

Symposium on Juvenile Crime: Policy Proposals on Guns & Violence, Gangs, & Drugs

We Don't Need More Wars

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WE DON'T NEED MORE WARS

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I. INTRODUCTION

At this point in my life, as a native born and former resident of an inner city, segregated Chicago ghetto, I am unhappy to report that I know of more old friends who are dead than who are still alive. Many of my friends died because of the effects of some drug, either alcohol, heroin or cocaine. Many OD'd (overdosed), or more recently, their hearts just could not take the pumping strain that the cocaine demanded, and ceased to beat.

Probably most African Americans in the nation have a relative, friend, or acquaintance in jail, prison, on parole, on probation, or somehow under the yoke of the criminal or juvenile justice system. The National Sentencing Project reports that on any given day one in four African American men from the ages of twenty to twenty-nine come into contact with the criminal justice system.¹ Research reports cannot depict the real meaning of these statistics when it might be your brother, your parent, your husband, or your child who is that one out of four. In reality, I doubt that such research is actually benefitting anyone but the researchers—by adding publications to their resumes, aiding in their promotion and tenure process, and bringing them renown and celebrity. Certainly, few of these findings have assisted minority communities, improved minority communities, or changed public policies, except, perhaps, to make them more punitive. An ancillary result of these reports is that they exacerbate the problem of negative minority stereotyping that already impacts the malleable psyches of fearful whites, a point I will return to later in my commentary.

Thus, the first policy I think that is necessary to address the problems of gangs, drugs, and violence, is the cessation of state and federally funded research to study minority crime and delinquency unless the researchers are minorities. I add that caveat for two reasons. First, since most minorities are more in touch with the populations to be studied and the dilemmas faced by our communities, we would bring reality to the research. For example, a number of years ago, I had a conversation with an African American research subject who said he had recently been interviewed and was chuckling about it. "I told

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1. MARC MAUER, *THE SENTENCING PROJECT, YOUNG BLACK MEN AND THE CRIMINAL JUSTICE SYSTEM: A GROWING NATIONAL PROBLEM* 3 (1990).

them whiteys what they wanted to hear," he laughed, adding, "Hell, they wouldn't know a junkie, or a criminal, if one come up and bit them in the ass!"

The second reason that I think minority researchers should be targeted for minority research is the dearth of previous research funding for people of color. In twenty years of academic experience in criminology/criminal justice, I can count on my hands the number of major research grants awarded to African American scholars—and with very little effort name the principal investigators on most of those projects. The hundreds of grants funded to Caucasians over the last two decades to "study" minority crime produced a picture of minority crime that is biased, inaccurate, and certainly not intended to address, much less eliminate, the problems they purport to identify.

II. SOME NEEDED DEFINITIONS

Before addressing any issue, it is necessary to define the major terms and the problem that is being addressed. We first need an operational definition of a gang. I think it is only fitting that since Frederic Thrasher's seminal work on gangs took place in Chicago,² we use a current Chicago definition:

The Chicago Police Department defines a "street gang" as an ongoing organization, association or group of three or more people, whether formal or informal, having as one of its primary activities the commission of one or more criminal acts. A gang is further defined as having a common name or common identifying sign, symbol, or specific color apparel displayed, and members who individually or collectively engage in, or have engaged in, a pattern of criminal activity.³

As to a statement of the problem, one can only ask, "*what problem?*" Eric Lotke produced some of the most meaningful information to come out of this symposium.⁴ He demonstrated to us that we are talking about a rather unimpressive number of youths arrested annually for homicide. More importantly, he stressed the need to look at numbers, not rates or percentages. I constantly warn my students to be cognizant of these differences by stressing that if there is one recorded murder this year and two next year, that is a 100% increase. It is a problem that youths kill and that they kill with semi-automatic

2. FREDERIC M. THRASHER, *THE GANG* (1927).

3. DANIEL DIGHTON, ILL. CRIMINAL JUSTICE INFO. AUTH., *THE VIOLENCE OF STREET GANGS* 6 (Fall 1996).

4. See Eric R. Lotke, *Youth Homicide: Keeping Perspective on How Many Children Kill*, 31 VAL. U. L. REV. 395 (1997).

weapons, but should we stigmatize all minority youths in the nation because of the few hundreds who murder? Yet, that is what is happening.

And whose problem is it? One gets the impression that youth violence, particularly minority youth violence, has somehow translated into a white problem. That problem is the arousal of white fear of the nebulous black "symbolic assailant" which is further exacerbated by the media. Most crime, including violent crime, is *intra-racial*. African Americans assault, rob, and kill other African Americans; Latinos assault, rob, and kill other Latinos; and whites assault, rob, and kill other whites. Whites have little to fear from youthful teenage gangs; unless, of course, they are in the ghetto or barrio seeking to purchase drugs and get caught in the cross fire of a drive-by shooting.

In many ways the problem of juvenile violent crime is arguable. In August 1996, Attorney General Janet Reno released FBI arrest statistics which revealed that not only was there a decline of 2.9% in the juvenile violent crime rate, but also the murder arrest rate among youths had dropped 15.2% from the previous year and decreased 22.8% over a two-year period.⁵ Are we inventing a problem to study that is not based in reality?

And what *is* the "drug problem?" The "war on drugs" is not being waged against the majority drug-using group. Drug usage is basically proportional by race and ethnicity to the representation of such groups in the United States.⁶ Whites represent 80% of the drug users but only about 12% of those arrested on drug charges. In contrast, African Americans comprise about 13% of monthly drug users but are 74% of those sentenced for drug possession.⁷ So what is wrong with this picture? The answer is that people of color, especially African Americans and Latinos, are being targeted for drug arrests.

Even more obscene is the fact that the *form* of cocaine is influential in punishment. Minorities are 90% of those arrested for crack cocaine, while whites are three-fourths of those arrested for powder cocaine.⁸ The federal sentence for crack cocaine possession is far more punitive than is possession for

5. THE PRESIDENT'S CRIME PREVENTION COUNCIL QUARTERLY 8 (Oct. 1996).

6. JEROME G. MILLER, SEARCH AND DESTROY: AFRICAN AMERICAN MALES IN THE CRIMINAL JUSTICE SYSTEM 80 (1996).

7. MARC MAUER & TRACY HULING, THE SENTENCING PROJECT, YOUNG BLACK AMERICANS AND THE CRIMINAL JUSTICE SYSTEM: FIVE YEARS LATER 9, 13 (1995).

8. MILLER, *supra* note 6, at 82.

powder cocaine. This fact is why our federal prisons are filled with young black and brown men.

And, why do we seldom talk about the *rural* drug problem where whites make up 75.9% of the arrests for drug abuse violations?⁹ Is it because the link between drugs and violence—except for alcohol abuse and domestic violence—is weaker in rural areas? Rural and urban youths are equally likely to use drugs, although the drugs differ. Rural cocaine use is far lower than in urban communities but, in contrast, alcohol, inhalants and stimulants are more prevalent in rural areas.¹⁰ Drug use is drug use, or it should be.

Finally, why have we overlooked females in this symposium? A few passing mentions were made of the “other gender,” but the seriousness of the problem of drug use and its consequences for females has been largely ignored. Trends in female arrests for drug abuse violations reveal an increase of 91.8% between 1985-1994. During this period of time the male increase was only 55.7%.¹¹ In 1994, drug abuse violations were the second most frequent cause of female arrests and tied with other assaults at 7.8% of all female arrests.¹²

The Drug Use Forecasting Program (DUF) launched in 1987 collects self-report and urinalysis data from selected samples of arrestees brought to booking facilities. Women are tested in twenty-one of the twenty-four DUF cities and in 1992 tested higher than men in thirteen of the twenty-one cities with the percentage of drug positives ranging from a low of 31% in San Antonio to a high of 80% in Portland, Oregon. In all but two sites (Indianapolis and San Antonio), cocaine was the prevalent drug among females.¹³

Data from the U.S. Sentencing Commission reveal that in 1994 African American women were 82% of all women sentenced for crack offenses.¹⁴ The increase in state imprisonments for drug offenses for African American women between 1986 and 1991 was 828% compared to a 241% increase for white women.¹⁵ In fact, we hear little about the fact that minority women are disproportionately incarcerated more so than their male counterparts. As of

9. Leon Pettway et al., *Drugs and the Community* (August 15, 1995) (unpublished manuscript presented to U.S. Attorney General Janet Reno by the American Society of Criminology Policy) (on file with author).

10. *Id.*

11. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, *CRIME IN THE UNITED STATES—1994*, at 222 (1995).

12. *Id.*

13. NATIONAL INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, *THE DRUG USE FORECASTING PROGRAM: MEASURING DRUG USE IN A “HIDDEN” POPULATION* (1993).

14. MAUER & HULING, *supra* note 7, at 20.

15. *Id.* at tbl.7.

June 30, 1991, women of color represented 61.4% of women in state prisons and 64.5% of women incarcerated in federal prisons.¹⁶ And the numbers are increasing steadily.

III. CURRENT POLICIES AND PRACTICES

I must preface the following discussion of current policies and practices of drug and crime control by emphasizing that *none of them work*. One could use the same chord of awe struck by the late astronomer Carl Sagan when he described the stars of the universe—"billions and billions" of dollars have been spent in the futile wars against drugs and crime. With one exception, a reinstated "war against poverty," there should be *no more wars*, particularly since these wars have been declared upon and fought against small time, low level drug dealers and petty street criminals who are predominantly people of color. These small fry minority members do not have the airplanes or ocean going vessels that carry the tons of drugs brought into our country. The big time, wholesaler, drug entrepreneurs who engage in large scale drug trafficking and the major white collar criminals whose crooked manipulations cost us ten times more than the gains of street crimes, are basically ignored by those who profess a desire to reduce crime.

When I spoke at the invitation of the inmate chapter of the NAACP at the federal prison in Terre Haute, Indiana, I was astounded when I looked out at the audience of predominantly young African American and Latino men. In talking to several of them after my presentation, I was shocked to find that most of them had received twenty years, while many had been sentenced to life in prison for drug possession. In many cases, these young men were users who sold drugs to support their own habits. I cried all the way during the hour and a half drive home. Later I had occasion to present a paper on drugs and the community to U.S. Attorney General Janet Reno,¹⁷ and she seemed very interested in those Terre Haute inmates. She approached me in a later conversation and gave me the names of three African American U.S. Attorneys to contact who would look into the exorbitant sentences of these young minority men. As soon as I returned from Washington, I contacted the NAACP representative at the prison, a form was designed, and completed by thirty-two young minority men outlining their arrest histories and their harsh sentences to federal prison. I also located and talked to two of the three U.S. Attorneys (one was on vacation), who Ms. Reno mentioned, since, after six weeks, they never contacted me. I found that they were unaware of Ms. Reno's commitment to seriously look into the Terre Haute situation. And that was the last I heard of

16. AMERICAN CORRECTIONAL ASS'N, DIRECTORY: JUVENILE & ADULT CORRECTIONAL DEPARTMENTS, INSTITUTIONS, AGENCIES, AND PAROLING AUTHORITIES (1992).

17. Pettitway et al., *supra* note 9, at 12.

it. I have not given up, however, and will continue to pursue the issue.

As Michael Tonry observes in his eloquent and insightful book, *Malign Neglect: Race, Crime and Punishment in America*:¹⁸ (1) the "war on drugs" was a failure because cocaine, "the war's signature drug," became more available and the prices fell; furthermore, there was no evidence that drug use decreased; (2) increased drug arrests (of the small fry) together with the imposition of more severe penalties resulted in a doubling of arrests, police, court cases, and a resultant burgeoning of jail and prison populations; the costs on the criminal justice system, and ultimately for the tax payers, were, and continue to be, enormous; and most disturbing; (3) "the War on Drugs foreseeably and unnecessarily blighted the lives of hundreds of thousands of young disadvantaged black Americans and undermined decades of effort to improve the life chances of members of the urban black underclass."¹⁹

The "war on crime" is simply the other side of the coin of the "war on drugs." Recent projections suggest that if the present arrest trends continue, the previously mentioned African American one in four will be one in two in the very near future.²⁰ In some cities the projected proportions are already a reality. In 1991, 42% of young African American males, eighteen to thirty-five years of age, were in jail, in prison, on probation, on parole, awaiting trial or sentencing, or had arrest warrants out for them in Washington, D.C.²¹ That same year this figure was 56% in Baltimore, Maryland.²² Further, of the 12,965 persons arrested and charged with drug abuse violations in Baltimore in 1991, 11,107 were African American (85.7%), with African American youths 100 times more likely to be charged with drug sales than white youths in Baltimore.²³

Franklin Zimring, law professor and juvenile delinquency expert at Berkeley, argues that crime rates are basically cyclical, yet the media keep crime in the "forefront of U.S. concerns."²⁴ Most importantly, Professor

18. MICHAEL H. TONRY, *MALIGN NEGLECT: RACE, CRIME, AND PUNISHMENT IN AMERICA* 81-82 (1995).

19. *Id.* at 82.

20. MAUER & HULING, *supra* note 7.

21. JEROME G. MILLER, NATIONAL CENTER ON INST. AND ALTERNATIVES, *HOBBLING A GENERATION: YOUNG AFRICAN AMERICAN MALES IN THE WASHINGTON, D.C.'S CRIMINAL JUSTICE SYSTEM* (Apr. 1992).

22. JEROME G. MILLER, NATIONAL CENTER ON INST. AND ALTERNATIVES, *HOBBLING A GENERATION: YOUNG AFRICAN AMERICAN MALES IN THE CRIMINAL JUSTICE SYSTEM OF AMERICA'S CITIES* (Sept. 1992).

23. MILLER, *supra* note 6, at 81-82.

24. *Short-term Trends in Violent Juvenile Crime: What Does it Mean?*, 21ST CENTURY CRIME & CRIM. JUST., Sept. 1996, at 1, 2.

Zimring notes that "It seems to be a mix of genuine alarm from the gun part of the homicide equation and a rather peculiar political context in which crime was going down all over America, but *we needed something to worry about and something to crusade against.*"²⁵ Humanist activist Jerome Miller further defines this last point when he states:

When nations are not united in wars against other nations, they begin looking elsewhere for enemies. The search focuses on those groups easiest to identify and least likely to be able to mount a credible defense—racial and ethnic minorities, the poor, and the criminal. It's a process of particular relevance in a world where superpowers have lost their causes.²⁶

In my opinion, this point is what the "war on drugs" and the "war on crime" are all about: the oppression of people of color who are treated as second-class citizens. As I have written elsewhere:

This second-class status has been extended and exacerbated by additional encroachments on freedoms by means of the "get tough"-on-crime policies instituted by an ever-widening, conservative administration, legislatures, and Supreme Court. New federal laws—for example, omnibus crime laws, federal sentencing guidelines, the federal penalty; and questionable legal practices—drug courier "profiles," urine testing, changed Miranda warnings, stop and frisk, search and seize, and executing children and the mentally retarded, to name but a few—reflect the mean-spirited, punitive, and institutionalized racist perspectives of those in power.²⁷

IV. PROPOSED POLICIES

A. Drug Policy

Before we can address the issue of drug policy, which I feel must be immediately changed, we must try to understand why people of any age use drugs. I suggest two possible reasons, each of which is not totally exclusive: first, drugs are pleasurable; and second, drugs provide an escape, the use of which is an anxiety-reducing response to troubling life conditions.

25. *Id.* (emphasis added).

26. I reviewed Miller's manuscript of *Search and Destroy*, for Cambridge University Press. See *supra* note 6. This was the opening paragraph in the manuscript but was apparently deleted in the book.

27. CORAMAE RICHEY MANN, *UNEQUAL JUSTICE: A QUESTION OF COLOR* 139 (1993).

I recall a lab experiment when I was a graduate student in clinical psychology. From an apparatus that drew smoke from a cigarette into a flask of water, the professor poured a small dish of that water for a laboratory rat that had been denied water. The little mammal thirstily lapped up the dish of water and shortly thereafter keeled over dead. After witnessing the experiment, there was a mad rush to the hall to light up our cigarettes and deal with our anxiety. Another experiment using cocaine demonstrated that when they had a choice of levers to select food or cocaine, the rats would continue to select cocaine over food until they died.

My point is that addiction is a psychological problem that is largely one of dependency, which makes addiction a medical problem, not a criminal problem; and it should be treated as such. Professor Polsby spoke of legalization and decriminalization of drugs as though they were the same policies. I would like to clear up the confusion in definitions. Drug legalization, if understood by the public and its officials, is possible; whereas, I doubt that decriminalization would be acceptable in America today. *Decriminalization* of drugs carries few, if any, legal sanctions—generally the penalty for possession is a fine. Thus, possession is not a crime under drug decriminalization. *Legalization* of drugs, on the other hand, would allow the treatment of registered drug users through regulation and control of the substance. Similar to legalized prostitution in some Nevada counties, the addict would be registered, given an identification card and monitored regularly. Therapy and drug counseling would be integral components of a legalized drug program. Such a plan could also involve family therapy, job training and placement, and any other counseling necessary to bring the dependent addict into the mainstream of society. In many ways legalization could also be described as a medical model.²⁸

B. Research Policy

As I stated previously, we now know the problems of drugs in the inner city very well. What more is there to know? And, how accurate are the current findings that are available? We should call a moratorium on research of minority youths and adults and best apply such funds to meaningful drug treatment and rehabilitation efforts. For those researchers who are chagrined at such a suggestion, perhaps they might persuade the usual funding sources, the federal and state governments who commonly set the research agendas, to adopt a more realistic research focus, one centered on the primary drug users—white Americans.

28. For more detailed definitions of drug policy terms, see Eric E. Sterling, *The Sentencing Boomerang: Drug Prohibition Politics and Reform*, 40 VILL. L. REV. 383, 399-406 (1995).

C. *Revisiting Anti-Poverty Programs*

Policy changes need to occur on almost every societal level in this nation, and should be particularly directed at those local, state, and federal institutions that affect people of color and the white poor, since they are those currently most in need. Throughout this paper I have spoken forcefully against the “war on drugs” and the “war on crime,” but I do have a great deal of respect for the 1960s “war against poverty” and many of its programs. This was the only “war” that not only made sense, but also had the potential for introducing major changes in U.S. social institutions. Unfortunately, with a few exceptions like Headstart and the Job Corps, that war effort was prematurely abandoned. We should revisit those innovative approaches.

D. *Strengthening Social Institutions*

Racial discrimination, racial segregation and racism have impacted and continue to perpetuate the minority and criminal status of all U.S. racial minorities through every phase of contemporary human existence and in its social institutions—health, education, welfare, housing, economics, politics, religion, family, law, and the justice systems.²⁹ What African American Harvard sociologist William Julius Wilson defines as “historic discrimination,” or discrimination before the mid-twentieth century,³⁰ is so ingrained in this nation as to require a mammoth program of social and economic reform involving the inclusive restructuring of *all* of our social institutions.

As one of the commissioners on the National Criminal Justice Commission (NCCJ)—a group composed of private citizens, police, prosecutors, community activists, civil rights leaders, public health workers, and academics—I can assure you that we worked hard along with an advisory panel of scholars and practitioners for two years to produce the first “independent, critical assessment of the American justice system.” A selection of a few of the recommendations of the NCCJ as to the future of the criminal justice system reflects the Commission’s belief that we should “go back to basics and prevent crime *before* it occurs”; and if it does occur, the punishment should be tailored to fit the offense and the offender. According to the NCCJ:³¹

29. For a more detailed picture of this phenomenon, see Coramae Richey Mann, *The Contribution of Institutionalized Racism to Minority Crime*, in *ETHNICITY, RACE, AND CRIME* (Darnell F. Hawkins ed., 1995).

30. WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* (1987).

31. For the complete report, see *THE REAL WAR ON CRIME* 195-219 (Steven R. Donziger et al. eds., 1996).

- (1) There should be a three year moratorium on new prison construction to assess whether new space is really needed for truly serious violent offenders. The number of incarcerated people has tripled since 1980 despite the fact that in the ten years since 1985 crime has decreased by 5%. Some prison sanctions could be replaced with alternative programs that are "less expensive and often more effective at reducing crime." Some noncustodial punishments are: intensive probation, day reporting centers, halfway houses, work release, home detention, curfews, electronic monitoring, fines, compensation for victims, community service, and drug treatment.
- (2) Over the past five years \$100 billion has been spent prosecuting the drug war yet illegal drug use has not diminished. So we must stop the War on Drugs and replace it with a policy of harm reduction. Harm reduction will include the availability of drug treatment facilities, the involvement of health professionals to operate treatment and detoxification programs, needle exchange programs to slow the transmission of the HIV virus, and special drug courts or pretrial diversion programs that insist upon drug treatment.

This policy will relieve our overcrowded jails and prisons as well as discourage police crackdowns in minority neighborhoods, a practice which contributes to racial disparities in the criminal justice system and strained race relations in the nation.

- (3) Eliminate mandatory punishments and return the balance of power to neutral judges rather than "partisan prosecutors" who seek "to advance their own careers by securing convictions," especially in high-profile cases.
- (4) Racial and ethnic biases within the criminal justice system should be eliminated. Any major changes to crime policy should first assess how the initiative would affect minority communities and prepare a racial impact statement to that effect.
- (5) Penalties for crack cocaine should be dropped to the same level as those for powder cocaine. The current federal practice of treating 100 grams of powder cocaine as equivalent to one gram of crack cocaine must be eliminated. Also, we must abolish the tendency to try African Americans and Latinos in federal courts for drug possession while simultaneously trying white powder cocaine users in state courts which have more lenient sentencing practices.

- (6) "Reduce violence by (1) using innovative approaches developed in the field of public health, and by (2) passing comprehensive gun control legislation at the federal level."³²
- (7) "[T]o reduce street crime, [we must reduce] poverty by investing in children, youth, families, and communities."³³

E. *New Laws Recommended By African American Scholars*

African American criminology professor and attorney, Katheryn Russell, notes that "White-on-Black hoaxes feature White women front and center. In fact, the Smith, Anderson, and Stuart cases involved White *mothers*—the symbol of American virtue—as victims of Black male deviance."³⁴

As you recall, in the South Carolina case, Susan Smith said she had been carjacked by a young black male who drove off with her two small sons. The Anderson case in Milwaukee involved two fictional black men who stabbed and killed Anderson's wife and stabbed him as well. In Boston, the Stuart case had two victims since Charles Stuart's wife was pregnant and according to Stuart, was shot by a black man who also shot him. Stuart had the gall to pick a black man, Willie Bennett, out of a lineup as most resembling the attacker.

Thus, through their racial hoaxes, these white murderers played on the lore that "the young Black male is the symbol of American criminality"³⁵ and according to Russell, such racial hoaxes "underscore unfairness and the racism of Whites."³⁶ Further, Russell notes: "Blacks and Whites divide further by race as the hoax takes its expected course."³⁷

As a remedy, Russell concludes that we need laws which do not reflect bias; one of which is a *racial hoax law* "to punish intentional efforts to thwart law enforcement."³⁸ Perpetrating a racial hoax would be a felony with a criminal fine and/or prison term; with prison time a more effective deterrent than a fine. The hoax perpetrator would also be required to pay restitution and court costs. Further, Russell suggests that an apology requirement should be considered wherein the hoax offender is required to apologize to "the public in

32. *Id.* at 210.

33. *Id.* at 215.

34. Katheryn K. Russell, *The Racial Hoax as Crime: The Law as Affirmation*, 71 IND. L.J. 593, 597 (1996).

35. *Id.* at 599.

36. *Id.* at 600.

37. *Id.*

38. *Id.* at 617.

general, and the Black community in particular, for playing on racial stereotypes.”³⁹

Paul Butler, an African American law professor at George Washington University, expands on Russell’s theme of harm to the black community and to black males specifically in his recommendation for racial based jury nullification⁴⁰ which occurs “[w]hen a jury disregards evidence presented at trial and acquits an otherwise guilty defendant, because the jury objects to the law that the defendant violated or to the application of the law to that defendant”⁴¹ Put simply, “[j]ury nullification occurs when a jury acquits a defendant who it believes is guilty of the crime with which he is charged.”⁴²

Professor Butler emphasizes the moral case for black jury nullification by finding that: (1) the “rule of law” is more mythological than real; that is, the law is “indeterminate and incapable of neutral interpretation”;⁴³ and (2) “‘democracy,’ as practiced in the United States, has betrayed African-Americans far more than they could ever betray it”⁴⁴ because “in American democracy, African-Americans suffer the tyranny of the majority.”⁴⁵

Racism excludes blacks from the governing legislative coalitions with the result that “African-Americans wield little influence over criminal law, state, or federal.”⁴⁶ Thus, under Butler’s black jury nullification thesis, “the black community is better off when some nonviolent lawbreakers remain in the community rather than go to prison. The decision as to what kind of conduct by African-Americans ought to be punished is better made by African-Americans themselves, based on the costs and benefits to their community, than by the traditional criminal justice process, which is controlled by white lawmakers and white law enforcers.”⁴⁷ Butler further states that “it is the moral responsibility of black jurors to emancipate some guilty black outlaws,”⁴⁸ but even more important, there is “no moral obligation to follow an unjust law.”⁴⁹

39. *Id.* at 619.

40. Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677 (1995).

41. *Id.* at 700.

42. *Id.*

43. *Id.* at 707.

44. *Id.* at 706.

45. *Id.* at 706 n.158.

46. *Id.* at 712.

47. *Id.* at 679.

48. *Id.*

49. *Id.* at 708.

V. CONCLUSION

It is sad that I must predict that few, if any, of the above needed recommendations for policy changes will occur in the near future, maybe not even in my lifetime. Gangs, drug policy, and youth welfare, are but a fraction of the problems faced daily by persons of color in this country in their interactions with unjust juvenile and criminal justice systems or in their efforts to survive the devastation of their communities and the concomitant disintegration of the social structure as it crumbles around them.

The anticipated resistance to policy changes will reflect the systemic racism endemic to our nation. In addition to deeply ingrained racial overtones, opposition to altering the existing state of affairs for racial minorities has an entrenched economic basis. In the United States today, the juvenile and criminal justice systems have become a multi-billion dollar industry. Hundreds of thousands of jobs have been created and billions of dollars annually have been spent, especially in law enforcement and corrections, to fight the "war on crime" and contain the prisoners of that war. If that financial sub-stratum collapsed, the economic fallout would be viewed by politicians and the administrations they support as catastrophic. Thus, people of color will remain the sacrificial lamb on the altar of U.S. economic enterprise and profit. This is not a new status, but a condition faced by minorities since the inception of this country. As I have said before, the question of economic subordination cannot be isolated from the question of color in deliberations on punishment and incarceration. As the most studied group, African Americans offer the principal example, but the "coolie" labor of Asian Americans and the "stoop" labor of Mexican and other Hispanic Americans must also be kept in mind. Historically, all peoples of color have been viewed by whites as inferior, controllable, and usable.⁵⁰

In earlier times, slave labor was free labor. After Emancipation, the prison convict lease system in southern states provided a replacement for slavery when, by white design, blacks became over 95 percent of the inmates in most southern prisons. "The coupling of prison and the labor markets as applied to African Americans leads to two critical observations: (1) the uncontestable historical and contemporary connection between labor-driven imprisonment based on color, and (2) the present-day implications of such economic motivations seen in expanding prison industries and the movement toward privatization."⁵¹

50. MANN, *supra* note 27, at 250.

51. *Id.* at 252 (quoting Christopher R. Adamson, *Punishment After Slavery: Southern State Penal Systems, 1865-1890*, 30 SOC. PROBS. 555, 565 (1983)).

Prisons provide a cheap labor pool for businesses and industries as well as captive customers for their many products and services. Because of these massive profits, it is not likely that we will see a reduction in that minority labor pool. In fact, the movement toward privatization of prison management and prison ownership is advancing rapidly since the first private prison opened ten years ago. It is chilling to envision private prisons where the only purpose is profit making. While I stated, "we don't need more wars," perhaps the war, the "big one," is just beginning.