION SURVEY: CRIMINAL VICTIMIZATION 1999, at 6, 9–11 (showing African Americans remain statistically more likely to be victims of violent offenses even after controlling for income and other salient demographic factors).

4. See JAMES ALAN FOX & MARIANNE W. ZAWITZ, U.S. DEP’T OF JUSTICE, CRIME DATA BRIEF: HOMICIDE TRENDS IN THE UNITED STATES 2 (1999). Another DOJ publication, *Murder in Large Urban Counties, 1988*, shows that 94% of black murder victims in urban areas are killed by other blacks. Violent crimes continue to be largely intraracial. For example, 84% of violent crimes against blacks are committed by other blacks. See BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, SELECTED FINDINGS: VIOLENT CRIMES 4 (1994).

personal accounts of violent encounters and heroic daily efforts to avoid such encounters, have led race and criminal law scholars, such as Randall Kennedy, to express a seemingly natural though unconventional claim: Frustrated and overwhelmed by gangs, drugs and crime, blacks in high-crime neighborhoods welcome disproportionately tough criminal sanctions and expanded police discretion.⁵ This claim, which I label the “urban frustration argument,” remains unconventional because African Americans are broadly viewed to perceive law enforcement with suspicion and distrust.⁶ This perception of distrust has been significantly bolstered by recent reports of extreme police misconduct in major urban areas such as Chicago, Los Angeles, New York City, and Philadelphia.⁷ In New York City, for example, community tension and distrust of police appear to be rising as residents struggle to reconcile a recent string of police killings of unarmed black men.⁸ These recent incidents notwithstanding, scholars

5. See, e.g., Randall Kennedy, *The State, Criminal Law, and Racial Discrimination: A Comment*, 107 HARV. L. REV. 1255, 1278 (1994) (noting that the disparities in criminal enforcement in the black community may be due to the “state apparatus responding sensibly to the desires . . . of black communities . . . for protection against criminals preying upon them”). See also RANDALL KENNEDY, *RACE, CRIME AND THE LAW* (1997); Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 571 (1997); Tracey L. Meares & Dan M. Kahan, *The Wages of Antiquated Procedural Thinking: A Critique of Chicago v. Morales*, 1998 U. CHI. LEGAL F. 197; Kate Stith, *The Government Interest in Criminal Law: Whose Interest Is It Anyway?*, in PUBLIC VALUES IN CONSTITUTIONAL LAW 137, 153 (Stephen E. Gottlieb ed., 1993). Cf. Tracey L. Meares, *Charting Race and Class Differences in Attitudes Toward Drug Legalization and Law Enforcement: Lessons for Federal Criminal Law*, 1 BUFF. CRIM. L. REV. 137, 157 (1997) [hereinafter Meares, *Lessons*] (employing survey data to evaluate the proposition that “groups that experience higher levels of criminal victimization should be more likely . . . to support ‘get tough’ approaches to crime” and finding this proposition unsupported among African Americans in her sample). See also Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677 (1995) (arguing that blacks do not support disparate enforcement).

6. For lists of surveys and empirical research supporting this view, see JULIAN V. ROBERTS & LORETTA J. STALANS, *PUBLIC OPINION, CRIME, AND CRIMINAL JUSTICE* 127–54 (1997); KATHERYN K. RUSSELL, *THE COLOR OF CRIME* 26–46 (1998); Butler, *supra* note 5; William J. Stuntz, *Race Class, and Drugs*, 98 COLUM. L. REV. 1795, 1797 (1998).

7. A few recent incidents include the brutal assault on Abner Louima in a New York Police Department precinct bathroom, the racial profiling scandal of the New Jersey State troopers, and the extraordinary allegations of misconduct and criminal behavior in the Los Angeles Police Department’s anti-gang units and the NYPD’s street crimes units. Consider, for example, the recent scandal involving the LAPD’s Rampart Division anti-gang unit. The scandal involving allegations of beatings, unjustified shootings, lying under oath, manufacturing evidence and even drug dealing by officers in the anti-gang unit—known as a CRASH unit (for Community Resources Against Street Hoodlums)—is still unfolding. Thus far, fifteen officers already have been terminated and many more are under investigation (though the LAPD’s 362-page report on the scandal does not reveal the numbers). See BERNARD C. PARKS, *LAPD BOARD OF INQUIRY INTO THE RAMPART AREA CORRUPTION INCIDENT: PUBLIC REPORT* (Mar. 1, 2000). Additionally, Police Chief Bernard Parks abolished all of the city’s existing CRASH units. See Lou Cannon, *One Bad Cop*, N.Y. TIMES MAG., Oct. 1, 2000, at 32, 37.

8. The most publicized killing being the bullet-blazing shooting of unarmed Amadou Diallo and the most recent being the killing of Patrick Dorsimond, a black security guard who was reportedly shot

have noted that the general sense of police distrust among African Americans is giving way to “a demand . . . for higher levels of law-enforcement,”⁹—a demand that is supported by a new sense of equity and partnership achieved through growing minority political power in urban areas and new problem-oriented law enforcement approaches.¹⁰ These new approaches promise to give high-crime urban communities greater protection from criminal activity by vesting enforcement agencies with increased discretion. Proponents of this approach contend that law-abiding minorities in urban communities are willing to yield more discretionary powers to law enforcement because “the continued victimization of minorities at hands of criminals poses a much more significant threat to the well-being of minorities than does the risk of arbitrary mistreatment at the hands of the police.”¹¹

The urban frustration argument, however, has been challenged on several fronts, most notably for lacking empirical support.¹² There is no broad-based evidence showing that African Americans in higher-crime neighborhoods are willing to support increased police discretion and harsher sanctions as the urban frustration argument maintains.¹³ In fact, a

in a struggle following his indignant refusal to buy drugs from a police officer in an undercover buy-and-bust operation. Evidence of racially biased police encounters with black and Hispanic youth in New York City has been recently reported by the Office of the Attorney General of the State of New York. See ELIOT SPITZER, OFFICE OF THE N.Y. STATE ATTORNEY GEN., THE NEW YORK CITY POLICE DEPARTMENT’S “STOP AND FRISK” PRACTICES 92–110 (Dec. 1, 1999) [hereinafter “STOP AND FRISK”]; *infra* note 181 and accompanying text.

9. Dan M. Kahan & Tracey L. Meares, *The Coming Crisis of Criminal Procedure*, 86 GEO. L.J. 1153, 1163 (1998).

10. For an elaboration on the community- and problem-oriented law enforcement perspectives and policies, see Livingston, *supra* note 5.

11. Kahan & Meares, *supra* note 9, at 1166. “Indeed, the overwhelming support of inner-city residents for the elements of the new community policing is strong evidence that these laws are liberty enhancing on net.” *Id.* at 1182.

12. See Albert W. Alschuler & Stephen J. Schulhofer, *Antiquated Procedures or Bedrock Rights?: A Response to Professors Meares and Kahan*, 1998 U. CHI. LEGAL. F. 215, 215–16; David Cole, *The Paradox of Race and Crime: A Comment on Randall Kennedy’s “Politics of Distinction”*, 83 GEO. L.J. 2547 (1995); Jack R. Greene & Ralph B. Taylor, *Community-Based Policing and Foot Patrol: Issues of Theory and Evaluation*, in COMMUNITY POLICING: RHETORIC OR REALITY 195, 216 (Jack R. Greene & Stephen D. Mastrofski eds., 1988); Carol S. Steiker, *More Wrong Than Rights*, BOSTON REV., Apr.–May 1999, at 13; Gary Stewart, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 YALE L.J. 2249 (1997).

13. Several recent reports, however, suggest that African American distrust of the criminal justice system may not fully be shared by other minority groups. For example, a 1999 survey of citizen confidence in the court system, conducted by the research arm of the National Association of State Courts, showed that Hispanics expressed much more confidence in the courts than African Americans. See David B. Rottman & Alan J. Tomkins, *Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges*, CT. REV., Fall 1999, at 24, 26–27. Similarly, despite the recent Rampart police scandal, “[t]he predominantly Latino community of Rampart has been supportive of the

significant amount of survey data reveals little or no association between citizen support for the police and fear of victimization.¹⁴ With limited confirming evidence, the urban frustration argument remains largely anecdotal, for while urban minorities clearly seek protection from criminals, they (largely the victims of police harassment and abuse) are also wary of the police.¹⁵ The tension between controlling crime and police discretion is well expressed by one community member in the Bronx neighborhood where Amadou Diallo was shot:

We're grateful for a lot of what the police have done to bring down crime, and we realize most officers, like most residents of our community, are honest, hard-working citizens, . . . [b]ut people are being stopped for no reason, thrown against a fence and searched. Their cars are stopped without probable cause. . . . What some of the officers are doing is just creating an atmosphere of fear.¹⁶

This Article presents results from survey data of perceptions concerning the police and the legal system in order to make inferences about the desire for differential and discretionary legal enforcement among African Americans.¹⁷ Analysis of the data indicates, unsurprisingly, that

L.A.P.D." Cannon, *supra* note 7, at 62 (citing a 1997 poll by the Center for the Study of Los Angeles at Loyola Marymount University, which reported that Latinos had the highest regard for the police among all ethnic groups surveyed). Since the data used here are based on an African American sample, this Article focuses solely on the views of African Americans. The generalizability of any claims or observations to other minority groups is clearly a matter for debate.

14. This observation may be related to the finding that Americans generally have little confidence in the ability of the police to protect them from crime. See ROBERTS & STALANS, *supra* note 6, at 129–30.

15. See Sandra Lee Browning, Francis T. Cullen, Liqun Cao, Renee Kopache & Thomas J. Stevenson, *Race and Getting Hassled by the Police*, 17 POLICE STUD. 1, 8 (1994); Francis T. Cullen, Liqun Cao, James Frank & Robert H. Langworthy, "Stop or I'll Shoot": Racial Differences in Support for Police Use of Deadly Force, 39 AM. BEHAVIORAL. SCIENTIST 449 (1996) [hereinafter Cullen et al., "Stop"] (describing national poll data showing blacks as significantly more likely than whites to perceive police brutality and use of excessive force in their communities).

16. David Kocieniewski, *Success of Elite Police Unit Exact a Toll on the Streets*, N.Y. TIMES, Feb. 15, 1999, at A1 (quoting Francisco Gonzalez, district manager of Community Board No. 9).

17. The principal data source is the 1993–94 National Black Politics Survey—a nationwide survey of adult African Americans concerning their perceptions of politics, race, and religion. See MICHAEL DAWSON, RONALD BROWN, & JAMES S. JACKSON, NATIONAL BLACK POLITICS STUDY, 1993 (Inter-university Consortium for Political and Soc. Research No. 2018, Aug. 1998) [hereinafter NBPS]. For a useful summary of the data and sampling methodology in the survey, see MICHAEL C. DAWSON, RIAZ KHAN & JOHN BAUGHMAN, BLACK DISCONTENT: FINAL REPORT ON THE 1993–94 NATIONAL BLACK POLITICS STUDY (Center for the Study of Race Politics and Culture, University of Chicago Working Paper No. 1, 1996) [hereinafter NBPS SUMMARY]. The analysis also utilizes data from the 1995 National Opinion Survey of Crime and Justice for a mostly non-black reference group against which the results from the NBPS sample may be roughly compared. See TIMOTHY J. FLANAGAN & DENNIS R. LONGMIRE, NATIONAL OPINION SURVEY OF CRIME AND JUSTICE, 1995 (Inter-university

the majority of African Americans believe that the American legal system treats blacks unfairly. However, compared to their wealthier counterparts, *poor blacks are more likely to view the American legal system as fair.*¹⁸ In particular, African American respondents in the lowest income brackets are twice as likely as those in the highest income brackets to state that the legal system is fair.¹⁹ This “endorsement” of the American legal system by poor blacks does not necessarily imply a desire for disparate criminal enforcement in their communities—still, it is not inconsistent with that claim. The data also reveal a strong countervailing consideration: Poor blacks are more inclined to respond that the police behave “like just another gang.”²⁰ That poor blacks are inclined to view the police as gang-like, and yet are more likely to believe in the fairness of legal system, suggests that they may welcome heightened enforcement but not by means of expanding police discretion. This interpretation of the data is consistent with the fact that urban minorities are the likely victims of criminal behavior and police misconduct. Taken together, these findings hint at an understanding of African Americans’ desire for safety and fairness that balances increased police presence *with limited discretion*. In particular, expanded service-oriented patrols and heightened community involvement are plausibly more consistent with the desires of minorities in high-crime neighborhoods than a policy of unleashing special tactical units (e.g., gangs, guns or drugs)²¹ with limited guidance. For example, Herbert

Consortium for Political and Soc. Research No. 6720, Aug. 1995) [hereinafter NATIONAL OPINION SURVEY]. For a more detailed description of the surveys, see *infra* Part IV.A.

18. This result was not found among the non-black sample considered in this work. See *infra* Appendix, tbls.11–12.

19. There are nine income brackets in the NBPS. See NBPS, *supra* note 17, at Var. J16. This result is based on the probability of respondents in the lowest two brackets reporting that the legal system is fair compared to respondents in the highest two of the nine brackets.

20. NBPS, *supra* note 17, at Var. F24. This finding is supported by a growing literature that identifies a negative correlation between wealth and favorable perception of the police among blacks. See, e.g., Komanduri S. Murty, Julian B. Roebuck & Joann D. Smith, *The Image of the Police in Black Atlanta Communities*, 17 J. POLICE SCI. & ADMIN. 250, 254–55 (1990). “The perception of unethical police standards appears to be especially widespread among urban residents living in ghettos.” ROBERTS & STALANS, *supra* note 6, at 136 (citations omitted). Recent studies have begun to focus on the wealth of the neighborhood, rather than the wealth of the respondent, as a means of explaining the negative association between wealth and perception of the police. See, e.g., Ronald Weitzer, *Citizens’ Perceptions of Police Misconduct: Race and Neighborhood Context*, 16 JUST. Q. 819 (1999) (arguing the importance of neighborhood class in shaping residents’ perception of the police). Other studies have identified meaningful correlations between a neighborhood’s racial or class structure and perception of the police. See, e.g., Howard Schuman & Barry Gruenberg, *Dissatisfaction with City Services: Is Race an Important Factor?*, in PEOPLE AND POLITICS IN URBAN SOCIETY 369–72 (Harlan Hahn ed., 1972).

21. Such special tactical units include the discredited anti-gang (CRASH) units in the Rampart Division of the Los Angeles Police Department, the weapons removal team (Street Crimes) unit

Williams and Anthony Pate discuss several promising community-based policing mechanisms in their evaluation of various policing strategies in Newark, New Jersey.²² They found that increased quality of contact between citizens and police (such as door-to-door police visits in the neighborhood and other non-confrontational interactions with the community members) gave the police more opportunities to feel connected to the communities, learn about their desires, and better serve them.²³ "There is ample evidence among the data analyzed to suggest that this approach had significant, positive effects on the attitudes of residents exposed to it."²⁴

To explore further the implications of African Americans' views of the criminal justice system, arrest rates and reported crime figures were determined for each respondent's county using the Uniform Crime Reports (UCR).²⁵ These data suggest that favorable perceptions of the police are negatively correlated with arrest rates for the low-level offenses of vandalism and vagrancy.²⁶ That is, respondents are more likely to view the police as "gang-like" in communities with higher arrest rates for these offenses. On the other hand, the data show that favorable perceptions of the police are positively correlated with arrest rates for more serious

involved in the Amadou Diallo shooting, or the undercover drug unit involved in the Patrick Dorismond shooting.

22. See Hubert Williams & Antony M. Pate, *Returning to First Principles: Reducing the Fear of Crime in Newark*, 33 CRIME & DELINQ. 53 (1987).

23. Instead of arresting loitering youths, Newark implemented a creative solution: "[W]e saw the pride displayed by officers who solved the apparently disparate problems of loitering youth and a litter-strewn lot by obtaining financial assistance from local businesses to support a baseball team, and by having the team members clean up the littered lot on which they would play." *Id.* at 68. Of course, not all problems are so happily solved; some problems must be addressed by traditional crime prevention methods. However, increased community-police connections may open previously unconsidered and inexpensive options.

24. Williams & Pate, *supra* note 22, at 67-68. See also WESLEY G. SKOGAN, DISORDER AND DECLINE: CRIME AND THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS 109-24 (1990) (discussing the Police Foundation's evaluation of the Newark program).

25. The Uniform Crime Reporting Program provides data on arrests for so-called Part I offenses (which include murder, rape, robbery, aggravated assault, burglary, larceny, auto theft, and arson) and the Part II offenses of forgery, fraud, embezzlement, vandalism, weapons violations, sex offenses, drug and alcohol abuse violations, gambling, vagrancy, curfew violations, and runaways. See U.S. DEP'T OF JUSTICE & FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTING PROGRAM DATA [UNITED STATES]: COUNTY-LEVEL DETAILED ARREST AND OFFENSE DATA, 1996, at 1-4 (Inter-university Consortium for Political and Soc. Research No. 2389, 2d ed. Sept. 1998).

26. The results from this data are only suggestive because county-level arrest rates and reported crimes are at best a rough proxy for neighborhood crime and police action. I have sought to refine this analysis by using crime figures for the respondents' census tracts. See discussion *infra* Parts IV-V. See also Richard R.W. Brooks, Correlation Between Arrest Types and Community Perceptions of Legal Fairness: Implications for Quality of Life Policing (2000) (unpublished manuscript, on file with author).

offenses, such as violent crimes.²⁷ These findings point to a possible cost of increased police attention to low-level offenses that promote community disorganization²⁸ and invite more serious crimes²⁹—the so-called *order-maintenance* policy.³⁰ Though largely recognized as an effective crime-fighting tool, this policy has been criticized for intensifying community conflict with the police.³¹ As Wesley Skogan notes, “[e]nthusiasm for closer police attention is not universally shared.”³² Minorities in urban neighborhoods are often ambivalent about the police. While needing protection from crime, many distrust the police and see their order-maintenance efforts as bullying and fear producing.

How much of an impact should all of these findings have in the debate on asymmetric criminal enforcement in urban communities? Conspicuous findings, such as these, tend to carry a misleading amount of weight in popular debates, as is often the case with glaring, acontextually offered statistics and emotionally laden anecdotal accounts. One aim of this Article is to highlight the need for more research and investigation of an empirical nature. Ultimately, there are many stories that are consistent with the data presented here—some more plausible than others. The benefit of

27. Again, this result was not found among the non-black sample considered in this work.

28. For a rich discussion of the forms and extent of community disorder in urban neighborhoods, see SKOGAN, *supra* note 24.

29. See James Q. Wilson & George L. Kelling, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC MONTHLY, Mar. 1982, at 29, 31–32 (discussing the “broken windows” theory of crime escalation).

30. In a related finding, Cullen *et al.* observed that residents of disorganized neighborhoods were less supportive of the police’s use of deadly force. They reasoned that “[i]t is possible that these neighborhoods are the site of more police surveillance and negative citizen-police interactions, which may make the residents more suspicious of police power.” Cullen *et al.*, “Stop”, *supra* note 15, at 456. This reasoning is consistent with the findings of Krivo & Peterson, who show that extremely poor disadvantaged neighborhoods experience qualitatively higher levels of crime. See Lauren J. Krivo & Ruth D. Peterson, *Extremely Disadvantaged Neighborhoods and Urban Crime*, 75 SOC. FORCES 619 (1986). Higher levels of crime provide more opportunities for police-resident contact and conflict, which may lead to more negative views of the police.

31. There is evidence of increased police brutality and growing resentment toward such brutality following the implementation of policies to crack down on disorder in New York City. See Dan M. Kahan, *Privatizing Punishment: Strategies for Private Norm Enforcement in the Inner-City* (1999) (unpublished manuscript, on file with author). See also SKOGAN, *supra* note 24, at 15 (observing that “Wilson[] himself has spelled out how efforts by the police to maintain order can become a source of racial and class discrimination, when the definition of who is ‘orderly’ lies largely in the hands of the police.”)

32. SKOGAN, *supra* note 24, at 118. In their evaluation of the Newark programs, Williams & Pate found that the “‘Broken Windows’ approach to order maintenance and law enforcement . . . appeared to achieve none of its desired goals.” Williams & Pate, *supra* note 22, at 67. It should be noted that Skogan’s discussion of community policing programs in Newark suggests that residents felt that the police were not “stopping too many people without good reason” or being “too tough on people they stop.” SKOGAN, *supra* note 24, at 118.

this type of examination is not simply that it offers answers, but rather that it informs our questions. No causal claims are made in this analysis; this analysis highlights significant correlations only. With this qualification in mind, several important implications can be drawn from the data. First, the data do not suggest that poor urban blacks are prepared to waive their constitutional rights in order to reduce crime. Second, the skepticism and distrust expressed by blacks may signal a more general wave of lack of faith in the legal system by all citizens. In recent years, for instance, prosecutors have reported a trend among grand jurors of increasing their scrutiny of police testimony.³³ Understanding the source of distrust and skepticism among blacks—especially among middle class blacks who are most distrustful of the legal system—may provide insight into preventing a crisis of confidence in the police and the legal system. Third, if poor blacks have more confidence in the legal system than wealthier blacks have, then prosecutorial efforts to prevent jury nullification by removing poor blacks may actually increase jury bias. Fourth, by merging crime figures with attitudinal data regarding police, this work depicts an important though often dismissed cost of order-maintenance policing. Community tension with and distrust of police may rise with more aggressive policing of low-level offenses. Part I presents a brief review of the literature assessing African American desire for criminal enforcement. Part II places this work in the broader context of the debate over differential enforcement in urban minority communities. Part III describes a simple model of individual willingness to trade away constitutional protections for increased safety. This model is explored empirically in Part IV. That part begins with a discussion of the methodology and data used and closes with a presentation of the results, which are discussed in Part V. The conclusion offers a brief summary and a discussion of future research directions.

I. AFRICAN AMERICAN PERCEPTIONS OF RACIAL INJUSTICE IN THE AMERICAN LEGAL SYSTEM

Public opinion and attitudes on injustice and criminal law enforcement have been extensively studied. Researchers have sought to identify significant correlates of public opinions toward the police,³⁴ the courts,³⁵

33. See David Rohde, *Jurors' Trust in Police Erodes in Light of Diallo and Louima*, N.Y. TIMES, Mar. 9, 2000, at B1.

34. See, e.g., Timothy J. Flanagan & Michael S. Vaughn, *Public Opinion about Police Abuse of Force*, in POLICE VIOLENCE 113, 128 (William A. Geller & Hans Toch eds., 1996) (exploring public opinion about the police's use of force).

various legal sanctions,³⁶ and the legal system.³⁷ Surveys have consistently found that a nontrivial portion of the general population believes that the legal system treats minorities unfairly.³⁸ Researchers have also consistently found significantly greater level of perceived bias in the legal system among minorities.³⁹ In particular, African American perception of racial discrimination in criminal law enforcement has been consistently identified in empirical research and opinion polls.⁴⁰ To clarify the salient factors behind this perception, recent studies⁴¹ of African American crime concerns have noted that while blacks are more likely than the general population to view police brutality and harassment as a problem,⁴² they are also much more likely to perceive crime as a serious problem.⁴³ Thus blacks suffer from a “dual frustration”⁴⁴—being fearful of both the police and criminals. Additionally, Regina Austin identified cultural ambivalence when it comes to “black criminal behavior and the debates that it engenders.”⁴⁵ Tracey Meares also identified a complex set of issues

35. See, e.g., Timothy J. Flanagan, Edmund F. McGarrell & Edward J. Brown, *Public Perceptions of the Criminal Courts: The Role of Demographic and Related Attitudinal Variables*, 22 J. RES. CRIME & DELINQ. 66 (1985).

36. See, e.g., Phoebe C. Ellsworth & Lee Ross, *Public Opinion and Capital Punishment: A Close Examination of the Views of Abolitionists and Retentionists*, 29 CRIME & DELINQ. 116 (1983) (presenting data on public's view of the death penalty); Austin Sarat & Neil Vidmar, *Public Opinion, the Death Penalty, and the Eighth Amendment: Testing the Marshall Hypothesis*, 1976 WIS. L. REV. 171.

37. See, e.g., TOM. R. TYLER, *WHY PEOPLE OBEY THE LAW* (1990).

38. See, e.g., NATIONAL OPINION SURVEY, *supra* note 17.

39. See DAVID H. BAYLEY & HAROLD MENDELSON, *MINORITIES AND THE POLICE: CONFRONTATION IN AMERICA* 42 (1969); ROBERTS & STALANS, *supra* note 6, at 173–75; Ronald Weitzer, *Racial Discrimination in the Criminal Justice System: Findings and Problems in the Literature*, 24 J. CRIM. JUST. 309 (1996).

40. See John Hagan & Celesta Albonetti, *Race, Class, and the Perception of Criminal Justice in America*, 88 AM. J. SOC. 329 (1982); Cormarae R. Mann & William Wilbanks, *Racism in the Criminal Justice System: Two Sides of the Controversy*, in *CRIMINAL JUSTICE: CONCEPTS AND ISSUES* (Chris W. Eskridge ed., 2d ed. 1996); Charles W. Peek, George D. Lowe & Jon P. Alston, *Race and Attitudes Towards Local Police: Another Look*, 18 J. BLACK STUD. 361, 361 (1981); Steven A. Tuch & Ronald Weitzer, *Racial Differences in Attitudes Towards the Police*, 61 PUB. OPINION Q. 642 (1997).

41. See, e.g., KATHERINE MCFATE, *JOINT CTR. FOR POLITICAL AND ECON. STUDIES*, 1996 NATIONAL OPINION POLL: SOCIAL ATTITUDES.

42. See Flanagan & Vaughn, *supra* note 34; Browning et al., *supra* note 15; Cullen et al., “*Stop*,” *supra* note 15.

43. See DOJ, *PERCEPTIONS OF NEIGHBORHOOD CRIME*, *supra* note 2.

44. See Michael A. Fletcher, *Study Tracks Blacks' Crime Concerns: African Americans Show Less Confidence in System, Favor Stiff Penalties*, WASH. POST, Apr. 21, 1996, at A11.

45. Regina Austin, “*The Black Community, Its Lawbreakers, and a Politics of Identification*,” 65 S. CAL. L. REV. 1769, 1770 (1992). A considerable amount of literature, going back several decades, has also identified ambivalence among the general public's view of law enforcement. See Flanagan & Vaughn, *supra* note 34.

underlying African American desire for tough criminal enforcement.⁴⁶ While these works highlight the complexity of assessing African American attitudes on criminal justice, other research provides insight into interpreting results. For example, rather than treating the fairness finding as an “endorsement” of the American legal system by poor blacks, it may be appropriate to interpret this finding as black middle class disenchantment with the system. Heightened disenchantment among better-off blacks has been identified in many institutional settings.⁴⁷ Evidence of black-middle-class distrust of the legal system has been documented by scholars for some time.⁴⁸ The research presented here extends these works by introducing new theories and data to explain the phenomenon of black-middle-class disenchantment.

II. COMMUNITY PREFERENCE FOR DIFFERENTIAL ENFORCEMENT

Lowering standards for arrests and convictions may lower crime rates, but at what cost? Amy Farmer and Dek Terrell argue that reduced standards in high-crime neighborhoods and the resulting inequality in arrest and conviction rates may be optimal for a society that cares about both controlling crime and assuring fairness.⁴⁹ Farmer and Terrell further claim that urban minorities who are concerned with crime and victimization

46. Using 1987 General Social Survey (GSS) data, Meares evaluated African American support for laws that treat drug offenders harshly, and found evidence supportive of “dual frustration” or ambivalence. See Meares, *Lessons*, *supra* note 5, at 156–64.

47. See ELLIS COSE, *RAGE OF A PRIVILEGED CLASS* (1994); MICHAEL C. DAWSON, *BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS* (1994); ; NBPS SUMMARY, *supra* note 17; JENNIFER L. HOCHSCHILD, *FACING UP TO THE AMERICAN DREAM: RACE, CLASS, AND THE SOUL OF THE NATION* (1995); HOWARD SCHUMAN, CHARLOTTE STEEH, LAWRENCE BOBO & MARIA KRYSAN, *RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS* (1997). For further discussion, see *infra* Part V.

48. See Hagan & Albonetti, *supra* note 40; Raymond J. Murphy & James W. Watson, *The Structure of Discontent: Relationship Between Social Structure, Grievance, and Riot Support*, in *THE LOS ANGELES RIOTS: A SOCIO-PSYCHOLOGICAL STUDY* 140 (Nathan Cohen ed., 1970); Peek, et al., *supra* note 40; Walter J. Raine, *The Perception of Police Brutality in South Central Los Angeles*, in *THE LOS ANGELES RIOTS: A SOCIO-PSYCHOLOGICAL STUDY* 380 (Nathan Cohen ed., 1970); Ronald Weitzer & Steven A. Tuch, *Race, Class and Perceptions of Discrimination by the Police*, 45 *CRIME & DELINQ.* 494, (1999); Scot Wortley, John Hagan & Ross Macmillan, *Just des(s)ert? The Racial Polarization of Perceptions of Criminal Injustice*, 31 *L. & SOC'Y REV.* 637, 649 (1997). For further discussion, see *infra* Part V.

49. “Results [of their model] using F.B.I. data indicate an upper bound of inequality where innocent black Americans are five times more likely to be convicted of a violent crime than innocent white Americans.” Amy Farmer & Dek Terrell, *Crime Versus Justice: Is There a Tradeoff?* 29 (1999) (unpublished manuscript, on file with author).

“might even prefer more inequality in the justice system.”⁵⁰ This claim is simply a restatement of the urban frustration argument—an argument that is currently being used to promote heightened sanctions and expanded police discretion in urban minority communities. Roughly, the argument maintains that the majority of law-abiding residents in these communities welcome (or *should* welcome) disparate enforcement policies even at the expense of certain civil liberties: Poor high-crime communities are willing to trade away civil liberties in order to assure the provision of more basic needs, such as decent housing, fewer gangs and incidents of gang-related violence, better education for their children, drug-free neighborhoods and so forth.

Federal drug enforcement policies provide an apposite application of the argument. Consider the sentencing disparity between crack cocaine (crack) and powder cocaine, the so-called 100-to-1 rule.⁵¹ Under this rule, someone charged with the offense of possession with intent to distribute 50 grams of crack faces the same mandatory prison sentence as someone charged with possession with intent to distribute 100 times more powder cocaine (i.e., 5,000 grams). Since crack distribution is concentrated in urban communities, the 100-to-1 rule has resulted in higher incarceration rates and significantly longer prison terms for African American drug law offenders.⁵² Thus, some opponents of the rule have labeled it racist—if not in design, then in implementation. However, Kate Stith has argued that rather than working against the interest of African Americans, the 100-to-1 rule disproportionately benefits black communities. Stith claims that these communities benefit from stringent enforcement of crack cocaine laws because such enforcement removes criminal offenders from the neighborhood for longer periods of time and provides greater deterrence for prospective dealers.⁵³ Stith and others argue that poor blacks living in urban drug-devastated communities should welcome the heightened enforcement. Proponents of this view, such as Kennedy, further assert that judges, scholars and casual observers who condemn the consequential race-based disparity for criminal defendants are missing the big picture: “In [their] zeal to protect that mainly black pool of persons convicted of crack

50. *Id.* Farmer & Terrell do acknowledge in a footnote that the opposite also may occur. *See id.* at 30 n.17.

51. *See* 21 U.S.C. § 841 (1994).

52. *See* Paul Butler, (*Color*) *Blind Faith: The Tragedy of Race, Crime, and the Law*, 111 HARV. L. REV. 1270, 1276 (1998) (citing the U.S. Sentencing Commission and noting that in 1993 blacks comprised 88.3% of federal crack convictions, while whites comprised only 4.1%. Whites on the other hand comprised 32% of federal powder cocaine convictions, while blacks made up 27.4%).

53. *See* Stith, *supra* note 5, at 153.

offenses, [they] almost completely ignore[] those, also mainly black, who must share space on streets and in buildings with crack traffickers.”⁵⁴

Another application of the urban frustration argument can be found among the commentaries in favor of the Chicago Housing Authority’s (CHA) former building search policy.⁵⁵ The search policy, which allowed for mass searches of public housing units without probable cause, was reported to have the support of the overwhelming majority of the public housing residents. Supporters of the policy viewed it as an appropriate and necessary response to rampant shootings and lawlessness in the housing projects. To highlight this view, Meares and Kahan note that “in one four-day period near [the time the policy was put in place], the police recorded more than 300 gun-fire incidents in the Robert Taylor Homes and Stateway Gardens projects.”⁵⁶ Thus, when the American Civil Liberties Union (ACLU) challenged the CHA’s building search policy on the grounds that it violated the constitutional rights of the residents, “an overwhelming majority of the residents *opposed* the ACLU’s effort to block the building searches.”⁵⁷

Residents of urban communities have also resisted efforts to promote “their” constitutional rights over their desire to establish exclusively black male public schools.⁵⁸ Confronted with the failure of current models used to educate young black males, some proponents of gender- and race-segregated public schools are willing to trade away the constitutional rights that many of them fought for decades earlier in order to achieve better educational results.

Debates over urban youth curfews have also triggered application of the urban frustration argument. Perhaps the most compelling recent contribution to the contentious debate over the desirability and constitutionality of discretionary legal enforcement in high-crime minority communities involves so-called gang-loitering laws and the use of civil injunctions to restrict gang members from congregating in public spaces.⁵⁹ Consider, for example, Chicago’s controversial “Gang Congregation Ordinance,”⁶⁰ which allowed the police to disperse any loitering⁶¹ group of

54. KENNEDY, *supra* note 5, at 375.

55. *See Pratt v. Chicago Hous. Auth.*, 848 F. Supp. 792 (N.D. Ill. 1994) (striking down the housing authority’s building search policy on Fourth Amendment grounds).

56. Tracey L. Meares & Dan M. Kahan, *When Rights Are Wrong*, BOSTON REV., Apr.–May 1999, at 4, 4.

57. *Id.*

58. *See* Margaret A. Burnham, *Twice Victimized*, BOSTON REV., Apr.–May 1999, at 16.

59. *See* Livingston, *supra* note 5.

60. CHICAGO, ILL., MUN. CODE § 8-4-015 (1992).

persons in the presence of a suspected gang member. According to the Illinois Supreme Court in *City of Chicago v. Morales*, the ordinance gave the police unconstitutionally broad enforcement discretion.⁶² Meares and Kahan assert that discretionary enforcement should be allowed because the local community, overwhelmed by gangs and drug-related crimes, sponsored and broadly supported the ordinance.⁶³ In addition to local sponsorship and support, Meares and Kahan maintain that the “(courts) should have upheld the gang-loitering ordinance” because adequate safeguards were in place,⁶⁴ and because incentive alignment between the supporters of the ordinance and those likely to be burdened by it operated to prevent misuse of discretion.⁶⁵ They, and others scholars, such as Debra Livingston,⁶⁶ distinguish *current* discretionary law enforcement approaches from those of the 1960s and 1970s that the U.S. Supreme Court deemed as failing to meet constitutional standards.⁶⁷ Meares and Kahan suggest that courts should respect a (high-crime) community’s desire to strike an appropriate balance between broadened police powers and safety when that community internalizes the burden of expanded police discretion,⁶⁸ and when the community’s interests are sufficiently represented through political and legal institutions. They cite the increase in African American political participation and the fact that “African-Americans today make up a significant percentage of all urban police departments”⁶⁹ as evidence that safeguards were in place to protect against abuse of discretion under the

61. Loitering is defined as remaining in any one place with no apparent purpose. *See id.*

62. 687 N.E.2d 53 (Ill. 1997), *aff’d*, 527 U.S. 41 (1999).

63. *See* Meares & Kahan, *supra* note 56, at 8. *See also* Meares & Kahan, *supra* note 5, at 197–213 (maintaining that there continues to be strong community support for the ordinance).

64. Kahan & Meares, *supra* note 9, at 1183. These safeguards include political accountability to African Americans in Chicago and increasing numbers of black police officers serving in the Chicago Police Department. *See id.*

65. *See id.* at 1182–83. “Far from being the target of these new law-enforcement strategies, inner-city minority residents are now their primary sponsors.” *Id.* at 1154. “[T]here is no natural antagonism between the supporters of community policing and those who bear the coercive incidence of curfews, anti-loitering laws and the like.” *Id.* at 1168.

66. *See* Livingston, *supra* note 5, at 595–627.

67. *See, e.g.,* Papachristou v. City of Jacksonville, 405 U.S. 156 (1972) (illustrating the void-for-vagueness doctrine).

68. Kahan & Meares present a very interesting burden internalization test for determining when courts should defer to identified community standards in evaluating liberty constraining laws: “[A]ssuming the law is one that affects the average citizen in a meaningful way, she *can* determine through introspection whether the norms that fuel the regulated conduct are welcome or unwelcome.” Kahan & Meares, *supra* note 9, at 1182. However, even if one agrees that the average citizen sufficiently internalizes the costs of the policy, it is not obvious that she is the appropriate arbiter. Also, the problem of ascertaining the distribution of community standards in order to identify this average citizen remains.

69. *Id.* at 1162.

ordinance. Supporting this position, Justice Thomas, in his dissenting opinion in *Morales*, issued the same criticism to opponents of the gang-loitering ordinance that Randall Kennedy delivered to opponents of the 100-to-1 rule:

Today, the Court focuses extensively on the “rights” of gang members and their companions. It can safely do so—the people who will have to live with the consequences of today’s opinion do not live in our neighborhoods. Rather, the people who will suffer from our lofty pronouncements are people . . . who have seen their neighborhoods literally destroyed by gangs and violence and drugs.⁷⁰

To be sure, disparately harsh punishments for crack-cocaine offenses, discretionary police enforcement of gang ordinances, curfews, and mass building searches all differ in meaningful ways—there are probably more differences than similarities among these law enforcement policies.⁷¹ Still, all of these policies have been promoted with the claim that black communities support expanded enforcement in order to combat the rampant crime in central city neighborhoods. However, the claim of overwhelming black support for (and benefit from) differential legal enforcement has been contested.⁷² For example, Meares and Kahan’s claims of strong community support for Chicago’s gang-loitering ordinance have been challenged by Albert Alschuler and Stephen Schulhofer: “The truth is that the anti-loitering ordinance was intensely controversial, . . . and that to the extent one can identify any predominant view, Chicago’s anti-loitering ordinance was opposed by the very groups that Meares and Kahan identify as its principal supporters.”⁷³

70. *Morales*, 527 U.S. at 114–15 (Thomas, J., dissenting).

71. Meares & Kahan focus on community involvement and pay deference to community policing and order-maintenance strategies to support the expanded use of gang-loitering laws, youth curfews and building searches. See *Meares and Kahan Respond*, BOSTON REV., Apr.–May 1999, at 22, 22–23. “In many cities where violent crime has declined—including New York and Boston—order-maintenance policing strategies similar to the ones we are defending deserve at least part of the credit.” *Id.* at 22 n.1 (citation omitted). On the other hand, the 100-to-1 rule for crack and powder cocaine was largely motivated by a “get tough on crime” policy that, according to some of its critics, had predictably detrimental consequences for the communities in which the laws operated.

72. David Cole has criticized Kennedy for not providing more than anecdotal evidence in support of his claim. See David Cole, *The Paradox Race and Crime: A Comment on Randall Kennedy’s “Politics of Distinction”*, 83 GEO. L.J. 2547, 2560–62 (1995). Meares challenged commentators on both sides of that debate to provide empirical support for their claims. See Meares, *Lessons*, *supra* note 5, at 137.

73. Alschuler & Schulhofer, *supra* note 12, at 215–16 (1998). Meares and Kahan’s claims of adequate community representation through the political process and in law enforcement agencies have also been challenged by many other scholars. See Alan M. Dershowitz, *Rights & Interests*, BOSTON REV., Apr.–May 1999, at 10; Joel F. Handler, *It’s Not So Simple*, BOSTON REV., Apr.–May 1999, at 12;

The remainder of this work focuses on the issue of community support for differential policies and expanded police discretion to combat gangs and neighborhood crime. Results from this research may be interpreted as providing some empirical evidence for the urban frustration argument. This evidence, however, does not by itself support an expansion of discretionary and differentially harsh legal enforcement in poor urban communities. First, it must be noted that a large majority of African Americans across most surveys tend to view the American criminal justice system as unfair to African Americans.⁷⁴ It is among the minority of respondents,⁷⁵ who believe that the legal system is fair, where disproportionately strong support is identified among the poor. Second, survey data show that poor blacks are more likely to view the police as gang-like themselves, rather than as an important solution to gang violence. Taken together, this evidence reveals the difficulty in identifying broad-based support for differential enforcement in poor urban communities. The data suggest that there is disproportionate support for, or at least belief in, legal institutions among poor blacks. However, the data do not support (even inferentially) the notion that the majority of poor urban blacks support expanded police powers to reduce gang violence and crime.⁷⁶

Furthermore, this work does not maintain that high-crime urban communities should or should not receive differential enforcement. There are, arguably, many reasons to support broadened criminal enforcement in high-crime urban communities. For example, the social harm from under-enforcement may be greater because crime in these communities affects more people or because there is more violence associated with it;⁷⁷ or the

Steiker, *supra* note 12; Jeremy Waldron, *Inalienable Rights*, BOSTON REV., Apr.–May 1999, at 18; Franklin E. Zimring, *Mystery Terms*, BOSTON REV., Apr.–May 1999, at 17.

74. This claim is well documented in the research literature concerning public opinion polls on criminal justice over a number of years. See generally Flanagan et al., *supra* note 35; Peek et al., *supra* note 40; Stuntz, *supra* note 6, at 1797 n.6; Weitzer & Tuch, *supra* note 48, at 494, 498; Ronald Weitzer & Steven A. Tuch, *The Polls-Trends: Racial Differences in Attitudes Toward the Police*, 61 PUB. OPINION Q. 642 (1997).

75. Typically between 15% and 30% of respondents in most surveys concerning the legal system. See sources cited *supra* note 74.

76. Indeed, there is reason to believe that urban blacks wish to restrict, rather than expand, police discretion. The police assaults on Rodney King, Abner Louima, and Amadou Diallo resonate in the cultural psyche of Americans generally and African Americans in particular. These accounts, along with widespread reports of the random police traffic stops for the offense of “Driving While Black” and accepted folklore of commonplace police abuse of blacks present a high barrier for police officials to overcome.

77. Stuntz uses a class-based model, rather than a race-based one, to suggest that lower-class criminal markets “almost certainly cause more social harm” and “tend to be more violent than their upper-class equivalents.” Stuntz, *supra* note 6, at 1799. See also Kennedy, *supra* note 5, at 1263–64.

police may find enforcement easier in poor urban communities;⁷⁸ or a long history of under-enforcement and police neglect might mandate greater attention to these communities.⁷⁹ There are also, arguably, many reasons not to support harsher criminal enforcement in high-crime urban communities. For example, the criminal justice system may already be too biased against black criminal defendants to tolerate any more discretion at their expense;⁸⁰ or differential enforcement, no matter how sensible or well intended, might substantially weaken the normative force of our criminal laws;⁸¹ or a more nuanced equal protection doctrine based on effect as well as purpose is required.⁸² These competing arguments, in addition to rival constitutional interpretations,⁸³ may continue to frame this important debate. Yet, the argument for expansion of differential enforcement based on the claim that these “communities” desire such a policy (i.e., the urban frustration argument) is not supported by the data presented here.

III. MODEL OF INDIVIDUAL'S WILLINGNESS TO TRADE RIGHTS

This section describes a simple model of a community resident's willingness to trade constitutional protections for aggressive policing.⁸⁴

78. See MICHAEL TONRY, *MALIGN NEGLECT—RACE, CRIME, AND PUNISHMENT IN AMERICA* 105–06 (1995) (noting that arrests are easier in socially disorganized neighborhoods because illegal activity occurs on the streets rather than indoors, and that undercover narcotics officers find easier acceptance into these neighborhood due to the social disorganization of the community).

79. Randall Keunedy argues that under-enforcement in the black community has denied blacks equal treatment under the law. See Randall Keunedy, *McClesky v. Kemp: Race, Capital Punishment, and the Supreme Court*, 101 HARV. L. REV. 1388 (1988); Keunedy, *supra* note 5, at 1259. See also Stephen L. Carter, *When Victims Happen to be Black*, 97 YALE L.J. 420 (1988).

80. Butler calls for black jury nullification for certain non-violent crimes. See Butler, *supra* note 5, at 677.

81. See Stuntz, *supra* note 6, at 1800–01.

82. See David A. Sklansky, *Cocaine, Race, and Equal Protection*, 47 STAN. L. REV. 1283, 1318–19 (1995) (arguing that equal protection ought to weigh against policies leading to racially disparate effects).

83. Regarding the constitutionality of differential enforcement for crack and powder cocaine, the Minnesota Supreme Court affirmed a trial court's ruling that the state's crack cocaine-powder cocaine sentencing disparity violated the state constitution. See *State v. Russell*, 477 N.W.2d 886 (Minn. 1991). Cf. *United States v. Armstrong*, 517 U.S. 456 (1996) (dismissing claims of racial discrimination in the selection of federal crack cocaine prosecutions). For discussion of the constitutionality of broad discretionary enforcement in high-crime urban areas, see *supra* notes 59–70 and accompanying text. Compare *People ex rel. Gallo v. Acuna*, 929 P.2d 596 (Cal. 1997), in which the California Supreme Court determined that an ordinance prohibiting gang members from appearing with other gang members did not violate First Amendment rights of association nor was it void for vagueness. See California Street Terrorism Enforcement and Prevention (STEP) Act, CAL. PENAL CODE § 186.20 (West 1988).

84. Though much of the previous discussion is couched in terms of communities' desires, this model uses the individual resident as the basic unit of analysis. No means of aggregating individual

Assume that more aggressive policing reduces crime and increases the resident's perceived and actual level of safety, the first commodity of interest. Assume further that more aggressive policing requires that the resident sacrifice some portion of her bundle of constitutional protections and rights, the second commodity of interest.⁸⁵ Let $U(r, s)$ represent the resident's utility from rights (r) and safety (s).⁸⁶ Figure 1 depicts an indifference curve for this resident, U_A . At the point A, the resident enjoys a high level of safety, \bar{s} , and the current level of constitutional protections and rights, r^* .

preferences to form community preferences are presented, since such a discussion is well beyond the scope of this work. This limitation is a greater problem for the urban frustration argument than for the model. That is, there is a tremendous difference between what an individual chooses and what a neighborhood chooses—just as there is a tremendous difference between what a neighborhood chooses and what a nation chooses. For a commentary on the implication of this choice for the urban frustration argument, see Dershowitz, *supra* note 73. Regardless of how individual preferences are aggregated, the model will show that there is no a priori justification to believe that residents in high-crime neighborhoods are more willing than those in low-crime neighborhoods to sacrifice individual liberties to bring about a reduction in crime.

85. These are simplifying assumptions made only to motivate the discussion. One can certainly imagine more aggressive policing leading to a decreased sense of safety. It is also possible that aggressive policing need not interfere with citizens' rights, at least over some range.

86. The standard assumptions of convexity, monotonicity, completeness, and transitivity are taken as granted.

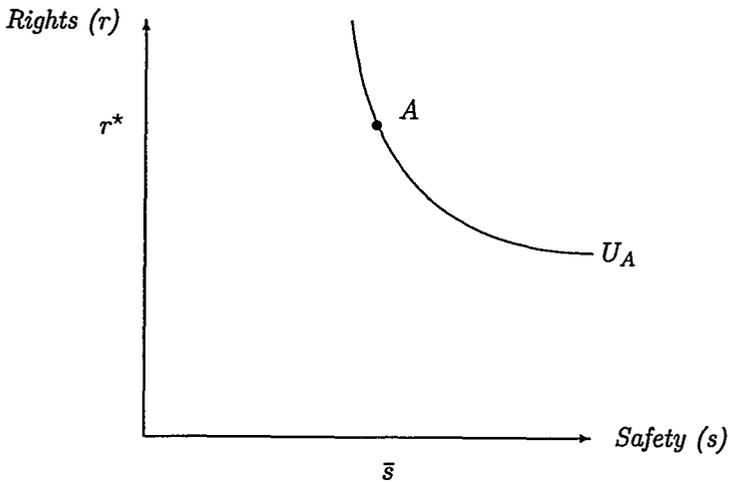


FIGURE 1

The slope of U_A at the point A captures the individual's marginal willingness to trade rights for safety. Now consider the individual's preferences at a lower level of safety, \bar{s} , and the same level of rights. This bundle is represented by the point B in Figure 2.

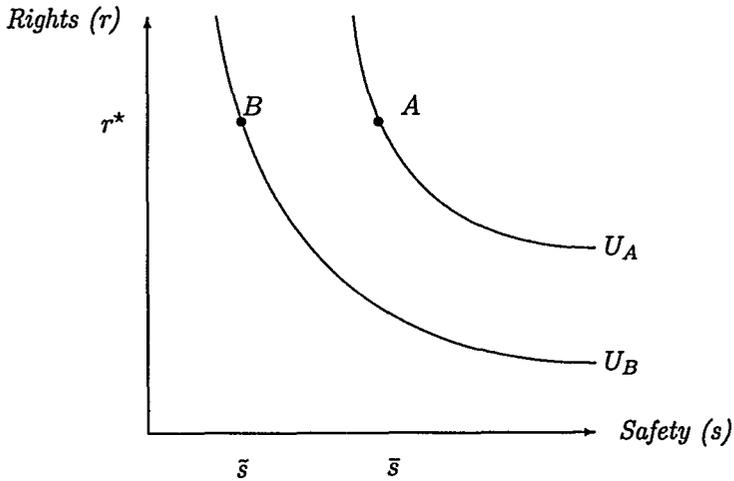


FIGURE 2

The claim that a resident in a high-crime area is more willing to sacrifice constitutional protections can be interpreted as a higher marginal willingness to trade rights for safety at point *B* than at point *A*. However, the two parallel lines in Figure 3 (one tangent to U_A at *A* and the other tangent to U_B at *B*) graphically show that the marginal willingness to trade rights for safety at *B* need not be greater than at *A*.⁸⁷

87. While (quasilinear) preferences of this sort may be a theoretical curiosity, it is reasonable to imagine that altruism or distaste for police discretion and abuse may lead law-abiding residents to prefer more constitutional protections as the crime rate increases. Thus the marginal willingness to trade rights for safety may fall, stay the same, or rise when moving to point *B* from point *A*.

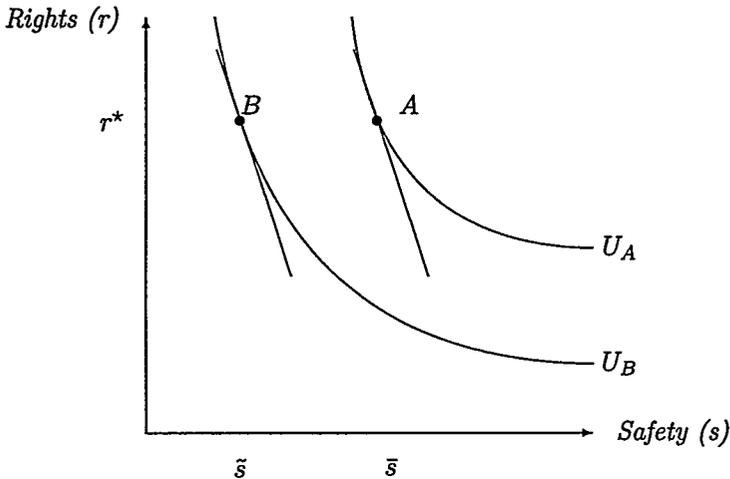


FIGURE 3

Of course, individuals make choices based on prices as well as preferences. Introducing differential prices for assuring rights and providing safety in high-crime and low-crime communities may lead the resident to make very different choices. Indeed, the price of aggressive policing may be lower in a poor high-crime community⁸⁸ or the price of assuring rights may be greater in these communities.⁸⁹ Under these circumstances, the resident may choose a weaker bundle of rights for increased safety. However, as discussed in Part II above, arguments in favor of expanded enforcement in high-crime neighborhoods based on price and cost considerations are not the same as arguments in favor of increased enforcement based on preferences and marginal willingness to substitute rights for safety. Whether residents in high-crime communities have a greater willingness to trade away certain rights to assure their safety is an empirical question—not a theoretical one. Unfortunately, these are communities for which there has traditionally been little data. When included in surveys, their numbers are often too few to make reliable

88. See TONRY, *supra* note 78, at 105–06.

89. William Stuntz observes that crimes in poor, high-crime neighborhoods are likely to be more violent and generate greater social costs. See Stuntz, *supra* note 6, at 1796. Therefore, assuring individual rights at the expense of retaining this greater social cost implies a higher price for assurance of constitutional protections compared to the price of such assurances in communities with less crime.

statistical inferences. Using what data are available, the following parts seek to explore the relationship between African American preferences to feel safe from crime and their willingness to expand police discretion thereby limiting their individual rights. It should be acknowledged at this point that the data do not allow direct investigation of minority stated preferences to trade rights for safety. The data and analysis merely provide a window into these preferences by looking at trends among responses to questions about the legal system and the police. The results that follow do not settle the empirical question, they only lay out some important considerations and suggest certain plausible interpretations.

IV. METHODOLOGY & RESULTS

This part first describes the data and presents basic summary statistics. After discussing sources of potential bias, the results of the empirical model are presented. A probit model is used to estimate the likelihood and statistical significance of respondents stating that “the American legal system treats everyone fairly,” based on income, other demographic indicators, and county-level arrest rates.⁹⁰ The marginal effects from the probit models are presented. Similar models are used to evaluate respondents’ views of the police.

A. THE DATA

This analysis is primarily based on survey responses taken from the 1993–94 National Black Politics Study (NBPS).⁹¹ The sample of the NBPS was obtained from a probability sample of all black households in the United States. Two sub-samples of equal size were created in order to assure representation of the general population. The first sub-sample was generated using random-digit dialing, while the second sub-sample focused on Census tracts with 30% or more black residents. “The demographic differences between the two sub-samples are negligible—in almost every respect they appear identical.”⁹² The response rate was 65%. Telephone interviews of approximately forty-five minutes in length were completed for 1206 respondents. The two main areas of interest pursued in the survey were black political and religious ideologies. The respondents also

90. Though only probit results are presented in the paper, the data were also evaluated using logit and linear probability models. Unsurprisingly, the results are consistent (with respect to direction, magnitude and significance) across all three models.

91. The study was administered through the University of Chicago, with principal investigators Michael Dawson, Ronald Brown, and James S. Jackson. See NBPS, *supra* note 17.

92. See NBPS SUMMARY, *supra* note 17, at 10.

provided information on gender, race, class, and various other demographic indicators. There are two questions of principal focus in this study. The first asked the respondents to choose which one of the following two statements most accurately reflects their opinion:

Generally the American legal system treats all groups fairly; OR
 The American legal system is unfair to blacks.

The second question asked respondents to decide which of the following two statements most accurately reflects their opinion:

The police are an important part of stopping gang violence; OR
 The police are too much like just another gang to stop gang violence.

Table 1. Income Distribution and Urbanization of Respondents

Obs.	Family Income	Obs.	Location	Code
152	Less than \$10,000	96	Rural	0.00
126	\$10,000–\$15,000	89	Small town	0.25
139	\$15,000–\$20,000	167	Small city	0.50
123	\$20,000–\$25,000	177	Suburb	0.75
118	\$25,000–\$30,000	673	Large city	1.00
162	\$30,000–\$40,000			
110	\$40,000–\$50,000			
117	\$50,000–\$75,000			
66	More than \$75,000			
93	Missing	4	Missing	
1113	Total valid cases	1202	Total valid cases	

The NBPS was expanded to include county-level per capita arrest rates and reported crimes for each respondent using the Uniform Crime Reporting Program (UCR), which provides data on arrests for Part I offenses—i.e., murder, rape, robbery, aggravated assault, burglary, larceny, auto theft, and arson—and Part II offenses—i.e., forgery, fraud, embezzlement, vandalism, weapons violations, sex offenses, drug and alcohol abuse violations, gambling, vagrancy, curfew violations, and runaways.

Table 2. Table of Summary Statistics

Variable	Obs.	Mean	Std. Dev.	Min.	Max.
Age	1136	42.8	16.1	18	88
Income	1113	0.46	0.31	0	1
Education	1199	12.94	3.24	0	26
Urbanization	1202	0.76	0.33	0	1
% black in census tract	1183	73%	30%	0%	100%
Female	781				
Male	425				

The analysis utilizes data from the 1995 National Opinion Survey of Crime and Justice (C&J95) in order to provide a non-black reference group against which the results from the NBPS sample may be roughly compared. The C&J95 is a random-sampled national survey of 1,005 adults in the continental United States, focusing on crime and the legal system.⁹³ As with most surveys employing a random-sampling design of the general population, the number of African Americans in the sample is quite small (i.e., 77 or 7.6% of the total).⁹⁴ The analysis results of C&J95 are presented in the Appendix.

B. THE BASIC REGRESSION MODEL

The basic regression equations use the perception of the *Legal System as Unfair* and *The Police as Gang-like* as dependent variables and a subset of the following Right Hand Side (RHS) terms:

$$\alpha + \beta_1 \text{Age} + \beta_2 \text{Urbanization} + \beta_3 \text{Income} + \beta_4 \text{Education} + \beta_5 \text{Gender} + \beta_6 \text{Pblack} + \beta_7 \text{Professional} + \beta_8 \text{Information-Networks} + \beta_9 \text{Crime} + \varepsilon,$$

where α is a constant and ε is the error term. The first six independent variables are fairly straightforward and are described in Table 2 (*Pblack* represents the estimated percentage of the respondent's census tract that was black in 1991). *Children* is a dichotomous variable equal to one if there are children under age eighteen living in the respondent's household

93. See NATIONAL OPINION SURVEY, *supra* note 17.

94. See *id.*, PART 2: NATIONAL DATA. The response rate was 65%. Interviews were conducted by telephone. For more information on this survey see *id.*

and zero otherwise; likewise, *Professional* is equal to one if the respondent described her main occupation as professional or technical and zero otherwise. *Information-Networks* is a composite of responses concerning the respondents' connection to various black media, such as black newspapers, magazines, television, and radio programs. The variable *Crime* represents county-level per capita arrests and reported crimes for various offenses.

C. ISSUES OF BIAS

Justice Thurgood Marshall observed that “[w]hile a public opinion poll obviously is of some assistance in indicating public acceptance or rejection of a specific penalty, its utility cannot be very great.”⁹⁵ The utility of the opinion polls used in this study ought to be appraised critically. The most critical issue is the generalizability of the responses and results from the NBPS or any given opinion poll of this kind: (1) Are the respondents representative of the population? (2) Did respondents and the survey designers share the same understanding of the survey questions? (3) Assuming that the respondents are representative and that there existed a shared understanding of the notions of “fairness” and “legal system,” how much ought we trust attitudes that vary across surveys and change over time?

Surveys are uncertain instruments. The methodology for generating a sample for the survey may create significant bias in the results of the survey. As mentioned previously, the NBPS sample was in part determined randomly and in part based on neighborhoods with high African American concentration. No significant differences between the two parts were identified, suggesting that the sampling methodology did not generate a biased sample.⁹⁶ Even when the sample is fairly representative of the general population, bias may arise from interpretive miscues of the interviewers, the respondents or both.⁹⁷ For example, significant bias has been shown to occur when the race of the interviewer and the race of the respondent do not match.⁹⁸ In order to minimize interviewer bias and elicit more open responses, the interviewers who

95. *Furman v. Georgia*, 408 U.S. 238, 361 (1972) (Marshall, J., concurring) (citation omitted).

96. The nature of the interview, however, probably introduced some bias. That is, the sample represents African Americans with telephones, where at least one adult in the household was home and willing to go through a 45-minute interview.

97. See L. M. Sanders, *What is Whiteness? Race-of-Interviewer Effects When All the Interviewers Are Black* (1995) (unpublished manuscript, on file with author).

98. See SCHUMAN ET AL., *supra* note 47, at 87–90.

administered the NBPS survey were all African American. Still, the problem of respondent interpretive bias is always present. It is impossible to know with certainty what the respondent is responding to in a survey.

1. *Response bias: "the legal system"*

For African Americans (if not the whole country) the two most observed legal battles of the early 1990s were the Rodney King police brutality case and the O.J. Simpson double-murder trial. The timing of the NBPS survey was post-Rodney King and pre-O.J. Simpson. This fact may have meaning for the interpretation of the term "the legal system." Parties could interpret "the legal system" as law enforcement by the police or judicial enforcement in the courts or some combination of the two.⁹⁹ The court cases involving Rodney King brought new popular attention to the American judiciary, but it was the Rodney King videotape which captured and focused worldwide attention on American police enforcement in urban areas. Therefore, it is a reasonable concern that the respondents may have been more inclined to interpret "the legal system" as police enforcement. One might attempt to deal with this interpretive bias by considering the correlation between viewing the police as like another gang and viewing the legal system as unfair. Table 3 shows the cross tabulation between this "police gang-like" question and the question about the fairness of the legal system.

While these responses are highly correlated, some disaggregation of the meaning of "legal system" may still be reached. As can be seen in Table 3, nearly half of the respondents felt that the police were part of the solution, whereas 83% felt the legal system is unfair to blacks. Thirty-five percent of those respondents who stated that the legal system is fair also stated that the police behaved like a gang. These respondents may reasonably be assumed to be referring to the court system when stating that the legal system is fair.

99. Of course, "the legal system" could further include legislators, the executive branch, and regulation through administrative agencies. However, this work considers police enforcement and judicial enforcement practically exhaustive.

Table 3. Simple Cross-tabulation of Respondents' View of Legal System & Police

	Police Like Gang	Police Imp. Solution	Total
Legal system fair	64 (35%)	118 (65%)	182 (17%)
Legal system unfair	470 (57%)	358 (43%)	828 (83%)
Total	534 (53%)	476 (47%)	1010 (100%)

2. Response bias: "fairness"

Political scientists and legal scholars have long argued that the perception of unequal treatment is the single most important source of dissatisfaction with the American legal system.¹⁰⁰ Empirical research on fairness of the legal system supports the notion that Americans generally agree on notions of fairness and criminal justice.¹⁰¹ Specifically, Tom Tyler has persuasively argued that when it comes to evaluating the fairness of the legal system, Americans focus on procedures rather than on outcomes.¹⁰² Tyler also found "no evidence that different types of people think differently about the meaning of procedural fairness."¹⁰³ That is, differences in age, gender, race, income, and education did not generate differences in how the individuals in Tyler's study understood fairness. Thus, although we cannot be certain that the respondents and the survey administrators share the same notions of fairness, Tyler's work provides

100. See Austin Sarat, *Studying American Legal Culture: An Assessment of Survey Evidence*, 11 L. & SOC'Y REV. 427 (1977).

101. See MICHAEL R. GOTTFREDSON & TRAVIS HIRSCHI, A GENERAL THEORY OF CRIME (1990); Sally Engle Merry, *Everyday Understandings of the Law in Working-Class America*, 13 AM. ETHNOLOGIST 253, 253 (1986); Joseph Sanders & V. Lee Hamilton, *Is There a "Common Law" of Responsibility?*, 11 L. & HUM. BEHAV. 277, 294 (1987).

102. See TYLER, *supra* note 37, at 107-08. Tyler argues that (i) consensus on fairness in a pluralistic society is more easily formed on procedure than on outcomes and (ii) bounded rationality prohibits the use of outcomes as a measure of fairness. This focus on procedural fairness may help explain why better-off blacks, who have achieved "good outcomes," are less likely to say that the American legal system is fair compared to poor blacks, whose outcomes are less successful. If better-off blacks perceive more unequal treatment, they will continue to view the American legal system as unfair regardless of any individual gains that are made. For an elaboration of this point, see *infra* Part V.

103. TYLER, *supra* note 37, at 142.

convincing theoretical and empirical evidence to indicate that they do. There is one caveat, however, to the claim that respondents had the same idea of fairness. Tyler observes that individuals may have different procedural fairness requirements for the police and the courts.¹⁰⁴ As previously discussed, some respondents may have perceived “the legal system” as courts, while others perceive “the legal system” as the police, or some combination of the courts and police. Given this potential difference in the understanding of “the legal system” (and differing procedural fairness requirements for the courts and the police) the parties may have understood fairness differently as well.

D. RESULTS

The principal result here is that higher-income blacks are more likely than poor blacks to perceive the legal system as unfair to blacks. Table 4 shows the distribution by family income categories of NBPS respondents who perceive the legal system as fair to all groups. The declining percentages in the third column of this table reveal a clear negative association between family income and perception of fairness in the legal system. That is, respondents in higher-income categories tend to view the legal system as more biased against blacks. Using this baseline association as a point of departure, the correlation between perceptions of fairness in the legal system and family income is estimated by controlling for a host of socio-demographic variables. In addition to *Family Income* in nine categories, other respondents' characteristics controlled for include *Age* (in years), *Urbanization*,¹⁰⁵ *Gender* (coded zero-one, where female is one), *Education* (measured as highest year of education),¹⁰⁶ *Professional* (a proxy for occupational prestige coded zero-one, where one represents more prestige), and *Information Networks* (a continuous measure from zero to one of connectedness to various black media). Neighborhood characteristics, such as the percentage of the neighborhood that is black (*Pblack*) and county-level arrest rates for various offenses are also

104. *See id.* at 104.

105. Urbanization is controlled for in five categories and is scaled from zero (rural) to one (large city).

106. Five separate measures of education were considered in this analysis: 1) those with and without high school degrees (including GEDs); 2) those with and without some college education; 3) those with and without a college degree; 4) education level in eight categories from zero years of formal education to college-educated; and finally 5) highest year of formal education, which is reported. All of the education measures lead to qualitatively the same results in terms of the sign of the coefficient, statistical significance, and effect on the other covariates.

controlled. Estimates for these covariates were generated using a probit model.

Table 4. Respondents' Perception of Fairness in Legal System by Income

Family Income	No. of Obs.	View Legal System as Fair
Less than \$10,000	133	19.5%
\$10,000–\$15,000	121	25.6%
\$15,000–\$20,000	129	15.5%
\$20,000–\$25,000	111	19.8%
\$25,000–\$30,000	109	15.6%
\$30,000–\$40,000	152	16.4%
\$40,000–\$50,000	103	13.6%
\$50,000–\$75,000	111	11.7%
More than \$75,000	61	11.5%

Table 5 shows the probit marginal effects for the dependent variable of viewing the American legal system as unfair. In Models 1, 2, and 3 the *Age* coefficient is small and negative, though significant. Thus, all else being equal, reducing the respondent's age will slightly increase the probability of that person believing that the legal system is unfair to blacks.

Table 5. Factors Correlated with Belief that Legal System is Unfair^a

Variable	Model 1 Df/dx^b	Model 2 dF/dx	Model 3 dF/dx
Age	-0.002** (0.001)	-0.002** (0.001)	-0.002* (0.001)
Urbanization	-0.002 (0.010)	-0.002 (0.010)	-0.005 (0.011)
Family Income	0.012** (0.005)	0.012** (0.006)	0.012** (0.006)
Education	0.004 (0.004)	0.003 (0.004)	0.004 (0.004)
Gender	0.028 (0.027)	0.014 (0.027)	0.014 (0.027)
Pblack	0.028 (0.043)	0.007 (0.043)	0.007 (0.043)
Professional	—	0.057* (0.029)	0.057* (0.029)
Violent Crimes ^c	—	—	0.002 (0.016)
Drug Sales ^d	—	—	0.003 (0.013)
Vagrancy	—	—	0.000 (0.014)
Vandalism	—	—	0.017 (0.015)
Number of Observations	882	800	800
Standard Errors in Parentheses			
* Significant at 5% level			
** Significant at 1% level			

a. Probit marginal effects where the dependent variable is equal to one if respondent stated that legal system is unfair to blacks and zero otherwise—missing cases not included.

b. Derivatives of probit coefficients evaluated at the means. Due to rounding, significance levels may appear to differ from actual significance, as reflected by asterisks.

c. Defined as murder, rape, robberies, and aggravated assaults. The crime figures are based on county-level arrests per capita. The marginal effects represent the change in the probability (from the mean) of stating that the legal system is unfair to blacks given an increase of one standard deviation of the choice variable.

d. Arrests for sale or manufacturing of marijuana, synthetic narcotics, cocaine, opium (and derivatives morphine, heroin, and codeine) as well as other dangerous non-narcotic drugs.

On the other hand, the *Family Income* coefficient is positive and statistically significant at the 5% level. To characterize this relationship roughly, one might say that moving up one income bracket increases the likelihood that a respondent will view the legal system as unfair by

approximately 1.5% to 2%.¹⁰⁷ Two percent is a nontrivial increase given the little room left for growth when starting from about an 80% likelihood of viewing the legal system as unfair. That is, the maximum possible increase is approximately 20%, and moving up one income bracket produces 7.5% to 10% of the maximum possible change. The *Professional* coefficient (in Models 2 and 3) is also positive and statistically significant. Thus, controlling for various demographic indices, respondents with professional employment and higher incomes are significantly more likely to view the legal system as unfair.¹⁰⁸ This significant relationship does not hold in the non-black sample of the C&J95.¹⁰⁹

Table 6 shows the marginal effects for the dependent variable of viewing the police as gang-like. In Model 1, the *Age* and *Family Income* coefficients are negative and significant. That is, younger respondents are more likely to view the police as gang-like than are poor respondents. In Models 2 and 3, the *Age* and *Family Income* are again statistically significant—in addition to *Information Networks*. The *Information Networks* variable has a positive coefficient, suggesting that respondents who identified themselves as having a strong connection to various black media are more likely to view the police as gang-like. Observe that in Model 3, the *Violent Crimes* coefficient is negative and significant, implying that higher arrest rates for violent offenses are associated with more favorable views of the police.¹¹⁰ On the other hand, the coefficients for the *Vagrancy* and *Vandalism* variables are positive and significant. That is, higher arrest rates for these offenses are significantly correlated with more negative views of the police.

107. The marginals for the family income coefficient were calculated at the mean, as well as lower and higher values. The 0.012 value reflects the calculation at the mean. The effect is stronger for movements from lower income brackets. That is, going up one bracket from a lower income bracket increases the likelihood of the respondent viewing the legal system as unfair more than going up one bracket from a higher income bracket.

108. An alternative model might look at the relationship between socio-economic status (SES) and belief that the legal system is unfair. Sociologists frequently use weighted measures of income, education and professional status to determine SES. Using SES (as opposed to individual regressors for income, education, and professional status) generally produces more powerful results because of collinearity among the regressors. Since significance was found for two of the three regressors in the same model, one can infer even more confidence in their significance.

109. See *infra* Appendix, tbls.11–12. For this non-black sample *Age* and *Education* were statistically significant correlates with the perception that the courts are biased against minorities and that the police are unfair; younger and more educated respondents tended to view the courts and police unfavorably.

110. The same is true for Total Reported Crimes (not shown).

Table 6. Factors Correlated with Belief that the Police are Gang-like^a

Variable	Model 1 <i>dF/dx</i> ^b	Model 2 <i>dF/dx</i>	Model 3 <i>DF/dx</i>
Age	-0.004*** (0.001)	-0.003** (0.001)	-0.003** (0.001)
Urbanization	-0.012 (0.013)	-0.019 (0.013)	-0.025 (0.015)
Family Income	-0.018** (0.007)	-0.022** (0.008)	-0.024** (0.008)
Education	0.005 (0.006)	0.005 (0.006)	0.007 (0.006)
Gender	0.019 (0.035)	0.022 (0.036)	0.017 (0.036)
Pblack	0.011 (0.058)	0.028 (0.059)	0.026 (0.059)
Information Networks	—	0.261*** (0.080)	0.250** (0.080)
Violent Crimes ^c	—	—	-0.052** (0.021)
Drug Sale ^d	—	—	-0.020 (0.018)
Vagrancy	—	—	0.064*** (0.019)
Vandalism	—	—	0.044** (0.020)
Number of Observations	895	882	882
Standard Errors in Parentheses			
• Significant at 10% level			
** Significant at 5% level			
*** Significant at 1% level			

a. Probit marginal effects where the dependent variable is equal to one if respondent stated that police are like just another gang and zero if respondent stated that police are an important part of stopping gang violence.

b. Derivatives of probit coefficients evaluated at the means. Due to rounding, significance levels may appear to differ from actual significance, as reflected by asterisks.

c. Defined as murder, rape, robberies, and aggravated assaults. The figures are based on county-level arrests per capita. The marginal effects represent the change in the probability (from the mean) of stating that the police are gang-like given an increase of one standard deviation of the choice variable.

d. Arrests for the sale or manufacture of marijuana, synthetic narcotics, cocaine, opium (and derivatives morphine, heroin, codeine) as well as other dangerous non-narcotic drugs.

Comparing the results from Tables 5 and 6, it is interesting to note that better-off blacks are more distrustful of the legal system, while poorer blacks are more distrustful of the police. These results are highly

consistent with a host of empirical studies in this area and will be further addressed in the following part.

At this point, however, Table 7 provides some insight into the matter by presenting a cross-tabulation of the police question and the legal system question in two broad family income categories, namely those with family incomes at or below the range of \$25,000 to \$30,000 and those above this range.¹¹¹ The first row of the table indicates that conditional on viewing the legal system as fair to all groups, respondents in the higher income categories are very likely to view the police as an important part of the solution to gang violence (i.e., 76% important solution to 24% gang-like.) Respondents in the lower income categories were more evenly split on their views of the police conditional on viewing the legal system as fair to all groups (i.e., 60% important solution to 40% gang-like).

Table 7. Respondents' View of Legal System & Police in Two Income Categories

View of Legal Sys.	Income ≤ \$25,000–\$30,000		Income > \$25,000–\$30,000	
	View the Police As: Like Gang	Important Solution	View the Police As: Like Gang	Important Solution
Fair	40%	60%	24%	76%
Unfair	61%	39%	52%	48%

On the other hand, conditional on viewing the legal system as unfair, variance in differences between respondents in the higher income categories (i.e., 48% important solution to 52% gang-like) and respondents in the lower income categories (i.e., 39% important solution to 61% gang-like) is substantially smaller. Wealthier blacks who view the legal system as fair are much more likely to hold consistently positive views of the police as well.¹¹²

111. The bracket of \$25,000 to \$30,000 was selected because it is the median family income bracket for the sample.

112. Perhaps because richer blacks live in safer neighborhoods and witness less police-citizen conflict, their view of the legal system is less likely to inform their confidence in the ability of the police to stop gang violence.

By reversing Table 7 we can gain further insight into the association between the legal system and police questions. Table 8 also presents the police question and the legal system question in two broad family income categories. However, now the perception of the police is represented in the rows, and responses to legal system question are captured in the columns. The first row of this table indicates that conditional on viewing the police an important solution to gang violence, 73% of poorer blacks state that the legal system is unfair compared to 27% who state that the legal system is fair. For wealthier blacks, the figures are 79% and 21%, respectively. The second row of figures shows that conditional on viewing the police as gang-like, 86% of poorer blacks view the legal system as unfair and 14% view it as fair. Ninety-three percent of wealthier blacks view the legal system as unfair (conditional on believing that the police are too much like another gang) while only 7% view it as fair. So poorer respondents who view the police as gang-like are twice as likely to view the legal system as fair (14% versus 7%). It may be that poorer respondents view the legal system (perhaps the courts) as a recourse to the "gang-like" police. Counting on the legal system to correct dishonest street-level enforcement, poor African Americans may simultaneously be more favorable in their assessment of the legal system while more disparaging of the police. On the other hand, better-off blacks—perhaps possessing more knowledge about the legal system generally and less about police behavior in poor urban neighborhoods—may be marginally more inclined to maintain the opposite views.

Table 8. Respondents' View of the Police & Legal System in Two Income Categories

	Income ≤ \$25,000–\$30,000		Income > \$25,000–\$30,000	
View of Police	View the Legal System As:		View the Legal System As:	
	Unfair	Fair	Unfair	Fair
Important Solution	73%	27%	79%	21%
Gang-Like	86%	14%	93%	7%

V. DISCUSSION OF DATA

In *Rage of a Privileged Class*, Ellis Cose presents a narrative description of a phenomenon broadly supported by more quantitative sources: the black middle and upper-middle class (who, by almost all accounts, have made tremendous gains under the American economic, legal, and political system) express greater discontent about “the system” than do poor blacks, who increasingly find themselves more impoverished, less represented, and less protected from crime.¹¹³ Numerous analyses of survey data point to the same conclusion. Hochschild observes that well-off blacks are more likely than poor blacks to agree that “American society is racist” and are less likely to believe in the “American Dream.”¹¹⁴ Michael Dawson finds that affluent blacks are more likely than poor blacks to view the economic condition of blacks as “much worse than whites.”¹¹⁵ Schuman, Steeh, Bobo, and Kryson note that “it is middle-class blacks who express the most impatience with the pace of civil rights activity.”¹¹⁶ With respect to perceptions of criminal injustice, Hagan and Albonetti find that blacks in professional positions are more likely to believe that the American legal system is unfair to blacks.¹¹⁷ Wortley, Hagan, and Macmillan find a similar result for well-educated blacks in Canada.¹¹⁸ Finally, Weitzer and Tuch have recently reported that better-educated blacks are more critical of the criminal justice system.¹¹⁹ This catalogue of black-middle-class discontent directs attention to the question of why better-off blacks express more dissatisfaction with the legal system.¹²⁰ The

113. See COSE, *supra* note 47, at 1–9.

114. See HOCHSCHILD, *supra* note 47, at 73. Hochschild indicates that not only are these findings consistent across surveys, they are largely consistent over the last twenty years. See *id.* at 80–81.

115. See DAWSON, *supra* note 47. For a general discussion of surveyed African American discontent, see NBPS SUMMARY, *supra* note 17.

116. SCHUMAN ET AL., *supra* note 47, at 271.

117. See Hagan & Albonetti, *supra* note 40, at 352. This finding has been observed by other researchers as well. See Murphy & Watson, *supra* note 48; Peek et al., *supra* note 40; Raine, *supra* note 48.

118. See Wortley et al., *supra* note 48.

119. See Weitzer & Tuch, *supra* note 48.

120. Heightened middle class perception of ethnic discrimination has also been identified among other ethnic groups. A study of 500 respondents from six ethnic groups (Irish, Jews, blacks, Cubans, Dominicans and Puerto Ricans) in New York City found that “[a]mong all groups, it is the middle-class respondents that tend to perceive ethnic bias in city government and their groups as the victims of this bias.” Robert C. Smith, *Sources of Urban Ethnic Politics: A Comparison of Alternative Explanations*, 5 RES. RACE & ETHNIC REL. 159, 183 (1993). While higher-income minorities perceive more bias, there is no strong indication that high-income whites share the same perception. For example, Hagan & Albonetti found that higher SES whites were not more likely to perceive criminal injustice. See Hagan & Albonetti, *supra* note 40, at 351–52. The data analyzed in this Article also show that higher-income white respondents were not inclined to express a perception of racial or ethnic bias in the legal system.

discussion below addresses this question by presenting several possible explanations under two broad categories: differences in perception and differences in treatment and experiences.

A. DIFFERENCES IN PERCEPTION

Individuals witnessing the same event often reach different conclusions or focus on different aspects of the event. This phenomenon may underlie the observed differences between the better-off and the poor respondents in this study. The source of this phenomenon might be understood as being driven by relative deprivation, heightened sensitivity or both.

1. *Relative deprivation*

A century ago, Alexis de Tocqueville observed that successful Americans are “restless in the midst of abundance.”¹²¹ This observation may aptly be made about successful African Americans today, and perhaps the cause of the discontent is the same. Tocqueville conjectured that professional access promotes discontent:

When all the privileges of birth and fortune are abolished, when all professions are accessible to all, . . . [a man] will readily persuade himself that he is born to no vulgar destinies.

. . . .

. . . [M]en easily attain a certain equality of conditions [but] they can never attain the equality they desire.

. . . .

. . . [This causes] that strange melancholy which oftentimes will haunt [them] in the midst of their abundance¹²²

Hochschild advances a notably similar conjecture to explain the present discontent among successful blacks: “[O]nce the formal barriers of racial discrimination are mostly dismantled[,] then one is tempted to anticipate more and more success, even if less and less reasonably. . . . [People] run the risk of becoming more dissatisfied as they

Education, however, is an important mitigating factor. That is, more educated whites, controlling for income, were more inclined to perceive racial bias in the court system. *See id.* at 351. *See also infra* Appendix, tbl.12.

121. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 145 (Arlington House 1966) (1835) (“At first sight there is something surprising in this strange unrest of so many happy men The spectacle itself, however, is as old as the world . . .”).

122. *Id.* at 146–47.

become more successful.”¹²³ That is, because of their history of success, middle class and upper class blacks maintain higher expectations both of themselves and their environment than do poor blacks.¹²⁴ Additionally, well-off blacks expect more class privilege. Given these high expectations, better-off blacks experience greater levels of personal disappointment when the legal, economic or political system fails to support their expectations. Sociologists refer to this phenomenon as relative deprivation—i.e., successful blacks perceive their individual outcomes adversely relative to their high personal expectations.¹²⁵ Ellis Cose frequently encountered this phenomenon in his survey of the black professional class:

“Here I am, a black man who has done all the things I was supposed to do,” he said and proceeded to tick off precisely what he had done: gone to Harvard, labored for years to make his mark in an elite law firm, married a highly motivated woman who herself had an advanced degree and a lucrative career. He and his wife were in the process of raising three exemplary children. . . . Yet he was far from fulfilled.¹²⁶

Runciman provides a useful dichotomy in the theory of relative deprivation: egoistical (or personal) deprivation and fraternal (or group) deprivation. Personal relative deprivation refers to the perception that one’s outcome is viewed negatively compared to one’s reference group.¹²⁷ When one’s reference group as a whole is perceived as deprived compared to other groups, that phenomenon is referred to as group relative deprivation.¹²⁸ This dichotomy helps to explain why better-off and poor blacks differ in their assessment of the legal system. First, low-income African Americans may be more inclined to restrict their frame of reference to their immediate community when evaluating their outcomes. Their restricted frame results from having fewer reference groups against which to compare their outcomes. Therefore, poor blacks in homogeneous

123. HOCHSCHILD, *supra* note 47, at 102.

124. *See id.* at 102–05. The author presents this argument and cites survey and experimental data to support the claim. *See id.* DeCarufel’s analysis provides a useful explanation of this apparent paradox. Namely, improvement in one’s situation leads to rising expectations and more relative deprivation when bad outcomes are realized. *See* Andre deCarufel, *Factors Affecting the Evaluation of Improvement: The Role of Normative Standards and Allocator Resources*, 37 J. PERSONALITY & SOC. PSYCHOL. 847, 856–57.

125. *See* W.G. RUNCIMAN, *RELATIVE DEPRIVATION AND SOCIAL JUSTICE: A STUDY OF ATTITUDES TO SOCIAL INEQUALITY IN TWENTIETH-CENTURY ENGLAND* (1966); James A. Davis, *A Formal Interpretation of the Theory of Relative Deprivation*, 22 *SOCIOMETRY* 280 (1959).

126. COSE, *supra* note 47, at 49 (quoting interviewee).

127. *See* RUNCIMAN, *supra* note 125, at 34, 50.

128. *See* James M. Olson & J. Douglas Hazlewood, *Relative Deprivation and Social Comparison: An Integrative Perspective*, in *RELATIVE DEPRIVATION AND SOCIAL COMPARISON* 1, 4–6 (James M. Olson et al. eds., 1986) [hereinafter *RELATIVE DEPRIVATION AND SOCIAL COMPARISON*].

communities may be more likely to focus on personal relative deprivation with a narrowly defined reference group of other blacks in their community. Scholars have highlighted this point in discussing why poor people appear more tolerant of injustice.¹²⁹

Middle-class blacks, however, are more focused on group relative deprivation. Scholars speculate that better-off blacks are more concerned about the status of blacks compared to other groups as opposed to maintaining a strictly black reference group. As middle-class African Americans achieve more success at home, in schools, and in the workplace, situations involving a strictly black reference group become less available. These successful blacks develop multiple reference groups, which allow them to compare more easily their outcomes to whites and other racial groups. Thus, despite achieving good individual outcomes, they continue to feel deprived as long as blacks as a whole fare poorly.¹³⁰

2. Heightened sensitivity

In addition to a greater propensity to make adverse assessments based on comparisons to similarly situated whites, successful blacks may be more sensitive to race-based differential treatment due to environmental factors. This sensitivity might develop from discrimination and other negative experiences in integrated workplace settings. For example, Erik Wright observed that income discrimination may be greatest among the black professional-managerial class.¹³¹ Using this observation, Hagan and Albonetti speculate that the members of this class “who perceive income discrimination may be sensitive to the perception of injustice elsewhere as well.”¹³² African Americans in integrated (or mostly white) residential or workplace settings may have more occasions to observe racial bias. Such experiences place middle-class and upper-class blacks in a constant state of

129. See Joanne Martin, *The Tolerance of Injustice*, in RELATIVE DEPRIVATION AND SOCIAL COMPARISON, *supra* note 128, at 217, 217–21. For related discussion, see Judith M. Blau & Peter M. Blau, *The Cost of Inequality: Metropolitan Structure and Violent Crime*, 47 AM. SOC. REV. 114 (1982) and the follow-up study by Steven F. Messner, *Economic Discrimination and Societal Homicide Rates: Further Evidence on the Cost of Inequality*, 54 AM. SOC. REV. 597 (1989) that discusses the role played by relative deprivation and economic inequality in one’s tolerance for crime and violence.

130. For a discussion of this point and the role it plays in collective action among the black middle class, see Ronald P. Abeles, *Relative Deprivation, Rising Expectations and Black Militancy*, 32 J. SOC. ISSUES 119, 120 (1976).

131. See Erik Olin Wright, *Race, Class and Income Inequality*, 83 AM. J. SOC. 1368, 1387–88 (1978).

132. Hagan & Albonetti, *supra* note 40, at 352.

alert with respect to differential treatment.¹³³ Often this bias is not obvious to casual observers. Scholars and lay commentators have noted that race-based differential treatment is often quite subtle—petty indignities or the so-called micro-inequities—but not unobservable to blacks attuned to it.¹³⁴

On the other hand, poor African Americans living and working in racially homogeneous environments may view the American legal system as harsh, but believe it is that way for everyone. In this sense the narrow frame of reference of their immediate neighborhood isn't chosen by the individuals, so much as it is determined by their experiences. One might thus conclude that blacks living in high-minority-concentrated central city neighborhoods are less able to identify racial bias given their environmental constraints. Nancy Apple and David O'Brien, however, provide evidence indicating a significant negative correlation between the concentration of blacks in a neighborhood and black individuals' attitudes toward the police.¹³⁵ In other words, as the number of blacks in a neighborhood increases, blacks in that neighborhood are less likely to view the police favorably.¹³⁶ Apple and O'Brien speculate that increasing the number of blacks in a neighborhood allows for more opportunities "for blacks to associate with others who have negative attitudes toward the police, [resulting] in an overall increase in the negative sentiment toward the police."¹³⁷ Of course, police behavior itself may be affected by increased concentration of blacks in a given neighborhood—or at least affected by factors correlated with increased black concentration in a neighborhood. That is, the police may behave less well when the number of blacks in a neighborhood increases. This issue notwithstanding, the findings of Apple and O'Brien are not entirely inconsistent with the heightened-sensitivity model, since the respondents in their study commented on the "quality of police protection" and not necessarily racial bias by the police or the legal system generally. Apple and O'Brien may have captured the sentiment that the police are tough or unfair to all individuals in the neighborhood. Indeed, as the concentration of blacks in the neighborhood increases, there are fewer opportunities to witness

133. Routine traffic stops of blacks driving in established neighborhoods, where white drivers pass unobstructed, provide an illustration of this mechanism.

134. See HOCHSCHILD, *supra* note 47, at 114–17; Mark Whitaker, *White & Black Lies*, NEWSWEEK, Nov. 15, 1993, at 52, 54.

135. See Nancy Apple & David J. O'Brien, *Neighborhood Racial Composition and Residents' Evaluation of Police Performance*, 11 J. POLICE SCI. & ADMIN. 76, 83 (1983).

136. This relationship was less clear for whites in the same neighborhood with higher black concentration. See *id.*

137. *Id.*

differential treatment to others. Therefore blacks in high-concentration black neighborhoods may be less able to identify racially biased treatment.¹³⁸

B. EXPERIENCED DIFFERENCES

While the section above focused on differences in perceptions of racial bias in the legal system between better-off and poor blacks, the discussion now turns to actual differences in the treatment that these two groups receive. A separate discussion of actual differences is not intended to suggest that it is mutually exclusive of differences in perceptions of racial bias. In fact, there is every reason to expect that these phenomena are inextricably connected.

1. *Linked-fate/dire-fate*

The “linked-fate/dire-fate” argument maintains that better-off blacks bear the costs of racially biased legal enforcement in urban areas, but experience none of the benefits. Experiencing few or no benefits from differentially harsh enforcement, better-off blacks may be more willing to critique the American legal system as unfair. This argument begins with the observation that well-off, more-educated blacks tend to exhibit greater race consciousness than other groups¹³⁹ and are likely to maintain a connection and sense of responsibility to urban black culture.¹⁴⁰

138. It is important to note that this argument is not based on the often-cited but infrequently supported “subculture of violence” hypothesis. See MARVIN E. WOLFGANG & FRANCO FERRACUTI, *THE SUBCULTURE OF VIOLENCE: TOWARDS AN INTEGRATED THEORY IN CRIMINOLOGY* (1967). This hypothesis maintains that individuals in highly violent environments learn to accept violence as a part of life. This hypothesis has been used to suggest that blacks in high-crime neighborhoods are more tolerant of violence from other citizens and possibly from the police. However, numerous studies indicate that blacks in poor high-crime neighborhoods are much more likely to report a perception of police mistreatment, suggesting that they are not entirely complacent with the level of police violence. It may be that these blacks are accustomed to observing violence, but the overall perception of police mistreatment is still too strong to be dismissed. Additionally, the black subculture of violence hypothesis has been challenged by studies showing that whites are more likely to approve of violence. See Liqun Cao, Anthony Adams & Vickie J. Jensen, *A Test of the Black Subculture of Violence Thesis: A Research Note*, 35 *CRIMINOLOGY* 367, 373 (1997).

139. See MARY R. JACKMAN & ROBERT W. JACKMAN, *CLASS AWARENESS IN THE UNITED STATES* (1983). But cf. Richard L. Allen, Michael C. Dawson & Ronald E. Brown, *A Schema-Based Approach to Modeling an African-American Racial Belief System*, 83 *AM. POL. SCI. REV.*, 421, 435–36 (1989); Clifford L. Broman, Harold W. Neighbors & James S. Jackson, *Racial Group Identification Among Black Adults*, 67 *SOC. FORCES* 146 (1988); David H. Demo & Michael Hughes, *Socialization and Racial Identity Among Black Americans*, 53 *SOC. PSYCHOL. Q.* 364 (1990).

140. See Richard R.W. Brooks, *Hold-outs & Holymen in Bronzeville: Race, Religion and Development on Chicago’s South Side 5* (June 1, 2000) (unpublished manuscript, on file with author).

Additionally, better-off blacks have a strong sense that their fate is linked to the black community.¹⁴¹ Furthermore, some studies suggest that ethnic groups are more aligned in their view of criminal justice than class groups.¹⁴² Thus the views of injustice held by the black middle and upper classes may be largely informed by the perceived experiences of poor blacks in “the black community.”¹⁴³ However, since middle- and upper-class blacks do not live in neighborhoods where they face the same dire fate as poor urban blacks, they do not directly appreciate the benefit of reduced crime rates due to racially uneven, perhaps unfair law enforcement policies.¹⁴⁴ Therefore, these African Americans may maintain a more negative view of criminal enforcement and American justice. On the other hand, since harsh policies directed at black criminal defendants may reduce crime in their neighborhoods, poor urban blacks tend to discount any procedural unfairness when evaluating tough criminal enforcement. Therefore, this group of African Americans may maintain a more positive view of the American legal system. This claim is supported by the study of Robert Boeckmann and Tom Tyler, which found that “instrumental fears about the dangers that people pose” were a primary factor underlying willingness to deny procedural protections to potential law breakers.¹⁴⁵ Other cognitive research has highlighted instances where perceptions of injustice collide with pragmatic self-serving choices. Daryl Bem found that individuals in these instances may adjust their notions of justice, “rather than live with stressful inconsistency between their beliefs and their behaviors.”¹⁴⁶ Finally, William Julius Wilson’s thesis concerning the

141. See DAWSON, *supra* note 47, at 81–84. One might ask why middle- and upper-class blacks view their fate as linked with black criminal defendants and not with black victims of crime. A possible answer to this question may be found in the earlier discussion of group-versus-personal relative deprivation. That is, better-off blacks, being more focused on how blacks are faring relative to whites, are more troubled by the disparate arrests and imprisonment of black criminal defendants through largely white institutions. While black-on-black crime is troubling for well-off blacks to deal with, they may view it as a less pressing in-group problem.

142. See, e.g., BAYLEY & MENDELSON, *supra* note 39, at 126. Cf. Weitzer, *supra* note 20, at 843 (suggesting that class-based differences are more salient than race in the present context).

143. “Special populations [e.g., middle-class blacks] may have greater knowledge of others [i.e., poor blacks] and rely more on others’ experiences when evaluating their own.” TYLER, *supra* note 37, at 153.

144. Better-off blacks also avoid some costs of racially biased legal enforcement in urban neighborhoods—such as wrongful stops, searches, and so forth—since they do not live in these high-crime communities.

145. Robert J. Boeckmann & Tom R. Tyler, *Commonsense Justice and Inclusion Within the Moral Community: Why Do People Receive Procedural Protection from Others?*, 3 PSYCHOL. PUB. POL’Y & L. 362, 377 (1997).

146. Martin, *supra* note 129, at 239 (citing DARYL J. BEM, BELIEFS, ATTITUDES, AND HUMAN AFFAIRS, BASIC CONCEPTS OF PSYCHOLOGY SERIES (Edward L. Walker ed., 1970)).

declining significance of race for poor African Americans also supports the claim: Concerns about poverty, crime, and social disorder have superseded matters of race for poor blacks.¹⁴⁷ Thus, fairness to black criminal defendants becomes a second-order consideration.

2. *Expressive alignment*

Better-off blacks may be more likely to condemn the legal system as racist in order to maintain their commitment to the broader black community and their own self-image. Successful blacks who have moved out of poor, mostly black neighborhoods may voice lack of confidence in the legal system's treatment of blacks as a means of expressing their continued connection with the old neighborhood. These well-to-do, well educated blacks may ignore hard-to-swallow facts, such as the level of black-on-black crime and community devastation by gangs, in order to express their alignment with the poor black community (and especially those members of the community who are perceived as victims of the white dominant culture) and against the economic, legal, and political establishment.

Ellsworth and Ross, as well as Sarat and Vidmar, provide evidence indicating that individuals often discount countervailing facts (which *they themselves* state are important) when reaching decisions about the fairness of legal rules.¹⁴⁸ Ellsworth and Ross label this behavior "irrational consistency" in beliefs and documented it in the context of opinions concerning the death penalty.¹⁴⁹ When respondents in these studies were confronted with evidence that directly contradicted arguments they used to support their beliefs concerning capital punishment, the respondents stated that new evidence (even if factual) would not alter their death penalty views. This led Ellsworth and Ross to conclude that these views do not reflect informed, reasoned consideration of facts, but rather an "undifferentiated, emotional reflection of one's ideological self-image."¹⁵⁰ Donald Kinder and David Sears provide a similar argument in the context of suburban racism, noting that beliefs appear to be expressive or symbolic rather than instrumental.¹⁵¹ Also, Cullen, Frank, and Langworthy, in their

147. See WILLIAM JULIUS WILSON, *THE DECLINING SIGNIFICANCE OF RACE: BLACKS AND CHANGING AMERICAN INSTITUTIONS* (1978).

148. See Ellsworth & Ross, *supra* note 36; Sarat & Vidmar, *supra* note 36.

149. Ellsworth & Ross, *supra* note 36, at 162.

150. *Id.* at 116.

151. See Donald R. Kinder & David O. Sears, *Prejudice and Politics: Symbolic Racism Versus Racial Threats to the Good Life*, 40 J. PERSONALITY & SOC. PSYCHOL. 414, 422 (1981). In this sense, irrational consistency in beliefs may be motivated by subconscious impulses, deep-rooted coping

empirical study of the perception of the police's use of deadly force, found that the views of African Americans on the topic were less a distinctive set of attitudes than a reflection "of a more global liberal crime ideology."¹⁵²

3. *Differential bias*

It is widely known that blacks are arrested and imprisoned at rates that are significantly disproportionate to their numbers in the general population. Recent studies show that racial bias does not account for much of this disproportionality at the formal stages of arrest, conviction and sentencing in criminal enforcement.¹⁵³ However, these studies have not been able to dismiss claims of bias as a principal force in less formal enforcement decisions, such as the decision to stop black motorists.¹⁵⁴ Stories of black judges, lawyers, professors, doctors, and other professionals being stopped, detained, and sometimes wrongfully arrested are well reported in the popular press. Popular press coverage and acknowledgment of the practice of stopping black motorists who happened to be driving an expensive car or driving in an expensive neighborhood (or who appeared to be otherwise out-of-place) was so broad that the term "driving while black" quickly became common parlance. If members of the black middle and upper classes enter and exit the criminal justice system at this stage—replete with racial bias—then one might argue that they experience more discrimination than poor blacks, who either participate in the more formal stages of the criminal justice system or who seldom venture out of their neighborhoods or "place." Consider Ronald Weitzer's survey of African Americans' and whites' perceptions of misconduct. He found that, in some respects, middle-class blacks share more common experiences and views of the police with middle-class whites than they do with poor blacks.¹⁵⁵ For example, the middle-class

mechanisms, or subsurface ideological constraints, rather than by conscious self-seeking desires, such as ignoring important facts because doing so serves instrumental ends. See generally Daryl J. Bem, Introduction to Beliefs, Attitudes, and Ideologies 8, 14 (1999) (unpublished manuscript, on file with author).

152. Cullen et al., "Stop", *supra* note 15, at 458.

153. See discussion *infra* Part IV.C.1.

154. Cf. John Knowles, Nicola Persico & Petra Todd, Racial Bias in Motor Vehicle Searches: Theory and Evidence (Oct. 1999) (unpublished manuscript, on file with author). Knowles *et al.* examined the traffic-search patterns of the state police in Maryland, where African Americans represent only 18% percent of all motorists on Interstate 95 in Maryland, but 63% of the motorists who were searched by state police. See *id.* at 1. They suggest that stops by state police are consistent with non-prejudiced drug interdiction. See *id.* at 4–5. "In other words, it is possible to explain the black-white disparities observed in the Maryland motorist search data without recourse to racial prejudice." *Id.* at 4. It should be noted that their results are also consistent with racial prejudice by the police.

155. See Weitzer, *supra* note 20, at 840.

blacks, in his study, reported experiencing little police suspicion and mistreatment in their own neighborhoods. However, outside of their middle-class black community, they experienced greater levels of suspicion and mistreatment.¹⁵⁶ Weitzer argues that greater mobility among the middle class in conjunction with being African American makes better-off blacks more vulnerable to stops outside their neighborhoods.¹⁵⁷

Of course, opportunities for informal legal discrimination against blacks in poor communities exist, and poor African Americans do venture out of their neighborhoods, too.¹⁵⁸ However, it may be that better-off blacks are more susceptible to discretionary bias because they have more opportunities to “appear out of place.” The contention that better-off blacks experience more racial bias than do poor blacks is an empirical issue. If this contention is true, even in part, then it could explain why wealthier African Americans have less faith in the American legal system.

C. IMPLICATION FOR DIFFERENTIAL ENFORCEMENT & EXPANDED DISCRETION

An evaluation of the competing motivations behind the “fairness” finding reveals the difficulty of using it as a warrant to expand differential enforcement in black urban communities. On the one hand, if poor blacks are more supportive of the American legal system because they are less aware of the existence of race-based unfairness (i.e., the relative deprivation and heightened-sensitivity hypotheses), then a desire or willingness on their part to expand legal enforcement in poor urban communities is not a fully informed position for lawmakers to follow. This was Justice Marshall’s principal contention in denying the general utility of public opinion polls in these matters.¹⁵⁹ He felt that respondents are often not “fully informed as to the purposes of the penalty and its liabilities” when replying to pollsters about the fairness or justness of laws and the legal system.¹⁶⁰ Marshall’s contention is strongly supported by a large number of empirical studies based (paradoxically) on opinion polls. These studies identify a high level of ignorance and uncertainty in the general population concerning legal rules and rights. This uncertainty has been

156. *See id.* at 832.

157. *See id.* at 833.

158. In fact, Part V.C.1 *infra* argues that there is a potential for substantial levels of bias in the policing of low-level offenses in poor urban neighborhoods.

159. *See supra* note 95 and accompanying text.

160. *Furman v. Georgia*, 408 U.S. 238, 361 (1972) (Marshall, J., concurring). Justice Marshall was referring to the death penalty.

shown to be more prominent among African Americans and other minorities.¹⁶¹ On the other hand, if poor blacks are more supportive of the American legal system due to potential personal gains at the expense of black criminal defendants (i.e., the linked-fate/dire-fate hypothesis), then an initial expansion of differential legal enforcement *may* (in a cost-benefit framework) be justifiable if the gains outweigh the costs. Such cost-benefit calculations must, of course, be constrained by relevant constitutional issues concerning the majority of any group seeking to constrain the rights of a minority.¹⁶² Furthermore, even if such constitutional constraints can be satisfied, these calculations are often beyond the scope of surveys in general, and are certainly beyond the surveys used in this study. Indeed, if the calculation could be made for some point in time, dynamic interactions may reverse the gains-costs result. That is, as Tyler observes, more important than punishments and rewards, a legal system requires legitimacy to motivate compliance; in order to maintain legitimacy, a general sense of procedural fairness is necessary.¹⁶³ Thus, despite some initial benefits accruing to certain individuals in the community, if a sufficient mass of people in poor urban communities perceive differentially harsh enforcement as procedurally unfair, then the possibility exists that compliance with legal rules may actually decrease as punishments get tougher. Lawless activity in urban communities might increase with increases in discretionary enforcement and differentially harsh rules.

We must also not be too quick to promote the perceptions of well-off blacks to the exclusion of poor blacks. Rather than being better-informed than poor African Americans, wealthier blacks may have different motivations and incentives when evaluating the legal system (i.e., the fraternal deprivation and linked-fate/dire-fate arguments). Additionally, as Stuntz argues, limiting police powers by constitutional regulation of criminal enforcement may increase the number of poor defendants who are brought into the criminal justice system as the costs of prosecuting wealthier defendants increase.¹⁶⁴ Since increased constitutional constraints on criminal enforcement have the potential to transfer costs to the poor, better-off African Americans may not fully appreciate these costs in

161. For a review of the significant empirical literature on this matter and discussing the extent of public ignorance concerning the severity of legal penalties, see ROBERTS & STALANS, *supra* note 6, at 44-47.

162. For a discussion of this point in the context of black communities choosing to weaken civil liberties so as to apprehend more criminals, see Dershowitz, *supra* note 73.

163. See TYLER, *supra* note 37, at 166. See also Stuntz, *supra* note 6, at 1800-01.

164. See William J. Stuntz, *The Uneasy Relationship Between Criminal Procedure and Criminal Justice*, 107 YALE L.J. 1 (1997).

their assessment of the legal system.¹⁶⁵ Finally, better-off blacks may have a distorted or heightened sensitivity to racial bias or simply experience a different reality in terms of legal discrimination than do poor blacks.¹⁶⁶

Of central importance is not whether the views of richer or poorer blacks should carry more or less weight in the debates of criminal enforcement. The principal reason for evaluating the seeming black-middle-class discontentment is the implication such an evaluation might have for our understanding of the American legal system. On the one hand, better-off blacks may be an isolated minority with very particular and idiosyncratic views of the legal system. On the other hand, however, their experiences and perceptions may foretell what lies ahead not just for blacks generally, but for all Americans. There is budding evidence of broad skepticism of the police and the legal system from many quarters of American society. If this trend continues and becomes more widespread before we fully understand it, then lack of confidence in criminal justice procedures might wreak havoc on our system's laws and legal enforcement. Examining the disenchantment among middle-class blacks may very well increase our general understandings of how the American legal system is perceived and how we might repair this clouded perception.

1. *Broken windows & order-maintenance policing*

James Wilson and George Kelling observed in their article *Broken Windows* that neighborhood disorder seeds an environment that promotes serious crimes.¹⁶⁷ This observation led to the now broadly held conclusion that the police and communities can prevent serious crimes from overtaking a neighborhood by limiting and controlling the appearance of disorder. Most scholars, including Wilson and Kelling, advocate responses to limit disorder that involve the police and the community working together.¹⁶⁸ These responses fall under the general rubric of community policing and, when properly implemented, they have been credited with controlling crime.¹⁶⁹ However, in many central city neighborhoods, the police and the community are often at odds over the police's order-

165. Better-off blacks may not fully appreciate the benefits of expanded criminal enforcement as discussed in relations to the linked-fate/dire-fate argument.

166. In his study of three Washington, D.C. neighborhoods, Weitzer found that middle class blacks experienced more police suspicion and mistreatment outside their neighborhoods. Poor blacks faced less of this type of police suspicion because they were less mobile and therefore less likely to venture outside their neighborhoods. See Weitzer, *supra* note 20, at 843.

167. See Wilson & Kelling, *supra* note 29, at 31-32.

168. See *id.* at 36.

169. See SKOGAN, *supra* note 24; Livingston, *supra* note 5, at 578-91.

maintenance strategies. Complaints that the police are too aggressive and are often biased against urban minorities are rapidly growing in the wake of the highly publicized police corruption in cities like Los Angeles, New York, and Philadelphia.

Accusations of racial bias have long plagued the American criminal justice system.¹⁷⁰ Critics often point to the highly disproportionate number of African Americans caught up in the criminal justice system as prima facie evidence of discrimination. However, the claim that racial bias is responsible for the disparity in African American arrests and imprisonment has been challenged by a wave of broad-based empirical studies over the past two decades.¹⁷¹ These studies statistically show that racial bias does not account for the majority of the disparity in arrests, convictions and sentencing patterns for serious offenses such as homicide and aggravated assault.¹⁷² The studies, however, have been less successful in discounting claims of bias for drug infractions and other low-level offenses.¹⁷³ Indeed, one might expect more bias in the policing of lower-level offenses because the associated recordkeeping and review in the processing of these offenses is substantially less formal—when review exists at all—than with respect to more serious offenses. Consider, for example, the research of George Bridges and Sara Steen for an illustration of the subtle, though important, influence that race plays in the administration of juvenile sentencing.¹⁷⁴ Bridges and Steen studied juvenile offenders and evaluations of these offenders written by their probation officers. These written evaluations play a significant role at the sentencing stage. Their study revealed no direct significant difference in sentence recommendations by race.¹⁷⁵ However, there were pronounced differences in the manner in which the probation officers evaluated white and black juvenile offenders. In writing assessments for sentencing recommendations, officers frequently attached more negative interpretations to the behaviors of black youths compared to whites. Probation officers often stressed white offenders' social environment (*external characteristics*) while blacks were attributed with negative personality traits (*internal characteristics*). Sociologists have

170. See TONRY, *supra* note 78, at 38–39; Gary Stewart, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-gang Civil Injunctions*, 107 YALE L.J. 2249, 2259–61 (1998).

171. For a survey of some of the more influential studies, see RUSSELL, *supra* note 6, at 26–46 and TONRY, *supra* note 78, at 55–80.

172. See, e.g., Alfred Blumstein, *On the Racial Disproportionality of United States' Prison Populations*, 73 J. CRIM. L. & CRIMINOLOGY 1259, 1270 (1982).

173. See TONRY, *supra* note 78, at 81–123.

174. See George S. Bridges & Sara Steen, *Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms*, 63 AM. SOC. REV. 554, 567 (1998).

175. See *id.*

long argued that offenders whose behaviors are attributable to external characteristics are usually viewed as less culpable than those thought to be motivated by negative personality traits. Furthermore, “youths whose crimes are attributed to negative personality traits are much more likely to be perceived as having a high risk of reoffending”¹⁷⁶ Probation officers were found to be much more likely to recommend longer sentences for youths whose crimes they attributed to negative personality traits.¹⁷⁷

More generally, criminologist Katheryn Russell points out that police stops, “which constitute an informal stage, determine in large measure who will be arrested [T]hese encounters, which are not subject to official measure, must be included in an assessment of whether the justice system operates in a racially biased manner.”¹⁷⁸ Often the behavior is not consciously or overtly biased and therefore escapes scrutiny, particularly in the less formal lower stages of the criminal justice system.¹⁷⁹ “In arrests for less-serious, non-Index crimes, there is ample reason to believe the police role may well be more proactive than reactive, resulting in the overarrest of African Americans compared to whites.”¹⁸⁰ For instance, the Office of the Attorney General for the State of New York recently concluded that black and Hispanic males in New York City were subject to unfair practices through police “stop and frisk” operations.¹⁸¹ Similarly,

176. *Id.*

177. In a related observational study, Irving Piliavin and Scott Briar found that the police used a significant amount of discretion in their interactions with juvenile delinquents, where a principal factor guiding this discretion appeared to be the youths’ demeanor. They concluded that higher arrest rates for blacks was not due to higher rates of offending or direct police bias—but rather “due to the fact that Negroes more often than Caucasians exhibited those aspects of demeanor associated by officers with ‘true’ delinquent boys.” Irving Piliavin & Scott Briar, *Police Encounters with Juveniles*, 70 AM. J. SOC. 206, 206 (1964).

178. RUSSELL, *supra* note 6, at 32–33.

179. Racial bias may still pervade more formal settings. For example, African Americans consistently receive harsher sanctions in controlled mock trials where only the race of the defendants is variable. See Neil A. Rector, R. Michael Bagby & R. Nicholson, *The Effect of Prejudice and Judicial Ambiguity on Defendant Guilt Ratings*, 135 J. SOC. PSYCHOL. 651, 658 (1993); Laura T. Swency & Craig Haney, *The Influence of Race on Sentencing: A Meta-Analytic Review of Experimental Studies*, 10 BEHAVIORAL SCI. & L., 179, 192–93 (1992). Additionally, racial disparities in sentencing among mock juries increase when the defendants are accused of crimes often associated with blacks (such as robbery) as opposed to crimes typically associated with whites (such as embezzlement). See Randall A. Gordon, Thomas A. Bindrim, Michael L. McNicholas & Teresa L. Walden, *Perceptions of Blue-Collar and White-Collar Crime: The Effect of Defendant Race on Simulated Juror Decisions*, 128 J. SOC. PSYCHOL. 191, 192 (1988).

180. Anthony R. Harris & James A. W. Shaw, *Looking for Patterns: Race, Class, and Crime*, in CRIMINOLOGY: A CONTEMPORARY HANDBOOK 129, 135 (Joseph F. Sheley ed., 3d ed. 1999).

181. Officials stated that racial disparities in stops exist and, furthermore, that these disparities do not go away when race-specific crime rates are taken into account. See “STOP AND FRISK”, *supra* note 8, at 121.

the U.S. Customs Office recently reported that black women airline travelers were nine times as likely to be subject to invasive searches by Customs officers—despite the fact that black women’s rate of offending was actually lower than that of white women.¹⁸² Such police practices would likely have an impact on the perceptions of fairness in the legal system. That is, focusing on less scrutinized or lower-level offenses in a community may actually increase racial bias in criminal enforcement. This interpretation is consistent with the crime data presented above in Part IV. That part attempts to provide evidence connecting perceptions of fairness with police practices by merging survey data on African American’s views of the criminal justice system with arrest rates and reported crime figures. These data suggest that favorable perceptions of the police are negatively correlated with arrest rates for low-level offenses of vandalism and vagrancy, and positively correlated with arrest rates for violent crimes.¹⁸³ One might infer that minority communities tend to lose confidence in police fairness as order-maintenance policies become more stringent. If this inference is correct, then such community sentiment may ultimately limit the effectiveness of police in confronting more serious and low-level crimes.

These results are highly suggestive, but not entirely persuasive. The principal problem is that crime-related activities in a county probably reflect “hot pockets” of crime in various specific neighborhoods, rather than being uniformly distributed across the country. Therefore matching county-level crime data with individual respondents can create significant identification problems. The county-level figures do not sufficiently distinguish the neighborhood crime patterns in order to make claims that are more than suggestive. Unfortunately, there is no centralized source from which to gather neighborhood crime and arrest figures. In an ongoing research project, the author is seeking to compile neighborhood (i.e.

182. The report summarizes an investigation of U.S. Customs’ policies and procedures involving searches of airline passengers at four airports (John Fitzgerald Kennedy International Airport (JFK) in New York, O’Hare International Airport in Chicago, Los Angeles International Airport (LAX), and Miami International Airport) in 1997 and 1998. The report found that black women (U.S. citizens) were nine times more likely than white women to be subjected to invasive searches, though “[w]ere less than half as likely to be found carrying contraband as white women who were U.S. citizens.” U.S. GEN. ACCOUNTING OFFICE, PUB. NO. GAO/GGD-00-38, U.S. CUSTOMS SERVICE: BETTER TARGETING OF AIRLINE PASSENGERS FOR PERSONAL SEARCHES COULD PRODUCE BETTER RESULTS 10 (2000).

183. Residents may believe that the police are needlessly (and perhaps harshly) focusing on vagrants and teenage vandals while more serious offenders continue to devastate their communities. Or it may simply be that increased contact with law enforcement officers as they attempt to police low-level offenders engenders a perception of the bias. Whether the bias is merely perceived or actual, the data point to a real concern with respect to order-maintenance policing.

census-tract-level) crime and arrest figures to merge with the attitudinal data in the NBPS sample.¹⁸⁴

2. Jury nullification

“First, I ask ‘Is American criminal justice just?’”¹⁸⁵ Paul Butler posed this intendedly rhetorical question in urging black jurors to presumptively acquit African American defendants they believe are guilty of certain nonviolent crimes,¹⁸⁶ a proposal commonly referred to as jury nullification.¹⁸⁷ To support his argument in favor of jury nullification, Butler presents a long list of statistics showing that disproportionate numbers of African Americans are arrested, prosecuted, convicted and imprisoned. These oft-cited statistics have lent considerable weight to the commonly held view (particularly in the black community) that the legal system is not fair to blacks. Given this broad-based perception of racial bias in the American criminal justice system, many commentators and prosecutors have expressed concern that black jurors will heed Butler’s call and not convict guilty defendants. In response to this concern, prosecutors have sought to identify and remove these jurors either for cause or through peremptory challenges. Peremptory challenges allow prosecutors and defense attorneys to eliminate a specified number of prospective jurors without having to demonstrate a cause to the court.¹⁸⁸ However, the desirability of this strategy of elimination is predicated on the attorneys’ ability to identify impartial jurors. Stuart Brown¹⁸⁹ has formally

184. See Richard R.W. Brooks, *Correlation Between Arrest Types and Community Perceptions of Legal Fairness: Implications for Quality of Life Policing* (2000) (unpublished manuscript, on file with author).

185. Paul D. Butler, *Race-based Jury Nullification: Case-in-Chief*, 30 J. MARSHALL L. REV. 911, 922 (1997).

186. Butler first presented the question in 1995, sparking the debate about race-based jury nullification. See Butler, *supra* note 5.

187. Jurors have the power to nullify the law by choosing not to convict parties the jurors conclude are guilty; in turn, these parties are protected from later prosecution by way of the Double Jeopardy Clause of the U.S. Constitution.

188. These challenges are not without some restrictions. For example, attorneys cannot remove jurors based solely on race, see *Batson v. Kentucky*, 476 U.S. 79 (1986), or on gender, see *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994). Thus when the court’s attention is called to patterns in peremptory challenges that appear race- or gender-based, it can then demand a race- or gender-neutral justification. However, there are significant practical difficulties involved in invalidating a peremptory challenge based on race or gender. Attorneys need only present some justification other than race or gender to defeat a challenge under *Batson* or *J.E.B.* The barriers are so low, in fact, that it is commonly felt that there continues to be substantial noncompliance with these rulings. See Kennedy, *supra* note 5, at 208–30.

189. See Stuart Brown, *Peremptory Challenges and Jury Bias: the Social Welfare Effects of a Jury Selection Institution* 12–13, 21 (1998) (unpublished manuscript, on file with author).

demonstrated that if prosecutors wrongly eliminate jurors, they will tend to make juries less representative¹⁹⁰ and more biased. Paradoxically, the prosecution strategy may increase racial bias when poor urban African Americans are removed from jury pools based on a belief that these African American are more likely to nullify. The analysis of this work indicates that poor blacks are more likely than better-off blacks to believe in the fairness of the American legal system. Therefore, poor African Americans may be more impartial than wealthier blacks, who tend to be less content with the American legal system and presumably more likely to nullify. Of course, as a legal and a practical matter, an individual's belief that the legal system is unfair does not preclude her from faithfully serving on a jury and convicting defendants whom she concludes are guilty. Jurors who feel that a law is unfair may still serve on juries if they are willing to set aside that belief in deference to the law.¹⁹¹ However, one's inclination to view the legal system as unfair may be viewed as a reasonable proxy for willingness to nullify, while one's inclination to view the law as fair would tend to undermine a belief that such a person will nullify.

3. *Urbanicity, neighborhood crime, and black conservatism*

Since urban blacks are most likely to be the victims of crime, the urban frustration argument implies that they are more likely to view the legal system as fair compared to nonurban respondents. However, Table 9 shows little location-based difference in the perceived fairness of the American legal system. Chi-squared tests for differences in perception based on urbanization were nonsignificant. Nonsignificance was also found for the cross tabulation of urbanization and the question concerning whether the police are gang-like.

Future research should focus on learning more about the effects that neighborhood crime rates and arrest patterns have on perceptions of the police and the legal system. The crime and arrests reports used in this study are based on county-level data. While it is encouraging that significant results were obtained here, more detailed crime information (e.g., data at census tract or block level) would strengthen the results and refine our understanding of perceived fairness and justice in the American legal system.

190. While the Supreme Court has held that “[d]efendants are not entitled to a jury of any particular composition,” *Holland v. Illinois*, 493 U.S. 474, 483 (1990), it has consistently expressed the value of representative juries. See, e.g., *Batson*, 476 U.S. at 86–87.

191. See *Lockhart v. McCree*, 476 U.S. 162, 176 (1986).

Table 9. Perception of Fairness of the Legal System by Urban and Non-urban Respondents

	Fair	Unfair	Total Number
Large City	18%	82%	614
Suburb	15%	85%	159
Small City	18%	82%	160
Small Town	18%	82%	82
Rural or Country Area	17%	83%	84

Future research should also focus on understanding black conservatism and its relation to income and issues of fairness. Regression results confirm that self-identified black conservatives are more likely to believe that the legal system is fair. Furthermore, recall the result from Table 7 that indicates wealthier blacks who view the legal system as fair are much more likely to hold positive views of the police than poorer blacks who view the system as fair.

This result may possibly reflect black conservatism among the middle and upper classes—a possibility that should be explored. However, the notion that black conservatism is a phenomenon among the black middle and upper classes is not supported here, as demonstrated in Table 10. The connections between political self-ideology and perceptions of fairness in the legal system is worthy of further investigation.

Table 10. Cross-tabulation of Income and Conservatism

	Less Conservative	More Conservative
\$30,000 or Less	56%	44%
\$30,000 or More	55%	45%

CONCLUSION

The claim that blacks in urban communities desire differentially tough legal enforcement and greater police discretion to combat rampant crime is not obvious. While it is true that blacks in these communities perceive crime as a significant problem, they also view police brutality and harassment as a nontrivial concern. Therefore, identifying African American desire for differential and discretionary enforcement is a difficult task—but a task that, nonetheless, must be undertaken before advancing claims based on such a desire. To shed some light on the desire of the “black community” for differential and discretionary legal penalties, this research used survey data on African Americans’ perceptions of the legal system. Most of the results in this work confirm commonly held views, such as the belief that younger respondents tend to find the legal system unfair to African Americans, while respondents who characterize themselves as conservative tend to find the legal system fair to all groups. However, the finding that African American perception of fairness is inversely related to income is somewhat unexpected. That is, one might predict that African Americans who have achieved greater material success in American society would view the legal system as more fair than those who experience greater poverty, crime, and social disorder. Just the opposite was found, i.e., poor blacks are more likely to view the American legal system as fair. One might infer that poor blacks view the legal system as fair despite (*or perhaps because of*) the differentially tough legal enforcement in their communities. This inference is consistent with the argument that poor African Americans desire disproportionately tough legal enforcement in their communities. However, data also indicate that poor blacks have little confidence in the police. Poor blacks are more inclined to report that the police behave too much like a gang to be an effective response to gang-related crimes. In the context of the urban frustration argument, these findings suggest that aggressive enforcement with limited police discretion may be consistent with high-crime black communities’ desire for safety and fairness. On the other hand, one may question whether it is sufficient that individuals in these communities “choose” (from a truncated set of alternatives) to have harsher penalties. That is, the basis of these choices must be considered when informing legal policy. The analysis of black perceptions of fairness presented in this work does not lend strong support for the policy of differential enforcement based on the claim that these “communities” desire such a policy.

APPENDIX—REGRESSION MODELS OF NON-BLACK SAMPLE

Table 11. Factors Correlated with Belief that the Police are Unfair^a

Variable	Model 1	Model 2	Model 3
Age	-0.003** (0.001)	-0.003** (0.001)	-0.003** (0.001)
Urbanization	0.000 (0.001)	-0.002 (0.009)	-0.003 (0.009)
Family Income	-0.020 (0.013)	-0.001 (0.013)	-0.010 (0.012)
Education	-0.016 (0.010)	-0.021* (0.010)	-0.023 (0.010)
Gender	-0.001 (0.024)	0.004 (0.023)	0.000 (0.023)
Public Contact ^b	—	0.016 (0.024)	0.016 (0.023)
Police Aggressive ^c	—	0.137** (0.025)	0.132** (0.025)
Perceived Neighborhood Problems ^d			
Gangs	—	0.006 (0.016)	0.006 (0.015)
Unsupervised Youth	—	0.009 (0.011)	0.008 (0.012)
Graffiti	—	0.025 (0.037)	-0.006 (0.029)
Drunk/High People	—	0.012 (0.018)	0.014 (0.019)
Violent Crimes	—	—	-0.008 (0.016)
Total Drug	—	—	0.013 (0.017)
Vagrancy	—	—	0.013 (0.010)
Vandalism	—	—	-0.029* (0.013)
Number of Observations	778	707	756
Standard Errors in Parentheses			
* Significant at 5% level			
** Significant at 1% level			

a. Probit marginal effects where the dependent variable is equal to one if respondent rated "the fairness of the police in dealing with people" as "low" or "very low" and zero for "high," "very high" or "average." NATIONAL OPINION SURVEY, *supra*, note 17.

b. Equal to one if the respondent stated that the courts deal "too harshly" with criminals and equal to zero otherwise.

c. A measure of perceived police aggressiveness, which is equal to one if the respondent stated that it is a "serious problem" or "somewhat a problem" that the police use excessive force in the respondent's community, and equal to zero otherwise.

d. A measure of various neighborhood concerns, which is equal to one if the respondent stated that it is a "serious problem" or "somewhat a problem" in the respondent's neighborhood, and equal to zero otherwise.

Table 12. Factors Correlated with Belief that Courts are Biased Against Minorities^a

Variable	Model 1	Model 2	Model 3
Age	-0.004** (0.001)	-0.004** (0.001)	-0.004** (0.001)
Urbanization	0.032* (0.014)	0.021 (0.015)	0.011 (0.016)
Family Income	-0.001 (0.022)	0.016 (0.023)	0.014 (0.023)
Education	0.054** (0.016)	0.048* (0.017)	0.044* (0.018)
Gender	0.039 (0.039)	0.035 (0.041)	0.036 (0.041)
Courts Harsh ^b	—	0.048 (0.129)	0.057 (0.129)
Police Aggressive ^c	—	0.262** (0.052)	0.253** (0.053)
Perceived Neighborhood Problems ^d			
Gangs	—	0.054 (0.036)	0.050 (0.037)
Unsupervised Youth	—	-0.004 (0.022)	-0.003 (0.022)
Graffiti	—	-0.020 (0.071)	-0.035 (0.072)
Drunk/High People	—	0.046 (0.041)	0.045 (0.042)
Violent Crimes	—	—	-0.005 (0.029)
Total Drug	—	—	0.051 (0.031)
Vagrancy	—	—	0.009 (0.021)
Vandalism	—	—	-0.011 (0.022)
Number of Observations	710	660	660
Standard Errors in Parentheses			
* Significant at 5% level			
** Significant at 1% level			

a. Probit marginal effects where the dependent variable is equal to one if respondent stated that it is a “serious problem” or “somewhat a problem” that courts “do not treat minorities as well as they treat whites”; the dependent variable is equal to zero if the respondent indicated that it is a “minor problem” or “not a problem” NATIONAL OPINION SURVEY, *supra*, note 17.

b. Equal to one if the respondent stated that the courts deal “too harshly” with criminals and equal to zero otherwise.

c. A measure of perceived police aggressiveness, which is equal to one if the respondent stated that it is a “serious problem” or “somewhat a problem” that the police use excessive force in the respondent’s community, and equal to zero otherwise.

d. A measure of various neighborhood concerns, which is equal to one if the respondent stated that it is a “serious problem” or “somewhat a problem” in the respondent’s neighborhood, and equal to zero otherwise.

