

Discussion of Mocan (2021)
“Racial Disparities in Judicial Outcomes, and Human
Behavior”

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*Boston Fed Economic Conference: Racial Disparities in Today's
Economy*

October 6, 2021

This Paper

- ▶ Illustrates the prevalence and persistence of racial disparities in criminal legal system in United States
 - ▶ Document how judicial decisions contribute to overrepresentation of Black individuals in prison relative to share in general population
 - ▶ Describe how disparities at the end could be a product of biased decision-making at many earlier stages by police, prosecutors, attorneys

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 - ▶ Document how judicial decisions contribute to overrepresentation of Black individuals in prison relative to share in general population
 - ▶ Describe how disparities at the end could be a product of biased decision-making at many earlier stages by police, prosecutors, attorneys
- ▶ Raises important research question: what are the sources of these racial disparities in judicial decisions?
 - ▶ Existing work shows that judge attributes, emotional cues, and peers all impact decisions, suggesting importance of behavioral/human sources

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- ▶ Raises important research question: what are the sources of these racial disparities in judicial decisions?
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- ▶ Highlights connection to related literature on in-group bias
 - ▶ Depends on combination of judge and defendant attributes

Outline of Comments

1. Sources of Racial Disparities
2. Relevance of In-Group Bias
3. Institutional Setting
4. Policy Implications

#1 Sources of Racial Disparities

- ▶ Large racial disparities in conviction and sentencing – what could explain them?
 1. Racial disparities prior to judicial decision through police, prosecutors
 2. Racial disparities attributable to judicial decision conditional on what has already happened → primary focus of this paper

#1 Sources of Racial Disparities

- ▶ Racial disparities attributable to judicial decision – what could drive this?
 1. Intentionally/consciously treating individuals differently on basis of race
 2. Unconscious bias, or race-neutral decision rules that have a disproportionate impact by race

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 1. Intentionally/consciously treating individuals differently on basis of race
 2. Unconscious bias, or race-neutral decision rules that have a disproportionate impact by race
- ▶ Economists have primarily focused on (1)
 - ▶ Leads to a common empirical approach of comparing how outcomes differ for White and Black individuals who are *observably similar* (e.g. same offense, same criminal history)

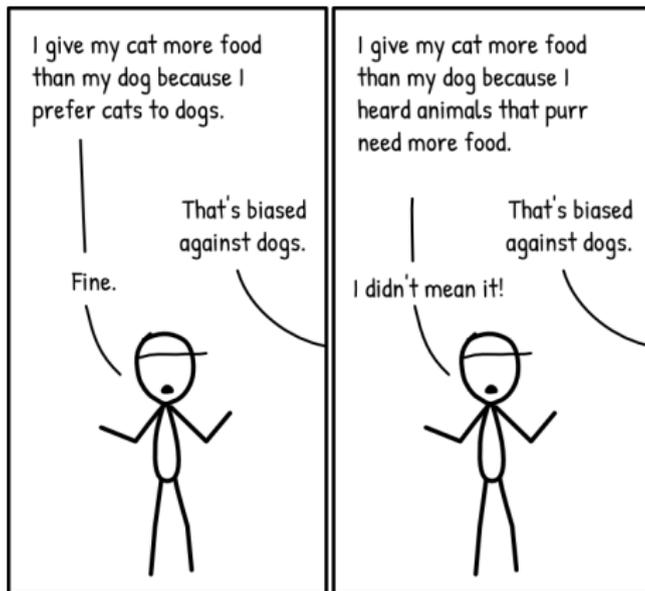
#1 Sources of Racial Disparities

- ▶ But this approach identifies only a very narrow type of racial bias
- ▶ Judges can just as easily be biased against Black individuals through seemingly race-neutral characteristics
 - ▶ Judge is more punitive against those charged with crack cocaine vs. powder cocaine offenses and this causes large racial disparities
 - ▶ Controlling for offense would mask important source of racial bias

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#1 Sources of Racial Disparities



Disparate Treatment

Disparate Impact

#1 Sources of Racial Disparities

- ▶ Understanding all sources of racial disparities thus requires moving beyond standard empirical approaches
- ▶ Cautions against an approach of controlling for all X's

#2 Relevance of In-Group Bias in U.S. System

- ▶ In hypothetical examples, Mocan shows how aggregate disparities may mask in-group biases that are offsetting
 - ▶ Ex: Black and White judges who both exhibit in-group bias and hear an equal number of cases could lead to no aggregate racial gap

#2 Relevance of In-Group Bias in U.S. System

- ▶ In hypothetical examples, Mocan shows how aggregate disparities may mask in-group biases that are offsetting
 - ▶ Ex: Black and White judges who both exhibit in-group bias and hear an equal number of cases could lead to no aggregate racial gap
- ▶ Mocan and Osbourne (2021) document interesting findings on in-group bias among NBA referees where they can actually observe whether decisions (foul calls and non-calls) were made correctly
 - ▶ Find that there is no overall racial bias in Type I and II errors, but if player-referee are race-concordant, referee more likely to incorrectly “acquit” the player
 - ▶ In-group favoritism by Black referees disappears when there are 2 White peer referees

#2 Relevance of In-Group Bias in U.S. System

- ▶ Aggregate disparities most likely to mask in-group biases when there is substantial number of decision-makers of different races
 - ▶ Among NBA referees analyzed in Mocan and Osbourne (2021), 81 total referees of whom 43 are Black

#2 Relevance of In-Group Bias in U.S. System

- ▶ Aggregate disparities most likely to mask in-group biases when there is substantial number of decision-makers of different races
 - ▶ Among NBA referees analyzed in Mocan and Osbourne (2021), 81 total referees of whom 43 are Black
- ▶ But is that characteristic generalizable to criminal legal system - how many Black judges are there?
 - ▶ In federal system, only 13% of active judges who conduct criminal sentencing are Black

#2 Relevance of In-Group Bias in U.S. System

- ▶ If many Black defendants and vast majority of cases are heard by White judges who do exhibit in-group bias, we will likely observe overall racial disparities in judicial decisions, which is an important and policy-relevant measure

#2 Relevance of In-Group Bias in U.S. System

- ▶ If many Black defendants and vast majority of cases are heard by White judges who do exhibit in-group bias, we will likely observe overall racial disparities in judicial decisions, which is an important and policy-relevant measure
- ▶ Does it matter for policy if there are a handful of Black judges who exhibit in-group bias against White defendants?

#3 Institutional Setting

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BLACK COPS ARE JUST AS LIKELY AS WHITE COPS TO KILL BLACK SUSPECTS

New research suggests a culture of bias is a bigger problem than individual racist officers.

TOM JACOBS · AUG 9, 2018

#3 Institutional Setting

The Effects of Judge Race and Sex on Pretrial Detention Decisions

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ABSTRACT

The pretrial detention decision has critical implications for a defendant's employment opportunities, family ties, likelihood of conviction, and length of prison sentence. While prior researchers have assessed the disparities that exist in the bail decision based on defendant and case characteristics, little systematic empirical attention has been paid to the effects of the pretrial detention judge on decisions at this stage of criminal case proceedings. Here, we focus specifically on judge race and sex, exploring not only the unconditional effects of judge sex and race but also whether the effects of these judge characteristics at the bail decision are conditioned on the sex and race of the defendant. Using newly collected pretrial detention data from 22 federal district courts from 2003 to 2013, we empirically examine the effects of judge and defendant race and sex on whether defendants are released on their own recognizance before trial or, instead, are given a more punitive pretrial outcome. Our results indicate important judge and defendant-based differences in bail setting leniency provided to defendants including that Black judges are more likely to grant pretrial release without hefty conditions to white defendants than are white judges. We also find that female judges are more likely to detain or require monetary bail for male defendants and less likely to do so for female defendants relative to male judges.

KEYWORDS

Pretrial detention; federal district courts; race; gender

#3 Institutional Setting

THE SENTENCING DECISIONS OF BLACK AND WHITE JUDGES: EXPECTED AND UNEXPECTED SIMILARITIES

CASSIA SPOHN

Those who champion the representation of blacks on the bench argue that black judges may make a difference. Indeed, some suggest that increasing the proportion of black judges might result in more equitable treatment of black and white defendants. In this study we test these expectations. Using data on defendants charged with violent felonies, we compare the sentencing decisions of black and white judges in Detroit. We find remarkable similarities and conclude that judicial race has relatively little predictive power. More important, we find that both black and white judge sentence black offenders more severely than white offenders. Our results raise questions about the appropriate interpretation of racial disparity in incarceration rates and suggest that the harsher treatment of black offenders cannot be attributed to the racism of white judges.

Judges, Juveniles, and In-Group Bias

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Abstract

We investigate the existence of in-group bias (preferential treatment of one's own group) in court decisions. Using the universe of juvenile-court cases in a US state between 1996 and 2012 and exploiting random assignment of juvenile defendants to judges, we find evidence for negative racial in-group bias in judicial decisions. All else being equal, black (white) juveniles who are randomly assigned to black (white) judges are more likely to be placed in custody, as opposed to being placed on probation, and they receive longer sentences. Although observed in experimental settings, this is the first empirical evidence of negative in-group bias based on a randomization design outside the lab. We provide explanations for this finding.

#4 Policy Implications

- ▶ Suppose we do find evidence of in-group bias in judicial decisions like in NBA referee decisions – what does this mean for policy if the goal is to reduce racial disparities?
 - ▶ Unlike in the NBA referee context, how do we know which judges' decisions are “correct”?
 - ▶ Increase cooperation/interaction between groups?
 - ▶ Sentencing with racially diverse peer groups of judges?
 - ▶ Increased/decreased diversity in courts?

Conclusion

- ▶ Interesting paper that highlights fruitful area of research for understanding racial disparities in judicial decisions!