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Beyond Skin Deep: Understanding Disproportionate Minority Contact through Ethnocultural Implicit Bias and the Decision-Making Process among Justice System Gatekeepers

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Disproportionate Minority Contact (DMC) has been studied as a social phenomenon for decades. Despite the quality research done on this construct, efforts to reduce disproportionality across the justice system have been marginally successful. Historically, DMC has been viewed from a perspective that attributes a macro level construct (systemic minority overrepresentation) to micro level processes (individual decision-making), with the most of the research focusing on whether DMC exists and the scope of the problem, rather than why it exists. The present article offers a theoretical explanation of DMC through an expanded lens of implicit bias. While implicit bias is usually discussed from a racial context, the discretionary decisions of justice system gatekeepers are subject to implicit biases transcendent of race. These biases, which may be grounded in ethnocultural differences, present the risk for inequitable criminal justice decision-making and may be driving the overrepresentation of minority youth in the justice system. The tenets of this perspective, as well as applications and recommendations are discussed.

INTRODUCTION

For more than two decades, Disproportionate Minority Contact (DMC), defined as the overrepresentation of minority youth in contact with the juvenile justice system, has been a critical issue in the United States (Disproportionate Minority Contact). Despite federal and state government efforts to reduce DMC, and over 20 years of quality DMC research, commentary, and proposed solutions, racial disparities among system-involved youth remains a prevalent issue (Mears, Cochran, and Lindsey, 2016). In North Carolina, efforts to reduce delinquency rates and secure custody admissions have been successful, while issues of racial disparities within the system have remained prevalent. The 2016 Annual Report on Juvenile Justice prepared by the North Carolina Department of Public Safety reflects steady declines in the number of school based juvenile complaints from over 16,097 in 2010 to 11,630 in 2016 (Perry, Guice, & Lassiter, 2016). Additionally, the report indicates both short term and long term secure custody admissions have seen notable declines, reducing the number of youth detained in detention centers and youth development centers by nearly 33% and 50% respectively. Despite the concerted effort to reduce youth contact with the juvenile justice system overall, minority youth

continue to represent over 75% of youth confined in detention centers and nearly 85% of youth confined in youth development centers (Perry, Guice, & Lassiter, 2016).

Traditionally, DMC research has focused on understanding the construct from a structural perspective. The majority of DMC research is focused on examining the prevalence of racial disparities across the various points in the juvenile justice system (Nellis and Richardson, 2010). Scholars have consistently found that DMC is prevalent at virtually every decision point in the juvenile justice system (Brinkley, Craven, & McCormack, 2013; Dillard, 2013; Mears, Cochran, & Lindsey, 2015). The narrative as it relates to systemic contributors to DMC has generally identified lack of DMC education, flawed philosophical approaches to juvenile justice, and unfair policies that limit the discretion of decision-makers (Nellis and Richardson, 2010). As a result, efforts to increase DMC related awareness has become a popular first step at reducing disproportionately (Nellis and Richardson, 2010; Dillard, 2013). Resources from OJJDP, state level organizations, and local jurisdictions are disseminated regularly to juvenile justice practitioners and service providers. In addition, addressing discriminatory practices has been a focus of many jurisdictions, as agencies across the country have made racial diversity in hiring practices and sensitivity training priorities (Allen and White-Smith, 2014).

Few studies, however, have examined DMC from a micro-level perspective. The structural focus of traditional DMC research is not equipped to account for the individual level interactions between system gatekeepers and minority youth. As a result, behavioral science perspectives that may add context to systemic disparate outcomes has been underrepresented in DMC research. The limited success of DMC reduction efforts has been discussed within the literature. Dillard (2013) cites limited discourse on the issue, and a failure to consider the role of police officers and other front-end system players in the persistence of DMC. Other researchers (Nellis and Richardson, 2010; Bell & Ridolfi, 2008) argue that successful DMC reduction has been hindered by the research's explicit focus on whether DMC exists and the scope of the problem, and limited focus on why DMC exists and how to go about eliminating it. This argument highlights the need for scholars and juvenile justice practitioners to approach DMC from a new angle.

The existence of prejudice, stereotypes, and implicit bias variations are well documented throughout the social psychological knowledge base (Green, et.al, 2007; Brewer, 1988; Fiske & Neuberg, 1990). In addition, ethnocentric thought and its impact on information processing and decision-making are also documented (Banks, 2016; Neese & Haynie, 2015). Although these constructs are not new, there is little evidence in the criminal justice research literature that these relevant social psychological constructs have been applied to understanding racial disparities and DMC. Further, bias, while traditionally studied in a racial context, is subject to happen in a broader context to include elements of ethnicity and culture. This perspective is missing from the implicit bias literature, but is important because it potentially elucidates critical explanatory mechanisms that drive the perpetuation of DMC. Because police officers, school personnel, probation officers, and other system gatekeepers are human, they are subject to the influence of implicit bias, which may affect their decision-making habits. This article aims to explore DMC through the expanded theoretical lens of ethnocultural implicit bias and examining the decision-making process of justice-system gatekeepers.

LITERATURE REVIEW

Variations of Implicit Bias

Implicit bias, also known as implicit social cognition, refers to a series of involuntary, unconscious thoughts and attitudes driven by traces of past experiences that directly influence an individual's behavior. (Haefffel, et.al, 2007; Greenwald and Banaji, 1995). Because these thoughts and attitudes exist unconsciously, people often lack the ability to detect bias within their behavior. Although the original experience that triggers the thoughts and attitudes (bias) is not a dominant feature in an individual's thought process, the thoughts and attitudes resulting from the experience become imbedded in one's subconscious thoughts (Fazio and Olson, 2003). For example, a negative experience with a rude campus police officer while in college may affect one's perception of police officers in general. This negative experience serves as the catalyst for an underlying bias against police, which may be exacerbated by the documented negative experiences of others. Long after the details of the original negative interaction with the police officer are forgotten, the bias remains and drives the student's thoughts and attitudes toward police. As a result, the biased thoughts and attitudes become so engrained in one's unconsciousness, that they are unable to connect a specific past experience to their bias (Greenwald and Banaji, 1995). Social psychologists have studied implicit bias for decades, documenting its prevalence and exploring its impact on various outcomes across several disciplines and topics of interest.

Implicit bias has been cited as a possible explanation to racial health disparities, as unconscious attitudes and stereotypes have been found to influence physicians' approach treatment among black and white patients (Green, et.al, 2007). Additionally, implicit attitudes associating obese medical patients with laziness have been found to be prevalent among medical professionals (Teachman & Brownell, 2001). Similar findings are prevalent in literature related to discriminatory hiring practices (Greenwald & Banaji, 1995), threat assessment among police officers (Hugenberg & Bodenhausen, 2003), and among trial juries within the criminal justice process (Mears, Cochran, & Lindsey, 2015). The underlying theme that emerges from implicit bias literature is its prevalence among generally well-intentioned people. Implicit bias does not require intent, nor does it readily detectable. As a result, variations of implicit bias, to include attentional bias and implicit ethnocentrism, have also been studied, highlighting a nuanced impact of unconscious attitudes more broadly.

Attentional Bias. Cognitive psychologists (Brewer, 1988; Fiske & Neuberg, 1990; Rodin, 1987) have asserted that the process by which people store, process, and apply information is profoundly influenced by the stereotypes ascribed to various social categories. The categorizing of people, places, and things is not a function of one's bias, but rather a function of how the human brain streamlines information processing. Associating people or things with a particular category, or stereotype, significantly influences one's subsequent interaction with the people or things. While the brain naturally categorizes social stimuli, personal experiences drive one's perceptions of social stereotypes. Perceptions that have been tainted by experiences produce bias, which attaches itself to the social categories organized within the brain. When these categories or stereotypes include negative social cues, increased attention may be given to the person or thing within the category.

Attentional bias refers to the tendency to become hyper-vigilant toward a particular stimulus, usually a perceived threat, while simultaneously ignoring other stimuli (Richeson & Trawalter, 2008). For example, if a child with an unreasonable fear of spiders encounters a spider in their bedroom, the attention given to that spider increases as he or she watches its every move. As hyper-vigilance towards the spider increases, the child becomes less aware of the other things in the room, resulting in the child falling over a piece of bedroom furniture as he or she flees the room. Attentional bias has been studied at length by cognitive psychologists and neuroscientists and has been linked to the disparate perceptions of facial emotion recognition and threat.

Bias and Threat Perception. Historically, stereotype research has linked black men to violence, criminality and danger (Maner et al., 2005; Payne, 2001; Cottrell & Neuberg, 2005). Neuroscientists (Davis, 1992; Whalen, 1998; Cunningham et al., 2004; Phelps et al., 2000) cite empirical evidence linking increased activity in the amygdala, the region of the brain that determines selective response to perceived threat, to attentional bias when exposed to threatening stimuli. Substantial empirical evidence suggests that automatic threat responses among white perceivers occur within the brain when exposed to faces of black males. Trawalter and colleagues (2008) conducted a study to measure the selective attention (attentional bias) of white social perceivers using a dot-probe detection paradigm to measure how their eyes reacted to race based stimuli. Participants were shown pictures of young, black and white male faces and their eyes were monitored for attentional bias. In addition to findings demonstrating clear attentional bias toward black faces, the findings also suggest that black male targets experienced levels of perceived threat similar to that of snakes, spiders or angry faces. Donder, Correll, and Wittenbrink (2008) found similar attentional bias in a study using similar dot-probe detection paradigm methodology to measure how the black danger stereotype affects differences in attentional capture and attentional holding among white perceivers. Study results suggest that black danger associations significantly predict the speed and length of the participants' attentional allocation to black faces. In sum, study participants allocated attention faster and for longer periods to black-dangerous faces.

Researchers have documented the implications of implicit and attentional bias. Richeson and Trawalter (2008) demonstrates the power of implicit bias and attentional bias through the subconscious nature of information processing. Study results found that implicit and attentional bias occur despite individual motivation to avoid appearing prejudice. Threat perceptions and stereotypes also have a profound impact on how people process information, often driving interpersonal interactions. Amodio and Devine (2006) argue that implicit stereotypes drive impression formation and judgement, which have implications for relevant behavior. Stereotypes and biases are notable variables in predicting how people interact with each other. In addition, scholars (Cunningham, Nezlek, and Banaji, 2004; Wanninayake, 2015) have highlighted the impact that ethnic based bias has on decision-making behavior.

Implicit Ethnocentrism. Social psychologists have studied ethnocentrism at length for over a century. Ethnocentrism speaks to a tendency for individuals to be ethnically centered, and rigidly accepting of those who share similar cultural values and norms, while generally rejecting and dismissing those who do not (Omohundro, 2008). The dominant feature of ethnocentric thought

is the notion that an individual's worldview is intrinsically more valuable than another's. Ethnocentrism can be manifested explicitly, but generally occurs implicitly. Much like other forms of implicit bias, ethnocentric thought is largely a product of socialization, one's personal experiences, and the manner in which the brain processes and organizes information (Omohundro, 2008; Cunningham, Nezlek, and Banaji, 2004; Amodio and Devine, 2006). Researchers have established implicit ethnocentrism as a prevalent issue within the literature related to stereotypes and prejudice.

Banks (2016) explains the development of ethnocentric thought by exploring the tenants of social identity theory. From a social identity perspective, ethnocentrism is a product of an innate tendency for people to adopt an "us versus them" worldview. Through the brain's natural function of processing information, people organize the world around them into categories that include some and exclude others. Because these categories are generally based on one's ethnocentric preferences, the similarities within the category are enhanced to accentuate the differences among those outside of the category. Ethnocentrism creates in-groups and out-groups along ethnic lines, producing perceptions of the in-group that tend to be positive, while out-group perceptions tend to be indifferent at best, or negative at worst. Ethnocentric thought has been found to be a predictor of racial and immigration policy opinions (Banks, 2016), consumer decision making (Neese & Haynie, 2015; Wanninayake, 2014), and food choices (Vabo, Hansen, Hansen, and Kraggerud, 2016), and has implications for the process by which bias impacts the criminal justice system.

Bias beyond the Racial Context

Implicit bias research has generally featured the racial context as the central theme driving perceptions and decision-making (Haefffel, et.al, 2007; Greenwald and Banaji, 1995; Teachman & Brownell, 2001). While understanding the role of race in the perpetuation of implicit bias and its implications is important, it does not account for bias that is transcendent of race. Implicit bias variations are subject to occur beyond the racial context, and may include aspects of culture, ethnicity, gender, politics, or age. Many baby boomers may ascribe to stereotypes and prejudices related to millennials, while southern conservatives may have bias related to northern liberals. These stereotypes are a hallmark of the socialization process, and may be better understood by examining them through the theoretical lens of an ethnocultural perspective.

Ethnocentrism, much like other implicit bias variations, often goes unnoticed because of its implicit and unconscious nature. Drumwright and colleagues (2015) describe ethnocentrism and prejudice as our moral default settings. Because the criminal and juvenile justice system relies on the discretion of system decision makers, and individual level discretion is highly influenced by one's moral code, ethnocentrism and other variations of implicit bias are potentially key intervening variables in understanding the nature of the decision making process. Criminal and juvenile justice gatekeepers, from law enforcement officers to court personnel, are not immune from the far-reaching impacts of implicit biases.

Despite broad racial diversity among gatekeepers to the justice system, to include criminal justice actors, school personnel, child welfare personnel, and parents, ethnocultural differences among minority youth at-risk for justice system involvement may be prevalent. Young people

may engage in behavior that is deviant in the eyes of adults, including justice system gatekeepers, but is well within their prescribed ethnocultural norms. The differences that exist between youth and adults span a broad range of ethnocultural variables, from music and clothing choices to word choice and public decorum. Theoretically, ethnocultural differences are not factors in the decision-making process for justice system gatekeepers, but decision-makers are human and subject to biases. As a result, there may be an elevated risk for these variables to affect the decision-making process of system gatekeepers. Attention must be given to the impact of implicit bias variations on the decision making of system gatekeepers, in addition to the implications it has on understanding the racial disparities within the criminal and juvenile justice system.

Bias and DMC

Research explicitly focused on exploring the link between implicit bias variations and racial disparities in the justice system is limited. While scholars have generally approached the exploration of implicit bias variations and the construct of DMC separately, a few studies have assessed the role of bias in criminal justice decision-making. Ward and colleagues (2011) explored the role of racial politics (support or opposition to the federal DMC mandate of 1992) among juvenile court workers, focusing on the degree to which the attitudes of the workers affected their view of the disparate confinement of minority youth. Study results suggest that racial politics may drive the orientation of court personnel, shaping the way they view racial disparities in youth confinement. Marsh (2009) discussed the implications of individual-level implicit biases on juvenile processing. The research highlights the potential for inequitable decision-making among system gatekeepers as a result of how the brain processes information.

Similarly, researchers exploring differential juvenile processing as a mechanism driving DMC have assessed the utility of stereotyping and bias among criminal justice actors. Racial disparities have been found to be driven by probation officer stereotyping related to youth risk for reoffending, sentencing recommendation, and perceived causes of crime (Bridges and Steen, 1998). Additionally, the race and demeanor of the youth has been found to affect the discretionary decision-making process of police officers (Correll et al., 2002). Most notably, Graham and Lowry (2004) conducted studies examining unconscious racial stereotypes of juvenile justice decision-makers. Results suggested that respondents with unconscious racial stereotypes were prone to developing negative perceptions of the minority youth, while perceiving greater culpability, expecting recidivism, and endorsing more severe punishments. These and similar studies evaluated bias within the justice system based purely from a racial context. Perspectives exploring bias as a product of ethnocultural variables beyond the domain of race are missing from the literature.

In their study, Graham and Lowry (2002) highlighted a theoretical narrative regarding the experiences African American youth in the justice system. Decades of social psychological research related to stereotypes (Correll, Park, Judd, & Wittenbrink, 2002; Devine & Elliot, 1995; Dovidio, Evans, & Tyler, 1986; Krueger, 1996) have linked minority youth, especially African Americans, to violence, aggression, danger, and adult-like criminal intent. Despite this truth, the juvenile justice system differs from the adult criminal justice system in that offenders are generally characterized as vulnerable, impulsive, and highly malleable. Graham and Lowry

(2002) hypothesize that the philosophical difference in approach between youthful and adult offenders is superseded by the negative cultural stereotypes attributed to African American youth, and reinforced through the media. This hypothesis underscores the need to expand the scope of inquiry related to the intersection between implicit bias and justice system gatekeepers to include ethnocultural variables.

DISCUSSION

Disproportionate minority contact (DMC) is largely a decisions driven phenomenon (Leiber, Bishop, and Chamlin, 2001). The concept of discretion is the primary decision-making tool that drives the criminal justice system at every level from policing to punishment. Bohm and Hayley (2017) describe discretion in the criminal justice system as the reliance on personal judgement rather than formal rules while making decisions. While the concept of discretion allows for a much more streamlined justice process that keeps every dispute from having to be settled within a court of law, it is subject to the influence of bias that occurs at the individual level. Racial disparities within the justice system may be the product of the manner in which the decisions of system gatekeepers are influenced by ethnocultural implicit bias.

System gatekeepers, including criminal justice actors, school personnel, child welfare personnel, and parents, represent the portal through which youth enter into the justice system. Individuals who are subject to their own individual-level implicit bias drive the criminal justice system at the macro-level, and the issue of overrepresentation of minority youth therein. Ethnocultural differences that produce implicit biases may be the catalyst that drives the manner in which minority youth are handled within schools, among law enforcement, and at home. Attentional bias research has produced empirical evidence that suggests minority youth receive selective attention from authority figures at higher rates than their white counterparts (Richeson & Trawalter, 2008; Davis, 1992; Whalen, 1998; Cunningham et al., 2004). The additional attention that minority youth receive from institutions potentially explains why some of the most pronounced racial disparities exist within juvenile system complaint data (Soler and Gary, 2009).

After youth are referred to the juvenile justice system, an intake counselor or probation officer makes a decision regarding the appropriate next steps. These steps range from taking no formal justice system related action to diversion, and/or confinement. While jurisdictions have developed guidelines and assessment tools to facilitate the juvenile justice decision-making, many decision-makers wield a great deal of discretion in terms of the most appropriate remedy to the deviant or delinquent act. This discretionary decision-making point is vulnerable to influence from individual-level ethnocultural implicit biases.

In the justice system, decisions regarding the most appropriate course of action for a particular youthful offender are likely the product of an evaluation of the circumstances surrounding the case and results from risk and needs assessments, coupled with the philosophical guidelines of the court district and the professional experience of the decision-maker. While the facts of the case are static in nature, interpretations of the assessment results and philosophy driven by the personal experiences of the decision maker are highly variable. System decision makers, who may include juvenile probation officers, intake counselors, or other juvenile court personnel, are

subject to the same in-group and out-group dichotomy as other people. Preventative measures that minimize the potential impact of ethnocultural implicit biases are needed to reduce the risk of discriminatory decision-making.

Diagnosing Disparity

Evidence supports the role of information processing in the brain, coupled with individual level experiences and socialization that affects implicit biases and decision-making (Hugenberg & Bodenhausen, 2003; Haefffel, et.al, 2007; Greenwald and Banaji, 1995). The manifestation of ethnocultural implicit bias potentially hinders the justice system's ability to facilitate equity and fairness for all. A critical first step in determining the approach most likely to address issues of DMC is to identify the underlying nature of the disparities existing in local jurisdictions. Some disparities may be driven by trends in differential offending behaviors, while other disparities may be a product of inequity in decision-making prior to official contact with the justice system.

Disaggregating offense data by race will give insight into any trends in differential offending. This analytic approach has been used widely in traditional DMC research and technical reports (Disproportionate Minority Contact, 2009). However, there is a dearth of research assessing the utility of data disaggregation to inform the creation of DMC reduction programming. Data driven, front-end prevention of contact with the justice system may prove to be a promising approach to reducing racial disparities in juvenile complaint data. Disparities existing within decision points further within the juvenile justice system, including detention, adjudication, and confinement, are especially likely to be driven by the nature of the offense committed by the youth (Mears, Cochran, & Lindsey, 2015). Reduction efforts of racial disparities in the latter stages of the juvenile justice system should center on ensuring equity in procedural practices and consistency in the application of the law among juvenile court judges and other decision makers.

Conversely, DMC driven by decision-making inequity among gatekeepers to the justice system requires an alternative approach. System gatekeepers, who are subject to ethnocultural implicit bias, may be a driving force behind the prevalence of notable racial disparities in juvenile complaint data. Juvenile complaints are generally subject to originate from schools, members of the community, parents, or law enforcement (Henry, Knight, and Thornberry, 2012; Dancy, 2014; Allen and White-Smith, 2014). There are few, if any, quality controls in place to ensure that decisions are made equitably among stakeholders within schools and law enforcement. Moreover, there are few, if any, mechanisms in place to give these gatekeepers feedback on their decisions. The process by which complainants reach their decisions to file a complaint is usually not documented, nor are the decisions subject to review before the youth makes official contact with the justice system. The gap in quality controls available to system gatekeepers in making decisions, coupled with underlying ethnocultural implicit biases may exacerbate the risk for discriminatory decision-making. Reducing racial disparities through the addition of quality control measures for system gatekeepers has not been explored at length in traditional DMC research. New approaches to addressing racial disproportionality must involve measuring and documenting decision-making consistency.

RECOMMENDATIONS

Rigorous studies of the criminal justice applications of implicit bias and its variations are needed. An assessment and comparison of ethnocultural variables among justice involved youth and system decision-makers is likely to illustrate the ethnocultural differences that exist between the two groups. While race seems to be the pervading difference between the groups, ethnocultural variables such as the family/household composition, physical appearance, speech patterns, and worldview represent important in-group/out-group differences that likely influence perceptions. The complicated relationships between in-groups and out-groups, in addition to underlying ethnocultural implicit bias set the stage for an inequitable justice process.

Research using strong methodologies to test the degree to which implicit bias variations influence criminal justice decision-making, in addition to the predictive validity of ethnocultural implicit bias measurements to disparate decision-making outcomes among juvenile court personnel and police officers are strong first steps to understanding how ethnocultural implicit bias manifests in criminal justice decision making. Moreover, research exploring equity in decision-making among pre-justice system actors like school personnel and other members of the community whose decisions may lead to a justice-system contact is missing from the literature. Expanding the focus of implicit bias research beyond the racial context, and including pre-justice system actors initiates a critical step toward closing a gap in DMC literature. Results from these studies should guide the development of innovative DMC reduction programming that could be implemented both local jurisdictions and within the justice system, ultimately working to eliminate racial and ethnic disparities in the justice system.

Additionally, the potential for discriminatory decision-making among system gatekeepers as a result of ethnocultural implicit bias warrants the development of a risk assessment measuring the propensity for disparate tendencies in decision-making. This measure could be used to determine the risk for discriminatory decisions in local jurisdictions and help to pinpoint DMC driven by decision inequity. A reliable and valid measure of discrimination risk could have applications in schools among disciplinary decision makers, among law enforcement officers, juvenile justice practitioners, and juvenile court judges. Risk scores could inform administrators in the applicable institutions on how best to approach professional development initiatives. Data driven professional development related to ethnocultural bias and discrimination may help to minimize the risk for decision inequity, potentially reducing DMC related to inequitable decision-making.

The issue of inequitable decision-making driven by ethnocultural implicit biases highlights the need for improved quality controls for justice system gatekeepers. The documentation and review of discretionary decisions among juvenile justice practitioners, school personnel, and judges is a simple framework through which decision-making quality control can be measured. This added layer of data collection could be used to provide decision makers with summaries of their discretionary decisions. Justice system gatekeepers would have the ability to review their tendencies, comparing their decisions over time and evaluate any inequities existing in the documentation. An added quality control measure may involve having a third party review the decisions and provide feedback to decision makers about their tendencies. Using the feedback from the documentation and review of decisions to guide future discretionary decision-making

may prove helpful in improving quality control measures for system gatekeepers. Because decision-making quality control has not been explored in the literature related to DMC, this approach presents an opportunity to address the reduction of DMC from a different angle.

Ethnocultural implicit bias among justice system gatekeepers is an emerging contemporary issue in the study of DMC. Examining the decision-making process as it relates to DMC beyond the racial context may be part of the innovation needed to move the work forward. The degree to which scholars and practitioners are willing to employ alternative perspectives related to the racial disproportionality in the justice system may drive our ability to eradicate the issue.

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