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David Cole

No Equal Justice: Race and Class in the American Criminal Justice System

New York: The New Press. 218 pp. \$25.00 (hbk).

ISBN 1–56584–473–4.

• Reviewed by Neil H. Buchanan, PhD, University of Michigan Law School, USA

John Rawls asked us to judge a society by asking ourselves whether we would be willing to start life within it from even the most disadvantaged position. If so, that society would be just. In the US and elsewhere, one of the most critical aspects of one's initial position is race.

Thus Rawls' question might profitably be asked in a different way: would a self-interested white person in the US be willing to start life over as a black child? To hear some conservative commentators and academics describe it, the legal environment in the US is unacceptably and horribly tilted against the majority. Affirmative action has gone too far and must be eliminated. There is supposedly no individual more put upon than the white male. If this preposterous claim were true, however, the quasi-Rawlsian hypothetical would certainly be easy to answer. Any white American would see social and economic advantages of being black.

When I ask conservatives this question, though, they look at me as if I have lost my mind. For all of their posing, there really is no getting around the basic facts. The economic statistics reveal an unending story of disadvantage for racial and ethnic minorities: among other problems, unemployment and poverty rates are dramatically higher; educational attainment is lower; and representation among business elites is almost non-existent. It is possible to quibble about various aspects of civil rights legislation, but the bottom line is that race is still a depressingly accurate proxy for class and status in the US.

The most dramatic arena in which race and class play a role, though, must certainly be the criminal law. Even for those members of racial minority groups who achieve economic success, there is no escaping the fact that they 'look different' and, therefore, that they are much more likely than whites to endure harassment and worse at the hands of police and the courts. David Cole's *No Equal Justice: Race and Class in the American Criminal Justice System* makes these points in grim but riveting detail. While a scholarly work that evokes the response 'Yes but we already knew that' will typically provoke little interest, this book leads the reader to say, 'Yes, I *knew* it.' Cole documents with both formal statistics and compelling recounting of individual cases what many of us

have known for years: that the US criminal justice system is blatantly, pervasively, and inherently skewed against minorities, and African-American men in particular.

The book is broken into an introductory essay and seven chapters. Cole discusses a wide array of subjects, such as race-based traffic enforcement, or 'pretext stops,' in which African-Americans are targeted for enforcement of minor traffic violations as a way to initiate illegal searches for drugs. This has again become politically volatile even in the few months since the book was published as the politically ambitious Republican governor of New Jersey, Christine Todd Whitman, has been forced to acknowledge and confront the pervasive use of racial 'profiling' by her state police force. The State of Maryland, which Cole describes as having been the target of a class-action law suit for racial profiling, has also recently been found to have violated its own agreement to stop the practice. The issues that Cole describes are not new, nor are they going away.

Cole includes an extremely important discussion of death penalty injustices in the US. A related part of this discussion, which arguably deserves even more attention than it currently receives from those interested in racial justice, is the quality of the legal representation received by poor (and mostly African-American) defendants in capital cases. Recent reports of court-appointed lawyers falling asleep in court and showing up for court appearances drunk, just might be related to the fact that States are providing compensation to private attorneys that amounts to less than minimum wage, on an hourly basis, even for the bare minimum of preparation. This, of course, is where the words '... and class ...' from the subtitle of the book become most important. In this area, it seems, the proximate issue is access to economic resources more than race itself.

Cole rightly devotes the bulk of his discussion of the death penalty to controversies over the importance of the race of both the suspect and the victim. As Cole notes:

Virtually every study of race and the death penalty has concluded that, all other things being equal, defendants who kill white victims are much more likely to receive the death penalty than those who kill black victims. The evidence regarding disparities based on the defendant's own race is more equivocal. (p. 132)

A strong point of the book is the lucid analysis of *McCleskey v. Kemp*, the 1987 case in which the US Supreme Court decided (by a one-vote margin) that the evidence regarding the importance of the race of the victim cannot invalidate the constitutionality of the death penalty. Confronted with the most extensive empirical study of its kind which demonstrated that the convicted murderer of a white victim was more than four times more likely to receive the death sentence than was the murderer of a black victim in the state of Georgia, the Court said that this was simply irrelevant. Absent a finding that the specific jury in each specific case (or the prosecutor in that case) was acting with conscious racist intent, the fact that *other juries* had apparently been convicting

on the basis of race simply did not matter. Cole's analysis of this case is simultaneously exhaustive, insightful, and passionate.

Concerned with remedies, the last chapter is also provocative. A sampling of the sub-headings in that chapter will provide a taste of Cole's approach: for example, 'Restoring Legitimacy,' 'Restoring Community' and 'Involving the Community in Punishment.' Cole provides an interesting discussion of shaming, acknowledging from the start that shaming has the potential to be barbaric. He then analyzes how to use shame positively to punish crime without the many costs of incarceration. He invokes the Australian criminologist John Braithwaite's concept of 'reintegrative shaming,' which is designed to make shaming a transformational enterprise. It also blunts the standard accusation that those who advocate anything other than prison-based punishment are 'soft on crime.'

Beyond Cole's impressive marshaling of evidence, as important as that is, perhaps the most interesting argument of the book appears in Chapter 6, 'The Costs of Inequality.' Here, Cole argues that the US justice system in its current form is the manifestation of a dangerous bargain made by white people. The current legal system exploits 'double standards and disparate impacts,' laying the costs of coercive and invasive crime fighting on minority communities while securing for whites the fruits of less crime. Cole argues persuasively that, at best, this is short-term gain at serious long-term expense, since any system of criminal justice must rely for its ultimate effectiveness on its legitimacy among the population—especially the population most targeted by the police. By making things as bad as they have become for America's poor and minorities, Cole warns, the majority is all but guaranteeing that matters will become worse for everyone.

Thinking about this bargain leads to some interesting theorizing. If we followed Cole's advice and forced the criminal justice system to deal with everyone in a truly color-blind and economically neutral fashion, it is not at all clear what would result. Would the general population put greater weight on their own freedoms or on their own fear of crime? Either outcome is imaginable. Faced with the possibility that the war on crime (which, in the US, is sometimes indistinguishable from the war on drugs) would be fought in their own automobiles and living rooms, the majority of the population might well decide that drug treatment (or even the legalization of most controlled substances) is not such a bad idea after all. On the other hand, it is similarly plausible that the people's choice would be to tolerate intrusive police-state tactics that will make the trains run on time—and make them crime-free to boot.

One is immediately tempted to suggest that we would probably end up 'somewhere in the middle,' but this is hardly satisfying. Where in the middle? Exactly halfway between a police state and the ACLU's dream? My own guess is that we would end up closer to the liberal ideal, with strict limitations on police powers and much closer adherence to explicit due process. After all, in those areas that actually do touch the middle and upper-middle class such as reproductive rights, American public opinion is decidedly libertarian. This is

admittedly conjecture and it suggests that useful work could be done by someone who was willing to consider seriously the likely social and political reactions to equalized treatment by the criminal justice system. Such work would almost certainly involve useful cross-national comparisons.

Clearly this is not a shortcoming of Cole's useful book, but rather evidence that its scope is broader than it seems. Anyone interested in a persuasive and readable account of the pernicious effects of race and class on the criminal justice system in the US could do no better than to start with David Cole's important book.

Drew Humphries

Crack Mothers: Pregnancy, Drugs, and the Media

Ohio University Press, 1999. 232 pp. £23.95 (hbk).

ISBN 0-8142-0816-9.

• Reviewed by Erica Childs, Fordham University, USA

The goal of *Crack Mothers*, writes Drew Humphries, is 'to answer . . . [h]ow and with what consequences did an unusually powerless category of women emerge as a threatening symbol of disorder, the unenviable enemy in the domestic war on drugs?' (p. 15). Humphries takes a critical approach to answering these questions, arguing that the phenomenon of 'crack mothers' and to an extent, the crack epidemic itself, was constructed by the media. This campaign against women who used drugs during pregnancy is viewed as a moral panic, insofar as the media fed mainstream society's fears and did not accurately portray women's lives and circumstances. The intersections of race, gender, and class are also addressed, showing how the media played upon stereotypical images and ideas about poor minority women. Without condemning or condoning the actions of these women, Humphries provides an in-depth look at how and why 'crack mothers' came to the forefront of the war on drugs.

Combining media analysis, statistics, and interviews with drug-using women, Humphries uses a variety of methods to explore three different aspects of the 'crack mother' phenomenon: the media's role in the creation of a moral panic; treatment options and punitive measures applied to women; and consequences for the children and child welfare services. Thus, Chapter 1 analyzes national network television news broadcasts from 1983-4. Humphries identifies four stages which document the rise and fall of crack mothers as a news story. Emphasis is placed on the race and class specific images of crack mothers in the later stages, as well as the final stage which marks a transformation in the portrayal of crack mothers towards highlighting an optimistic future for the mothers and children who are on the road to recovery through treatment.

Next, in Chapter 2, Humphries discusses how this supposed 'transformation' was a result of shifting media interest. Suggesting that the 'crack mother'