Working as Intended

Legislative Intent, Policing, and Racism in the Criminal Legal System

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We would never have written this book without the encouragement of James Williams. The long-time Public Defender for Orange and Chatham Counties until his retirement during the period when the research underlying this book was in progress, Mr. Williams initially proposed the idea of a comprehensive assessment of various parts of the criminal code and how they might have disparate racial impacts. His own work as a public defender over several decades had led him to expect this, and he particularly suggested we look into laws surrounding public protests and disturbances. James, you will see in Chapter 10 just how accurate your intuitions were.

Jim Woodall, long-time District Attorney in the same district as Mr. Williams (and home to Chapel Hill, NC, where all three authors have spent time), was also essential in making this project come to maturity. Far from shying away from an analysis that could prove inconvenient, Mr. Woodall wanted to know exactly what we discovered. He met with us and had several of his most senior assistant district attorneys do so as well, as we asked for clarification about the meanings of certain charges and sought to understand various nuances of the criminal code. The senior staff helped us particularly to identify those offense codes that relate to crimes of violence and to distinguish sexual crimes not involving physical touch (such as failure to register as a sex offender) from those including physical assault. This help was indispensable to us.

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[Other acknowledgments to follow…]

Preface

This book began with modest ambitions. We were going to work with our local Public Defender and District Attorney to write a report assessing racial disparities in the outcomes of the court system. Both were concerned with this and both welcomed the opportunity to bring some social science analytic skills to the question in a way that might be useful in identifying the most serious hotspots of disparity so that they could take action to rectify these issues, or at least to understand them. We worked initially with them and their staffs to produce a technical report for our local area around Chapel Hill, NC, where we were based at the time (and where two of us remain today).

As time went on, the project grew more ambitious. It turns out that the work needed for an assessment of the local situation was the same that would be needed elsewhere. And even in a single prosecutorial district there were tens of thousands of records leaving us with complicated data management and measurement problems. Solving them for the local area also solved them state-wide. So, we expanded our scope and wrote a book about the entire state.

Our project also morphed from a technical report to an ambitious theoretical treatment. We decided not simply to document and explain the roots of racial differences in contact with and treatment by the criminal legal system, as we had started out to do. That seemed too modest, and frankly it had been done before. While it is valuable to update such analyses and to conduct them for each particular jurisdiction, that's a technical report. We decided to write a book. We particularly wanted to address a key issue, which is at the core of this book and in its very title: Is the system broken and dysfunctional, or is it working as intended? That certainly was not in the remit we received from Mr. Williams and Mr. Woodall; their requests were more modest.

In developing a theory about legislative intent and pairing it with the best evidence about disparate impact, we hope that what began as a "mere" technical report has now developed into a more important and complete theoretical statement.

The three of us also have come to this project at different stages of our careers. Baumgartner has been a distinguished professor of political science at UNC-Chapel Hill since 2009. This is his second book analyzing a large administrative database provided by the State Department of Justice; the first had to do with over 20 million traffic stops (see Baumgartner, Epp, et al. 2018). Johnson and Davidson were undergraduates at the time when this project began, but already involved in empirical research; indeed this is our second book as a team, with the first book having been published in 2018 on the topic of the US death penalty system (see Baumgartner, Davidson et al. 2018). They both graduated in 2016, with Davidson pursuing his graduate studies at The University of Michigan, and Johnson at Harvard. Both got their respective PhD's in 2024, and Davidson is now on the faculty of the University of Wisconsin, Madison, and Johnson at her alma mater, UNC-Chapel Hill. It has taken a long time to complete this project as we worked on it in fits and spurts while also doing other things. For Davidson and Johnson, those other things included starting and finishing their PhDs at two of the most demanding graduate programs in the country.

A Note on Language and the Limitations of the NC AOC Database

The bulk of the statistical analysis that we report in the chapters to come derives from our analysis of a database graciously provided by the State of North Carolina, the Administrative Office of the Courts Criminal Statistical Extract (see NC AOC 2014). This is a copy of the database used by the courts system to record and manage each offense. Two elements merit attention: race and gender. Race is recorded as one of the following options: Asian, Black,

Hispanic, Indian, Other, Unknown, and White. Sex is recorded as one of these options: Male, Female, and Unknown.[1]

We generally use these language conventions with respect to race: Asian-American, Black, Latine, Native American, Other, White, and Unknown, but the list above shows how these racial groups are actually recorded by the state. Note that "Hispanic" (or Latine in the chapters that follow) is treated by the state as a race, not an ethnicity. That means that White generally means White, non-Hispanic, as do the other racial categories. The racial categories used by the state are mutually exclusive.

For Sex, we are clearly limited by the data collected by the state, which refer to biological sex at birth or in official documents. We have no doubt that non-cisgender individuals experience the criminal legal system in vastly different ways than cisgendered individuals. The structure of the state's database means, however, that we cannot analyze gender, only a dichotomous treatment based on biological sex. Generally, we use the word sex when referring to this characteristic, though readers should understand that if the word gender appears, and it relates to our database, we are limited to the male/female dichotomy provided by the State.

Finally, we should note that we fully recognize the limitations and dangers of using administrative data to assess criminal legal outcomes. We have no idea about what behaviors people engage in; we only know if they were arrested. Being arrested, and therefore appearing in our database, generally requires being observed by a police officer and that officer deciding to make an arrest. Much stands between committing an illegal act and being arrested for it. Anyone who drives on the state's highways knows that most people are speeding. However, only a few

[1] Both the race and sex fields also include a category for "Non-person" such as when a corporation is the offender, but we do not analyze those data in the Chapters that follow.

are pulled over. That sums up the difficulty in using official data sources; we only see the people who were arrested, and we do not know which others engaged in the same behavior but were left free.

There have been many critiques of relying on administrative databases when trying to understand the complexities of the criminal legal system. Law enforcement has been known to lie or fabricate data and to incorrectly code race (such as labelling Latine people as non-Hispanic White) (for a summary of critiques see Piston et al. 2025). It also does not allow us to observe what happens before an arrest takes place. For instance, if a person is pulled over for a traffic stop and made to sit on the side of the road for several minutes, but is never arrested, they would not show up in the NC AOC database. Yet, this form of interaction is, in many cases, an expression of state violence and highly relevant to understanding the dynamics and effects of policing. An addition issue with police administrative databases is the reality that the collection of data by the police as a practice is rooted in racial science (Johnson 2021; Muhammad 2010). We acknowledge and agree with these critiques. However, while the NC AOC database is in many ways a problematic database, it is the closest thing we have to a comprehensive record of the number of people who are arrested in the state along with other granular level details.

We have taken all steps and precautions to remedy some of the problems we could foresee. For example, one critique of police-generated databases is the often-confusing categorization of different types of crimes. A crime of failing to register as a sex offender is categorized as a sex crime, but this differs from a sex crime that includes violence or physical harm to a victim. One of the main tasks we undergo to recategorize crimes into categories that make more sense. In the case of sex crimes, we separate those that involve physical contact and those that do not. This task, as we will explain in Chapter 2, also reveals that the inaccurate

labelling of crime types can lead one to massively overestimate the rate of violent crimes that occur. While we cannot be sure to ever have a perfect database, we hope that our acknowledgement of its downfalls, and our efforts to rectify them, gives the reader a sense of ease on this matter.

Data Availability and Replication

The main database on which we rely was provided by the State of North Carolina, Department of Justice, Administrative Office of the Courts. It contains a raft of confidential information about each person arrested in the state over a period of seven years. This information includes name, birth date, address, and other data elements that we cannot share with the public. We do, however, make available our computer code which includes variable names and other data elements that would allow a person to replicate our work with access to the database. The State generally makes a five-year extract of the database available for research purposes.

Other elements our analyses throughout the book are based on datasets that we can make public, and we do so at our book website, where all of our figures and replication code are also made available. This website is at the following URL: [xxx will be updated for publication].

Note concerning the Figures if rendered in Black and White:

One element in this version of the manuscript is incomplete:

The figures must be read in color. For anyone reading the manuscript in its PDF or electronic form, that should not be an issue. But we are aware of a problem when the manuscript is printed in black and white; many of the shadings and legends do not render properly, which can be confusing to the reader. Please review the manuscript using the electronic version or email us and we will be glad to send a printed color version by mail. We will revise and correct this problem while the manuscript is being reviewed. We also plan to standardize the presentation of all the Figures so that they are identically formatted across the chapters; this work is not yet complete. Of course, none of this changes anything of substance.

Part I

Introduction

Anyone visiting a local courthouse just for an hour or two would notice the mix of well suited and coiffed attorneys mixed with their marginalized clients, who more than likely have darker skin complexions. The clients are visibly marginalized by their race, by their youth, by their social class, and by their employment status. The visitor would not be able to see it, but they also come from a small subset of all the neighborhoods; many of them are neighbors to one-another. They live in the poorest neighborhoods and are therefore also marginalized by their housing. It would take no longer than a few minutes of observation to see these obvious facts, and rare is the criminal courthouse throughout the United States that would show anything different. Of course, a large scholarly literature documents these patterns, but it is obvious and would be evident even to a casual observer.

In this introductory section, we assess whether these facts reflect some kind of flaw in the criminal legal system or rather reflect a plan to criminalize certain forms of behavior, to allow the police to surveil and arrest individuals based on vague or overly broad definitions of various crimes. That is, we can observe the marginalized and disadvantaged nature of those confronted with the challenges of the criminal legal system. Is this a mistake or a sign of a system doing what it was designed to do? Is marginalization a cause of contact with the legal system, a result of it, or does the legal system both target the marginalized and push them further into the margins? In Chapter 1, we begin our discussion of social (dis)advantage and the criminal legal system. In Chapter 2 we explain the massive database on which we rely and lay out its many

complicated parameters, including its enormous scope and the preponderance of low-level charges. These two chapters therefore constitute the baseline from which we can begin our analyses in Parts II and III before concluding in Part IV.

1

Working as Intended

Introduction

A System Working as Intended

We posit a continuum of social advantage; this seems uncontroversial. Some individuals have wealth, education, class, and other characteristics that give them a high degree of social status, prestige, and power. Others, perhaps because of disadvantages related to age, race, gender, education, employment, or the location of their housing, are at the other end of the continuum: They have low prestige, low power, and low social status. We refer to this as a continuum of social advantage or more simply a continuum of advantage. There are two important differences between a general understanding of advantage and how such advantage operates in the context of the criminal legal system. Women are more advantaged than men in the legal context, though clearly not so in wider society. With respect to police, the courts, and the legal system in general, women benefit from less surveillance than men; again, this assertion should be uncontroversial. In addition, age is inverted from what might be considered a general societal preference for the young; this is definitely not the case with regards to police and the law. So, we have at one end of our continuum of advantage White and Asian-American women above a certain age living in higher-income neighborhoods and enjoying some social status. At the other end are younger men of color living in lower-income neighborhoods and lacking in social status perhaps because of a lack of a job or education. Others (the vast majority) fall in between these extremes.

Many of us have various characteristics of our intersectional identities that provide advantage as well as disadvantage. Social advantage is a complicated and sometimes dynamic continuum, not a static dichotomy separating “haves” and “have-nots”. So, while it is

complicated and can be dynamic over the course of a person's life, we posit a continuum of advantage.

Second, we observe a continuum of surveillance. Police and the courts interact with some types of people much more than with others. As we will show in later chapters, the continuum of surveillance overlaps with the continuum of advantage almost perfectly. Those at the top of the social advantage scale rarely interact with the police and the courts while those at the bottom do so routinely. When high-status individuals interact with the police, for example in the context of a traffic violation, they expect to be treated with courtesy and professionalism and quickly to be allowed to go on their way. Low-status individuals may have very different experiences with their interactions, and many more of them. These can be humiliating, disruptive of daily routines, lengthy, dangerous, and common. Indeed, the level of interaction that race- and class-subjugated individuals have with the courts and the police may shock readers of this book or others whose social advantages render them highly unlikely to have many interactions with the legal system or its representatives. Of course, we would hardly be the first to document that those with various social, economic and identity-based disadvantages come into contact with the legal system more than wealthy White women do. Still, we will document these trends and explore their complexities in this book. The more interesting question, of course, is why these patterns occur.

What do we mean by police surveillance? Surveillance is police observation of one's behavior for the purposes of enforcing the law. The odds of police observation of one's behavior depend greatly on where and when the police are deployed. Some cities have more police officers than others, and of course within any agency, the police tend to "go where the crime is". This means that their deployments within a city are differentially targeted at certain times of day and in certain neighborhoods (often those considered crime "hot spots" based on previous

patterns of crime occurrences and citizen calls for assistance). Further, once they have been deployed, the police are more likely to engage with some individuals than others, with young men of color fitting a stereotypical profile getting more surveillance. This is because the police often use such a profile in assessing which individuals merit a "second look" or a conversation. So, for those of us (such as the senior author of this book), who live in a town with a relatively low police presence, who live in a neighborhood that is not considered a crime hot-spot, who does not frequent clubs and bars late at night, and who does not fit the demographic profile the police associate with crime, surveillance is extremely low. The police rarely interact with such individuals. But just because they rarely interact with one group does not mean that they have no interactions with others; on the contrary, if they are doing their job correctly we would expect them to be allocating resources to those times, places, and people who are more likely to be associated with criminal activity. The problem is that police have no crystal ball so when they go to "crime hot-spots" and interact with people who appear that they may be suspicious, most of those people are innocent of any crime.

In the social sciences we distinguish between Type I and Type II errors; a Type I error is believing something that is incorrect; a Type II error is refusing to believe something that is in fact correct. This is the language of hypothesis testing and is fundamental to scientific inquiry. A key issue in scientific inquiry is what should be the balance between these two errors; typically we impose a 5 percent level of statistical significance so that we accept results showing a relationship (e.g., *x* is correlated with *y*) only if there is less than a 5 percent chance that the observed relationship could have been caused by chance. But that means that we might refuse to believe something that is true even if there is, say, an 85 percent chance of it. Because we generally use a 5 percent standard, it is statistically accurate to say the system is biased toward a

willingness to refuse to believe that the two factors are related; if the evidence was only that odds were 85 percent that the two factors were related, and 15 percent that they were not, we would "fail to reject the null" and we would conclude that the two were not related. Philosophers of science may debate whether this is good or bad but it is accepted practice in all the social sciences and fundamental to the concept of "statistical significance".

We can use this language to point out a puzzle in policing that generally garners little attention from those of us accustomed to low levels of surveillance. Let's say that in policing one could fail to surveil someone who is about to commit a crime, and let's call that a Type II error. (That is, it is akin to failing to believe something that is correct: the person is about to engage in criminal behavior.) Clearly, that's the error we want to avoid, and what the police focus on. But what about a Type I error? This involves focusing on someone, surveilling them, interviewing them, perhaps detaining them momentarily, when in fact they are just going about their perfectly legal business, such as walking to school, the grocery store, or going for a jog in their neighborhood. (In the social sciences, this is believing something that is incorrect; this person is not about to engage in a crime.) Police surveillance leading to arrest based on the observation of a crime is only one possible outcome of a targeted surveillance system.[2] Another outcome is the routine surveillance and interaction with people who in fact are not involved in any type of criminal activity. And, of course, a further outcome is that people who are routinely surveilled may be found guilty of low-level infractions that are also common among the general population,

[2] We should point out that the gives no regard to police interactions not leading to arrest; these are considered inconsequential and police officials rarely even acknowledge them. Individuals interviewed but not arrested are generally considered to have paid no price for that interaction. But it can be very costly in terms of self-esteem, humiliation, fear, and in other important ways.

but go undetected in that privileged group.[3] For example, many people smoke marijuana or carry small amounts of it in their pockets, backpacks, or purses. But the police only find it when they look, so if the police look much more commonly at some people (those disadvantaged because of place, time, age, race, gender, and economic status) than others (those who look and live more like the senior author of this book), then some will avoid detection while others will be routinely discovered to be in violation of the narcotics laws.

Police traffic stops provide a good example of this phenomenon. Some traffic stops lead to a warning or a ticket concerning bad driving: Speeding, unsafe movement, running a stop sign or stop light, and so on. The purpose of the traffic stop is to warn or sanction the driver for their unsafe driving. Other traffic stops are "pretextual" in that the officer is interested in surveilling the driver for some reason, perhaps the reasons described earlier (time of day, location, the driver perhaps fitting a certain demographic profile). Officers may then observe a technical infraction of the traffic or vehicle code (illegal right turn; failure to come to a complete stop at a sign; expired tags; cracked brake light, and so on), and this violation provides a legal justification for a traffic stop. Once the stop has been initiated, the officer may ask for permission to search the vehicle; this is known as a "consent search" because it relies on the driver's consent in response to a question for the officer to conduct a search. In a comprehensive analysis of over 20 million traffic stops in North Carolina from 2002 through 2016, Baumgartner and colleagues (2018) found that 93 percent of consent searches were "fruitless" in that they either did not lead to the discovery of contraband, or if they did, the officer declined to arrest the driver (see Table 5.4, p.

[3] Let us point out as well that police would argue that a valid arrest for one person concerning some illegal behavior is not dependent on the police arresting others, much less all others, involved in that same behavior in environments that the police did not observe. So, our observations here about the characteristics of the surveillance system are not meant as critiques of "improper" policing. Rather, they are descriptions of standard police behaviors.

107). The police literature and training about the value of traffic stops as a crime-fighting tool emphasizes that "you have to kiss a lot of frogs before you find your prince" (Webb 2007; Baumgartner et al. 2018, 98). That is, thousands of motorists must be stopped in order to discover a few instances of contraband. The vast majority of these motorists are expected to be innocent; only a small percent are expected to be found with contraband.

A key element in the surveillance system, and a key reason why these "Type I errors" are allowed (e.g., the surveillance and police interaction with thousands of innocent people) is that those being surveilled come from the low end of the continuum of advantage. They don't have the political power to fight back, and those with the political power to change things are not subject to the surveillance and either may not be concerned with what is happening in "that neighborhood over there" or may well be unaware of what is happening. We believe that political power is a key element in explaining the linkage between surveillance and advantage, and we will come back to this in later sections.

There is another important element to our argument; this relates to the mechanisms by which laws can be targeted at some groups more than others. We argue that two elements of government decision-making interact to generate the overlap between disadvantage and surveillance. These are the intent of the legislature when considering new laws and the discretion that these laws allow the police and the courts to enforce these laws differentially based on the same continuum of advantage.

Imagine a vague law that would theoretically criminalize common behaviors, but a policing system that interacts largely with those at the low end of the continuum of advantage. While those at the top end might be in violation of the law just as much as those at the low end, those arrested under it would predominantly come from the lower end. This would be true even

if individual police officers were unbiased in their decisions of whom to arrest. The key driver here is the difference in the likelihood of a citizen-police interaction; the surveillance system.

Now imagine a law that has significant ambiguity where officers must decide whether the targeted behavior constitutes a threat to public safety or not. Here, we add individual police officer discretion to the mix. Officers might be more likely to conclude that those at the bottom of the continuum of advantage are more threatening; after all, they are likely to live in neighborhoods with more crime and to have more interactions with the police (and perhaps a criminal record based on those past interactions). The driving force here is police officer decision-making, interacting, of course, with the surveillance system.

Finally, consider the intent of the legislature in passing a particular piece of legislation. What problem is it supposed to solve? Over the decades (and centuries), the criminal code has steadily grown. As we will show in a series of specific examples in later chapters, many important pieces of legislation have come in direct response to social developments such as the civil rights protests of the 1960s, when the legislature decided it need to "do something" about peaceful protests (such as sit-ins) and street demonstrations. Given that the continuum of advantage translates into political power, and that most members of the legislature themselves come from the higher end of this continuum, it should not surprise us if from time to time the "problem" that a given law is designed to solve is directly related to political demands or behaviors stemming from minorities and other disadvantaged individuals. Of course, not every law has discriminatory intent. But some do, as we will show. In fact, they are not hard to find.

A final part of our argument is that observed disparities in criminal justice outcomes have been documented time and time again, over the decades and centuries. In some cases, political leaders are appalled and take action to correct the situation. In some cases, courts determine that

a law unconstitutionally targets a protected class and rules the law unconstitutional. In some cases, social movements mobilize to demand change, and they eventually find success. But in other cases, political leaders take no action. We believe that the actions of political leaders, or their inaction, in the face of documented disparities in the enforcement of various parts of the criminal code can be taken as important indicators of their acceptance of whatever disparate impact the law in question may have. In cases where this impact is unacceptable, state leaders can take action to correct the mistake. In cases where no action is taken in the face of documented disparities, then we have to conclude that the legislature deems the disparity to be unproblematic, perhaps exactly what they wanted in the first place, or that they determine that, while perhaps distressing and unintended, it is not worth correcting. In any case, the policy process does not end when a law is passed. The law is enforced over the decades, feedback is apparent about how the law is working, and in subsequent cycles of the policy process, legislators have the opportunity to correct any unintended consequences of previous laws. In assessing matters of legislative intent, this is another important consideration.

Police Surveillance

Charles Reich and James Baldwin help us frame our understanding about policing. Writing in the 1960s, Yale law professor Charles Reich (1966) described his multiple (and ultimately judicially inconsequential) interactions with police as he did things like take late-night strolls near his family's summer home in New York, near his own home in Maryland, at a later residence in Connecticut, or while travelling in California for a professional conference. Reich summarized his concerns this way:

> If I choose to get in my car and drive somewhere, it seems to me that where I am coming from, and where I am going, are nobody's business; I know of no law that requires me to have either a purpose or a destination. If I choose to take an evening walk to see if Andromeda has come up on schedule, I think I am entitled to look for the distant light of

> Almach and Mirach without finding myself staring into the blinding beam of a police flashlight (Reich 1966, 1172).

Reich was a gay man writing in the 1960s. But he was also a tenured professor at Yale Law School. His multiple identities nonetheless put him in a position of marginality that generated multiple interactions with the police. While in his case his high social status, bearing, and knowledge of the law may have saved him from adverse outcomes from these many encounters, he was left with the question of why he had so many interactions with the police when he knew that he was violating no laws. He certainly would have known that his colleagues had few such encounters; perhaps this explains his motivation to publish an article in *Yale Law Review* that explained: "My problem is that I like to walk" (see Reich 1966, 1161). He likely knew very well that walking was not the problem (see also Seo 2016).

In the same year that Reich raised concerns over the authority of the police to monitor and investigate an individual, James Baldwin published *A Report from Occupied Territories* (1966), which detailed the hostile treatment that Black residents of Harlem were subjected to at the hands of police officers. In his account, he described the increasing encroachment of the police in public and private space:

> This means that the citizens of Harlem who, as we have seen, can come to grief at any hour in the streets, and who are not safe at their windows, are forbidden the very air. They are safe only in their houses—or were, until the city passed the No Knock, Stop and Frisk laws, which permit a policeman to enter one's home without knocking and to stop anyone on the streets, at will, at any hour, and search him. Harlem believes, and I certainly agree, that these laws are directed against Negroes. They are certainly not directed against anybody else (Baldwin 1966, np).

Reich explained his motivation for writing his 1966 article: "Most recently, when the officer told me he had the right to stop anyone any place any time-and for no reason-I decided I had better write an article" (1966, 1161). Reich saw his own privilege and recognized the

relatively inconsequential nature of his encounters with the police, compared to what might have been the case had he been Black:

> For what is but a rare occurrence in my life may be a much more significant part of the lives of minority groups and of the poor. I suspect that the police are far more likely to stop a Negro than a white man; far more likely to question a shabbily dressed man than one in an expensive suit. I imagine that the tone of the questioning is different. I can get away with asking a policeman what right he has to stop me; could a Negro safely do this? Of course the crime statistics show that the crime rate is higher among Negroes and among the poor, but that is just what worries me—that statistics and appearances will be held against individuals, and that the police in their contacts with the populace will treat some groups differently from others. It is a form of discrimination which is particularly baleful because it is so hard to prove and so hard to correct. And it is a form of discrimination which must deeply affect the attitudes of minority groups toward the police and government. It is the raw material of alienation and rebellion (Reich 1966, 1164–1165).

Baldwin's account was much more personal than that of Reich, of course, and the encounters he described were much more violent, intrusive, and dangerous. The two writers, however, have an important commonality. They were concerned not only with the issue of arrest and punishment, but in police surveillance. What makes an officer view a wanderer with suspicion and gives the officer the authority to investigate that individual, even if the investigation leads the officer to conclude that the individual has broken no law?

We refer in this section with two authors writing in the 1960s to point out that the issues we are describing are by no means novel. They are not restricted to current times, to North Carolina, or even to the United States. The decision by the police to surveil one group but not another is a fundamental puzzle, and one with which we start our analysis.

Legislative Intent

In assessing legislative intent, we ask: What problem is this law intended to solve? Many times, laws are intended to solve problems that are entirely unrelated to race or social advantage. In other cases, problems are highly racialized and the legislature understands this very clearly when

passing new legislation, even if the legislators are careful to avoid using racialized language. For example, in the period since the 2017 killing of Heather Heyer at a protest in Charlottesville VA, legislatures have considered bills to decriminalize those who hit protesters with their cars, including in North Carolina. There may be no mention of race in any of these laws but anyone following closely the legislative session or the news at the time would know that they are motivated by sensitivities related to response to predominantly Black protests in the wake of the killing of George Floyd. Many of these were large "street protests" where traffic was peacefully impeded.

The recent wave of legislative action across the country relating to drivers potentially hitting protesters (portrayed as obstructing traffic) is part of a long line of racialized legislative concern with the issue of protests and demonstrations. A spate of laws passed in the 1960s targeting "riots" and street protests. NC General Statute 14-288.5 make it illegal for any group of three or more persons to remain in place if a police officer orders them to disperse. This law was passed in 1969, at a time when the legislature was concerned about Black protests and "riots". As we will show in the chapters to come, this and related elements of the NC criminal code remain disproportionately enforced against Black people. In this case, based on the legislative record, we can show that this is precisely the intent of the law, and it continues to work precisely as intended. In sum, some laws may well be designed to keep the community safe from violent and serious acts, and other laws may have other purposes, purposes more focused on social control than on public safety. The racial disparities apparent in arrest statistics may not be a result only of social disadvantage; they may be the product of a system working precisely as designed.

Some laws may have no racialized legislative intent but may lead to racially disparate outcomes. One such example is the creation of laws to restrict overfishing in the state. As we go

into greater detail in Chapter 3, the majority of people who are charged with fishing violations are White men, including such offenses as gill net violations, failure to report big game, and leaving a pot or gill net unattended. Most of these laws were passed in the late-1990s and early 2000s in response to growing concerns over the health of the fish stock in the state. Although these laws later resulted in a disparate impact on White men, it is difficult to argue that these laws were intended to target that population when the laws were put on the books.

Other examples can highlight an action by the state whose purpose had no racialized intent at all, but whose implementation provided the opportunity for a racialized distribution of burdens and benefits (see Schneider and Ingram 1993). For example, building the interstate highway system was a fundamental part of the post-war modernization and adaptation to the car culture, as we will explore in Chapter 12. Building out the highway system by itself was a major transformation driven by many factors and we do not believe it was racialized in intent. However, in building the highways, public officials had to decide where to put them—some neighborhoods, they argued, had to be destroyed. We know with hindsight that, in practice, many of the highways built in the 1950s and 1960s were put through historically Black communities in what is referred to as "urban renewal". One example is in Durham where the Durham freeway went through the historic Hayti community. Other examples are apparent in many areas of the state, and indeed across the country (on this history generally see Leavitte 1970 or Rose 1990). In an instance such as this, it would likely be wrong to argue that the intent of building the highways themselves was racially discriminatory. Nevertheless, the legislature took this as an opportunity to impose its anti-Black agenda.

Another example also draws from the domain of cars and highways. Every state mandates that drivers have a valid license and adequate automobile insurance including liability.

Driving without these documents is illegal. It turns out that enforcement of these laws about proper documentation affects the Latine population much more than others. Again, we do not believe this was the intention of the legislature to target this specific population when it mandated driver's licenses in the 1930s. So, the disparate impact is something that developed later, for reasons unconnected to the intention of the legislature when the law was passed.

In cases such as the two just mentioned, the disparate impact of a law, whether through law enforcement or racialized practices in implementation, are likely to be known by political leaders. While it may take years or even decades for this feedback to become apparent, the legislature is likely to know about it. The disparate impact of the drug laws of the 1960s through 1980s has long been apparent, for example, as was the impact of various policies of mass incarceration in the 1980s and 1990s. The "urban renewal" policies of the 1960s had obviously differential impacts on White and Black communities. Our point is that, once the policies are enacted and we have years of experience with them, political leaders become aware of their impacts. They have the option of allowing the policies to continue without revision, in which case the disparate impact will likely continue as well, or they can change the laws to eliminate the unintended and surprising effects of the law. We all make mistakes, and we can take steps to correct them. If a legislature passes a law that has an unintended consequence to the detriment of a particular racial group, it can fix the mistake if indeed it was a mistake. Or it can let it stand. We will come back to this issue of correcting mistakes in later chapters as well.

How Legislative Intent and Police Discretion Interact

Laws may be precise or ambiguous. To the extent that laws are vague, then police are given more discretion in their application.[4] For example, North Carolina's capital punishment statute, like most such statutes around the country, includes some explicit, precise, and objective eligibility factors for the death penalty; for example, "The capital felony was committed by a person lawfully incarcerated" (NC GS 15A-2000 (e) (1)). However, some such clauses are quite vague, for example: "The capital felony was especially heinous, atrocious, or cruel" (NC GS 15A-2000 (e) (9)). With that single vague aggravator (or eligibility factor), the legislature opened the door for District Attorney's throughout the state to use their judgment about when to seek death and when not to do so. In many cases, such discretion is the route to racially disparate outcomes.

Of course, some laws are so powerful and important that they are almost always enforced if discovered: homicide, violent assaults, home invasions of wealthy homes, for example. But others, like most elements of the vehicle code, are routinely ignored but occasionally enforced. Similarly, trespassing, jay-walking, loitering, and similar laws could technically be enforced much more than they are. But this very lack of enforcement provides the opportunity to the police to enforce the laws from time to time, often with disparate impacts on those at opposite ends of the continuum of advantage.

The seriousness of the offense may interact with the level of discretion allowed in generating racially disparate outcomes. But even at the highest level of seriousness, capital murder, we see the use of language that leaves significant discretion to law enforcement. At the

[4] Our thinking about the interaction between legislative language, police discretion, and discriminatory intent benefitted from conversations with Prof. Tracy Meares of Yale Law School, whose encouragement and interest in the topic we want to acknowledge.

lower levels, for example traffic enforcement, we also see laws that are either vague ("unsafe driving") or routinely violated so that officers can pick and choose on which drivers to enforce the law (e.g., speeding).

Laws that are vague (such as the "especially heinous" element of the capital punishment statute), like laws that technically criminalize common behavior (such as speeding) have the effect of leaving decisions about implementation to law enforcement officials. In most cases, street-level police officials make routine decisions every day about when, where, and with respect to whom to enforce elements of the traffic code or other minor violations of the law such as possession of drug paraphernalia, public drunkenness, or littering. In some cases, such as with capital punishment, district attorneys rather than police make similar implementation decisions.

As we will discuss in later chapters, there is good reason to expect that when the legislature passes a law with ambiguous or overly broad language, it does so with the knowledge of how the police or district attorneys will implement the law. That is not to say that they can predict each and every discretionary decision, but we expect that members of the legislature would not be surprised if they found out that police target young Black and brown men in neighborhoods associated with higher levels of crime for these discretionary laws. Similarly, in legislative deliberations, police officials, district attorneys, and others in the criminal legal system may ask the legislators to include some discretion so that they can use their best judgment to keep the community safe. It is reasonable for them to argue that if the legislative language is too objective, precise, and detailed, it might allow some unwanted behaviors to slip through because they do not meet the letter of the law. As a result, many laws are purposely written with significant ambiguity so that law enforcement officials can use their discretion in accordance with the spirit of the law. To go back to an earlier discussion, the law enforcement community

may recommend some legislative ambiguity in order to avoid Type II errors. To the extent that this occurs, they we can expect more Type I errors as well. But those Type II errors, or discriminatory enforcement of the law, will likely not affect those high on the scale of advantage. Lawmakers themselves, and those likely to be in their social circles, will not be subject to that discriminatory enforcement; only those at the bottom of the continuum of advantage are likely to experience it. In any case, the language of the law, and its relative breadth and ambiguity, have a predictable effect on enforcement and the degree of disparate impact that we may expect.

Law enforcement discretion may or may not lead to racially disparate impacts. Of course, as we discussed in the previous section, if the legislature sees that laws are inadvertently leading to disparate outcomes that they do not want to accept, it can revise the law. If it does not, and the disparity is known, then this is a choice as well. We will pay attention to the ambiguity of legislation when assessing possible legislative discriminatory intent, and we will take into account whether laws are revised in accordance with historical and statistical evidence that they are being applied in a disparate manner.

One important theme that we will return to throughout the book is the idea that one of the major reasons that we have the current law enforcement system is because it disproportionately harms a particular group of people, namely, Black and Brown people with lower income backgrounds. If we lived in a world where the criminal legal system routinely targeted White and wealthy people or those in elite circles, and therefore those with more political power, we would probably expect that those people would intervene to prevent disparate outcomes from continuing. It is difficult to find an example where an area of the criminal law that routinely targeted White people that may have been later changed, because laws have historically avoided such disproportionate impacts to the detriment of White people. However, other areas of the law

are rife with instances of wealthy and politically powerful people lobbying for laws to be changed to benefit either them or people in their social class; one such example is the lobbying to change tax policy to benefit the wealthy.

Our Empirical Approach: A Comprehensive Analysis

We raise some troubling possibilities in the previous sections. But these have to be taken seriously because many people have previously documented large and historically long-lasting disparities in many aspects of American society, particularly in the domain of the criminal legal system (for example see Alexander 2010, but the literature is too voluminous to review). So, we simply ask: Are these things mistakes and unintended and unfortunate results of laws designed and intended for other purposes, or are these patterns and experiences actually design features, indicators of a system working precisely as it was intended to do?

We take a two-pronged approach to the evidence. One is highly statistical and makes use of the most sophisticated geo-spatial and statistical modelling techniques. The other is archival research and deep case studies of particular laws and the context that surrounded their original passage. The chapters in Part II of the book focus on the statistical approach, and in Part III we turn to the archival work.

On the one hand, we make use of a database we received graciously from the North Carolina Administrative Office of the Courts (NC AOC). This is a copy of the state's computerized court records for every single charge assessed during the eight-year period from 2013 to 2019, over 13 million charges. In this database are indicators of the precise offense code at the time of arrest, filing of charges, and (for some) conviction. The database also indicates the name, home address, date of birth, race, and sex of the defendant as well as the dates associated

with the arrest, charge, and resolution of the case and other data fields relevant to their journey through the court system: how they pled, how the case was adjudicated, and so on.[5]

This complex database allows us to do many things, but the most important is to classify every offense code in the state's criminal legal system (over 2,000 offenses) by the demographic mix of who is arrested under those charges. As we will show, some charges (in fact, only one charge: failure to stop for a school bus) are relatively equitable in their impact on different groups in the population. But others show a tendency to be associated with Black women (welfare fraud), White women (embezzlement from places of employment), White men (wildlife violations), or Black men (cocaine). In sum, we can give a "disparity score" to every single element of the criminal code, indicating the degree to which the mix of individuals charged under that code corresponds to or differs from the demographic mix of those living in the state. We can also assess other aspects of patterns of arrest, such as the importance of geography, as we show in later chapters.

Once we identify areas with disparate contemporary impact, we choose a handful of these particular cases for intensive historical study. For example, the traffic code has a disparate impact, disfavoring Black and Latine drivers. These laws were passed at the state level, for the most part, in 1937. We therefore go back to the early decades of the 1900s and review the debates and context surrounding the original passage of the traffic code. Jim Crow was in full force in 1937, so it is not hard to imagine some racialized tendencies of those in power at the time, and indeed we document many. But the drug laws mostly stem from the 1970s and 1980s; laws regulating public protests and demonstrations from 1969; anti-gang legislation from the

[5] Our agreement with the state concerning use of this database includes safeguards for the protection of the privacy of individuals appearing there, and we do not include in this book anything that would reveal the identity of any individual appearing in the database.

early 2000s; and so on. No matter the time-period, our evaluation of many (but not all) of the laws that currently have disparate impact is that the historical record suggests that this would be seen as a feature rather than a bug by those legislators who passed the law criminalizing that behavior.

Of course, many scholars have come before us and inspired our work. We will review these authors and studies in the later chapters where the perspectives are relevant to the particular question at hand. But we would be remiss not to mention the impact of Richard Rothstein's 2017 book *The Color of Law* on our thinking. Rothstein focused particularly on demonstrating government intent and meticulously documented historical practices by various government agencies at all levels of government in developing housing practices that were both discriminatory in intent and also highly effective in generating racially disparate outcomes. His dual focus in documenting not only the outcomes, but also the historical practices by government agencies, is a model for us.

Plan of the Book

Chapter 2 completes the first Part of our book, introducing the reader to the massive database consisting of over 13 million charges in the state across seven years.

Part 2 begins our explanation of the racial and identity-based disparities that are found throughout the criminal legal system. Chapter 3 shows how we can map particular types of offenses to different social groups based on race and sex, identifying "high disparity" laws and elements of the criminal code, as well as the year in which those laws were created or amended. This helps us in later chapters in assessing intent. Chapter 4 presents a deep dive into localized policing practices in one city, Durham, identifying some neighborhoods with extremely high levels of policy surveillance compared to others. Chapter 5 expands the analysis to other cities,

showing similar concentrations of arrest by social group as well as by geography. Chapter 6 shows the historical continuity of these patterns by comparing the areas we identify as low- and high-arrest zones with maps from the 1930s that were used in the "redlining" practices that dictated whether homeowners could get bank mortgages. Chapter 7 assesses some paradoxical elements of the huge scope of the criminal legal system, including the vast numbers of cases that are pled down to a lesser charge or dismissed altogether; these processes are similar all the way up and down the system, from speeding tickets to capital murder. Chapter 8 we explore the outcomes of arrests and indictments. Surprisingly large numbers of cases are resolved by having all the charges dropped, though the time from arrest to dismissal can be substantial. Those who see charges dropped tend to come from the same end of the disadvantage scale as those who are most frequently arrested; this raises questions about the quality or seriousness of the arrests occurring in the most surveilled neighborhoods of the state, and to the most marginalized among us. Finally, the chapter looks at the differences in using private attorneys and negotiating more favorable outcomes in the legal process. This shows that social disadvantage matters considerably. This concludes the section in which we identify and document disparities. There are many.

In Part 3 of the book, we pivot to examining the origins of a subset of the criminal code. We select area of the criminal code that are diverse across time, the actions that the law is aiming to correct or control, and the number of arrests that stem from that section of the law. In Chapter 9, we provide a detailed outline of our approach to understanding and discovering legislative intent. We document not only the approach that has been taken by previous scholars, but we also provide additional methods for proving such. We also provide a theoretical framework to understand the interaction between legislative intent, law enforcement discretion, and disparate

outcomes. Chapters 10, 11, and 12 put these methods into practice. Chapter 10 examines the creation of laws related to protests and gangs through an examination of legislative documents. In Chapter 11, using the cases of laws connected with certain drugs, capital punishment, and 1994 sentencing reforms, we expand our case for proving discriminatory intent when the legislature acts or does not act in the face of proven disparate outcomes. The final chapter of this part of the book takes on the creation of the traffic code. Our deep examination of the context of the time surrounding its enactment highlights one of our main points: given the intensely racist society of North Carolina in the early 1900s, why wouldn't the laws passed reflect this?

Conclusion

Race, gender, geographic, and class-based disparities surround us all and have for generations. To those on the winning side of these disparities, it may be comfortable to believe that these are natural results of a system working with no intention to create those harms to others, but simply reflecting different types of behavior which unfortunately contribute to higher incarceration or arrest rates for some people rather than others. To us, this is wishful thinking. People of privilege may not like to confront the painful possibility that racially discriminatory intent may have colored the deliberations of legislative bodies in the past, just like they may not like to be reminded of lynchings, slavery, the removal of Native Americans from their lands or other aspects of our history that may not make us beam with pride.

A clear-eyed assessment of the historical record suggests that our criminal justice system is not broken at all; it is working as intended. Of course, these are controversial assessments and conclusions, so in the next chapters we get into the evidence.

2

Seven Years, 10 Million People, and 13 Million Charges

North Carolina has a few individuals who get arrested a lot. In fact, we have identified more than 100 individuals arrested on 200 or more charges. Who are these individuals? Are they people who commit multiple murders, or homeless people? Are their crimes extremely violent? Or are they stealing loaves of bread? What explains the fact that a few people are arrested so many times on so many separate charges? We should note the obvious: if the crimes were extremely serious, the offender would most likely be put in prison for a long time and be unable to re-offend. So, there is some reason to expect that those with the greatest numbers of contacts with the criminal legal system may not be the most frightful criminals, the most violent offenders, or those perpetrating the most heinous and violent crimes. Indeed, this is what we see.

The person with the greatest number of charges and the most prolific contact with the NC Courts was from Onslow County and was arrested on 29 separate occasions (in Duplin, Jones, Onslow, Pender, and Pitt counties) and faced a total of 1,126 charges. These charges were generally associated with crimes of stealing things from cars from September 3 through December 14, 2014. Overall, the individual was arrested on 472 separate charges of breaking or entering a motor vehicle (Felony Class I); 300 charges of misdemeanor larceny (Misdemeanor Class 1); 112 charges of possession of stolen goods (Misdemeanor Class 1); 76 charges of felony conspiracy (Felony, class unspecified); 32 cases of possession of stolen goods (Felony Class H); 32 cases of larceny of a firearm (Felony Class H); 28 cases of felony larceny (Felony Class H), and so on. The highest charge was possession of a firearm by a felon (Felony Class G), which was charged eight times. He was convicted of 60 counts of breaking or entering a motor vehicle (Felony Class I) and two counts each of felony conspiracy, larceny, larceny of a firearm, larceny

of a motor vehicle (all Class H felonies); two counts of possession of a firearm by a felon (Class G), and two counts of misdemeanor larceny. With 72 felony convictions, it is clear that this individual will be in prison for some time. Note, however, that he faced 710 felony charges at the time of arrest, as well as 416 misdemeanors.

Another individual was arrested on 640 separate charges involving 24 different incidents from May to July 2016, generally involving false bomb reports in Catawba and Burke counties (the individual's home was in West Virginia). This individual had 313 such charges (each a Class H felony) and was convicted of each of them. The person saw 8 charges for false bomb report in a public building and was convicted of four of these. There were also several hundred other, public peace, or public order "free text" charges, each also associated with a conviction.

The third most prolific offender in our database was from Harnett County and had 540 charges stemming from 13 separate incidents in Harnett and Lee counties between June and July 2015, generally involving larceny. This person had 134 charges each for the following three charges, each a misdemeanor: injury to real property, conspiracy, and larceny, as well as 110 misdemeanor charges of possession of stolen goods. They faced two charges of felony larceny (Class H) and two charges of conspiracy to commit felony larceny (Class I). In the end, 526 charges were dismissed, and the person was convicted of two counts of misdemeanor larceny and 12 counts of obtaining property by false pretense, a Class H felony.

The fourth most prolific offender was from Lenoir County and was active from March to October 2018 with a series of forgeries and passing false checks in Lenoir and Pitt counties, with 61 different incidents involving 526 separate charges. This included 106 charges of forgery of instrument (a Class I felony); 139 charges of uttering a forged instrument (also Class I); 105 charges of obtaining property by false pretense (Class H), and 146 other charges, all felonies

related to these alleged crimes. In the end, 457 of these charges were dismissed and the case ended with 69 convictions of uttering a forged instrument, a Class I felony. (In plain English, "uttering a forged instrument" means passing a check, credit card payment, or some other financial "instrument" with a forged signature.)

The four individuals just described were found guilty of a total of 791 charges among them. But they faced a total of 2,832 charges when arrested. None appeared before a jury. All plead guilty. Except for the person who filed the false bomb reports, most were convicted of only a small fraction of the crimes that were alleged against them, many of which were felonies.

In this chapter we describe the scope and shape of the North Carolina criminal legal system. We explain the structure of our database and we note the vast differences in the system from arrest to eventual resolution of cases with a focus on the different types of crimes and classes of offenses. North Carolina has a "structured sentencing" system, so each offense is associated with a given class, and each class is associated with a punishment. The punishments are harsher for those with many prior convictions, but judges have only limited discretion to deviate from the punishments prescribed for each offense class. It matters a lot, therefore, exactly what offense one is charged with and convicted of. Felonies range from Class A (capital murder, punishable either by life without the possibility of parole, or by death) to Class I (various drug and larceny offenses generally punishable by 4 months of probation). Misdemeanors range from Class A1 (up to 60 days of probation) to Class 3 (a fine). Infractions, at the lowest end of the system, involve only a fine, not time in prison or on probation. We explore how this works in later sections of this chapter.

Charges, Incidents, and Resolutions

Our analysis relies on a copy of the North Carolina Administrative Office of the Courts Criminal database. This includes all charges in the state's court system from January 1, 2013 through December 31, 2019. North Carolina has a centralized court system, which means that any individual arrested in the state for any criminal offense will have a record created in the state's computerized database system, operated by the Administrative Office of the Courts (NC AOC). The entry will include information about the individual (e.g., their name, address, date of birth), the specific charge for which they were arrested and other information about the alleged offense (e.g., the arresting agency, the date and county of the charge). Because the database is the official record used by the courts themselves, it also includes procedural records about each charge: who were the attorneys involved, when was it scheduled for various court hearings, and so on. For our purposes, key elements are those related to the person accused of a crime; the charges at arrest and indictment, how they pled, the verdict, and the punishment(s). See our on-line Appendix XXX for a copy of the documentation for the NC AOC database.

The database on which we rely includes a record of every "criminal" charge filed in the state during the period of our study. This means it excludes some minor offenses punishable generally only by a fine: "Infractions." Note, however, that many individuals facing a criminal case are also charged with infractions, and those are included here. Also note that a case may start out with a criminal charge, but it may be reduced to an infraction through plea-bargaining. So, in the end, our database consists of a record of each charge against any persons in the state from 2013 through 2019 where at least one of the charges was "criminal." Another database records all "infractions" that are not associated with a simultaneous criminal charge. We do not use that infractions-only database.

The basic unit of organization of the AOC database is the "charge," and the database includes roughly 13.5 million of these. A person may be charged with several offenses stemming from the same incident. We define an "arrest-incident" as a single episode in which an officer arrests a person, and that incident may involve just one or possibly many charges. (Specifically, we define a set of charges to be from the same arrest-incident if they are from the same county, on the same date, and relating to the same person.) Just as a single incident may involve multiple charges, so the same person may also be arrested again on a different date.[6] We can therefore look at 13.5 million charges, xx million incidents, or 4.98 million individual people. Note that the total population of North Carolina during the time of our study was between 10 and 11 million. Of course, some individuals arrested in the state are from outside the state, but still, a large share of the population is represented here.

Charges and Resolutions over Time

Because our database is essentially a seven-year snapshot of the court's records, some cases were still pending in the system when the data collection period ended. For most cases, we know the beginning, middle, and end of the judicial story associated with each arrest, but for some we do not, particularly those where the arrest was in 2019. We define a case as "resolved" if any single charge from the same arrest-incident has reached a resolution. If one charge was resolved through a plea or dismissal, then we can be certain that the DA's office had the opportunity to review the other charges stemming from the same incident. In the parts of our book where we

[6] Our ability to identify the same person appearing multiple times in the database is not perfect because of differences in spelling of the name, address, or errors in the date of birth when the same individual is arrested on different dates. When we refer in this section to the same person, that is a probabilistic match based on their address, name, race, sex, and birthdate. We may therefore be overestimating by some degree the number of distinct individuals in the database. In any case, for our purpose here, we can certainly show that some people are arrested on many different occasions.

analyze judicial outcomes, we filter out the cases where there is no resolution yet to any of the charges, since these resolutions have not yet occurred. For the most part, this is simply a matter of time. Table 2-1 shows how many cases were and were not resolved, by year of the arrest. It shows that well over 99 percent of cases from before 2016 were resolved by 2019, as were 99 percent of those from 2017, 96 percent of those from 2018, but only 63 percent of cases from 2019. For the most recent cases, there is nothing more complicated than the late date of arrest that indicates why the case was not yet resolved by the end of 2019. For the earlier cases, these are likely to be drawn from the higher end of the scale of severity: Murder trials take much longer to prepare and adjudicate than traffic tickets.

Table 2-1. Charges Resolved v. Pending, by Year.

	Charges Resolved			Percent
Year	No	Yes	Total	Resolved
2013	5,221	1,204,080	1,209,301	99.57
2014	5,935	1,692,301	1,698,236	99.65
2015	9,450	2,256,640	2,266,090	99.58
2016	12,618	2,207,714	2,220,332	99.43
2017	25,234	2,219,531	2,244,765	98.88
2018	82,449	1,991,439	2,073,888	96.02
2019	666,881	1,159,774	1,826,655	63.49
Total	807,788	12,731,479	13,539,267	94.03

Because the most serious crimes often take years to resolve, whereas low-level crimes may be resolved in only a few months, our database may reflect fewer resolutions at the highest end of the punishment scale than one might expect. In any case, Table 2-1 makes clear that 94 percent of all the cases, and almost 100 percent of the earlier cases, are resolved.

Table 2-1 also makes clear the astounding scope of the system: generally over 2 million charges each year, in a state with about 10 million people. We will come back to this question in later chapters but it is fundamental to keep in mind while interpreting what is to come. Many

elements of the criminal legal system are driven by the crushing numbers of cases that must be processed with limited resources.

Arrests, Charges, and Verdicts

Table 2-2 summarizes the numbers of arrest-incidents, charges in each incident, and charges associated with each individual in the database.

Table 2-2. Summary Charges per Incident, Incidents per Person, and Charges per Person.

	Incidents Per Person		Charges Per Incident		Charges Per Person	
Number	N	%	N	%	N	%
One	3,803,336	76.30	2,762,193	55.42	2,472,129	49.60
Two	672,421	13.49	1,323,696	26.56	1,194,301	23.96
Three	243,446	4.88	295,359	5.93	388,702	7.80
Four	111,446	2.24	278,537	5.59	310,642	6.23
Five to nine	132,168	2.65	253,469	5.09	416,837	8.36
10 to 19	19,884	0.40	60,551	1.21	151,063	3.03
20 to 49	1,638	0.03	9,774	0.20	45,551	0.91
50 to 99	53	0.00	686	0.01	4,458	0.09
100 or more	5	0.00	132	0.00	714	0.01
		-		-		-
Total	4,984,397	100.00	4,984,397	100.00	4,984,397	100.00

Looking first at the number of incidents per person, three-quarters of the individuals in the AOC database appear only once. There are, however, a few individuals with multiple arrests; about five percent have four or more arrests, and more than 20,000 individuals have ten or more separate arrest incidents. (Recall that our database covers only seven years, 2013 to 2019.)

In terms of charges in each incident, 55 percent of incidents involve just a single charge, 18 percent have three or more charges, and just over one percent have 10 or more charges, as the Table shows. Finally, when we note that a single individual could have multiple charges and multiple incidents, we find that half of all the charges in the database are single charges to a person who never appears again in the database. We do find a few people with very large numbers of charges; more than 50,000 individuals with 20 or more charges, and 100 with 200 or

more charges. We gave some examples at the beginning of this Chapter about what types of charges were involved in the four cases with the greatest number of them across the state.

Trials, Dismissals, and Guilty Pleas

Table 2-3 shows how cases are resolved, and Table 2-4 presents the same information in percentages. Recall that the basic unit of analysis here is the charge, and a given person may face one or multiple charges from the same incident. Some charges may be dismissed by the district attorney in exchange for a guilty plea on some other charge. We will look carefully at how these charges are resolved for any individual in later chapters. Over 5 million charges (41 percent) are dismissed by the DA, about 1 million are waived by the clerk of court (generally infractions and traffic violations). About 2.9 million charges are adjudicated by a judge, generally a sign of a plea agreement having been reached then approved officially by the judge. Just under 12,700 charges are considered by a jury, out of 12.7 million charges overall; literally one case in one-thousand.

Table 2-3. Method of Adjudication.

Method of Disposition	All	Infractions	Traffic	Misdemeanors	Felonies
Jury	12,736	115	1,329	2,275	8,246
Judge	2,881,447	103,744	1,638,012	732,924	364,759
Voluntarily Dismissed by the DA	5,204,826	725,868	3,028,361	1,672,836	696,718
Dismissed with Leave by the DA	640,430	92,869	474,039	61,263	9,592
Waived by Clerk of Court	1,094,582	128,522	939,389	23,221	1
Superseding Indictment	678,602	4,475	22,619	126,329	508,990
Waived Probable Cause (Transfer to Superior Court)	92,923	51	259	5,197	85,649
Other	2,125,933	14,480	287,606	449,722	278,355
Total	12,731,479	1,070,124	6,391,614	3,073,767	1,952,310

Note: Cases still pending not shown. Each entry relates to a charge, and there can be multiple charges in any given case. Only a small fraction, consistently less than one-half-of-one-percent, of the charges are considered by a jury. Note that since a given case could have many charges, this explains why some infractions and traffic incidents are dealt with by juries; generally these would be cases where more serious charges are also considered. Still, even among felony charges, less than 0.5 percent of such charges are considered by a jury (e.g., 8,246 felony charges considered by a jury / 1.952 million felony charges = 0.42 percent).

Table 2-4. Percent of Cases Adjudicated by Different Methods.

Method of Disposition	All	Infractions	Traffic	Misdemeanors	Felonies
Jury	0.10	0.01	0.02	0.07	0.42
Judge	22.63	9.69	25.63	23.84	18.68
Voluntarily Dismissed by the DA	40.88	67.83	47.38	54.42	35.69
Dismissed with Leave by the DA	5.03	8.68	7.42	1.99	0.49
Waived by Clerk of Court	8.60	12.01	14.70	0.76	0.00
Superseding Indictment	5.33	0.42	0.35	4.11	26.07
Waived PC (Transfer to Superior Court)	0.73	0.00	0.00	0.17	4.39
Other	16.70	1.35	4.50	14.63	14.26
Total	100.00	100.00	100.00	100.00	100.00

Note: Percentages based on N's reported in the table immediately above.

The 12,736 charges presented to a jury included 11,237 pleas of not guilty and 1,052 pleas of guilty (there were 447 miscellaneous pleas not included here). Of those charges where the defendant pleaded not guilty, juries found them guilty in 64 percent of the cases (7,166 charges). These charges and pleas were associated with 6,199 separate trials, and the defendant was found guilty of at least one of the charges at trial in 4,459 cases, 72 percent. Among the 2,940 charges presented in these same cases to a judge, 88 percent led to a finding of guilt, and of the 1,762 different trials with at least one count heard by the judge rather than the jury, 1,750, or 99 percent, were found guilty of at least one charge.

Table 2-5 shows the share of guilty and not guilty pleas to each level of offense charged by the state.

Table 2-5. Guilty and Not Guilty Pleas by Level of Charges.

Charged	Not Guilty		Guilty		Total	
Offense Level	N	%	N	%	N	%
Infractions	6,883	2.94	227,183	97.06	234,066	100.00
Traffic	55,912	2.15	2,539,016	97.85	2,594,928	100.00
Misdemeanors	96,334	12.57	670,107	87.43	766,441	100.00
Felonies	8,170	2.19	365,542	97.81	373,712	100.00
Class A Felonies	189	19.61	775	80.39	964	100.00
Overall	170,211	4.24	3,845,880	95.76	4,016,091	100.00

Note: Guilty includes GU (guilty), GL (guilty to lesser); GA (Alford plea); RS (responsible); RL (responsible to lesser); and NC (no contest / nolo contendere). Not guilty includes NG (not guilty) and NR (not responsible).

Over 95 percent of all charges moving to judicial resolution are associated with a plea of guilty. Even among felonies, this number is 98 percent. In the 964 cases with capital murder charges (e.g., Class A felony), fully 80 percent of the charges were resolved with a plea of guilty. Of course, guilty pleas include plea negotiations so that the person pleads guilty to a lower-level offense class, thereby reducing their punishment from what might otherwise occur. But to say that plea bargains are common in the state judicial system is an understatement. Jury verdicts are rare, as are pleas of Not Guilty. The vast majority of cases, not just a small majority, are settled

with a plea agreement, generally to lesser charges, with other charges voluntarily dismissed by the district attorney. We can illustrate these dynamics with a review of the most common offense in our database, speeding. Very few are "convicted as charged." We explore the reasons for, and the consequences of, this characteristic of the system in greater detail in Chapter 7.

What Types of Crimes are Most Common?

The key organizing element in the state's judicial database is the "offense code," a precise 4-digit number indicating what element of the code was allegedly violated. Anyone arrested for any crime will be informed of that code, which Table 2-6 displays along with a short title for the offense, the section of the North Carolina General Statutes that defines that crime and the associated punishment level. Each offense code is associated with a general category as well as an "offense class" that in turn corresponds to a punishment. A Class 3 misdemeanor, or a Class G felony, is an example of an offense class. Each offense class is associated with a particular punishment, so the offense class is a key element of the system; crimes of the same offense-class have the same punishment. Table 2-6 shows the most common offense codes in our database, including all those codes under which more than 100,000 charges appear.

Note that the NC AOC database records the specific offense codes leveled against the individual at three moments: Arrest, charging, and verdict. We found that the first two are identical in 99.82 percent of the observations in our database. Therefore, we focus on the offenses at the time of charging, and we compare these with the verdicts. Looking at arrests rather than charges would yield virtually identical results.

Table 2-6. The Most Common Offense Codes.

Code	Number of Charges	Description	Class	NC General Statute	Category
5450	1,801,314	Speeding	T - 3	20-141(J1)	Vehicle
5461	1,179,221	Expired registration card/tag	T - 3	20-111(2)	Vehicle
5441	746,892	No operators license	T - 3	20-7(A)	Vehicle
4725	614,837	DWLR not impaired rev	T - 3	20-28(A)	Vehicle
4440	450,903	Expired/no inspection	I -	20-183.8(A)(1)	Vehicle
2322	324,990	Misdemeanor larceny	M - 1	14-72(A)	Larcenies & Related
5494	304,702	Operate veh no ins	T - 3	20-313(A)	Vehicle
5405	261,840	Driving while impaired	T -	20-138.1	Vehicle
4716	254,801	DWLR not impaired rev	T - 3	20-28(A)	Vehicle
3401	233,638	Possess drug paraphernalia	M - 1	90-113.22	Drug Offenses
3550	207,439	Possess marijuana up to 1/2 oz	M - 3	90-95(D)(4)	Drug Offenses
9955	187,535	Civil revocation dr lic (30)	T -	20-16.5	Vehicle
1389	184,457	Assault on a female	M - A1	14-33(C)(2)	Assaults
4721	174,501	Cancl/revok/susp certif/tag	T - 3	20-111(2)	Vehicle
4722	172,266	Fict/alt title/reg card/tag	T - 3	20-111(2)	Vehicle
5310	160,010	Resisting public officer	M - 2	14-223	Public Peace
5030	158,960	Misdemeanor probation viol	M -	15A-1345	Public Order
5446	154,624	Reckless driving to endanger	T - 2	20-140(B)	Vehicle
3400	151,912	Possess marij paraphernalia	M - 3	90-113.22A	Drug Offenses
1368	144,894	Simple assault	M - 2	14-33(A)	Assaults
5709	144,350	Second degree trespass	M - 3	14-159.13	Trespass
2632	144,218	Obtain property false pretense	F - H	14-100	Fraud
4450	132,717	Speeding	I -	20-141(B)	Vehicle
5328	130,971	Communicating threats	M - 1	14-277.1	Public Peace
5491	127,262	Drive/allow mv no registration	T - 3	20-111(1)	Vehicle
4470	101,731	Fail to wear seat belt-driver	I -	20-135.2A	Vehicle

Note: Classes abbreviated as follows: T = Traffic; M = Misdemeanor; I = Infraction, F = Felony. Traffic violations are misdemeanors unless listed as infractions. DWLR = Driving While License Revoked.

At the top of Table 2-6 is speeding, code 5450, by far the most common charge, with almost 1.8 million occurrences. This is a Class 3 misdemeanor as defined by NC General Statute Chapter 20, section 141, subsection J1, and it is a Vehicle crime as defined by the state. Next most common is expired registration card / tag, also a Class 3 misdemeanor. In fact, eight of the top nine offense codes by frequency of occurrence are violations of some part of the vehicle code. There are over 300,000 misdemeanor larceny charges, a Class 1 misdemeanor, marijuana possession (a Class 3 misdemeanor), possession of drug paraphernalia, and so on as the Table shows. Note that only one of the charges listed in the Table is a felony: 144,000 charges of obtaining property by false pretense, a Class H felony. Two charges listed there are violent, assault on a female (Class A-1 misdemeanor) and simple assault (Class 2 misdemeanor), with "communicating threats" (a Class 1 misdemeanor) also relatively common. Resisting a public officer is common as well. In sum, Table 2-6 shows every charge in the state that has occurred more than 100,000 times during the period from 2013 through 2019.

The state associates each offense code with both a class and a category of offense. We'll look in a section below at the distribution of charges by offense class, which determines the severity of the associated punishment. Before turning to that question, we look next at the Categories of crime that are most and least common. And we introduce our own category system, revised from the one used by the state.

Frequencies of Charges by Offense Category

Categories Defined by the State

Table 2-7 lays out the numbers of arrests, charges, and verdicts by Category, using the categories as defined by the state. Almost 60 percent are violations of the traffic code; 10 percent relate to drugs, and so on.

Table 2-7. Charges and Verdicts by Category of Crime.

	Charges		Verdicts	
State Categories	N	%	N	%
Vehicle	7,964,283	58.82	2,805,595	71.11
Drug Offenses	1,406,488	10.39	278,730	7.06
Larcenies & Related	817,560	6.04	223,485	5.66
Public Order	560,336	4.14	23,444	0.59
Assaults	555,622	4.10	96,101	2.44
Public Peace	409,100	3.02	91,460	2.32
Fraud	339,176	2.51	62,141	1.57
Burglary	237,059	1.75	62,089	1.57
Trespass	171,565	1.27	50,397	1.28
Alcohol	159,866	1.18	42,753	1.08
Property Damage	151,072	1.12	25,238	0.64
Weapons Offenses	127,987	0.95	26,706	0.68
Other	110,716	0.82	15,314	0.39
Child Abuse	105,370	0.78	25,428	0.64
Sex Crimes	97,484	0.72	19,436	0.49
Local Ordinance	69,433	0.51	40,377	1.02
Robbery	64,544	0.48	11,774	0.30
Forgery	63,277	0.47	13,126	0.33
Wildlife	47,365	0.35	20,721	0.53
Kidnapping	22,636	0.17	2,656	0.07
Embezzlement	14,214	0.10	2,272	0.06
Homicide Related	13,524	0.10	2,154	0.05
Prostitution	6,008	0.04	1,483	0.04
Gambling	4,636	0.03	684	0.02
Arson	4,333	0.03	788	0.02
Extortion & Gangs	3,154	0.02	218	0.01
Health Law	2,785	0.02	368	0.01
Escaping	1,441	0.01	348	0.01
Tax & Finance	1,355	0.01	304	0.01
Title & Inspection	367	0.00	35	0.00
Other	6,511	0.05		-
No verdict		-	9,593,642	
Total	13,539,267	100.00	3,945,625	100.00

Note: the “No verdict” category generally reflects charges that are dropped, dismissed or (in a small share of cases) pending resolution.

Because of our interest in statistical comparisons and analyses, it is clear that many of the categories defined by the state appear so rarely that we cannot reliably analyze patterns across

demographic groups, over time, and from county to county. So, we have generated a simplified list of categories that may be more useful in our analyses.

A Revised System of Categories of Offenses

Table 2-8 shows our revised set of categories of offenses and the number of arrests, charges, and verdicts associated with each. We separate driving offenses from vehicle ones by noting whether the offense related to a moving violation or an equipment violation. We combined robbery, larceny, forgery, trespassing and other similar crimes into a category we call Property crimes. We separate drug and alcohol related crimes, and we distinguish between sexual crimes involving physical contact from those that do not; such crimes without contact might include failure to register as a sex offender, violations of electronic monitoring rules, soliciting prostitution, and others. We note separately where a crime is violent. Though we understand and agree with broad definitions of violence, for the purposes of categorizing crimes, we define a violent crime as one that involves physical harm or injury. Finally, note that our categories are not mutually exclusive. A small number of offenses may be classified more than once. This allows us to look, for example, at sexual crimes with contact that were also violent, or drug crimes that also involved weapons violations. Only a small number of cases are affected by this double-coding, but this feature allows considerable flexibility in analyzing the database.

"Public order" violations generally involve such things as parole violations, domestic violence restraining orders, failure to appear in court, failure to follow conditions of parole or parental supervision (child abuse) requirements, or other court / judicial system orders. "Public peace" violations are such things as noise ordinances, disorderly conduct, and so on.

Table 2-8. A Revised Set of Categories.

	Charges		Verdicts	
Category	N	%	N	%
Driving	4,155,229	30.69	1,310,253	33.21
Vehicle	3,806,384	28.11	1,506,172	38.17
Property	1,938,032	14.31	461,116	11.69
Drugs	1,406,490	10.39	278,730	7.06
Violent	742,643	5.49	127,670	3.24
Public Order	662,312	4.89	50,401	1.28
Public Peace	441,534	3.26	101,208	2.57
Alcohol	160,956	1.19	42,963	1.09
Weapons	132,903	0.98	27,719	0.70
Other	120,492	0.89	28,856	0.73
Sexual with Contact	56,565	0.42	9,349	0.24
Sexual w/o Contact	48,705	0.36	11,974	0.30
Wildlife	47,365	0.35	20,721	0.53
Total	13,719,610	101.33	3,977,132	100.80
Observations	13,539,267		3,945,625	

Note: percentages sum to greater than 100.00 because a small number of crimes are counted in more than one category. For example, driving while intoxicated is both an alcohol and a driving offense; discharging a weapon in a building is both violent and a weapons offense; sexual assault is both sexual with contact and violent. We double-code only 91 of more than 2,100 offense codes.

Table 2-8 gives a sense of where the criminal code is focused and what kinds of behaviors are sanctioned. Further, looking at the column labeled “Verdicts” allows some insight into how common various types of criminal convictions are. Whereas Table 2-7 showed about 19,000 convictions for sexual crimes, Table 2-8 clarifies that only 9,000 of these involved contact and that almost 12,000 involved no physical contact. Crimes of violence represent just 5.48 percent of all arrests and charges, and just 3.23 percent of all verdicts. Adding sexual crimes involving contact to this share generates only about six percent of all arrests and four percent of all verdicts. The traffic code looms large, of course, but we will see in later sections that when we look only at felonies, we also see a lot of lower-level drug and property crimes and relatively few crimes associated with violent assaults. Still, as we come to understand the North Carolina

criminal legal system, it is important to keep in mind the distribution of charges, and verdicts across the different types of crimes. The picture that emerges is different from the one that might be familiar to most citizens, who generally get their understanding of the criminal legal system from the news. Understandably, the news media focus on the most serious crimes. A more complete review of the entire criminal legal system has to start with a clear understanding of the predominance of low-level crimes. In the pages that follow, we will explore different parts of the system separately, for example infractions, traffic violations, misdemeanors, and felonies. Within each such grouping, we will consistently see a preponderance of low-level charges, with high-level offenses constituting small shares of the system.

Conviction Classes and their Associated Punishments

The structured sentencing system used in North Carolina has four types of punishments. In descending order by severity, these are: Active, Intermediate, Community, and Fines. Active punishment is hard prison time in a state penitentiary. Community punishment is generally known as probation. Intermediate punishments include probation but may also include such conditions as: house arrest; community service; participation in substance abuse, educational, or vocational skills programs; satellite-based monitoring; and weekends or other short stays in a corrections facility with release for employment (see Markham 2011). Fines may be the only punishment for certain low-level offenses, but they are virtually always also applied on top of whatever other punishment is imposed. For example, those on probation or post-release supervision may be assessed monthly fees associated with ankle-monitors, parole supervision fees, and so on, and these may be quite substantial as they can accumulate over many months and the person may have difficulty finding affordable housing and employment, making it difficult to keep up to date. People who have been criminally charged may also be assessed court

costs, restitution, and other fees. As of January 1, 2025, the fee for an infraction dealt with in district court was $181, or $191 for a traffic-related infraction. Superior Court fees range from $208 to $398.50. Probation, ankle monitors, staying in jail before trial, and so on are each associated with fees; $40 per month for supervised probation, $40 per day for being jailed, $90 plus $4.48 per day for house arrest with electronic monitoring; $200 for failure to appear in court, and so on[7]. The fees are substantial.

In terms of understanding what types of punishments are imposed, we can summarize and simplify a complex system by saying that fines and fees are ubiquitous and that punishments range from simple probation and reporting to an officer (Community punishment) to various additional requirements (Intermediate), to hard time in a state prison (Active). As described above, every offense enumerated in the NC Code is associated with a four-digit "offense code," and each of these offenses is further associated with an "offense class," which in turn is associated with a given level of punishment. Table 2-9 lays out the punishment associated with each offense class. It shows the minimum punishment for people convicted of a crime with no prior points as well as those in the highest category of prior offenses. Punishments are considerably more severe for those with prior convictions. Note that many different offenses, sometimes hundreds of different ones, may correspond to the same offense class, particularly at the lower levels of severity. Punishments are common to all offenses within the same offense class.

[7] These fees are explained at this NC AOC website and are regularly updated: https://www.nccourts.gov/documents/publications/current-court-costs.

Table 2-9. Offense Classes and Punishments.

	No Prior Points		Maximum Prior Points	
Offense Class	Minimum Punishment	Punishment Type	Minimum Punishment	Punishment Type
Felony - Class A	Life without Parole	Active	Life without Parole	Active
Felony - Class B1	18 Years 5 Months	Active	32 Years 2 Months	Active
Felony - Class B2	12 Years	Active	20 Years 11 Months	Active
Felony - Class C	5 Years 7 Months	Active	9 Years 9 Months	Active
Felony - Class D	4 Years 11 Months	Active	8 Years 7 Months	Active
Felony - Class E	1 Year 11 Months	Intermediate / Active	3 Years 4 Months	Active
Felony - Class F	1 Year 3 Months	Intermediate / Active	2 Years 2 Months	Active
Felony - Class G	1 Year	Intermediate / Active	1 Year 8 Months	Active
Felony - Class H	6 Months	Community / Intermediate / Active	1 Year 4 Months	Active
Felony - Class I	4 Months	Community	8 Months	Intermediate / Active
Misdemeanor - Class A1	1-60 Days	Community / Intermediate / Active	1-150 Days	Community / Intermediate / Active
Misdemeanor - Class 1	1-45 Days	Community	1-120 Days	Community / Intermediate / Active
Misdemeanor - Class 2	1-30 Days	Community	1-60 Days	Community / Intermediate / Active
Misdemeanor - Class 3		Fine	1-20 Days	Community / Intermediate / Active
Infraction		Fine		Fine

Note: Traffic violations may be charged as infractions or misdemeanors. To see the full punishment grids including more detail, see the NC AOC website at: https://www.nccourts.gov/documents/publications/punishment-grids.

Table 2-9 makes clear the wide range of possible punishments and shows the importance of the offense class of conviction, which largely determines the punishment. Class A felonies, capital murder, are punished only by life without parole or the death penalty; the minimum punishment is life without parole. Moving down to a Class B1 felony reduces the punishment to less than 20 years; moving to Class B2 reduces it to 12 years, and a Class C felony is punished by less than six years. Voluntary manslaughter is a Class D felony and is therefore punished by 4 years 11 months, and involuntary manslaughter is a Class F felony; the punishment there is 15 months. These are not mere abstractions; a person charged with First Degree Murder may eventually be convicted of a lower-level offense such as second-degree murder, voluntary manslaughter, or lower. Our database includes more than 3,500 charges of First-degree murder, but only 261 such convictions. Clearly, many proceedings lead to a reduction in level of conviction and Table 2-9 explains just how much difference that can make to an individual charged with a serious crime. Few people are found "guilty as charged."

At the bottom of the list of felony classes are the most common ones, appearing hundreds of thousands of times in our dataset: classes G, H, and I. Class G felonies are punishable by a year, but this may be intermediate or active, an important distinction. Class H felonies lead to six months of punishment, but this may be only community punishment. Class I felonies, the lowest level of felony, are punishable by 4 months of probation. A Class H conviction can lead to 6 months of active prison time, but a Class I felony will lead to prison time only if the person fails to meet the conditions of probation.

Table 2-9 also makes clear how much more severe are punishments for the same crime when the person has many previous points (prior convictions). For these individuals, even low-level misdemeanors can lead to active prison time, and those felonies that might lead to

community or intermediate sentences are moved up to active prison time. Times are greatly enhanced as well. A person with no prior points convicted of a Class H felony might serve 6 months of community punishment, but one with many prior points would serve a minimum of 16 months of active prison time. This punishment could further be enhanced by the judge based on their discretion (see the full punishment grid for these details; such "enhanced punishments" are relatively rare).

Misdemeanor offenses generally lead only to fines or short periods (less than 60 days) of probation. However, these can be significantly enhanced up to and including active prison time, for those with many previous convictions. Infractions, the lowest type of offense, are punishable only by a fine.

Clearly, the punishment grid provides an incentive for a person charged with a crime to "bargain it down" to a lower level of offense by accepting a plea agreement to plead guilty to a lower-level offense if offered. It also makes clear that from the law enforcement perspective it makes sense to charge individuals with multiple crimes; such a strategy provides more leverage later to agree to lower-level convictions, perhaps only on some of the charges originally considered. (In later chapters, we will show that this is indeed a very common outcome, by far the most common outcome in fact. Most convictions include a plea agreement rather than a trial, result in a conviction at a lower level than the original charge, and include the complete dismissal of a large percentage of the charges originally levelled.)

Numbers of Charges and Convictions by Offense Class

Understanding the punishment grid allows us to move on to a discussion of how many individuals are charged and convicted of each class of offense. Table 2-10. gives a summary of all 13.5 million charges in the database.

Table 2-10. Charges and Verdicts by Offense Class.

Offense Class	Charges		Verdicts		Verdicts as Percent of Charges
	N	%	N	%	
Felony - Class A	3,543	0.03	261	0.01	7.37
Felony - Class B1	16,820	0.12	1,730	0.04	10.29
Felony - Class B2	3,623	0.03	350	0.01	9.66
Felony - Class C	25,816	0.19	2,072	0.05	8.03
Felony - Class D	52,354	0.39	5,804	0.15	11.09
Felony - Class E	75,385	0.56	10,765	0.28	14.28
Felony - Class F	62,272	0.46	13,170	0.34	21.15
Felony - Class G	95,620	0.71	21,781	0.56	22.78
Felony - Class H	781,895	5.78	124,558	3.21	15.93
Felony - Class I	520,028	3.84	77,119	1.99	14.83
Felony - Class Unspecified	409,316	3.02	19,606	0.50	4.79
Misdemeanor - Class A1	375,521	2.77	74,798	1.93	19.92
Misdemeanor - Class 1	1,108,964	8.19	318,357	8.20	28.71
Misdemeanor - Class 2	540,534	3.99	123,856	3.19	22.91
Misdemeanor - Class 3	789,787	5.83	208,794	5.38	26.44
Misdemeanor - Class Unspecified	475,544	3.51	63,043	1.62	13.26
Traffic - Class A1	1,640	0.01	609	0.02	37.13
Traffic - Class 1	290,495	2.15	77,657	2.00	26.73
Traffic - Class 2	459,339	3.39	80,521	2.07	17.53
Traffic - Class 3	5,587,651	41.27	738,532	19.02	13.22
Traffic - Class Unspecified	469,417	3.47	156,211	4.02	33.28
Infraction	1,139,758	8.42	1,763,654	45.42	154.74
Class Unspecified	253,945	1.88		-	-
		-		-	
Total	13,539,267	100.00	3,883,248	100.00	28.68
Dropped Charges or Pending Verdicts			9,656,019		

Several important insights derive from Table 2-10. First, there are 13.5 million charges but only 3.9 million verdicts. This is because charges are reduced or dismissed. Note also that Table 2-10 refers to each charge a person may receive, and many of these individuals plead or are found guilty of one charge and see other charges dropped or suspended. That is, a person may be arrested on 3 or 4 charges (sometimes many more than that), and the resolution of these

charges may include a plea of guilty to one or some of the charges in exchange for the dismissal of others. The DA may reserve the right to allow a punishment of probation but to press charges temporarily dismissed if the individual violates the terms of their probation. So, there is a lot of room for individual charges to be dismissed, given that many individuals face multiple charges from the same event. Of course, sometimes all charges are dismissed, though this is less common than seeing some charges dismissed, but others being resolved with some sort of guilty plea (often to lesser charges). We will look in later sections at the highest charges received by each individual in any given arrest-incident. Also, recall from our earlier description of the NC AOC database on which our study relies that our analysis is limited to arrests on or after January 1, 2013 through December 31, 2019. Particularly for charges that occurred in 2019, some of these cases have not yet moved through the judicial system, so there is no verdict or final disposition of the case. Our database contains no information for judicial activities (including resolution of the case) after 2019.

The last column in Table 2-10 shows the obvious. For most offense classes, there are many fewer verdicts than charges. Whereas over 3,500 charges of capital murder (Felony Class A) were levied, fewer than 300 such verdicts were rendered. This pattern is common among all the felonies and misdemeanors including traffic violations; infractions are a different story. At the lowest level of the criminal legal system, we see 1.8 million verdicts but only 1.1 million charges. Fully 45 percent of all verdicts are infractions (e.g., fines only), with another 19 percent being class 3 misdemeanors associated with traffic violations. Among felony charges, we see enormous numbers of Class H and I felonies compared to the higher classes, none of which has more than 100,000 charges.

Most offense classes see well fewer than 20 convictions for every 100 arrests, with the exception of the lowest offense classes within each group, and in particular with infractions. Being "convicted as charged" is actually very rare. We will explore this at the individual level in later sections of this and subsequent chapters.

Most Common Charges in Each Offense Class

Table 2-10 above made clear that the NC criminal legal system is heavily tilted toward the lowest end of the severity scale: of 13.5 million charges, 5.6 million are Class 3 traffic infractions. Of just over 2 million felony charges, 1.7 million are Class H, I, or unspecified and fewer than 24,000 are Class A or B. Of course, looking at verdicts pushes the results even further to the observation that the vast majority of judicial outcomes relate to lower-level crimes. While we can all rejoice collectively that there is comparatively little high-level crime, this fact might be a jarring surprise to those who read the newspapers or watch the nightly local news. High level crimes that include physical violence get a lot more media attention, and justifiably so. But to understand the system as it really works, we must clearly understand the fact that most crimes come from the low end of the scale. In order better to understand these characteristics of the North Carolina criminal legal system, Tables 2-11, 2-12, and 2-13 show the top five offense codes within each of the offense classes above separately for felonies, misdemeanors, and traffic violations and infractions. The sometimes-obtuse abbreviations are those used in the state records. To find the full definition of each offense code, see our Appendix which links each offense code to the section of the North Carolina general statutes where it is defined.

Table 2-11. Top Offense Codes in Each Offense Class, Felonies.[8]

Code	Description	Class	Charges	Verdicts	Rate
	Class A				
0935	First degree murder	F - A	3,543	261	7.4
	Class B1				
1137	Stat rape/sex offn def >=6yr	F - B1	4,210	275	6.5
1107	Statutory rape of child <= 15	F - B1	1,927	87	4.5
	Class B2				
0951	Attempted first degree murder	F - B2	2,064	149	7.2
3838	Int child abuse-ser bod inj	F - B2	836	51	6.1
	Class C				
1348	AWDWIKISI	F - C	8,435	568	6.7
1026	First degree kidnapping	F - C	4,894	382	7.8
3453	Manufacture methamphetamine	F - C	3,520	318	9.0
	Class D				
1222	Robbery with dangerous weapon	F - D	28,549	3,253	11.4
2226	First degree burglary	F - D	8,739	653	7.5
	Class E				
1221	Consp robbery dangrs weapon	F - E	13,940	2,210	15.9
1346	AWDW serious injury	F - E	11,898	2,090	17.6
	Class F				
1118	Indecent liberties with child	F – F	17,340	4,006	23.1
1168	Fail reprt new address-sex off	F - F	6,875	1,497	21.8
1325	Assault serious bodily injury	F - F	6,781	959	14.1
	Class G				
5224	Possession of firearm by felon	F - G	51,020	10,145	19.9
1220	Common law robbery	F - G	11,786	3,923	33.3
	Class H				
2632	Obtain property false pretense	F - H	144,218	22,954	15.9
2212	Breaking and or entering (f)	F - H	92,483	23,211	25.1
	Class I				
2216	Break or enter a motor vehicle	F - I	78,820	17,421	22.1
9968	Maintn veh/dwell/place cs (f)	F - I	73,297	4,629	6.3
	Class Unspecified				
5032	Felony probation violation	F -	80,361	-	-
5040	Fel prob viol out of county	F -	48,596	-	-

Note: Rate is the number of verdicts (x 100) divided by the number of arrests. “AWDWIKISI”: Assault With a Deadly Weapon with Intent to Kill, Inflicting Serious Bodily Injury. “AWDW”: Assault With a Deadly Weapon.

[8] Our on-line appendix includes a spreadsheet showing the numbers of charges and verdicts associated with each of the 2,100+ offense codes.

If we look at the most common felony arrests, these are largely at the lowest level of the hierarchy of severity: Obtaining property by false pretense (code 2632, Class H, over 144,000 charges); breaking and entering (code 2212, Class H, over 92,000 charges); probation violations (punishable depending on the crime for which probation was the initial punishment, over 80,000 charges); breaking and entering a motor vehicle (code 2216, Class I, over 78,000 charges), and so on. With the exception of probation violations, which may relate to any crime (but which are most commonly assigned for low level crimes), all of the most common felony charges are Class H or I, the two lowest levels of severity. When we look at misdemeanors, we will see that the pattern is repeated, but the numbers are vastly higher.

Table 2-12. Top Offense Codes in Each Offense Class, Misdemeanors.

Code	Description	Class	Charges	Verdicts	Rate
	Class A1				
1389	Assault on a female	M - A1	184,457	33,023	17.9
3872	DV protective order viol (m)	M - A1	41,248	11,086	26.9
1388	Assault with a deadly weapon	M - A1	38,579	6,438	16.7
	Class 1				
2322	Misdemeanor larceny	M - 1	324,990	127,453	39.2
3401	Possess drug paraphernalia	M - 1	233,638	60,429	25.9
5328	Communicating threats	M - 1	130,971	16,091	12.3
	Class 2				
5310	Resisting public officer	M - 2	160,010	49,934	31.2
1368	Simple assault	M - 2	144,894	23,069	15.9
1336	Assault and battery	M - 2	34,483	3,854	11.2
	Class 3				
3550	Possess marijuana up to 1/2 oz	M - 3	207,439	55,082	26.6
3400	Possess marij paraphernalia	M - 3	151,912	25,889	17.0
5709	Second degree trespass	M - 3	144,350	44,655	30.9
	Class Unspecified				
5030	Misdemeanor probation viol	M -	158,960	-	-
2912	Injury to personal property	M -	99,917	15,694	15.7

Note: Rate is the number of verdicts (x 100) divided by the number of arrests.

The most common misdemeanor arrest is larceny, with 327,000 arrests; this is followed by possession of drug paraphernalia (234,000 arrests); possession of less than ½ ounce of

marijuana (208,000 arrests); assault on a female (185,000 arrests); resisting a public officer (160,000 arrests), and so on as the table shows.

Table 2-13. Top Offense Codes in Each Offense Class, Traffic Violations and Infractions.

Code	Description	Class	Charges	Verdicts	Rate
	Class A1				
5443	Misdemeanor death by vehicle	T - A1	1,640	609	37.1
	Class 1				
5418	DWLR	T - 1	90,350	19,137	21.2
4726	DWLR impaired rev	T - 1	75,493	28,561	37.8
4717	DWLR impaired rev	T - 1	33,877	14,709	43.4
	Class 2				
5446	Reckless driving to endanger	T - 2	154,624	28,942	18.7
5464	Reckless drvg-wanton disregard	T - 2	93,291	13,217	14.2
5489	No liability insurance	T - 2	39,947	2,116	5.3
	Class 3				
5450	Speeding	T - 3	1,801,314	120,346	6.7
5461	Expired registration card/tag	T - 3	1,179,221	110,610	9.4
5441	No operators license	T - 3	746,892	276,443	37.0
	Class Unspecified				
5405	Driving while impaired	T -	261,840	-	-
9955	Civil revocation dr lic (30)	T -	187,535	-	-
5499	Traffic offense - free text	T -	9,308	1,634	17.5
	Infraction				
4440	Expired/no inspection	I -	450,903	38,062	8.4
4450	Speeding	I -	132,717	585,357	432.5
4470	Fail to wear seat belt-driver	I -	101,731	56,783	55.9

Note: Rate is the number of verdicts (x 100) divided by the number of arrests. DWLR = Driving While License Revoked.

Traffic violations are of course a large part of the total criminal legal system, at least in terms of numbers. It is remarkable to see the difference between arrests and verdicts, because these illustrate the ubiquity of reductions in severity of punishment, and reveal some interesting characteristics of the plea-bargaining system, as we will explore more below. For example, the most common charge in Table 2-13 is speeding (code 5450), a Class 3 misdemeanor. But there are only 120,000 such convictions; less than seven percent. On the other hand, speeding (code

4450, an Infraction) saw 135,000 charges but almost 600,000 convictions. In fact, as we will explore below, the most likely verdict associated with a speeding violation is to be convicted of driving with a faulty speedometer (details in a later section). Other common charges are expired registration, driving without a license, and expired / no vehicle inspection. There are more serious crimes, such as death by vehicle, and there are more than a quarter million driving while impaired arrests, but for the most part, the bulk of traffic offenses related to speeding and to license / registration / inspection violations.

If we look at all the offenses listed in Tables 2-11, 2-12, and 2-13 above, the top five offenses are all traffic violations or infractions (1.8 million speeding violations, 1.1 million expired registrations; 747,000 operator's license violations, 614,000 driving with license revoked, and 451,000 driving with an expired or no inspection sticker). Only after this do we come across 327,000 misdemeanor larceny violations, and other less common offenses. So, the very common violations of North Carolina law are clearly very low level, and this will be something to keep in mind as we evaluate who comes into contact with the criminal legal system in the chapters to come.

More Convictions than Arrests

It is clear from the discussion above that many charges are "bargained down" during the period after arrest and before resolution of charges. Table 2-14 lists the offense codes and classes with the largest numbers of verdicts among all those cases with a greater number of verdicts than arrests. The most common are related to speeding; indeed, virtually all the most common ones are traffic-related offenses. Among felony convictions, we see eluding arrest, second-degree murder, and voluntary manslaughter. (These last two have fewer than 1,000 verdicts combined.) We also see various levels of DWI and hit-and-run convictions.

Table 2-14. Offense Codes with More Convictions than Arrests.

Code	Offense Description	Offense Class	Charges	Verdicts
4418	Improper equip - speedometer	I -	2,519	796,004
4450	Speeding	I -	132,717	585,357
4573	Fail to notify dmv addr change	I -	13,877	121,986
4486	Improper muffler	I -	2,093	25,071
4467	Exceeding safe speed	I -	9,183	22,642
5421	Fail to notify dmv addr change	T - 2	3,056	12,441
8501	Traffic control device viol	I -	43	11,450
4512	Fail wear seat belt-rear seat	I -	1,569	9,679
8410	City/town violation (i)	I -	111	9,278
2513	Common law uttering (m)	M - 1	953	2,782
2510	Common law forgery (m)	M - 1	1,045	2,359
5010	Obstructing justice	M - 1	1,216	1,462
4483	Illegal parking	I -	151	957
0944	Second degree murder	F - B1	454	669
0920	Voluntary manslaughter	F - D	96	328
4423	Improper steering mechanism	I -	37	138

Note: the table omits cases with less than 100 convictions, other than the hit-and-run verdicts shown. It also omits various categories where the arrest is for a generic offense (e.g., DWI) but the verdict is highly specific depending on a later verification of the facts, such as the blood alcohol level, the number of previous offenses, or the level of aggravation of the incident (e.g., injuries or deaths for a hit-and-run driving incident. Notable categories here are DWI, eluding arrest, hit-and-run driving.

We will explore in later chapters how plea bargains often lead to verdicts associated with crimes different from those that were alleged at the time of arrest. Such outcomes, as Table 2-14 makes clear, extend from the very highest level of the criminal legal system, murder charges, down to the lowest, speeding-related charges. The largest numbers are among infractions and low-level misdemeanors, but the practice is common from the top to the bottom of the system, so is an important characteristic to keep in mind.

All Politics is Local. How about Crime?

Here we look at the county of arrest compared to that of residence. Overall, based on the 13.5 million observations in our database, approximately 66 percent of charges relate to a person living in the same county as their arrest, 29 percent reside in another county in North Carolina,

and five percent live outside of the state. Table 2-15 shows that crime does tend to be local, and that this tendency is higher for more serious crimes. Many traffic offenses are committed by "outsiders" but felonies, especially the more serious ones, tend to be local affairs.

Table 2-15. County of Residence Compared to County of Arrest.

	Same County		Other NC County		Out of State		Total	
Category	N	%	N	%	N	%	N	%
Fel. Class A-D	79,438	77.8	19,864	19.4	2,854	2.8	102,156	100.0
Felony	1,517,470	74.1	462,489	22.6	66,713	3.3	2,046,672	100.0
All Charges	8,915,121	65.9	3,950,597	29.2	673,549	5.0	13,539,267	100.0

As one might expect, the odds of being from out of state are higher in some counties than others; several of the smaller mountain counties in the far west of the state have higher shares of out-of-state individuals facing charges; the out-of-state share rises to approximately 30 percent in a few counties. But in general, it is fair to think of crime, particularly serious felony crime, as involving people who live relatively nearby; over three-quarters live in the same county as the arrest, and over 97 percent of felony charges and over 95 percent of all charges, go to a person who resides within the state.

Conclusion

This chapter has provided an overview of the database on which we rely; it consists of every charge presented in a North Carolina court from 2013 through 2019. The vast majority of the charges are relatively minor; vast numbers are dismissed; and the large majority are resolved through a plea agreement rather than by the exercise of one's right to a jury trial. Having an understanding of these basic parameters of what drives the NC criminal legal system, particularly its large scope and overwhelming numbers of relatively low-level crimes, is key to the analysis that follows.

Part II

Disparate Impact

Each of the chapters in this Part assesses differences across social groups with regard to their likelihood of arrest. Chapter 3 documents the degree to which different elements of the criminal code affect different race-gender mixes of individuals and notes the times during which each of these disparate-impact laws were passed. Chapter 4 then addresses the question of police surveillance through a deep dive into a single city, Durham. In that case, we dispose of a rich dataset consisting of 911 call data, police patrol data, and the outcome over a million police-public interactions. Since we know the geographical location of each of these actions, we can assess the impact of place as well as that of social identity. Some places are much more closely surveilled by the police than others. In Chapter 5 we turn back to a state-wide analysis and document the range of arrest-rates for over 50,000 categories of individuals living in the state, by race, gender, age group, and municipality / place. These annual arrest rates range from almost zero for some social groups to well over one-quarter of the population for some others.

Chapter 6 looks at the historical continuity of marginalized and advantaged places. We make use of historical redlining maps from the 1930s to show that places that were considered "most desirable" at that time continue to benefit from various social advantages that are associated with minimal police presence and arrest rates. On the other hand, those areas that were "redlined" in the 1930s remain economically, physically, and socially marginalized today, and this is reflected in concentrated poverty, crime, and police surveillance.

Chapter 7 turns to the inner workings of the court system and how it processes the overwhelming number of cases that come into it each year. It focuses on the plea-bargaining system that is an inevitable part of the huge scope of the criminal legal system. Looking at a

range of criminal cases from first-degree murder down to speeding tickets, the Chapter documents the low rate of conviction and the high rate of dismissal or reduction in charges. This is the only way to make a plea-bargaining system work: offer a plea. The result of this is a surprising number of charges being dismissed, and equally surprising number being reduced to a negotiated conviction to a lesser charge, and fewer than ten percent of individuals being found guilty of the crime for which they were arrested. The result of this system is rarely, in other words, that the person admits responsibility for what they have done and is punished accordingly. Rather, it is a legal odyssey generally resulting in a negotiated plea to something that may never have happened.

Chapter 8 extends our analysis of the legal process further by looking at rates of charges being dismissed across various demographic groups and in charges stemming from the "high-arrest" neighborhoods that we identified in Chapter 5.

Overall, the chapters in Part II amply document something that our casual observer of a local county courthouse would have easily glimpsed: The system is highly focused on the most marginal in society. But the analysis presented here goes much further than what would be possible with a quick visit to the courthouse to observe the proceedings. It shows the depth of the targeting and the precision with which different parts of the criminal code focus on people with different social characteristics and who live in different places. In some ways the analysis in Part II may strike some readers as unsurprising. After all, we would hardly be the first do document racial disparities in the functioning of the criminal legal system. Still, we do a complete job of it and we lay it out with regards to different parts of the criminal code, each separately. Further, our analysis of place is more detailed than we have seen in previous works of this type. Overall, however, Part II lays out something in great detail something that a casual observer would

already have noticed: The criminal legal system is highly focused on those with the most marginalized positions in society.

3

How Different Elements of the Criminal Code Affect Different Demographic Groups

Introduction

It is probably not news to the reader that the criminal legal system is rife with inequalities. Scholars and advocates have uncovered the extent to which race, sex, class, and place have contributed to differences in outcomes of the criminal legal system. We also generally know which areas of the law produce these outcomes. Drug laws, formed during the War on Drugs waged in 1971, have been found to disproportionately target Black Americans (Provine 2007). Latine people are increasingly being arrested for traffic stops (Baumgartner, Christiani, et al. 2017) and property crimes (Hagan and Palloni 1999). Native Americans have been found to have higher rates of arrests for violent crimes compared to other racial groups (Pridemore 2004). Yet, beyond these broad categories, we do not yet know much about the specific crimes that lead to a disproportionate number of people represented in the system.

The previous chapter discussed the size and scope of the North Carolina criminal legal system, highlighting the huge number of people filtered through the system, often for low level charges and not for grievous violent crimes as local news channels would have us believe. In this chapter we will further explore the AOC database to understand how specific criminal charges are spread across different demographic groups in North Carolina. Most social science research in the racial disparities framework focuses on differences in outcomes at various junctures of the criminal legal system such as arrest, sentencing, and incarceration or at various high-level categories of crime such as drug crimes, property crime, violence crimes (Piston et al. 2025). Here, we can move beyond when disparities emerge along the criminal legal system conveyor

belt and can speak directly to the specific criminal codes that lead to the highest disparities within race-sex demographic groups. We begin with a general discussion on the concept of disparate impact and by situating our analysis of disparate impact criminal charges in North Carolina within the larger literature. We then move on to identify which specific criminal codes produce disparate impact by race-sex demographic groups. We close out the chapter by examining when statutes that result in disparate impact were put on the books in North Carolina, laying the groundwork for subsequent chapters in Part III of this book on discriminatory intent and the context under which sections of the criminal code were created in North Carolina.

Defining Disparate Impact in Criminal Charges

Disparate impact, in its simplest term, refers to policies or practices that result in a disproportionately negative effect on a group of people. Disparate impact entered American criminal law in the 1971 Supreme Court case *Griggs v. Duke Power Company* (Stephanopoulos 2019). In this case, plaintiffs challenged the power company's requirement that employees pass an aptitude test and hold a high school diploma, arguing that these requirements had no justification based on work-related duties and resulted in adverse consequences for minority job applicants. The Court found that these requirements, though written and designed with no discriminatory intent, resulted in disqualifying a "disproportionate number of Negroes" (Id. at 429). The Duke Power Company job requirements were found to be in violation of Title VII of the Civil Rights Act as they were not related to job performance or business necessity. The courts refined their three prong approach to disparate impact theory established in *Griggs* within employment law a few years later in *Albemarle Paper Company v. Moody* (1975), where: (1) the plaintiff's prima facie demonstration of a policy's disparate impact, (2) the defendant's job-

related business necessity defense of the discriminatory policy, and (3) the plaintiff's demonstration of an alternative policy without the same discriminatory impact (Tobia 2017).

Though disparate impact liability had first been grappled with by the courts within the domain of employment law, disparate-impact liability has rippled out to various areas of the law. Examples can be identified in housing discrimination through the Fair Housing Act, age discrimination through the Age Discrimination in Employment Act, lending discrimination through the Equal Credit Opportunity Act, disability discrimination through the Americans with Disabilities Act, and voting discrimination through the Voting Rights Act (Tiwari 2019). However, the courts have been resistant to apply the disparate impact doctrine to social actions and criminal law (Fiss 2019)[9].

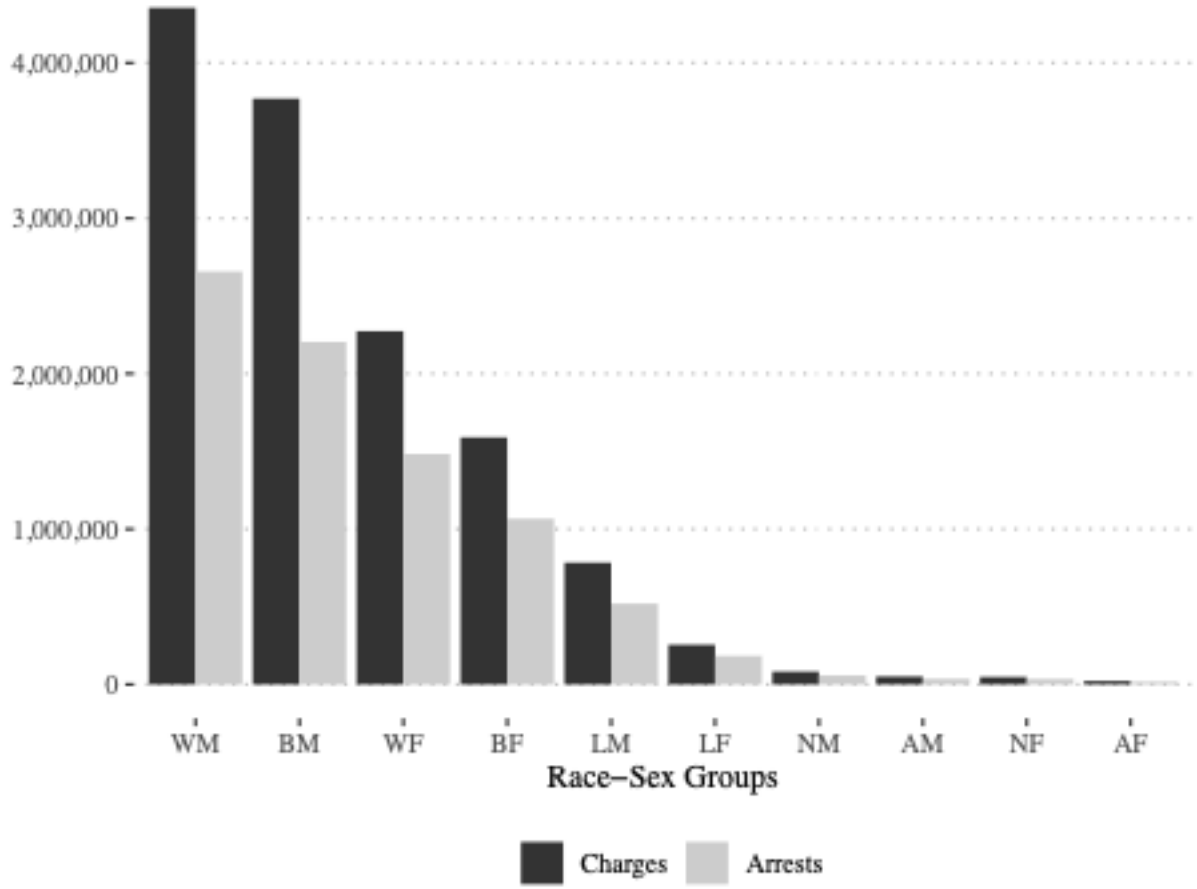
Though the courts have been resistant to accept arguments of disparate impact, even when presented with evidence of such, the uncovering of disparate impact within the criminal legal system in academic social science scholarship is a longstanding topic of inquiry. From every point of contact, from getting pulled over during a traffic stop (Baumgartner, et al. 2018) to criminal sentencing (Rehavi and Starr 2014), researchers have shown that Black and Brown people, especially Black men, are disproportionately represented in contact at every step within the criminal legal system. From the social science perspective, group disproportionality and disparities in the law exist when interactions with the criminal legal system, across any point including arrest, charge, conviction, incarceration, and sentence, differ from the underlying population. Disparate impact, unlike discriminatory intent—a concept that we will explore in later chapters—does not require that there be any intention for the disparities to occur. Disparate

[9] For a discussion on why the disparate-impact doctrine should be applied to policing, see Tiwari (2019).

impact is met in social science research when a defined group differs substantially from the underlying population. Following from this large body of work, we adopt this notion of disparate impact.

We can define a group of people that has been targeted by the law in many different ways: People who are at or below the poverty level, geographical areas, sex, or the racial demographics of a group, for example. Each of these groupings would show various layers in unequal enforcement of the law. Within this body of work, partially due to administrative data constraints and partially due to the widely documented racial disparities within the law, we opt to define groups in terms of race, ethnicity, and sex, though in later chapters we expand upon this set of variables. Specifically, we use the race and ethnicity indicators provided by the NCAOC: Black, White, Latine, Native, and Asian, and the two sex categories provided, men and women. We change the name of two racial categories provided by the NCAOC, Hispanic to Latine and American Indian to Native, to keep in line with current standards and name preferences of those racial groups. We omit the 307,815 observations at the charge level that lists the race or ethnicity as “Unknown” or “Other” or where there are missing observations for sex. This categorization produces 10 distinct race-sex groups. We show the number of criminal charges (black bar) and arrest incidents (grey bar) for each race-sex group in Figure 3-1 for the seven-year period of the NC AOC data.

Figure 3-1. Arrest-Incidents and Charges, by Race-Sex Groups.



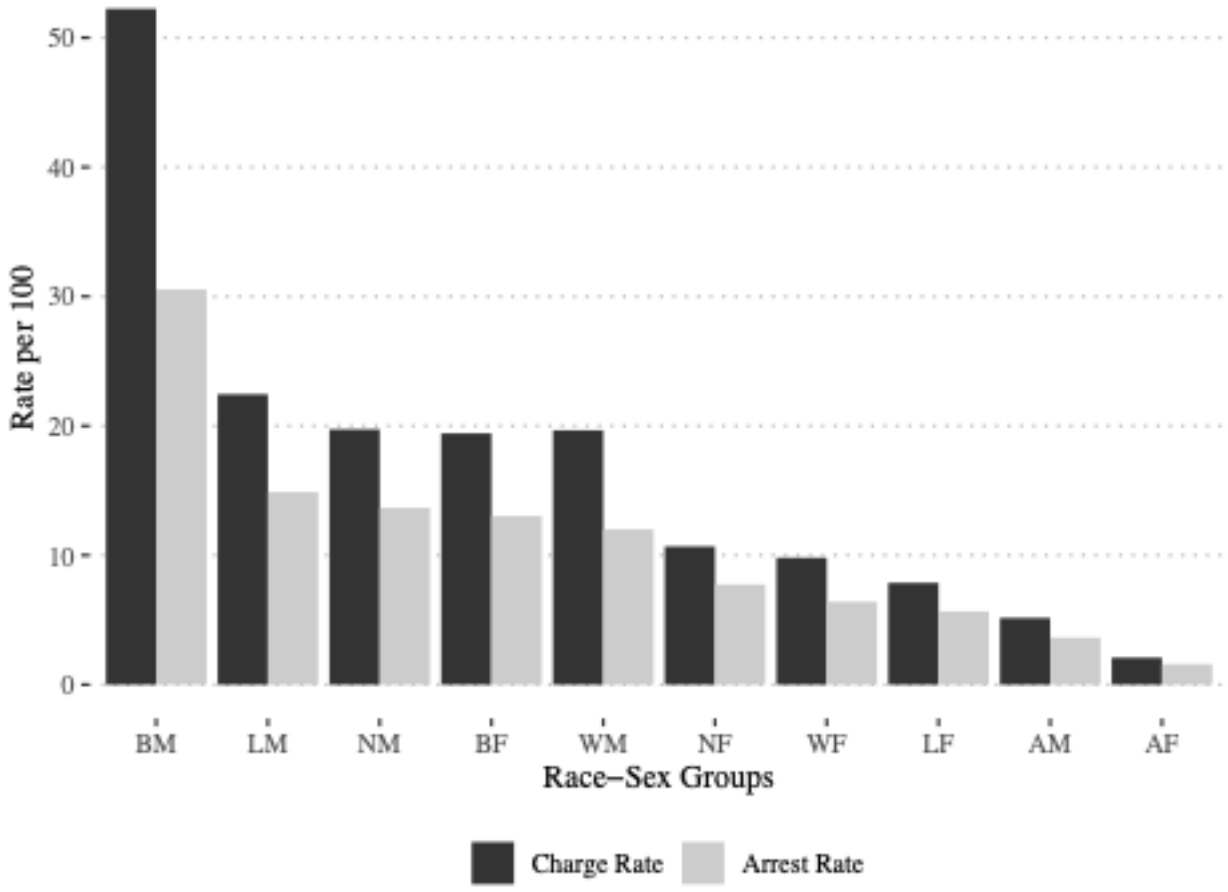
Note: The five race groups are White, Black, Latine, Native, and Asian, each identified by the first letter; the two sex groups are Male and Female, also indicated by the first letter.

Figure 3-1 shows vastly different numbers of charges and arrests based on demographic groups. White men have the most charges (4,354,827) and arrests (2,656,994) of any other race-sex groups, followed by Black men with 3,770,175 charges and 2,204,032 arrests, White women (2,273,363 charges and 1,483459 arrests), and Black women (1,590,074 charges and 1,066,508 arrests). Asian women have the lowest charges (22,116) and arrests (16,776) across all race-sex demographic groups.

The arrests and charges outlined in Figure 3-1 do not account for the differences in the population share and if taken at face value seems to indicate that White men fare the worst with

regard to police interaction. To correctly interpret these numbers, it is necessary to standardize them with the population share for each respective group. Figure 3-2 shows the rate of charges and arrests for the 10 race-sex groups as a rate per 100 of the race-sex population averaged over seven years and arranged in descending order of rate. If we lived in a world where charges and arrests are dispersed equal to the population share, we should see all bars being roughly the same height. As seen in the Figure, this is not the case.

Figure 3-2. Arrest-Incidents and Charges across Race-Sex Groups, per Capita.



When looking at the charge and arrest rates for yearly averages, Black men have a charge rate of around 52 per 100 residents and an arrest incident rate of around 30 per 100 residents. Note that here we are counting each charge, and many individuals (as we showed in Chapter 2)

have multiple charges. So, Figure 3-2 shows that the number of charges filed against Black men equals 52 charges per 100 individuals. The number of individuals against whom these 52 charges were filed may be lower. The second bar, the arrest rate, shows this number: Almost one in three Black men will be arrested. Latine men are the second highest with 22 charges and almost 15 arrests per 100 population, followed by Native men (20 charges and 14 arrests), Black women (19 charges and 13 arrests), White men (20 charges and 12 arrests), Native women (11 charges and 8 arrests), White women (10 charges and 6 arrests), Latine women (8 charges and 6 arrests). Asian men (5 charges and 4 arrests) and Asian women (2 charges and 2 arrests), have the lowest rates across both charges and arrests.

As noted earlier in this chapter, there is a long and ongoing discussion surrounding the ways in which one might prove that disparate impact has occurred under a specific law or policy. There are parts of the law that do not consider statistical evidence at all (Gross 2012), and some that have accepted statistical evidence of disparate impact but have not provided a concrete threshold for what constitutes disparate impact. Although there has been no formal guideline provided through the Fair Housing Act, some commentors have suggested that a policy with disparate impact under the Fair Housing Act is one that has a 20 percent difference between the relevant groups (i.e. a statute that charges at least 120 percent of a group's population share would be considered a law with a disparate impact). Others have conjectured that, absent statistical definitions, there must be a "meaningful difference" between groups. To provide a conservative estimate of what we define as disparate impact, we set the threshold at 140 percent of the population share as what defines a statute that disproportionately impacts a racial group. Table 3-1 shows the population count, population percent, and the disparate impact threshold that we use throughout this chapter.

Table 3-1. Race-Sex Group Population Number, Percent, and Disparate Threshold.

Race-Sex Group	Population (count)	Population (%)	Disparate impact threshold (%)
White Women	3,310,377	32.2	45.1
White Men	3,164,311	30.8	43.2
Black Women	1,169,762	11.4	16.0
Black Men	1,030,999	10.0	14.1
Latine Men	498,990	4.9	6.8
Latine Women	463,675	4.5	6.3
Asian Women	151,372	1.5	2.1
Asian Men	141,620	1.4	1.9
Native Women	64,249	0.6	0.9
Native Men	59,703	0.6	0.8
Total	*10,264,876*	*98.0*	--

Note: population (%) does not add up to 100, as we omit racial groups "other" from race-sex groups

White women are the largest race-sex group in North Carolina with over 3.3 million people and accounting for around 32 percent of the total population. White men are the second largest group with over 3.1 million people and almost 31 percent of the total population, followed by Black women (11 percent), Black men (10 percent), Latine men (5 percent), Latine women (5 percent), Asian women (2 percent), Asian men (1 percent), Native women (0.6 percent, and Native men (0.6 percent). The final column gives the threshold for disparate impact for each race-sex group. We define this as 140 percent of the population share. Throughout the remainder of this chapter, when we refer to disparate impact, we will use the thresholds provided in Table 3-1. Any part of the offense code that shows more than this threshold value can be classified as a code with a disparate impact against that particular demographic group. Because the population groups are of different sizes, so are the disparate impact thresholds.

Disparate Impact Offense Codes

Having established that race-sex groups are charged and arrested at vastly different rates, we now move on to explore the types of crimes that groups are charged with. In presenting and

discussing the top criminal charges for each group, we are not implying that each group is necessarily behaving differently. As we are dealing with law enforcement administrative datasets at this point, we can only comment on the reported crime rate, not the actual occurrence of behavior by demographic group. While many may assume that groups who are arrested at higher rates for certain behaviors have the same underlying trends, existing data does not support this assumption. For example, the FBI UCR reports that in 2019 there were 1,052,101 arrests for drug abuse violations, with Black people accounting for roughly 26 percent of those arrests (FBI UCR, 2019 Crime in the United States, Table 43a). Yet, according to a national survey conducted by the Substance Abuse and Mental Health Services Administration shows that of those surveyed who answered yes to using an illicit drug in the past year, Black people account for just 12.8 percent (NSDUH Public Use Data, 2019) of those responding in the affirmative. While the dominant narrative around explaining drug arrest rates in social science literature has typically hinged on underlying use, recent literature has attempted to disrupt this narrative by highlighting the discrepancies between estimated drug use and drug possession arrests (Beckett, et al. 2005). We leave the question of whether arrests are in proportion to underlying behaviors to other scholars focusing specifically on these important questions and instead focus solely on which areas of the NC criminal code affect which groups of people.

Recall from the previous chapter that the offense code is a precise 4-digit number that indicates the crime that a person has been charged with. There are over 2,000 offense codes in the NC criminal code, of which 1,546 appear in our database. Many of these criminal codes have relatively few charges, with 605 codes having less than 100 charges across the seven years of the database. The most common offense code that appears in our database, by far, are related to speeding and other traffic and vehicle violations. The crime code that appears most frequently is

5450 which is defined as a traffic speeding crime and has 1,801,314 charges, the second most common crime code with 1,179,221 charges is 5461, which is defined as an expired registration card or tag. Traffic and vehicle charges are so commonly used in North Carolina, that a huge proportion of the total charges are attributable to just a handful of offense codes. The top five offense codes across the entire database account for 4,793,169 charges, or 35.4 percent of the total charges. The most common crime code that is not related to a traffic or vehicle violation is 2322, defined as misdemeanor larceny and has 324,990 charges.

Identifying codes that disproportionately impact different groups, rather than the most used criminal codes, requires us to sort codes by percent of charges by race-sex groups. There are a several offense codes for each race-sex group where 100 percent of the charges are confined to that group. In those cases, it is virtually all just a handful of charges. For example, there are ten offense codes that are 100 percent Black women. Yet, there are only 16 charges across all those criminal codes. There are 13 offense codes that are entirely charged to White women, accounting for 13 charges. There is just one offense code with 100 percent Latine women charged, though it is only a single individual. There is no offense code charged exclusively to Asian women. Men have the highest number of criminal charges that are exclusively used within their race group, aside from Asian and Native people who have no offense codes that are charged exclusively to their group. There are 29 criminal codes that are exclusively charged to Black men, ranging from a single charge to 86 (5256: armed habitual felon), with a total of 216 charges. There are 70 criminal codes that are exclusively White men, totaling 247 charges with most of these being under the wildlife crime category. Latine men have the lowest of the men race groups with three exclusive offense codes, accounting for four charges.

Recall from Table 3-1 in this chapter that there are specific thresholds that we set to flag a crime code as being disparate impact or not. We use these thresholds to identify the codes that produce the most disparate impact by race-sex groups and present them in Tables 3-2 to 3-6. In each table, the top panel shows disparate impact codes against women and the bottom panel shows disparate impact codes against men. We list the code, crime description, category, percent of total charges, and the number of charges. To not confuse or mislead the reader regarding the concentration of criminal codes for any given group, we omit any offense code from the table that has less than 100 charges for any given race-sex group.

Table 3-2. Top Offense Codes among Charges against White People.

.Sex	Code	Description	Category	%	Charges
Women	3430	EMBEZZLE CS BY EMPLOYEE OF REG	Property/substance	64.5	445
	4021	SOLICIT PROSTITUTION 2ND/SUB	Sex crime no contact	63.2	110
	3597	PROVIDING DRUGS TO INMATE	Substance	53.7	181
	4011	PROSTITUTION	Sex crime no contact	50.5	536
	3345	OBT CS PRESCRIP MISREP/WITHHLD	Substance	49.6	254
	4719	AID&ABET DWLR IMPAIRED REV	Vehicle	49.4	129
	3822	SCHOOL ATTENDANCE LAW VIOL	Public order	48.8	8,156
	9924	CORPORATE MALFEASANCE	Property	48.5	127
	4728	AID&ABET DWLR IMPAIRED REV	Vehicle	47.8	412
	2658	OBTAIN CS BY FRAUD/FORGERY (F)	Property	47.4	3,659
Men	6312	GILL NET/EQUIP/OPER VIOLATIONS	Wildlife	94.1	305
	6222	EXCEEDING GAME LIMIT	Wildlife	93.8	135
	6246	FAIL REPORT/TAG BIG GAME	Wildlife	92.6	2,490
	6219	UNLAWFULLY TAKE MIG GAME BIRD	Wildlife	92.2	640
	6226	POSS DEER TAKEN CLOSED SEASON	Wildlife	91.2	249
	6360	LEAVE POT/GILL NET UNATTENDED	Wildlife	90.8	108
	6374	TAKE MIG WATERFOWL W/O LIC	Wildlife	90.4	227
	6230	DWI - MOTOR BOAT/VESSEL	Driving/Wildlife	89.1	956
	6223	OPER MOTORVESSEL INVALID NUM	Wildlife	88.7	188
	6225	USE UNPLUGGED SHOTGUN	Wildlife	88.2	642

Table 3-3. Top Offense Codes among Charges against Black People.

Sex	Code	Description	Category	%	Charges
Women	2619	PUBLIC ASSISTANCE FRAUD (F)	Property	74.7	118
	2354	THEFT OF CABLE TV SERVICE	Property	47.9	287
	2615	FOOD STAMP FRAUD (F)	Property	43.1	188
	2649	FAIL RETN PROP RENTD PUR OPT	Property	41.0	5,706
	4414	CHILD NOT IN REAR SEAT	Traffic	40.5	2,905
	2646	FAIL TO RETURN RENTAL PROPERTY	Property	37.7	3,912
	4472	FAIL TO SECURE PASSEN UNDER 16	Traffic	35.5	9,736
	2603	INSURANCE FRAUD	Property	33.5	871
	2663	MISREP TO OBTAIN ESC BENEFIT-M	Property	31.8	979
	2676	FAIL RETURN HIRED MV >$4000	Property	30.7	297
Men	6259	DOG FIGHTING	Wildlife	93.6	378
	2151	DISCHARGE FIREARM ENCLOSURE	Violent/Weapon	87.3	179
	5242	CARRYING CONCEALED GUN(F)	Public order	86.7	1,302
	9923	VIOLENT HABITUAL FELON	Violent?	84.0	105
	5219	DIS WEAP OCC PROP SER BOD INJ		82.6	528
	3441	SELL COCAINE	Substance	82.3	5,728
	3456	DELIVER COCAINE	Substance	81.6	4,196
	3435	SELL/DELIVER COCAINE	Substance	79.7	5,782
	3555	PWISD COCAINE	Substance	79.6	22,213
	5220	DISCHARGE WEAPON OCCUPIED PROP	Violent	79.5	3,769

Table 3-4. Top Offense Codes among Charges against Latine People.

Sex	Code	Description	Category	%	Charges
Women	5469	EXPIRED OPERATORS LICENSE	Vehicle	16.6	281
	5410	ALLOW UNLICENSE MINOR TO DRIVE	Vehicle	16.3	219
	5441	NO OPERATORS LICENSE	Vehicle	12	89,285
	5470	ALLOW UNLICENSED TO DRIVE	Traffic	11.8	3,171
	5634	LIC/PERMIT NO SUPV DRIVER <18	Vehicle	11.7	246
	5630	LEARNERS PERMIT VIOLATION >18	Vehicle	11.7	331
	5523	AID & ABET OPERATORS LIC VIOL	Vehicle	10.7	132
	4432	FAILURE TO YIELD	Traffic	10.2	369
	4472	FAIL TO SECURE PASSEN UNDER 16	Traffic	9.9	2,706
	4414	CHILD NOT IN REAR SEAT	Traffic	8	576
Men	5469	EXPIRED OPERATORS LICENSE	Vehicle	39.5	667
	5441	NO OPERATORS LICENSE	Vehicle	32.9	245,788
	4425	IMPROPER LOADING/COVERING VEH	Vehicle	26.4	273
	3534	CONSPIRE TO TRAFFIC IN COCAINE	Substance	20.6	433
	6395	FISHING WITHOUT A LICENSE	Wildlife	20.3	117
	5634	LIC/PERMIT NO SUPV DRIVER <18	Vehicle	19.9	418
	4551	ILLEGAL RIGHT TURN ON RED	Traffic	19.6	171
	6207	FISHING WITHOUT A LICENSE	Wildlife	18.5	402
	4401	IMPEDE TRAFFIC BY SLOW SPEED	Traffic	17.8	146
	4432	FAILURE TO YIELD	Traffic	16.6	598

Table 3-5. Top Offense Codes among Charges against Asian People.

Sex	Code	Description	Category	%	Charges
Women	6099	HEALTH LAW - FREE TEXT	Public order	14.4	135
Men	3528	TRAFFICKING IN MARIJUANA	Substance	4.5	102
	3496	TRAFFICK IN METHAMPHETAMINE	Substance	1.4	119
	6299	WILDLIFE - FREE TEXT	Wildlife	1.4	166
	2699	FRAUD - FREE TEXT	Property	1.2	136

Table 3-6. Top Offense Codes among Charges against Native American People.

Sex	Code	Description	Category	%	Charges
Women	3822	SCHOOL ATTENDANCE LAW VIOL	Public order	3.5	591
	5471	AID AND ABET IMPAIRED DRIVING	Traffic	2.3	161
	5338	THREATENING PHONE CALL	Public peace	1.7	108
	5565	PERMIT OPERATION VEH NO INS	Vehicle	1.4	168
	5470	ALLOW UNLICENSED TO DRIVE	Traffic	1.4	365
	2649	FAIL RETN PROP RENTD PUR OPT	Property	1.3	176
	2342	SHOPLIFTING CONCEALMENT GOODS	Property	1	564
	2666	SIMPLE WORTHLESS CHECK	Property	.9	196
	5337	CYBERSTALKING	Public peace	.9	144
	2390	UNAUTHORIZED USE OF MOTOR VEH	Property	.9	233
Men	5338	THREATENING PHONE CALL	Public peace	2.9	191
	6299	WILDLIFE - FREE TEXT	Wildlife	2.1	258
	1322	ASSAULT BY POINTING A GUN	Violent	1.7	274
	5471	AID AND ABET IMPAIRED DRIVING	Traffic	1.7	117
	5038	MISD PROB VIOL OUT OF COUNTY	Public order	1.4	1,008
	2390	UNAUTHORIZED USE OF MOTOR VEH	Property	1.4	353
	4462	UNSAFE TIRES	Vehicle	1.3	114
	5328	COMMUNICATING THREATS	Public peace	1.3	1,684
	1388	ASSAULT WITH A DEADLY WEAPON	Violent	1.3	496
	2341	POSS STOLEN GOODS/PROP (F)	Property	1.3	667

Several observations follow from Tables 3-2 to 3-6. The most important is that there are very clear differences in the types of crimes that different race-sex groups are being charges with. Table 3-2 show the top charges for White people. For White women, highest disparate impact crimes include a mix of different kinds of crimes including property crimes, sex crimes that do not involve contact, substance crimes, and vehicle crimes. Disparate crime codes for White men, on the other hand, are exclusively in the wildlife crime category (though DWI on a motorboat may be interpreted as a driving offense). Table 3-3 show disparate impact codes for Black people and, unlike other groups, have echoes of racial stereotypes of the past. For Black women, eight of the top ten charges are property crimes, with many of the disparate codes in line

with the racist "welfare queen" stereotype developed under the Reagan administration as a political tool to justify welfare reforms (Hancock 2003). For Black men, dog fighting is at the top of the list and is also a reflection of societal tropes around Black masculinity, criminality, and brutality (Kim 2015). While the most common category for Black men is related to the sale and delivery of cocaine. Overwhelmingly, disparate charges against both Latine women and men are traffic and vehicle related, shown in Table 3-4.

Notice that Table 3-5, which identifies disparate impact codes used against Asian people, has fewer rows compared to other tables. As we only display the top disparate impact codes, we truncate the table if there are less than ten such charges. For Asian woman, there is only one disparate impact charge with more than 100 charges for the group, which is an open text health law. There are four disparate impact charges against Asian men, two under substance category, one wildlife charge, and one property charge. Table 3-6 shows disparate impact charges against Native people. Both women and men have a mixture of different categories of charges.

Something else to keep in mind is that the punishment type and length also differ between groups. When looking at the median offense code for each sex group excluding traffic offenses, all groups, except Black men, have a median offense class of misdemeanor class 1, which recall from Table 2-9 in Chapter 2 has an associated punishment of 1-45 days of community punishment. Black men, by contrast, have a median offense class of misdemeanor class A1, which has an associated minimum punishment (meaning a person has no prior points) of 1-60 days of either community or jail time. In line with dominant narratives on the targeting of Black men of lower-level crimes, when we subset down to only those codes that result in a disparate impact for the group, certain groups are charged for lower-level offenses more than often. The median offense class for disparate impact codes against Black women, Latine women,

and Latine men is misdemeanor traffic class which carries a fine. Black men and native women have a median offense code of misdemeanor class three, which also carries a fine. The median offense class for White women, Native men, Asian women, and Asian men disparate impact codes is misdemeanor class one, carrying a community punishment of 1-45 days. White men have the highest median offense class of misdemeanor class A1, which carries a minimum punishment of 1-60 days of either community or jail time.

In addition to looking at the specific crime codes and categories that are used against race-sex groups, we were curious of the percent of total charges against each race-sex group stem from these codes. Although examining the top offense codes used for each race-sex group can give a lot of insight into which crimes law enforcement is charging different groups with most frequently, it is also very helpful to ask of all the crime codes on the books in North Carolina, how many of them are used disproportionately? In other words, how many offence codes on the books result in a disparate impact for race-sex groups? To calculate disparate impact criminal codes, for each criminal code we flag whether there is a disparate impact for any of the race-sex groups according to the thresholds provided in Table 3-1, which flags a disparate impact code when a group accounts for at least 140 percent of the population share. The first column of Table 3-7 lists the race-sex group, the second column shows the number of disparate impact codes identified in the database, followed by the number of charges from disparate impact codes, the total number of charges in the AOC database for the race-sex group, and the final column has the percent of total AOC charges that fall under the disparate impact codes. We sort the table in descending order of the number of disparate impact codes. Unlike Tables 3-2 through 3-6, we retain all crime codes in the AOC database, including those that have less than 100 charges in the entire AOC database.

Table 3-7. Race-Sex Group Charges under Disparate Impact Codes.

Race-Sex Group	Disparate Impact Codes (DICs)	Charges from DICs	Total Charges	% of Charges from DICs
Black Men	1,085	3,744,613	3,770,175	99.3
Black Women	216	650,140	1,590,074	40.9
Native Men	314	33,492	82,467	40.6
Latine Women	51	100,919	255,378	39.5
Latine Men	367	259,846	783,863	33.1
White Men	582	390,884	4,354,827	9.0
Native Women	76	3,252	48,051	6.8
Asian Men	104	974	51,142	1.9
Asian Women	24	218	22,116	1.0
White Women	54	14,419	2,273,363	0.6

Table 3-7 shows us that 1,085 criminal codes disproportionately impact Black men, 582 criminal codes that disproportionately impact White men, followed by Latine men (367), Native men (314), and Black women (216), all other groups have disparate impact from less than 100 criminal codes per group. This should be striking to the reader. Of the 1,546 criminal codes used in North Carolina, over two thirds of them are disproportionately used against Black men in criminal charging. The drivers behind the overrepresentation of Black men are not confined to just a small part of the criminal code, or a few select crimes that were created during the war on drugs, as is commonly cited when inquiring about when mass incarceration was triggered. It is the majority of the criminal code.

In addition to the number of disparate impact codes that exist, the percent of total charges that stem from disparate impact codes also reveals the how large of an impact those codes have on the overall rate of arrests. The final column of Table 3-7 gives the percent of the total charges against each race-sex group that are from disparate impact codes for that group. Interestingly, there are two distinct groups: those who have a sizeable percent of total charges from disparate impact codes, and those who have a relatively smaller percent. Focusing on the former group, 99.3 percent of all charges against Black men stem from disparate impact codes, followed by

Black women (40.9 percent), Native men (40.6 percent), Latine women (39.5 percent), and Latine men (33.1 percent). For these five race-sex groups, when codes disproportionately target their group, a lot of people are affected. For the remaining groups, when disparate impact codes are used, there are relatively few people charged with them. For White men, despite having the second highest number of disparate impact codes, just nine percent of their total share of charges stem from them. Native women have 6.8 percent of total charges from disparate impact codes, followed by Asian men (1.9 percent), Asian women (1 percent), and White women have the lowest with just 0.6 percent of total charges stemming from disparate impact codes). For this group, although there are disparate impact codes, they only account for a small number of group arrests.

The combination of these two points, number of disparate impact codes and percent of charges stemming from them, highlight some interesting dynamics in criminal charging. For White men, there are a lot of disparate impact codes, but they do not account for a high number of arrests. On the other hand, for Latine women, there are relatively few disparate impact codes that account for a sizeable percent of the group's arrests. For Black men, about two thirds of the criminal code disproportionately impacts them and 99.3 percent of their arrests stem from disparate impact codes. There is one main point that we wish to highlight in presenting these data. If we were to theoretically undergo an exercise of eliminating areas of the criminal code that produce the most disparate impact for race-sex groups, for some groups, such as Asian and Latine women, it would be a relatively easy task, requiring no more than a handful of criminal codes. For others, namely Black men, the task would require an overhaul of essentially the entire system.

Disparate Impact Statutes

Moving from examining the very specific crimes used in our database and how they contribute to disproportional representation in arrests, we now focus our attention on the statutes that currently exist in North Carolina. Each crime code that we have discussed was created from a statute that was passed by the NC legislature. These statutes can create just one crime code, or it can create several at once. For example, NCGS 90-98 is a statute concerned with drug offenses and has 31 crime codes associated with it. On the other hand, NCGS 113-152 is a statute concerned with certain fishing violations and has just two crime codes associates with it.

As of end of year 2021 2,184 offense codes appeared under 1,084 statute subsections; when aggregated to the chapter and section number, 647 statute sections appeared in total, of which 559 figure in the AOC database. From the discussion in the previous section, we know that the majority of crime codes result in a disproportionate impact on Black men. Is the same true of existing statutes? Figure 3-3 provides the number of disparate impact statutes for each race-sex group using the disparate impact thresholds provided in Table 3-1. If there were just a handful of statutes that created most disproportionate crime codes, as might be the case with drug crimes created during the war on drugs, we would see low numbers of targeted statutes for each race-sex group. Conversely, if the disparate impact crime codes span multiple statutes, we might see higher numbers.

Figure 3-3. Number of Disparate Impact Statutes, by Race-Sex Group.

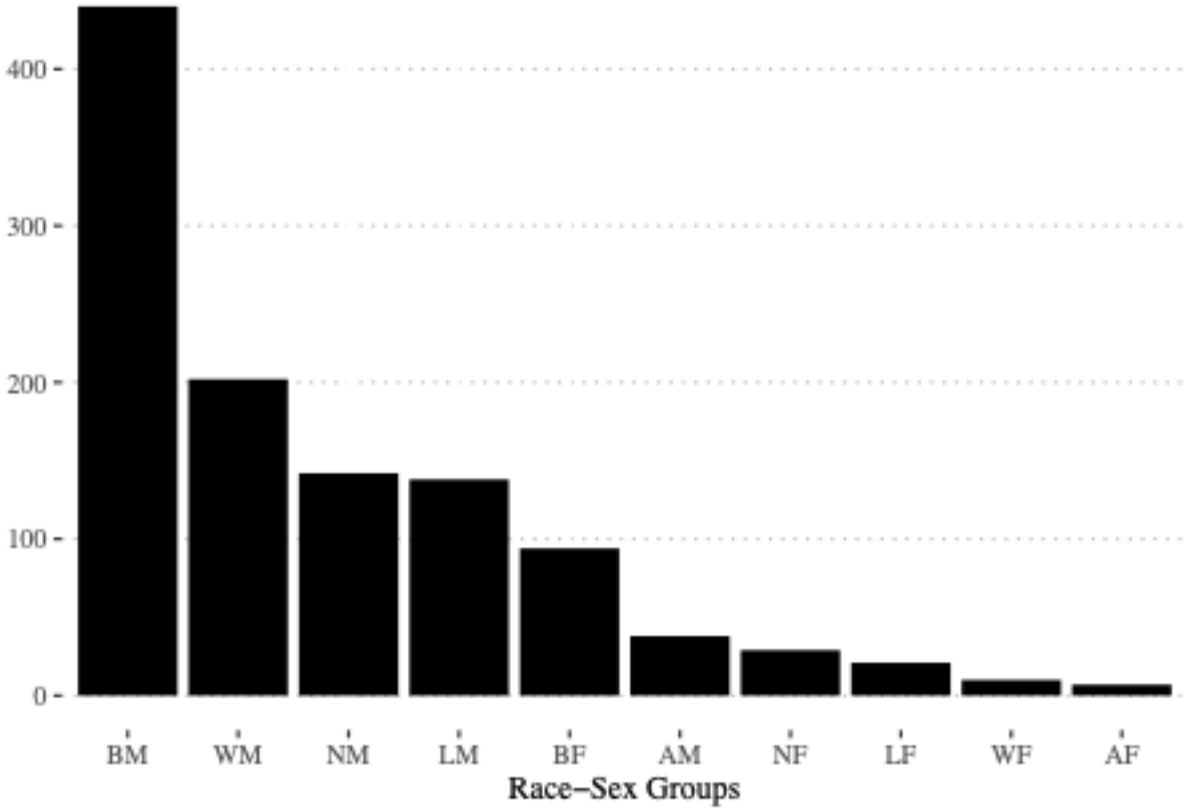


Figure 3-5 show similar trends as Figure 3-6 and reaffirms our previous statement regarding disparate impact crime codes: the majority of statutes that exist are being used disproportionately against Black men and are used far more frequently than any other race-sex group. We now focus our attention on uncovering when these statutes were passed.

Origin Years of Disparate Impact Statutes

Every year, North Carolina state legislatures pass session laws that creates statutes and adds or removes crimes from the criminal code. The entire criminal code lists the year the statue origin years and each year the statute is amended. To understand when laws were created that result in disproportionate arrests, we gathered the origin year for every statute that is currently on the books in North Carolina. The first step in our analysis was to collapse the data to the statute number and include demographic counts for each statue that appeared in the database. Then, to

identify the year that the statute was codified, we examined the drafting and revision of each statute provided through the North Carolina General Assembly[10] and recorded the origin year for all statutes appearing in the list of active offense codes. Figure 1 shows the number of current statutes by the year that they were passed. Recall from above that the AOC database includes individuals arrested under 559 separate chapters and sections of the code; 38 statutes did not have an origin year listed, 23 have been repealed, 14 had no date listed, and two are broadly defined as local ordinances. So Figure 1 is based on the remaining set of laws.

Two important caveats must be highlighted. First, as we only have access to the current criminal code, we do not have the origin years of all crimes that were put on the books across time. There are certainly a number of statutes that created crime codes that were, at some point, removed from the books. When presenting these data, we do not mean to imply that these are all the statutes that were created. Second, we focus our attention to origin years of statutes that currently exist, rather than crime codes, as we cannot be sure that a crime code was created at the same time a statute was created.

Figure 3-4a shows the identifiable origin years for all statutes that exist on the books, and Figure 3-4b shows the identifiable origin year for those statutes that result in disparate impact (at least 140 percent of any demographic group) in the AOC database.

[10] Data retrieved from the North Carolina General Assembly website: https://www.ncleg.gov/Laws/GeneralStatutes

Figure 3-4. NC General Statutes, by Year.

A. All Current Statutes B. Disparate Impact Statutes

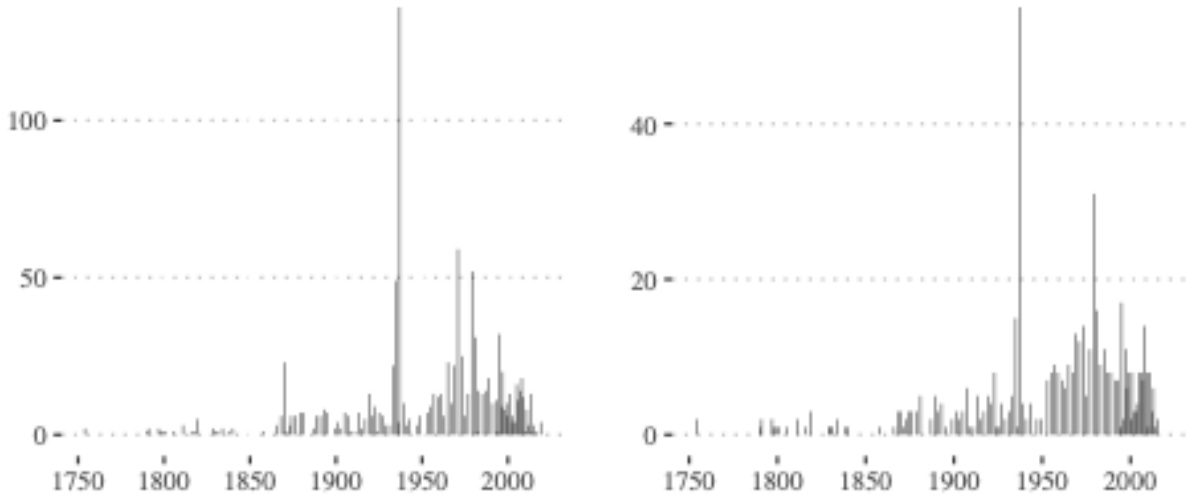


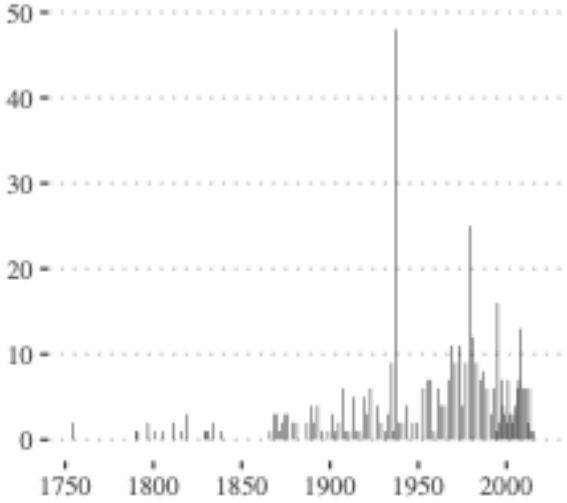
Figure 3-4 shows clear peaks and valleys in when all general statutes and disparate impact statues were passed. Most notably are the spikes in the mid-1930s, the mid-1970s, and then in the mid-1990s and the late 2000s. There are two main takeaways: First, it is not the case that there are roughly equal numbers of statutes being created each year by the legislature. If there were, the vertical lines would be roughly the same height across years. Instead we see very clear periods of heightened legislative activity in the domain of criminal lawmaking. Second, when sub-setting to the statutes that current produce disparate impact in charges in North Carolina, there are very clear periods of time when those statutes were passed.

The trends displayed in Figure 3-4 are for disparate impact statutes for all race-sex groups. In case the reader is curious of how these trends differ when looking at race-sex group, we disaggregate the data by race-sex groups and present in Figure 3-5 a-j when statutes were passed that today disproportionately target specific groups by year. Each vertical line represents the number of current disparate impact statutes that were passed in the years plotted along the x-

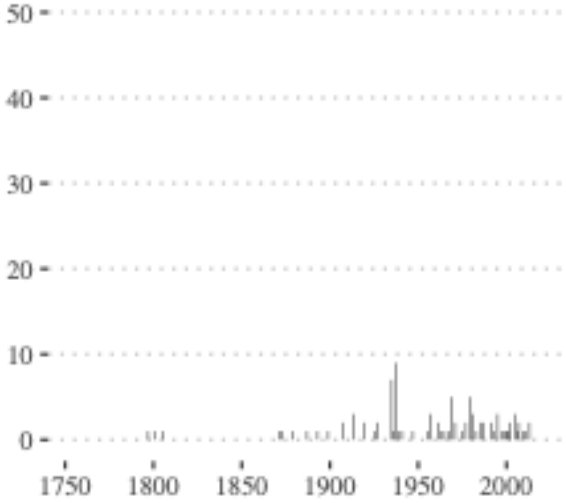
axis. Meaning, the higher the vertical line, the more statutes were passed that year that resulted in a disparate impact in the NC AOC data from 2013 to 2019.

Figure 3-5: Origin Years for Disparate-Impact Statutes, by Race-Sex Groups.

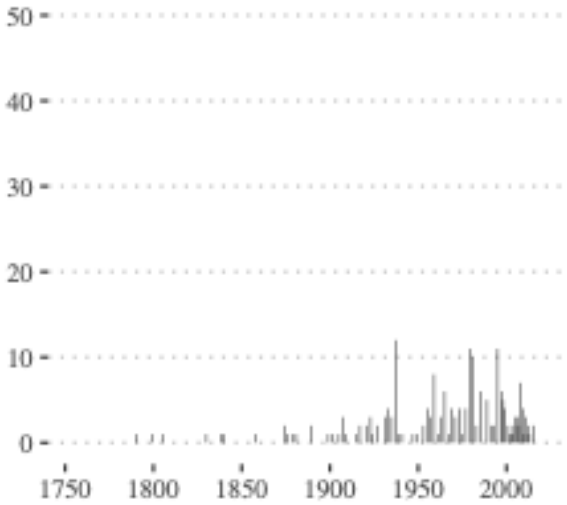
A. Black Men



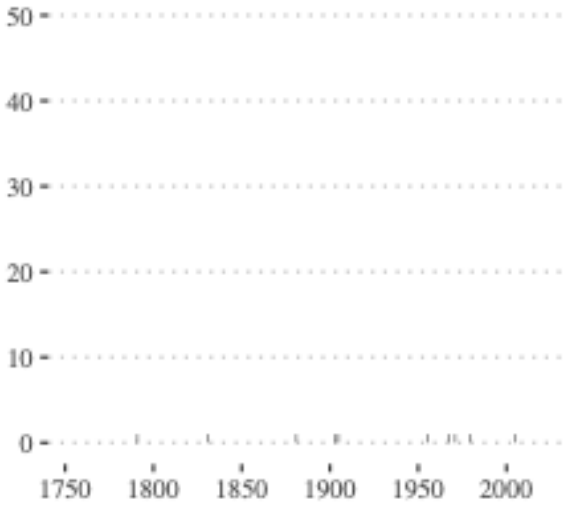
B. Black Women



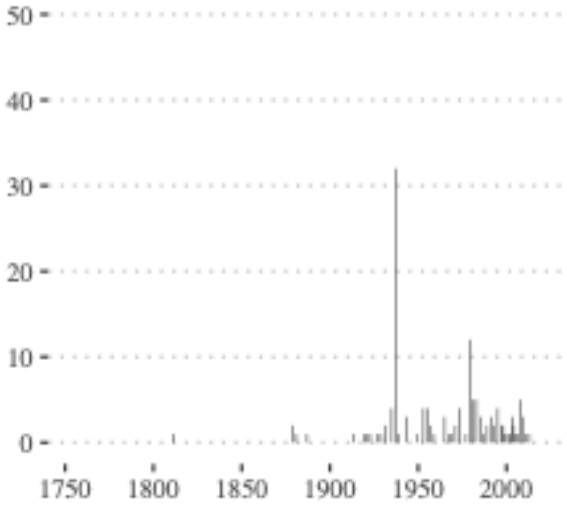
C. White Men



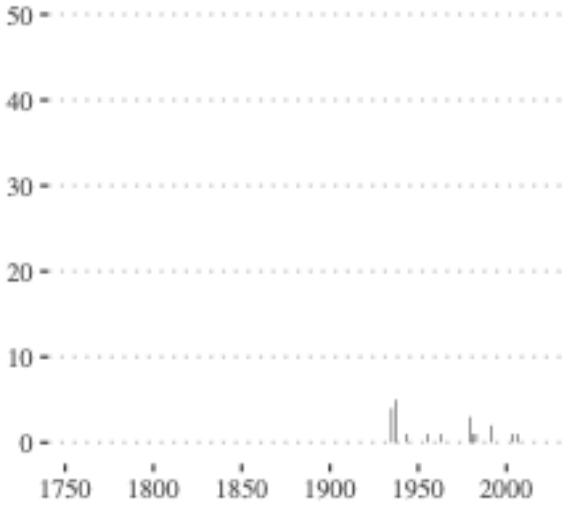
D. White Women



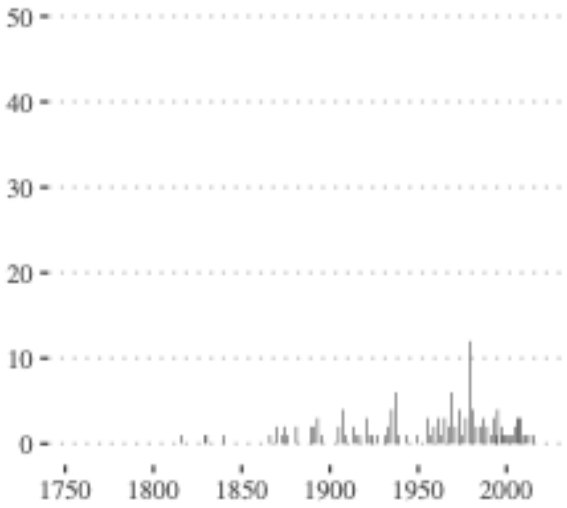
E. Latine Men



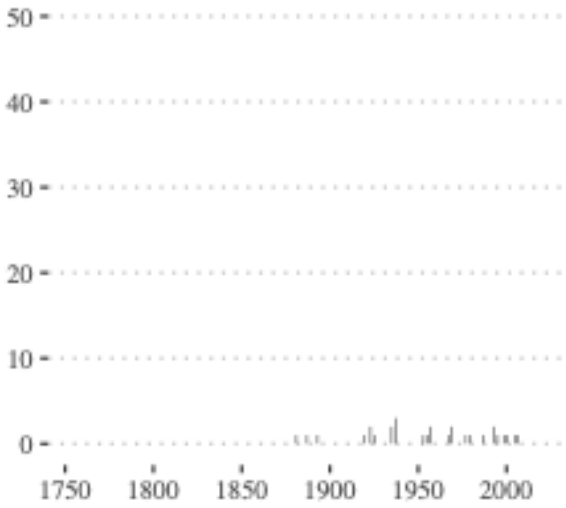
F. Latine Women



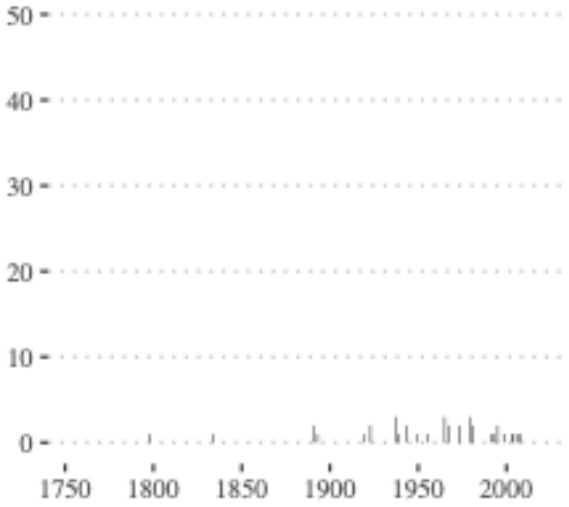
G. Native Men



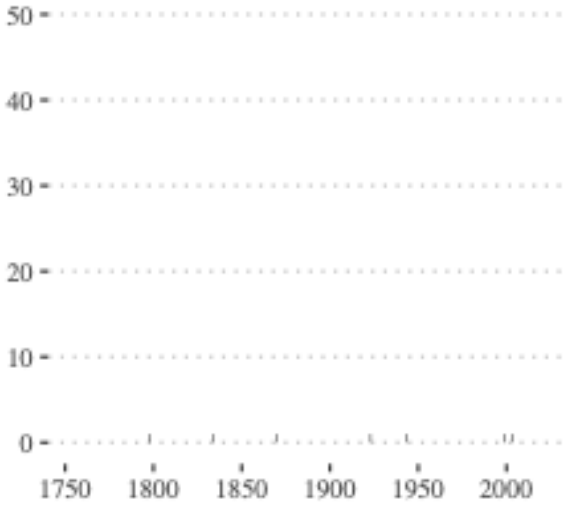
H. Native Women



I. Asian Men



J. Asian Women



This final step puts a metaphorical cherry on the top of the story we have presented in this chapter. When looking at when current disparate impact statutes by race-sex group, it is clearly not the case that statutes were passed randomly—there are very specific times when these statutes were created. This is particularly true when we look at Black and Latine groups. It is especially striking when looking at when Black men targeted statutes were passed: with very clear spikes in 1937 (48 statutes passed), 1979 (25 statutes passed), 1981 (12 statutes passed), 1995 (16 statutes passed), and 2008 (13 statutes passed). For Black women, the clearest spike is in 1935 and 1937 (9 and 7 statutes passed, respectively). Statutes passed in 1937 (32 statutes passed) and 1979 (12 statutes passed) currently have a disproportionate impact on Latine men. For Native men, there were 12 statutes passed that disproportionately target them today. We see no noticeable spikes for other race-sex groups.

We will dedicate later chapters to understanding why it is at these particular times that laws were passed that currently target race-sex groups, providing important answers to an enduring question: were laws that currently target demographic groups designed with an intent to do so?

Conclusion

Different parts of the criminal code disproportionately affect various demographic groups. Here we have looked at men and women across five racial groups: Asian, Black, Latine, Native, and White. Each of these ten demographic groups has some criminal offense codes where they are particularly over-represented. Black people, and Black men in particular, have many more such codes than others. The laws that criminalized the behaviors that currently have these disparate racial impacts stem from identifiable historical periods. These basic building blocks about racially disparate impacts of specific parts of the criminal code provide a key element of our analysis in the chapters that come.

4

Crime, Neighborhoods, and Police Surveillance

Introduction

In Chapters 2 and 3 we reviewed patterns of contact with the North Carolina criminal legal system. Our analysis is based, as we described, on a record of every arrest-charge in the state over 7 years. By definition, each item in the database consists of a charge against an individual; an arrest or a citation. But for every person arrested, the analysis we will present in this chapter suggests that at least 95 individuals have contact with the police. Traffic stops are of course a common way of interacting; over 1 million people interact with North Carolina police officers in that way each year, with only a share of these resulting in a citation and less than two percent leading to arrest (see Baumgartner et al. 2018). Individuals involved in automobile crashes also generally can expect to interact with the police, generally without arrest. People who have been victimized by crime will likely interact but not be arrested. And many individuals may call the police about some concern but not be arrested (on patterns of public contact with the police nationally, see the periodic reports from the US Department of Justice based on the National Crime Victimization Survey; the most recent is Tapp and Davis 2022, reporting on the 2020 survey).

In this chapter, we make use of three databases from the Durham Police Department that allow us to look more deeply into patterns of contact with the police, whether or not a person is arrested. All of the data we report here come from the City of Durham's Open Data Portal.[11]

[11] We downloaded the data we use in this chapter in 2021 from this site: https://live-durhamnc.opendata.arcgis.com/.

These allow us better to understand our main database, which by definition is limited to individuals who have been arrested by a police officer.

The Open Data Portal includes 1,612,622 data points, which can be broken down as follows. First, a small share were not usable because they were geo-coded or they were outside of the city limits; this leaves 1,565,198 total usable observations. Of these, 1,040,546 were initiated by police and 524,652 were calls for service initiated by civilians. The police actions can be divided into two groups: 521,017 directed patrols and 519,529 other police-initiated enforcement acts. A directed patrol is an officer, generally in a patrol car, driving on patrol; the database indicates the time and location of the beginning of the patrol.

Of these 1.6 million policy actions or investigations, only a tiny fraction end in an arrest. While we believe that these databases represent an accurate and highly granular picture of the intensity of policing in Durham, we should highlight that they only include interactions that have been recorded by the police. There are certainly instances of people being policed that are not recorded by law enforcement, so we do not want to imply that we are working with a record of the universe of police interactions.

Individuals living in different neighborhoods experience vast differences in the likelihood of interacting with the police. Modern police departments make extensive use of data analytics and document what they do. They pay extensive attention to patterns of calls for service: where they come from (e.g., which city block or exact address), how serious the alleged behavior is, the precise time of the call, and so on. With reams of such data, leaders allocate patrols, cars, and officers to different neighborhoods. They are sensitive to crimes, of course, but also to calls for service that may not involve a crime or lead to an arrest. Police culture and technology are highly

attuned to geography, as the data clearly show that there are indeed certain “hot spots” where more crimes occur than others.

Our database allows us to know, for each call for service (911 call), its time and location, the nature of the problem, the police response to the call, and the outcome with respect to police actions. This allows us clearly to see which 911 calls lead to an arrest and which lead to something else. But we can go further because we also have information about police-initiated behaviors. After all, the police are not merely passive agents responding to public calls for service. They are also pro-active in directing cars and officers to certain areas, and the officers on the ground use their own discretion to follow up on some situations but to ignore others. The size and richness of these two databases in terms of precise times and locations for each activity allow us to evaluate the ways that directed patrols (that is, those activities generated autonomously by the police department) respond to public complaints. It makes sense that if a spike in calls comes from a particular location that the police might add some extra surveillance to that general area (and indeed they do, as we will demonstrate).

In this chapter we explore the different neighborhoods of Durham in order to understand police surveillance. Our analysis shows that arrests occur only one time out of 100 when the police initiate contact with an individual, and fewer than five times out of 100 when the police respond to a call for service. While these two rates are quite different (one is five times higher than the other), they are both very low. Well below 5 percent of police contacts with members of the public result in an arrest.

Obviously, one cannot be arrested unless one first comes into contact with the police. Understanding patterns of contact with the police is therefore fundamental to understanding patterns of arrest, the focus of chapters beyond this one. Our goal in this chapter is therefore to

explain what leads a person into contact with the police. Largely, this depends on where they live, what particular neighborhood or city block. Of course, as we showed in Chapter 2, arrests relate strongly to demographics: age, race, and gender. In this chapter, we use a different analytical approach and different sets of data than in the other chapters of the book in order to explore in detail how location matters. Of course, residential segregation is real, so people of different income levels, races, and other identity characteristics live in different areas. Where one lives is a key driver in police contact.

Our case study of Durham has some pluses and some minuses. On the plus side, we have an extraordinarily rich database that allows us to understand not only how police respond to calls for service, but also how these calls have a secondary impact on the allocation of police surveillance because the department relies on such data to allocate its own proactive behaviors. Second, the databases we use here are rich with respect to the many possible outcomes of a police encounter other than arrest. On the minus side, it is obvious that Durham is just one city and is not reflective of the entire state. Rural areas may experience different types of dynamics than a more densely populated city such as Durham. And cities differ dramatically in how many police officers they have per resident. Some have relatively more officers than others, inevitably leading to different levels of surveillance. While Durham is in the middle of the distribution in terms of officers per capita, no single police agency can represent the diverse realities that we see across the entire state. Still, we believe that the reader will agree with us that we can gain a lot of understanding about arrests when we understand more about police surveillance.

Police Response to Public Calls for Service

During the period from 2013 to 2019, residents of Durham submitted over 524,000 911 emergency service calls. Many of these calls ranged from the ordinary—i.e., traffic accidents and

personal disputes, etc.—to the extraordinary—i.e., sounds of shots, homicide, armed robbery, etc. Each instance of contact initiated its own unique sequence of subsequent institutional follow-up by law enforcement or medical services. Some calls would go on to be cancelled before first responders had that chance to arrive at the scene while others would travel down a series of forking pathways that sometimes led to an arrest. Regardless of the exact specifics surrounding each call, each instance of civilian-initiated contact constituted a point in a vast mosaic of data to which the police department has access, control, and the ability to analyze.

Acting on this constant flow of information, the Durham Police Department (DPD) regularly initiates its own enforcement acts through directed neighborhood patrols, foot patrols, vehicular stops, and so on. Between 2013 and 2019, the department conducted over 1 million officer-initiated enforcement acts. The vast majority of these acts involved surveillance operations, such as directed patrols—approximately 521,000; where assigned officers patrol a neighborhood to enhance public safety via their own physical presence or to assess whether a safety threat still exists following some emergency. Often, DPD conducts these surveillance operations in commercial or entertainment zones where there is a high volume of pedestrian activity. Examples include Durham's downtown region, which accounts for a disproportionate share of surveillance relative to other parts of the city.

Since we know which actions were initiated by the police department itself, and which were in response to a call for service, we can assess whether and how calls influence subsequent police patrols. The result is an assessment of each neighborhood of the city of Durham with regards to its crime and police surveillance profile. Some areas, we will note, generate both a lot of calls for service and a lot of surveillance. Others show lower levels of one, the other, or both. These assessments allow us to generate a measure or a continuum of neighborhood surveillance

and to show that some residents are surveilled considerably more than others. This over-exposes certain segments of the population to the criminal legal system while insulating others. Neighborhoods regularly surveilled by law enforcement and whose residents regularly call law enforcement produce a disproportionate share of civilian-police interactions. In Durham, these high demand / high surveillance neighborhoods tend to cluster to the east of Durham's downtown region extending south toward North Carolina Central University, an historically Black institution.

Notably different is the area around Duke University, a prestigious and expensive historically White institution; police patrols there are less frequent. This could be due to the fact that Duke University, like many university campuses across the country, has private police that often have concurrent jurisdiction. While we do not know the nature of the interdepartmental agreement between Duke University Police and the Durham Police Department, campus police usually act as primary responders on campuses. Though we do not explore the workings of special police forces, we should highlight that this adds another level of privilege to those fortunate enough to attend college: if a student is engaging in behavior that would be deemed a criminal act, campus police (and by extension, the college itself), decides whether to enforce the rules in a strict manner, or whether they should be lenient and allow the behavior to be brushed off a youthful transgressions—something that is not extended to those outside of campus walls. (To be clear, NCCU also has its own police department. We will see, however, that the areas surrounding these two educational institutions could hardly be more different with regards to the intensity of Durham Police Department activities.)

A deep dive into the patterns of surveillance across a single city, and the connection between reported crimes, calls for service, and police-initiated patrols will help to inform our

analysis in subsequent chapters where we further discuss the role that socioeconomic and racial inequality plays within the North Carolina judicial system. In this chapter, we document multiple forking pathways into the North Carolina judicial system, starting with police surveillance and ending with arrest. Most of these pathways preclude them from showing up in our main AOC database since they do not involve arrest. Our focus in this chapter is therefore on a single city to review which people have how much contact with the police. Generally, this does not involve arrest, though occasionally it does.

Police- and Public-Initiated Police Actions Compared

The source of the police-civilian interaction greatly influences who has contact with law enforcement, who is arrested, and who therefore appears within the NCAOC administrative dataset on which we rely in other chapters. Broadly speaking, there are two possible sources for police-civilian interactions. Civilian-initiated interactions represent the first source. This includes any interaction where a Durham resident, after experiencing some real or perceived crisis, decides to call emergency services with the expectation that responding officers will be dispatched. Law enforcement-initiated interactions represent the second source. This includes any interaction where a law enforcement agent, after surveying their immediate environment, decides to interact with a member of the public. These contacts are affected of course by decisions by supervisors to assign individual officers for patrol in various areas of the city as well as by the officer's own decisions on the ground.

Our database includes just over 1 million unique police encounters with members of the public; about half of these stem from response to 911 calls for service, and the rest are initiated by the police themselves (including directed patrols). The vast bulk of the police-initiated actions are traffic stops or other activities that are the exclusive domain of the police such as crime-scene

investigations or arrest warrants. A smaller share of the police-initiated are for what we will call here "overlapping" reasons: the same concerns that might motivate a member of the public to call 911: suspicious behavior, stolen property, a robbery, the sound of gunshots, a loose dog, unruly behavior, public drunkenness, or a loud party. Table 4-1 summarizes these different sources of police-public encounters and the number of arrests that derive from them.

Table 4-1 Police Interactions and Arrests, by Source.

		Encounters		Arrests		Arrest
Source	Type	N	%	N	%	Rate
Public (911 calls)	Overlapping	524,597	50.2	27,931	68.8	5.3
Police	Overlapping	73,746	7.1	9,543	23.5	12.9
Police	Exclusive	445,721	42.7	3,130	7.7	0.7
Police	Subtotal	519,467	100.0	12,673	31.2	2.4
Total		1,044,064	100.0	40,604	100.0	3.9

"Overlapping" refers to calls for service or police actions for similar reasons: suspicious vehicles, robbery, sound of gunshots, or any other action that could be initiated by a civilian as well as by a police officer. "Exclusive" refers to activities that could never be initiated by a civilian, such as crime-scene investigations, serving an arrest warrant, traffic stops, and so on.

Looking first at the public-initiated encounters, which are police encounters with members of the public in response to a 911 call, we see about 525,000 such encounters and almost 28,000 arrests, a rate of 5.3 percent. Looking next at the police-initiated encounters for similar reasons, we see only 74,000 encounters and 9,500 arrests, with an arrest rate of almost 13 percent. Other police encounters are much more numerous (over 445,000 encounters), but very rarely lead to arrest (0.7 percent). When we look at the subtotal of all police-initiated encounters, it is about half of the observations and the arrest rate is 2.4 percent. However, the table makes clear that the police encounters differ dramatically depending on the type of activity. Traffic stops and crime-suspect interviews rarely lead to arrest, but in the overlapping category we see a much higher arrest rate.

It is important to look at the data in another manner, though, because 911 calls are so common and "overlapping" police-initiated behaviors are very rare. If we look at all arrests in

the entire database, almost 70 percent of the arrests (68.8) stem from a 911 call. When the police are going about their business, doing traffic stops for example, they rarely make an arrest. Bottom line: almost 70 percent of all arrests can be directly attributed to someone picking up the phone and calling emergency services.

Table 4-1 showed that arrests ensue only 3.9 percent of the time when a police officer encounters an individual. What happens the other times? The Durham Police Department classifies all encounters with the public into one of eight categories. Three of these include straightforward outcomes where responding officers do not possess wide latitude in enforcement discretion. This includes: 1) encounters cancelled by the dispatcher, 2) those transferred to other local agencies (e.g., the fire department), and 3) cases that were documented by responding officers (generally for insurance purposes) but which do not lead to immediate criminal investigation (i.e., hit-and-run report, property crime report, collision report, etc.). The remaining outcomes are 4) scenarios where a responding officer determines a complaint to be unfounded, 5) cases where the responding officer resolves the issue and determines there is no need for an official report, 6) a verbal or written warning, 7) a citation, and 8) arrest. Recall that arrests (and a few citations) lead to a record in the AOC database that we use in other chapters.

Breaking down police-civilian interactions by these eight outcomes reveals that the instigating source has a large influence on the outcome, beyond only whether or not the person is arrested. Table 4-2 shows how the outcome generally falls far short of arrest, and how these encounters end differently depending on whether they were initiated by the police or by a call for service.

Table 4-2. Outcomes of Police Interactions, by Source.

Outcome	Police-Initiated	Public-Initiated
Resolved, no further action	59	49
Documented, no further action	5	24
Unfounded	3	13
Transferred to another agency	5	5
Arrest	2	5
Cancelled	2	4
Warning	12	0
Citation	12	0
Total (Percent)	100	100
Total (Observations)	519,467	524,597

Table 4-2 shows that 59 percent of all public encounters initiated by the police result in an immediate resolution of the situation by the officer with no documentation. This compares to two arrests, twelve citations, twelve verbal or written warnings, with a few cases (about ten percent) cancelled, unfounded, or sent to another agency such as EMS. The key takeaway: arrests are rare; officers typically resolve the situation on their own, immediately. (Recall from Table 4-1, however, that we can identify a small share of police-initiated actions that lead to a much higher arrest rate; Table 4-2 refers to all police actions, however.)

Table 4-2 also shows the outcomes for 525,000 calls where members of the public, not the police, initiated the encounter. When the police arrived, what did they do? Here we see that arrests occur 5 times out of 100; documentation (perhaps needed by the reporting party for insurance purposes, for example if there is a robbery, vandalism, or a hit-and-run) occurs approximately 24 percent of the time; immediate resolution with no documentation is still the most common outcome, at 49 percent; and about 22 percent were cancelled, found to be unfounded, or sent to another agency. (No citations or warnings are present.)

Table 4-2 shows some similarities and some important differences. Immediate resolution with no documentation is the most common outcome in both types of encounters. Most

interactions with the police, it is useful to remember, lead to nothing but a conversation. Documentation of the encounter with no follow-up is common when a member of the public initiates the encounter, but not when the police do. Similarly, more than 20 percent of the public-initiated calls are cancelled, unfounded, or sent to another agency whereas this is rare when the police are at the origin; all this makes intuitive sense. A key difference: Arrests are more than twice as likely when the public initiates the call as compared to when the police act on their own.

Durham's database also allows us to break down the data by what the call was about: suspicious individuals or vehicles in the neighborhood, noise or other quality of life issues, crimes of violence, and so on. As one might expect, these are highly variable in their odds of leading to an arrest. Table 4-3 shows these results.

Table 4-3. Public-Initiated Police Contacts by Category and Outcome.

	Encounters		Arrests		Arrest
Category	N	%	N	Category	Rate
Property Crimes	137,218	26.16	11,490	41.17	8.4
General Disturbance	97,176	18.52	2,044	7.32	2.1
Quality of Life	67,201	12.81	325	1.16	0.5
General Suspicious	59,675	11.38	217	0.78	0.4
Other	46,558	8.88	602	2.16	1.3
Violent	30,417	5.80	2,561	9.18	8.4
Domestic Violence or Abuse	30,230	5.76	7,435	26.64	24.6
Alcohol or Drugs	19,761	3.77	1,868	6.69	9.5
Hit and Run	18,675	3.56	124	0.44	0.7
Financial	13,134	2.50	951	3.41	7.2
Sexual Crimes	4,552	0.87	294	1.05	6.5
Total	524,597	100.00	27,911	100.00	5.3

Table 4-3 presents the categories in order of frequency; 26 percent of the encounters (but 41 percent of the arrests) related to property crimes. The last column shows the arrest rate; 5.3 overall, but higher and lower for each individual category. Over 67 percent of the arrests occur

for property or domestic violence related issues, but these are just 32percent of the encounters. Crimes of violence are less than six percent of the encounters (9.18 percent of arrests), and sexual crimes are less than one percent of the encounters (1.05 percent of the arrests). The typical 911 call is not about such crimes.

In this section, we have reviewed some important differences between police interactions with members of the public that derive from a 911 call and those that were initiated by a police officer. Arrest rates are generally very low, but they are higher when officers respond to a call and when the call involves a domestic violence dispute. A small share of public calls for service relate to sexual or violent crimes, and these are of course more likely to lead to arrest. Still, these represent approximately 10 percent of all the arrests that follow from a 911 call. Calls for service have another impact, however. They feed into algorithms that police administrators use to allocate future police patrols. This means that when a person calls 911 reporting some suspicious activity, that call itself may not lead to an arrest. However, it may cause the Department to allocate additional police patrols in the area. In the next section, we look at these dynamics.

The Geography of Housing, Crime, and Surveillance

Rich and poor people tend not to live on the same block. When people with financial means look for housing, many of the attributes they seek would be the same things that others might seek: Good schools, a safe environment, quiet, being away from major thoroughfares and establishments that sell liquor (not too far, but not too close), and the availability of amenities such as parks, green spaces, and high quality shopping. They may also look for a larger house on a larger lot. (Obviously some prefer a luxury apartment in a downtown high-rise, but this is a not the general norm.) But only some can afford these things. Crime and police surveillance cluster

in areas the wealthy can afford to avoid but the poor cannot. Of course, in Durham as in the rest of the US, this also correlates with race. Figure 4-1 shows a series of maps of Durham. The top pane shows demographics (population density, percent minority, and poverty) and the lower pane shows crime-related statistics (calls for service, police patrols, arrests). Note that arrests come from the NC AOC database that we use in other chapters of the book; 911 calls and police patrols should be familiar to the reader already as they are used throughout this chapter.

Figure 4-1. The Geographical Distribution Population, Race, Income, and Policing.

The top-left pane of Figure 4-1 shows population density; the top-middle pane, the share of the population identifying as non-White; and the top-right pane, poverty.[12] It will not surprise

[12] Note that our measure of poverty is not the share of the population under the poverty level; rather it is simply the inverse of average household income provided by the Reference USA household income survey database. High values refer to low income and low values refer to high income. This is so that the shading in the map will always show the marginalized groups with the same color scheme.

that the wealthier areas are also those with lower population density and lower shares of minority residents. Areas of the city with lower income and more minority residents also are more crowded.

The bottom of the Figure shows where the 911 calls come from (left pane), where police patrols occur (middle), and the addresses of people who are arrested. These maps are not precisely identical, but the similarities are striking. Note that the arrest data come from the NC AOC database and refer to the home address of the person arrested, not the location of the arrest. Still, we see that those who are arrested tend to live in the same areas where the calls for service come from and where the police surveillance occurs.

The Continuum of Surveillance

Given the patterns that we just documented in Figure 4-1, it should come as no surprise that individuals living in different areas of the city experience vastly different experiences with the police. The "deployment hypothesis," for example, states that minority residents experience increased rates of police contact because of differential policing deployment patterns (Engel, Smith, and Cullen 2012). The uneven distribution of crime and calls for service generates differential scrutiny across neighborhoods as the police follow the data and patrol more intensely in areas that generate more calls for service. However, as we will show, their responses to calls from wealthy and poor neighborhoods differ substantially. In the following section, we examine four neighborhood types that we identify with our data on 911 calls and police patrols. We identity "demand" by looking at the number of calls for service from each neighborhood in the city; we identify "surveillance" by looking at the number of police patrols. Generally, of course, the two overlap quite substantially: the police surveil the areas that generate the 911 calls.

We identify two sets of neighborhoods because they are at the extremes of both demand and surveillance: High demand, high surveillance (HDHS) areas produce among the top ten percent 911 calls and similarly are ranked in the top ten percent in terms of police patrols. Low demand, low surveillance (LDLS) areas are the opposite: they rank in the bottom ten percent both in terms of calls as well as patrols. Because calls and patrols are tightly correlated, we can also identify areas that generate more and fewer patrols than one would expect, given the volume of calls. These are the high demand, low surveillance (HDLS) areas and the low demand, high surveillance (LDHS) areas of the city. People living in these different types of areas have very different relations with the police.

Table 4-4 shows summary statistics about the Durham population across six different types of neighborhoods: the four types just mentioned as well as downtown and then the remainder of the city, neighborhoods that are not at either extreme with regard to calls for service or surveillance. Note that because we use only the top and bottom few percent, 65 percent of the Durham population lives in these "other" neighborhoods. By looking at the extremes, we can see the patterns more clearly. In other chapters, we will look at similar questions with different techniques, reaching similar conclusions, so we are confident that our particular methods are not driving the results we show.

Table 4-4 Demographic Characteristics of Durham Neighborhoods.

Type	Population	% of Pop	Income ('000s)	% Commercial	% Black	% White	% Latinx
HDHS	34,859	12.1	18	5.0	60.3	20.7	5.5
HDLS	11,696	4.1	76	0.2	47.9	35.9	4.4
LDHS	8,162	2.8	143	1.0	12.3	70.7	2.3
LDLS	8,133	2.8	130	0.3	14.7	68.8	2.1
Downtown	14,544	5.1	17	11.5	24.6	53.8	3.6
Other	210,580	73.1	63	1.5	34.3	46.9	3.8
Total	287,973	100.0	61	1.8	37.0	44.6	4.0

Note: HDHS = High Demand, High Surveillance; see text above for the other categories. Population refers to the number of residents in the area, according to the US Census. Income is the average family income, in thousands. Percent Commercial is the percent of properties zoned as commercial rather than residential. Percent of population is the share of the total city population, summing to 100% across all the neighborhoods. Racial breakdowns sum to 100% for each row in the table.

Table 4-4 shows information about the entire city of Durham. Looking at the bottom row labeled "Total," the Table shows a total population of almost 290,000 (based on LandScan population estimates), the average income of $61,000, the percent of the properties that are zoned commercial—about two percent—and the racial breakdown of the city (based on registered voters in the NC voter file): 44 percent White, 37 percent Black, and so on.

Each of the other rows refers to a specific set of neighborhoods. Starting at the top, in those neighborhoods that generate a lot of calls to 911 as well as a high number of police patrols per capita, we see that approximately 35,000 people live in such places, that they have a very low income, less than one-third of the city average, and that the White share of the population is approximately half of the city-wide average whereas the Black share is much larger. Note particularly that 12 percent of the city population resides in such neighborhoods and that these neighborhoods, unlike any others, have a high number of commercial properties, second only to the downtown area.

High demand, low surveillance neighborhoods are listed next. These house about 4 percent of the city population, and reflect the city demographics relatively well, both by income and race. While they generate large numbers of demands for police response, they see fewer police patrols than one would expect. Low demand, high surveillance neighborhoods, housing about three percent of the city's population, are wealthier and have more White and Other racial group residents. Low demand, low surveillance are the wealthiest neighborhoods and are more than 70 percent White.

The downtown area is outside of this categorization scheme, as its commercial and public nature generates a different style of policing than the residential districts of the city. And note of course that "Other" neighborhoods represent almost 73 percent of the population, generally reflective of the city in terms of racial composition, but not as wealthy as the city average, perhaps because the low-demand neighborhoods house individuals of such high average family incomes.

Table 4-4 is a good summary of the demographics of six different neighborhood types. Rich and poor live apart. Most residents of the city live in areas that are not particularly distinguishable from average with respect to policing, and those areas are typical of the broader city with respect to demographics. But about 12 percent of the city residents live in areas where they are surrounded by poor minority residents; these are the HDHS areas. A few, about 5 percent of the city, live in high income areas with mostly white neighbors and low demand for policing services

Table 4-5 shows the level of police interactions that residents of these six different types of areas experience. The Table repeats the population numbers from Table 4-4, then shows the total number of interactions, 911 calls, directed patrols, police-initiated actions, and arrests.

Table 4-5 Summary of Police Activity across Durham Neighborhoods.

	Population		Total Police-Civilian Interactions			911 Emergency Calls			Directed Patrols			Police-Initiated Actions			Arrests		
Type	N	%	N	%	Rate	N	%	Rate	N	%	Rate	N	%	Rate	N	%	Rate
HDHS	34,859	12.1	646,038	41.3	18.5	211,185	40.3	6.1	246,089	47.2	7.1	188,764	36.3	5.4	18,884	46.5	0.5
HDLS	11,696	4.1	39,429	2.5	3.4	24,723	4.7	2.1	2,976	0.6	0.3	11,730	2.3	1	1,076	2.6	0.1
LDHS	8,162	2.8	21,797	1.4	2.7	3,215	0.6	0.4	13,038	2.5	1.6	5,544	1.1	0.7	209	0.5	0
LDLS	8,133	2.8	8,017	0.5	1	3,635	0.7	0.4	1,671	0.3	0.2	2,711	0.5	0.3	94	0.2	0
Down-town	14,544	5.1	173,934	11.1	12	35,101	6.7	2.4	65,497	12.6	4.5	73,336	14.1	5	2,432	6	0.2
Other	210,580	73.1	675,866	43.2	3.2	246,738	47	1.2	191,746	36.8	0.9	237,382	45.7	1.1	17,913	44.1	0.1
Total	287,973	100	1,565,081	100	5.4	524,597	100	1.8	521,017	100	1.8	519,467	100	1.8	40,608	100	0.1

Note: Rate refers to the number of actions per 100 residents.

Table 4-5 shows stark differences in the likelihood of a police encounter depending on where one lives. If we look at the rates of each outcome per 100 residents of the area, and compare the HDHS areas to the LDLS areas, we see that arrests are 0.5 to 0.0; police initiated actions are 5.4 compared to 0.3; directed patrols number 7.1 per 100 people compared to 0.2; 911 calls are 6.1 v. 0.4 and that the total number of interactions is 18.5 compared to 1.0.

Looking at the share of each type of police activity, and keeping in mind that the HDHS areas constitute 12.1 percent of the city's residents, the Table shows that these areas account for 46.5 percent of the arrests; 36.3 percent of the police-imitated actions; 47.2 percent of the directed patrols; 40.3 percent of the emergency calls; and 41.3 percent of the total interactions. The areas are therefore over-represented with regards to each of those types of actions by factors of 3.8, 3.0, 3.9, 3.3, and 3.4, respectively. (That is, the share of arrests is 3.8 times higher than the population share, and so on.)

We have now presented some maps that make it clear that different areas of the city differ dramatically by race, population density, income, prevalence of crime or other anti-social behaviors generating calls to 911, police surveillance activities, and arrests. We have also categorized the neighborhoods of the city by their demand for police services and the amount of police surveillance that they experience. In the next section we look in detail at how demand and surveillance interact, showing important differences depending on the type of area.

Surveillance Spillovers

When an individual calls 911, they set in motion a complicated set of immediate and longer-term police responses. The distinction we make among the four types of neighborhoods by levels of demand for and supply of police surveillance has a lot of explanatory power. We mentioned before that the police are active users of data analytics and algorithms; they send their officers

out to particular areas in response to the flow of data suggesting the need for more or less policing in certain areas at certain times. They respond quite differently to increases in the number of calls for service in different types of neighborhoods. Here we look at "surveillance spillovers." These are not the immediate responses to a 911 call; those are direct and straightforward. The spillovers are the follow-on surveillance that occurs after a neighborhood generates an increased number of such calls in a particular period of time.

Let us be clear: When a 911 call occurs, the police typically respond directly to the address from which the call originated. What we are talking about here (e.g., the "surveillance spillovers") are the subsequent police patrols that statistically can be associated with such calls. As we mentioned above, each 911 call enters into a stream of data that the police use to allocate resources, including officers, cars, and patrols. In some neighborhoods (poorer, more predominantly Black), these secondary patrols are in the immediate surrounding area of the calls, so more calls generate more blue lights over the next few days. But in other areas of the city, the same number of 911 calls generates no noticeable increase in police-initiated patrols.

Depending on the setting, the police may "flood the zone" with aggressive tactics making people feel they are in occupied territory, or they may discretely patrol the perimeter of the area, monitoring who is coming and going, looking perhaps for people who do not "fit in." Because these responses are so different, residents might find the police response to public disturbances to be reassuring or frustrating, a cherished community amenity or a public nuisance (Bell 2020). These reactions to the police depend, in part, on the extent of surveillance spillovers that emerge when residents call emergency services. For example, when a person calls the police in a low-demand neighborhood, their action has little to no impact on their neighbors because the police often interpret the crisis as being a one-off situation. The perpetrator is assumed to be an outsider

or the situation contained entirely within the household. In fact, we will show below that the secondary patrols that are generated by such calls actually occur in other neighborhoods, surrounding ones. In high-demand neighborhoods, on the other hand, the police often assume that the perpetrator is a local resident, and they increase their surveillance operations accordingly. This can generate fear, frustration, and inconvenience for local residents, the vast majority of whom are interested in minding their own business and who are not criminal suspects. Recall from above that even when police have encounters with members of the public, only a small share are arrested.

The numbers apparent in Tables 4-4 and 4-5, and the analysis to follow make one thing clear: Policing differs dramatically by neighborhood. Some neighborhoods see "light-touch" or "hands-off" policing, and others see much more aggressive police actions and almost constant police presence. These correlate strongly with race and poverty. And while one might think that it makes sense for the police to "go where the crime is", it is important to recall that the vast majority of those living in "high crime" areas are not themselves criminals. This is borne out in the statistics from earlier in this chapter showing that only a tiny share of all police-public interactions result in arrest.

All of this reinforces previous observations that "neighborhoods where police contact is concentrated" often "experience policing as a community event" (Lerman and Weaver 2013). That is, a 911 call does not just affect the person making the call; it reverberates throughout the community as the police come looking for suspicious activity. But this community-event aspect of policing is very different in the low-demand (e.g., wealthy, White) areas of the city; there, it is unlikely to affect the neighbors.

We measure surveillance spillovers for each 911 call as follows: First, we measure circular regions centered at each call location site; these circles are smaller if the intensity of 911 calls from the same or nearby sites is higher. Second, we count the number of directed patrols that intersect with each circular region within seven days of the emergency call. Using this framework, we are able to calculate the number of directed patrols in the surrounding area within seven days of every emergency call. We define high surveillance spillover events as any call that produces a large number of directed patrols over the next seven days in the local area. The intuition here is simple: How many additional directed police patrols do we observe in the vicinity of a 911 call, over the following week? Because the police use so much crime data, including calls for service, as a means of tracking "hot spots" and other areas in need of greater police presence, we can observe different levels of spillover response in different areas of the city. This process generates vastly different outcomes.

The number of additional police patrols that can be attributed to a 911 call differs by the topic of the call as well as by its location. Looking first at the type of call, or the object of the complaint, Tables 4-6 and 4-7 show the ten complaint topics that produce the highest (Table 4-6) and the lowest (Table 4-7) numbers of additional patrols to the area of the call in the following seven days. Table 4-6 shows the topic and category of the call, the number of such calls, the number of subsequent patrols that can be associated with it, three measures of the intensity of those subsequent patrols (mean number per call, share of calls that led to no patrols at all, and the average distance from the call to the patrol). The number, mean number per call, and share of calls with zero additional patrols are all indicators of the intensity of the police response. The distance measure suggests whether the police patrols are in the immediate vicinity of the originating call or further away.

Table 4-6. Emergency Complaints with the Highest Spillover Effects.

			Patrols in the following 7 days				
Complaint	Category	Calls	Total Number (Unique)	Mean per Call	Percent of Calls with Zero	Avg. Distance from Call Site (Feet)	Avg. Time until First Patrol (Hours)
Theft or larceny	Property	1,451	4,800	5.1	40.0	525	15
Shoplifter	Property	7,687	21,110	4.0	17.0	174	17
Armed robbery	Violent	3,996	16,905	3.3	34.1	270	15
Gunshot wound	Violent	1,556	4,923	3.2	32.1	243	13
Panhandling or solicitation	Quality of Life	7,026	32,934	3.1	31.7	308	16
Common law robbery	Property	1,683	8,333	3.1	37.3	301	16
Trespass or loitering	Property	1,663	7,273	3.0	29.7	354	17
Trespass or unwanted	Property	21,417	78,334	2.9	37.0	321	16
Fight	Gen. Disturb.	2,678	13,784	2.9	37.5	305	16
Intoxicated person	Quality of Life	5,459	25,732	2.7	38.5	341	15

Table 4-6 focuses on those calls with the greatest spillover effects. These generally involve property crimes and quality of life: Shoplifters, panhandlers, robberies, trespassing, and similar crimes. Each such call generates, on average, 2.5 to 3.7 additional police patrols in the area during the following week. This distribution is skewed and the number of calls that generate no additional patrols at all ranges between 17 and 38 percent. The patrols tend to be relatively close, within 300 feet, of the source of the initiating call.

Compare these patterns with other types of calls in Table 4-7; these are the calls that typically lead to no spillover effects at all, with 59 to 75 percent of the calls leading to not a single supplementary police patrol, and those patrols that do occur are considerably more distant from the location of the originating call (typically more than 400 feet).

Table 4-7. Emergency Complaints with the Lowest Spillover Effects.

		Patrols in the following 7 days					
Complaint	Category	Calls	Total Number (Unique)	Mean per Call	Percent of Calls with Zero	Avg. Distance from Call Site (Feet)	Avg. Time until First Patrol (Hours)
Barking dog	Quality of Life	2,853	3,247	0.7	67.9	810	10
Involuntary commitment	Quality of Life	6,963	11,407	1.0	65.3	411	13
Cardiac or resp arrest	Quality of Life	1,819	3,798	1.5	61.7	743	12
Runaway	Other	1,855	4,224	1.2	59.0	533	14
Animal problem	Quality of Life	4,606	10,548	1.2	58.5	564	14
Overdose or poisoning	Quality of Life	1,725	4,848	1.5	58.3	601	15
Missing person	Other	4,775	11,514	1.3	57.0	542	15
Sound of shots	Violent	13,654	31,064	1.3	56.7	503	13
Sexual assault	Sexual Crimes	1,184	2,750	1.3	55.7	653	14
Suspicious vehicle	General Suspicious	16,435	38,173	1.3	55.3	676	13

The calls listed in Table 4-7 are for barking dogs or other animal concerns, personal health emergencies (heart attack, overdose), runaways or missing persons, and suspicious cars or activities. Notably, it also includes the sound of gunshots and sexual assaults. Tables 4-6 and 4-7 give a sense of the different types of police responses to different types of calls. Our goal in presenting this detailed information is to give the reader a sense of what types of calls are coming into the 911 center and how the police are responding. Much of it makes sense. A shoplifter and a barking dog generate quite different levels of police response; we should all be pleased at that. (The low police response to sexual assaults is another matter, of course.)

Having presented this background information, now we turn to the question of differential response depending on the neighborhoods from which the calls emanate. Table 4-8 presents the same data as in the previous two tables for calls coming from the six different neighborhood types that we identified in Table 4-4, above. It shows the number of calls emanating from the area and the directed patrols that followed within the next seven days: the

total number, the mean number per call, the percent of calls that led to no such response, and the average distance from the call site.

Table 4-8. Spillover Effects by Neighborhood Type.

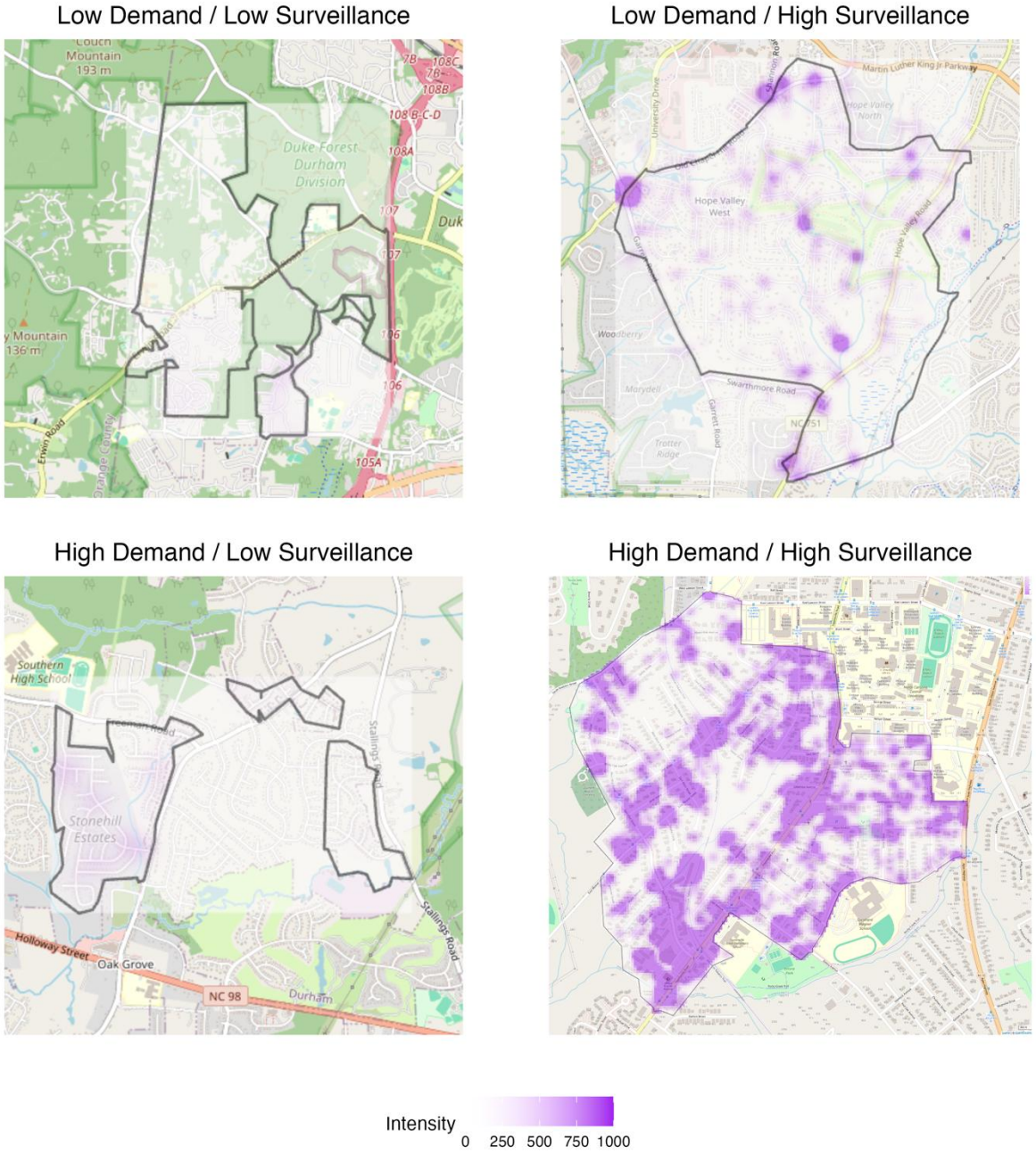
		Patrols in the following 7 days				
Neighborhood Type	Calls	Total Number	Mean per Call	Percent of Calls with Zero	Avg Distance from Call Site (Feet)	Avg. Time until First Patrol (Hours)
HDHS	223,544	242,198	2.6	38.7	233	15
HDLS	25,509	7,084	0.3	78.1	969	9
LDHS	3,224	8,611	1.9	41.5	1,223	15
LDLS	3,939	3,112	0.6	67.0	1,706	10
Downtown	36,491	61,541	3.8	31.3	205	16
Other	259,007	182,427	1.2	56.2	572	13
Citywide	551,714	448,252	1.9	48.5	453	14

The numbers are stark when we look at the 4 neighborhood types of particular interest. First, almost half of the total number of calls, and more than half of all the surveillance, comes from the HDHS (high demand / high surveillance) neighborhoods, but recall from Table 4-4 that only 12 percent of the city's population lives in these areas. The mean number of subsequent patrols generated per call is 2.6; just 39 percent of the calls go without such response; and the responses tend to be within 233 feet of where the call occurred. Looking in order at the three other neighborhood types, we see mean numbers of patrols decline from 2.6 to 0.3, 1.9, and 0.6; percent with no response moves from 39 to 78 to 42 to 67; and the average distance moves from 233 to 969 to 1,223 to 1,706 feet from the location of the call. So, there is less intensity of response as we move across the neighborhood types from HDHS to LDLS, and the response is less specifically targeted at the exact geographical location of the call.

The Table also provides information about the Downtown area, which also sees a high degree of police response for each 911 call, similar to the HDHS areas of the city in fact.

Figure 4-2 illustrates what we just showed with maps of particular neighborhoods that exemplify the four neighborhood types we have been discussing. The maps show the number of police patrols per month, averaged across the entire time period.

Figure 4-2. Police Surveillance in Selected Durham Neighborhoods.



At the top-left of Figure 4-2 we see the Durham neighborhoods of Lochn'ora, Solterra, and Carillon Forest (representing the low demand, low surveillance areas) and at the bottom left

we see the areas of Marbry Landing, Gatewood Forest, and Stonehill Estates (high demand, low surveillance). Both areas are low surveillance areas and indeed we see very few police patrols (indicated by purple shading, barely visible in the two maps) and no specific hot-spots. On the right side we see the area of Hope Valley at the top, representing a low demand, high surveillance area. Police patrols here are noticeably more intense, but they are in specific locations and these tend to be on the outskirts or perimeter of the area and on the major streets. These are typically occupied by business establishments such as gas stations and grocery stores.

Less than a half-mile to the north of Hope Valley is College View; this area illustrates a high demand, high surveillance area. It is adjacent to North Carolina Central University, a large historically black public university. Here we see virtually every street outlined in purple, indicating over 700 police patrols in the area each month. Seven hundred patrols a month, across 30 days on average, is 23 patrols per day, or one per hour. Readers should let that number sink in. And this is not just for a general area; it is for a specific address or city block. Residents on some blocks would see the blue lights on average once an hour, all day, every day, year after year. Others might see the police a few times per year.

Table 4-4 showed the population of each of the neighborhood types, and Table 4-5 showed the calls and police patrols. HDHS neighborhoods generate by far the most calls per capita at 6.1 (see Table 4-5). The downtown area is higher than average at 2.4, but none of the other neighborhood types generate as many as 2 calls per resident. With regard to police patrols, the numbers are even starker. Downtown generates 4.5 patrols per person and HDHS areas generate 7.1. No other type of area generates as many as 1.6 patrol per resident, and the LDHS and LDLS areas generate only 0.3 and 0.2 patrols per resident, respectively. Based on this we can say that residents of HDHS areas are more than 30 times as likely to see the blue lights of a

police vehicle on their street or in their immediate area than are residents of wealthier areas that generate fewer 911 calls. A 30-to-one difference is a stark illustration of the vast differences in likelihood of an adverse encounter with law enforcement and perhaps the strongest evidence we can present about the continuum of surveillance. Many individuals live in areas that are rarely visited by the police. Others, specifically those living in HDHS neighborhoods, may see them many times, every day.

High rates of neighborhood violence partially explain why the police are so active in the HDHS areas. During our time period, approximately 49 percent of all violent emergencies that occurred in Durham occurred inside an HDHS neighborhood. When broken down by emergency type, 62 percent of suspicious persons with a weapon, 62 percent of gunshot wounds, 61 percent of armed robberies, 59 percent of weapon disturbances, 55 percent of stabbings, and 50 percent of weapons violations occurred in HDHS neighborhoods. These high rates make it clear why residents are making calls to 911: Serious crimes are happening around them.

The irony, if not the tragedy, of it all is that the spillover effects of the heavy police presence stemming from this crime make all neighborhood residents, not only those responsible for the anti-social behavior, subject to increased rates of arrest. In HDHS neighborhoods, law enforcement surveillance of local side streets increases the exposure rates of neighbors who did not call law enforcement. On average, one emergency complaint from a HDHS neighborhood produces 2.6 directed patrols inside a call's circular region within seven days of the call report; in a LDLS area, this number is 0.6 (see Table 4-8). Crime clearly differs starkly by area of the city, as do police patrols. Living in an area with high crime and high levels of police surveillance exposes one not only to the possibility of crime victimization, but also to vastly increased levels of police contact, which can lead to arrest. Those with the opportunity to raise their children in

LDLS areas not only are more likely to avoid crime victimization, but also to avoid police surveillance.

Conclusion

A common adage in real estate is that the top three most important elements in determining the value of a home or building are "location, location, and location." In this chapter, we have shown how true this is in another area: policing. Depending on where one lives, we can predict the likelihood of living near anti-social behaviors and being subject to high levels of police surveillance. We have identified about 12 percent of the Durham population who live in high demand, high surveillance neighborhoods and shown how their experiences are starkly different to those who live in other areas of the city. We have also identified about three percent of the city's residents who live in low demand, low surveillance areas. The second group have about seven times the annual family income as the first group, and they rarely see the police.

Policing is strongly connected to identity characteristics: age, race, gender, and income status. It is perhaps even more strongly associated with time and place. While we have not focused on the time element here, we agree with your mother: To avoid trouble, it's best to be home before 10pm. We have looked closely here at the issue of place. When we look at place after having looked (in previous chapters) at age, race, gender, and income, we find that race and income correlate strongly with neighborhood. Poor people tend to cluster in those same areas where we see higher shares of minority residents, more anti-social behavior, and a different, more intense and aggressive style of policing than we see in other areas of the city. So, if policing is about location, location, and location just as is real estate, then it is also about income and race.

We were able in this chapter to make use of highly detailed information provided to us by the Durham Police Department and we cannot replicate this precise analysis for the entire state. However, we can document similar patterns of geographic difference in arrest rates across the state, for each of the state's major metropolitan areas. In the following chapter, we turn to show these similar patterns using different measurement techniques.

5

Geography, Social Identity, and Arrests

Introduction

In the previous chapter, we used Durham as a case study to better understand the police surveillance continuum and how it varies across neighborhoods. High demand / high surveillance (HDHS) neighborhoods inside Durham produce a disproportionate share of arrests. These arrested individuals then become part of our NC AOC database, since it consists of a court record of every arrest in the state. As we noted in Chapter 4, one cannot be arrested if one does not come into contact with the police. So, patterns of police surveillance must be a key element of our analysis.

In this chapter we move away from Durham to explore patterns of arrest by geography and social identity across the entire state. Our Durham analysis allowed a detailed look at public calls for service, police patrols, and police contacts with individuals that did not lead to arrest, as well as that small share that did. In this chapter we return to the main NC AOC database on which we rely throughout the book. This database includes information on the residential address of the person arrested, not the location of the arrest. It does not include information on 911 calls or police surveillance activities such as directed patrols. Finally, it includes only those police contacts that led to an arrest. So, we first want to look at how these characteristics differ from what we observed in Chapter 4.

Geography remains a major contributor to rates of arrest across the state, as we will show. Looking state-wide as well as zooming in with attention to the state's largest cities, we show arrest "hot-spots" and the racialized character of these places. Where arrest rates are

higher, the share of Black and Latine individuals arrested is also higher, creating a multiplicative effect to the detriment of minorities but largely sparing White individuals.

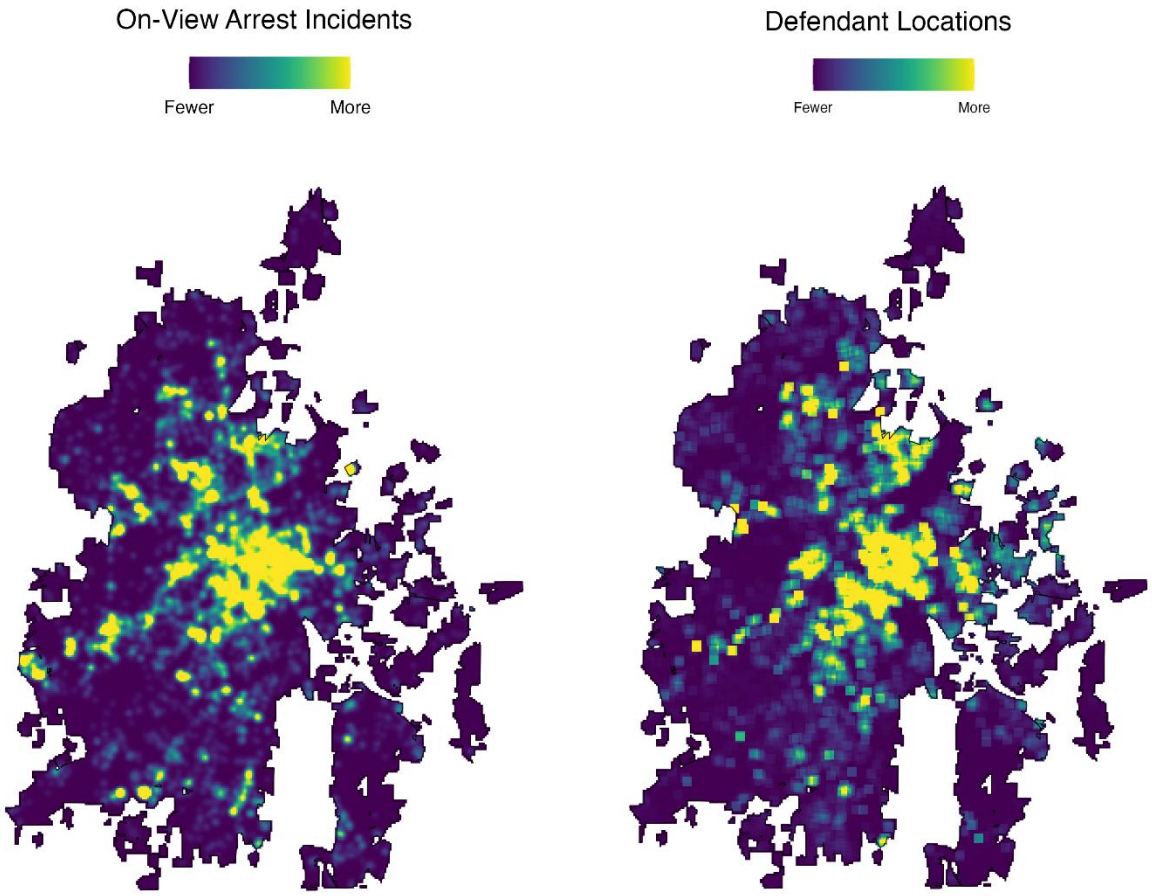
Of course, social identity also matters greatly in determining rates of arrest, so we look at gender, age group, and race in this chapter as well. Geography correlates strongly with race, as well as with income, as we saw in the previous chapter. Using geography in our analysis is an important way to look at differences other than race to understand racial disparities. Before we move into the analysis, we first address the differences between the datasets and methodologies that we used in Chapter 4 and what we do here. Chapter 4 relied on detailed databases that are not available for the rest of the state. After that short methodological detour, which largely shows the analyses and results are similar in spite of different types of data available, we return to the main analysis of arrest rates and social identity.

A Methodological Aside

Recall from Chapter 4 that we classified Durham neighborhoods based on their relative demand for police services (high v. low demand) and the relative intensity of police surveillance in each neighborhood, controlling for demand (high v. low surveillance). This produced a classification of 4 neighborhood types with respect to demand and surveillance as well as the downtown area and "other" areas of the city that were not in the extremes with respect to demand or surveillance. Figure 4.1 showed six characteristics of these different types of neighborhood, including population density, percent minority residents, income levels, calls for service, directed patrols (surveillance), and arrest rates. Figure 5-1 replicates the arrests pane from Figure 4.1 and shows the corresponding data from the NC AOC database that we will use throughout the rest of this chapter. Recall that the Durham data we used in Chapter 4 included the location of the

incident leading to the arrest (e.g., where the crime occurred), whereas here we dispose of the residential address of the person arrested.

Figure 5-1 Arrests in Durham.



The left pane in Figure 5-1 shows the location where arrests were made, using detailed information from the Durham Police Department. The right pane shows the home address of individuals appearing in the NC AOC database for Durham. While not precisely identical, the correspondence is obvious. One may think that individuals thinking of committing a crime would leave their home neighborhood but, generally speaking, crime is very local. This means that, while not identical, use of the residential address of the person arrested is generally a good

indicator of where crimes occur. Recall that we are not analyzing here any particular crime but rather looking at broad patterns.

Figure 5-2 breaks down the arrests in Durham using the AOC database to show how these differ by race and gender. It shows, by neighborhood, the percent of people in six demographic groups who have been arrested.

Figure 5-2 Race and Gender Difference in Arrests in Durham.

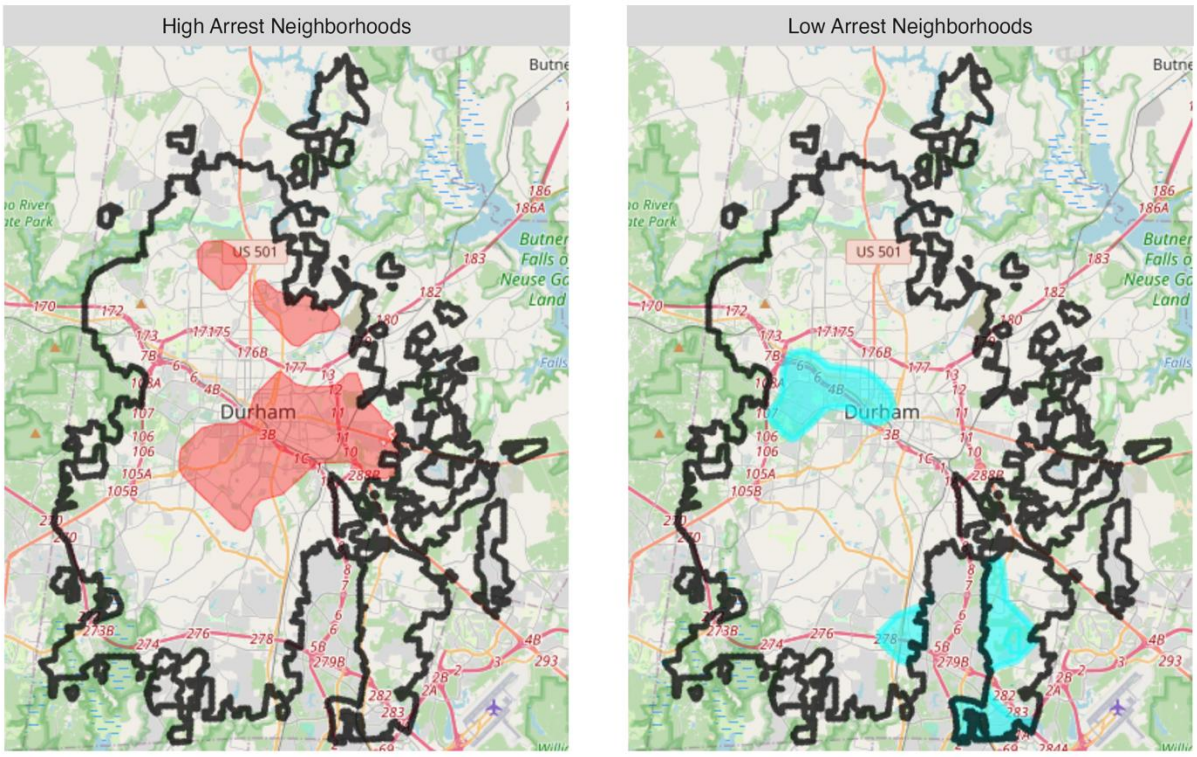
Arrest rates are consistently higher in certain areas of the city, and lower in others, but the Figure makes clear how these differ even more strongly by race and gender. The upper-left pane,

showing arrests rates for Black men, indicates over 40 percent of that population group being arrested in a given year, on average, in certain neighborhoods. In other neighborhoods, the rates are very low. White men show much lower rates across all areas of the city, as do women. These rates differ in consistent ways across the city's neighborhoods, however. We will return to the question of what explains more, race, gender, age, or place, later in this chapter.

High and Low Arrest Neighborhoods Defined

In Chapter 4, we identified high and low demand and surveillance neighborhoods, as well as others that fit into none of these categories. We cannot replicate that analysis with the AOC database, but we can identify areas with high and low rates of arrests. High-arrest areas are those in the top 15 percent of all arrest rates, and low-arrest areas are those in the lowest 15 percent. Figure 5-3 shows these two neighborhood types for Durham.

Figure 5-3 High and Low Arrest Areas of Durham.



The high-arrest areas of Durham are the same as what we identified in Chapter 4, broadly speaking. The low-arrest areas are also similar to those which were identified as low demand, low surveillance areas of the city in the previous chapter; they are wealthier, Whiter areas. North Carolina Central University and the area around it are fully contained in the area delimited in the map on the left, showing high-arrest areas, and Duke University is fully contained in the low-arrest area shown on the right.

Table 5-1 shows how this new classification system, which we can measure for the entire state, corresponds to what we showed in Chapter 4 for Durham using the more detailed policing information that we had only for that city.

Table 5-1. Rates of Arrest by Race, Gender, and Neighborhood, Durham.
A. Classified by High- and Low-Arrest Areas.

Class	Black Men	Latine Men	Black Women	White Men	Latine Women	White Women	City
High Arrest	41.7	38.3	15.3	11.4	16.0	5.2	14.1
Low Arrest	8.8	14.7	3.5	2.5	3.5	1.3	2.9
Other	17.8	18.9	7.5	5.1	7.6	2.6	5.8
Entire City	16.2	16.4	6.3	4.9	6.2	2.4	5.5

B. Classified by Scheme Used in Chapter 4.

Type	Black Men	Latine Men	Black Women	White Men	Latine Women	White Women	City
HDHS	29.8	30.6	11.0	5.7	11.7	2.9	8.3
HDLS	16.9	17.2	6.7	3.9	6.2	2.1	5.4
LDHS	15.5	18.5	6.6	4.2	7.3	2.1	5.1
LDLS	10.7	13.6	4.3	3.5	5.0	1.8	3.9
Downtown	27.9	23.5	9.2	7.3	7.6	3.2	7.4
Other	21.3	22.7	8.1	5.1	8.4	2.6	6.3
Entire City	16.2	16.4	6.3	4.9	6.2	2.4	5.5

The top pane of Table 5-1 shows annualized rates of arrest by demographic group for those living in high-arrest, low-arrest, and other areas of Durham, as well as the city totals.

Overall, 14.1 percent of those living in a high-arrest area could be expected to be arrested in any given year; this compares to 2.9 percent for those in low-arrest areas, 5.8 percent of people in other neighborhoods, and 5.5 percent of city residents overall. By demographic group, these rates range from 2.4 percent for White women (city-wide) to 16.2 percent for Black men. Looking at the high- and low-arrest areas, the Table shows that Black men in high-arrest areas have a 41.7 percent probability of arrest, per year. This compares to 1.3 percent for White women in low-arrest areas.

Table 5-1b shows the equivalent information using the classification scheme we used in Chapter 4, which is more detailed. The patterns are highly similar, even if the numbers are slightly different. Black men in HDHS areas of the city have a rate of arrest higher than any other group, at 29.8 percent. So, while the two methods are different, we can say with confidence that the methodology we are using here corresponds strongly with and leads to the same substantive conclusions as the more detailed methodology we were able to use in Chapter 4's exploration of Durham. We also show in Appendix 5A a graphical presentation of the correspondence between HDHS and "high arrest" areas of the city; this shows a high degree of overlap among the different neighborhood types. This analysis indicates that we can go forward drawing the lessons from Chapter 4 about surveillance but applying a different methodology given that we have different data resources. The results, as this short methodological diversion has demonstrated, are substantively the same no matter how we do it.

Arrests, Place, and Demographics

Geography clearly matters in explaining arrests, as we showed in Chapter 4. However, demographic factors matter as well. In this section we review a range of demographic factors and

show vast differences in arrest rates. Immediately following, we look at geography. By looking both at demographics and geography, we can reach a fuller understanding of who is arrested.

We begin by identifying all relevant demographic groups in a way that allows a direct comparison to the US Census. By calculating demographics in the same way as the Census, we can then divide the number arrested by the underlying population to get a rate. As we showed in Chapter 2, we can divide our database by: 1) Race (Asian, Black, Latine, Native, White); 2) Gender (male, female); and 3) Age group (18 to 24, 25 to 34, 35 to 44, 45 to 54, 55 to 64, and 65 and over). As there are 5 racial categories, 2 gender categories, and 6 age groups, this gives 60 demographic groups. We also have place: census-designated municipalities and the remaining unincorporated areas of each county. Across the state, this generates 839 geographical units. Generally, these are municipalities (cities), but in order to be complete we also assign areas outside of any city to their county. Altogether, combining demographics and location, we identify 50,341 unique demographic and spatial groups within the state.[13]

We use these as the building blocks for more aggregate demographic categories, such as those by race, gender, age-group, or location. A key element in our construction of these demographic groups is that we can correlate them precisely with the US Census. For any location, we can assess, for example, how many Asian-American men aged 25 to 34 live there. This gives us a baseline (or denominator) so that we can calculate a rate: how many are arrested as a percentage of people living there. We simply calculate the number arrested as a rate per 100 residents, separately for every one of 50,341 race-age-gender-location categories. The idea is

[13] Combining 839 geographic places with 60 demographic groups generates 50,340 categories (839 x 60 = 50,340). There is one category additional category for AOC defendants not fitting into any of the five race categories, or otherwise not captured in race-gender-age categories.

very simple, even if the logistics are highly demanding of computer processing power. (See Appendix 5B for a detailed explanation of how we construct these estimated rates.)

After identifying all relevant demographic groups, we generate numerator values – number of individuals arrested – by identifying all unique individuals identified in the NC-AOC database for each calendar year between 2013 and 2019. We geo-code the address of the individual and assign it to the relevant Census-designated place. This allows us then to generate counts of individuals arrested for each of the 50,341 unique categories defined by race, gender, age, and place. Because we have seven years of data, we calculate an estimate of the number of individuals arrested in any given year, the annualized arrest number, or average over seven years. That is the numerator.[14]

Finally, we generate denominator values by calculating population totals for each group using the 2018 5-year American Community Survey (ACS) estimates for individuals 18 years or older, using the US Census. To remove the issue of zero-denominator subgroups[15] and proportions greater than 100 percent[16], we use the upper estimates of the 95 percent confidence interval as the population total (ACS + 95 MOE). This is to say, where the ACS provides an estimated population number, it also gives a margin of error, and we take the upper bound of that

[14] Note that we identify unique individuals by looking at their names, sex, race, date of birth, and address, using a probabilistic matching process. It is possible that we could double-count some individuals, particularly if they use more than one address in the same year. Such double-counting could have an impact on the results for some small demographic groups, but is unlikely to be a significant share for larger groups. We use caution therefore when interpreting results for demographic groups with small numbers, and we take steps (described below) to avoid unreasonably high estimates in these low-population categories.

15 Subgroups where the 5-year ACS estimate equals zero. This issue commonly occurs for minority group members in rural locations that the ACS does not frequently sample with at-home surveys.

16 Subgroups with high arrest rates. Approximately 20 percent of demographic subgroups fall into this category when using ACS estimates.

margin of error. This has the effect of reducing the apparent arrest rate, but we do this because it will have very little effect for large municipalities but it can help reduce errors in low-population areas where a few arrests could suggest a very high rate within a given demographic group if few such individuals reside there. Appendix 5B provides more technical details on our procedures and estimates.[17] Generally, these adjustments are most helpful in rural areas where very few members of certain minority groups reside.

Differences by Race and Gender

Table 5-2 shows arrest rates for each group defined by race and / or gender, as well as the number of individuals in the state-wide population in that category. Overall, 3.8 percent of people in the state are arrested each year, but this ranges dramatically by demographic and geographic categories.

[17] As we explain in Appendix 5B, the methods we use to estimate population for so many demographic groups in relatively small geographic areas also involves temporal and spatial smoothing parameters. These are the most precise estimates of population counts we can produce, but they are not the same as simple counts. The adjustments are greater in smaller communities and are relatively minor in larger cities.

Table 5-2. Race, Gender, and Arrests.

Category	Population Size	Annualized Arrest Rates
Adults in North Carolina	8,818,301	3.1
By Sex:		
Men	4,213,206	4.5
Women	4,605,095	2.2
By Race:		
Black	1,933,819	5.6
Latine	643,484	4.2
White	5,892,616	2.7
Native	100,093	1.3
Asian	248,289	0.7
By Race and Gender:		
Black Men	875,988	8.7
Latine Men	337,896	6.4
Black Women	1,057,831	3.9
White Men	2,834,810	3.7
Latine Women	305,588	2.7
White Women	3,057,806	2.0
Native Men	47,425	1.8
Asian Men	117,087	1.1
Native Women	52,668	1.0
Asian Women	131,202	0.5

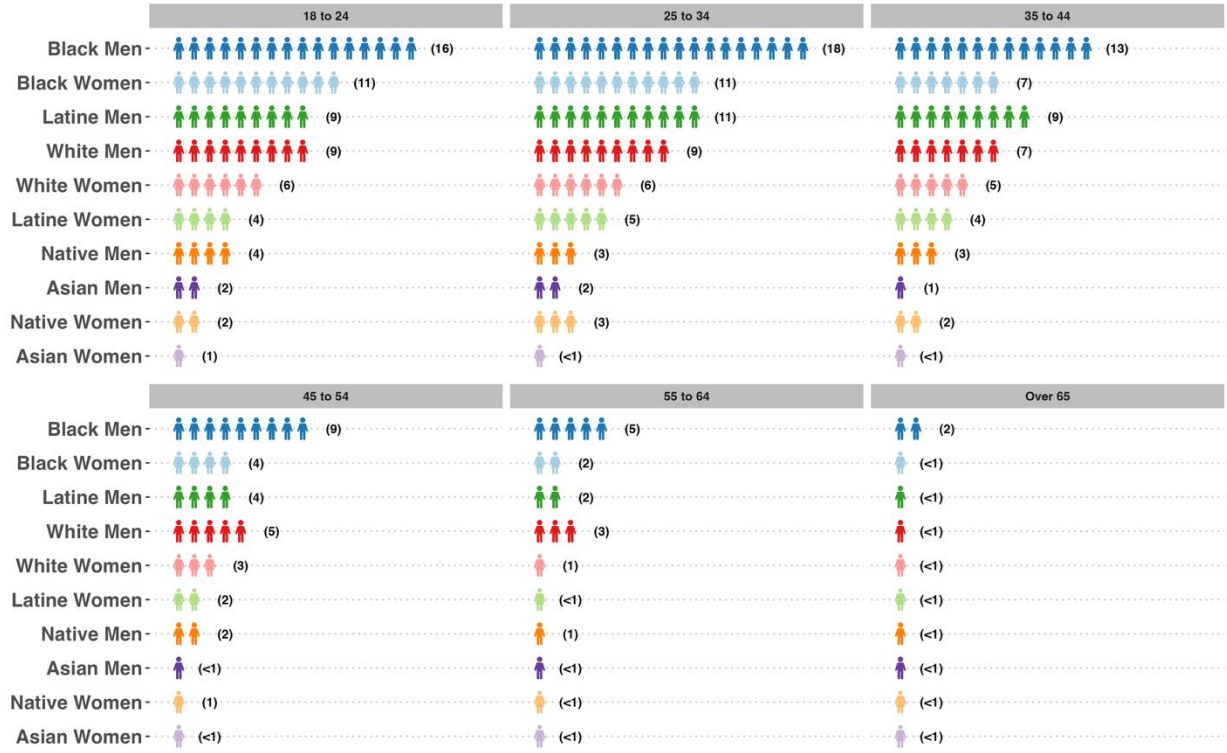
Note: Arrests are based on 7.7 million unique individuals identified in our NC AOC database, averaged across 7 years.

Table 5-2 shows strong variation in arrest rates by gender, race, and their combination. Men are arrested at more than twice the rate as women (4.5 v. 2.2 percent annually); race matters even more (with a range going from 0.7 percent for Asian-Americans to 5.6 percent for Black individuals); and the combined effect of race and gender produces differences ranging from 0.5 to 8.7 percent. The differences laid out in Table 5-2 are important, but we begin to see the most dramatic differences when we add age group to the analysis.

Age: Young Adults in the Cross-Hairs

Figure 5-4 shows the same information as the last column of Table 5-2, arrest rates for each race-gender combination, separately for those in six age groups from young adult to older.

Figure 5-4. Estimated Yearly Arrest Rates Across Racial, Ethnic, Gender, and Age Cohorts.



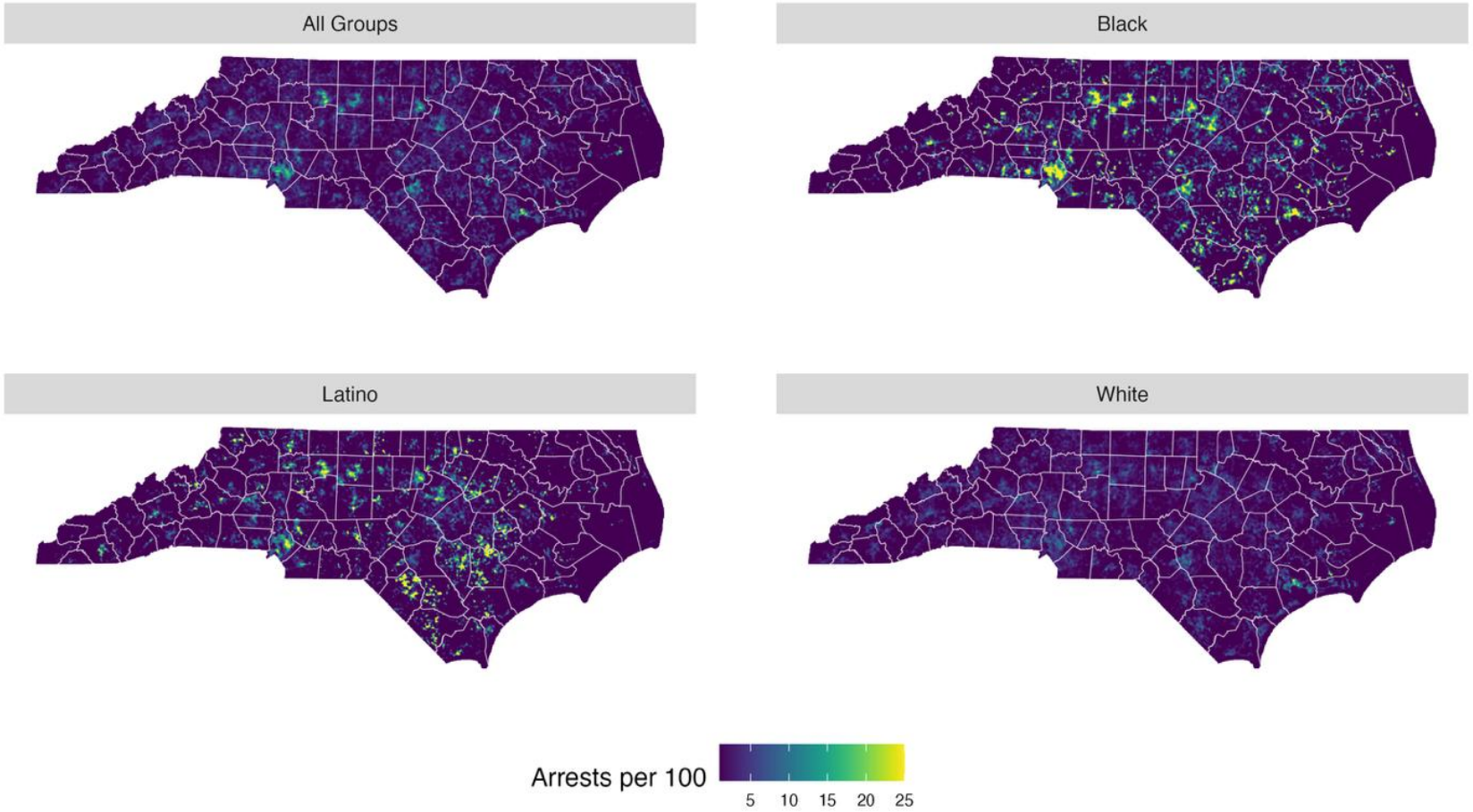
All racial and gender groups lose contact with the criminal legal system when they enter their retirement years. Among younger individuals, however, we see great differences by race and gender, with Black men consistently seeing the highest rates of arrest. Generally, the second age-group shown, those between 25 and 34 years of age, sees the highest rates of arrest, with those aged 18 to 24 close behind. Arrest rates then begin to decline with age until they are uniformly low for the oldest (65+) age group. The racial differences apparent among the younger groups are significantly greater than among those aged 45 and older. Thus, we again see a multiplicative disadvantage where young men of color experience rates of arrest many times higher than other groups, particularly women and older individuals.

Looking at the second age group, those aged 25 to 34, Black men see arrest rates of 18 percent, compared to 9 percent for White men, 11 for Black women, 11 for Latine men, 6 for White women, and then lower numbers for the other race-gender groups. Among those aged 45 to 54, the rates are lower (9, 5, 4, 4, and 3 percent respectively for the groups just mentioned), and they are also not as different from one-another. So, race-gender differences are greater for the young and less pronounced among older individuals.

Place Matters

Across North Carolina, arrests differ dramatically not only by demographics, but also by location. Figure 5-5 shows the arrest rates per 100 individuals overall, then separately for Black, Latine, and White individuals. These rates are calculated for each square kilometer of the state.

Figure 5-5. State-Wide Arrest Patterns by Location.

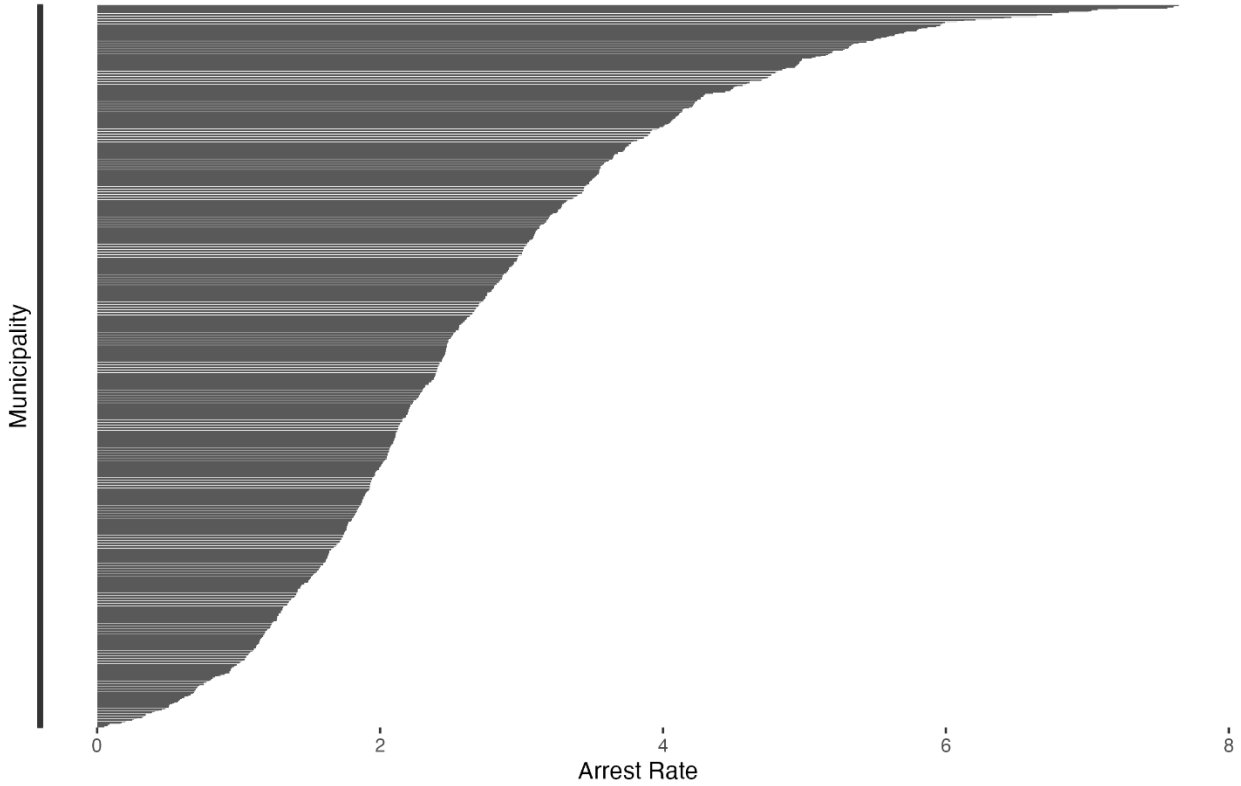


Looking first at the upper-left pane in Figure 5-5, it is clear that a few areas have higher rates of arrest than others. These are generally recognizable, for those familiar with the geography of the state, as the larger cities: Charlotte, Winston-Salem, Greensboro, Durham, and Raleigh stand out clearly. Looking next at the upper-right pane shows arrest rates for Black individuals: Many additional areas of the state "light up" in this presentation, and the cities just mentioned are even brighter, reflecting higher arrest rates for Black individuals than for the population overall. Latine individuals show similar, but lower, levels as Blacks, and Whites show consistently lower rates of arrest throughout the state, still with relatively higher rates of arrest in the same urban areas as the combined analysis showed. Our point in looking at this broad state-wide summary is simply to show that geography does indeed matter. To be clear, the rates shown in the maps are standardized to represent the number of arrests per 100 residents in the same area, separately by race. That is to say, the bright spots on the map, which generally correspond to urban areas, are bright because the rates of arrest are high per 100 residents, not because more people live there. These are striking differences after controlling for population size.

Figure 5-6 takes another approach to the issue of geography. Rather than looking at 1-km grids, we take the US Census and identify people in each of 839 municipalities (plus the people living in unincorporated areas of the various counties, as described above). For example, in Orange County, the municipalities would be Chapel Hill, Carrboro, and Hillsborough, and all other county residents living outside those municipal boundaries would be put in a fourth group. Doing this for the entire state generates 839 places. Looking at the average arrest rates per 100 residents across these various municipalities or outlying rural areas generates a range from

almost zero to almost eight percent. The rate is below one percent in 74 areas, and above five percent in 62.

Figure 5-6. Distribution of Arrest Rates by Place.



Note: The figure includes 839 “places” defined as a municipality or the outlying areas of a county.

Clearly, arrest rates differ sharply not only by race, gender, and age group, but by place as well. Table 5-3 shows the ten locations at the top and the bottom of Figure 5-6: The places with the highest and lowest arrest rates. It shows the Place name, total population size, percent White in the population, and the arrest rate. The table excludes municipalities with fewer than 10,000 residents and the outlying areas of counties not within any municipal boundary.

Table 5-3. High- and Low-Arrest Places and their Demographics.

Group	Population	Pct. White	Arrest Rate
a. Highest Arrest Rates			
Winston-Salem	182,131	46.0	7.6
Lexington	13,788	47.6	7.6
Henderson	11,007	25.4	7.1
Monroe	25,168	44.0	7.0
Fayetteville	156,548	38.1	7.0
Sanford	21,246	44.6	6.9
Rocky Mount	41,048	27.9	6.8
Gastonia	56,274	57.9	6.8
Statesville	19,815	50.2	6.6
Goldsboro	26,865	35.2	6.5
B. Lowest Arrest Rates			
Cary	120,166	63.4	2.7
Boone	17,677	90.4	2.7
Clemmons	14,795	77.5	2.5
Stallings	11,047	76.5	2.5
Matthews	23,871	75.1	2.4
Lewisville	10,393	88.2	2.4
Morrisville	17,428	39.8	2.4
Mint Hill	20,192	70.1	2.2
Southern Pines	10,955	74.9	2.0
Pinehurst	13,239	90.2	1.1

Table 5.3 shows some stark differences, with the cities listed in Part A all having arrest rates above 6.5 percent of the local population per year, and the cities listed in Part B all being below 3 percent. It hints at a correlation with race, since the cities in Part A have an average of 42 percent White population, but those in Part B have an average of 75. In other words, the lowest arrest-rate cities in the state are three-quarters white and those with the highest arrest rates tend to be majority-minority cities.

Race, Gender, and Place

When broken down by race, gender, and location, a clear pattern emerges whereby Black men in urban enclaves have the highest rates of arrest while white and Asian women have the lowest. Table 5-4 lists the 20 demographic groups with the highest rates of arrest, combining race, gender, and place into the analysis. Black men occupy all but five of these 20 positions, with North Carolina's top five jurisdictions all being represented. Note that if the overall rate across the state is approximately 3.1 percent (see Table 5-2), these rates for Black men in the towns listed are 4 to 9 times this rate.

Table 5-4. Demographic Groups with Highest Rates of Arrest, by Race, Gender, and Place.

Location	Group	Population	Defendants	Arrest Rate
Wilmington	Black Men	6,565	1,865	28.41
Gastonia	Black Men	6,779	1,818	26.82
Wilson	Black Men	7,359	1,770	24.05
High Point	Black Men	12,018	2,847	23.69
Greenville	Black Men	10,471	2,475	23.63
Winston-Salem	Black Men	27,560	6,109	22.17
Goldsboro	Black Men	6,536	1,438	22.00
Rocky Mount	Black Men	11,361	2,343	20.63
Winston-Salem	Latine Men	10,237	2,064	20.16
Greensboro	Black Men	39,464	7,668	19.43
Charlotte	Black Men	96,771	17,752	18.34
Fayetteville	Black Men	30,868	5,442	17.63
Jacksonville	Black Men	5,981	1,054	17.62
Raleigh	Black Men	44,551	7,579	17.01
Concord	Black Men	5,875	986	16.79
Durham	Black Men	34,318	5,532	16.12
Durham	Latine Men	12,062	1,929	15.99
Greensboro	Latine Men	6,894	1,087	15.77
Raleigh	Latine Men	16,108	2,338	14.51
Charlotte	Latine Men	38,538	4,756	12.34

Note: The Table includes only demographic groups with populations over 5,000. Defendants is annualized by dividing the total number in our database by 7. Arrest Rate is the number of defendants per 100 residents.

On the opposite side of the arrest spectrum are White and Asian women in urban and suburban enclaves. Table 5-5 lists the 20 demographic groups with the lowest arrest rates. Of

these 20, 12 are white women and 5 are Asian women. Asian women living in Durham, Charlotte, Cary, Raleigh, and Greensboro, and Pinehurst all have arrest rates below 2 percent.

Table 5-5. Demographic Groups with Lowest Rates of Arrest.

Location	Group	Population	Defendants	Arrest Rate
Kernersville	White Women	7,679	324	4.21
Hendersonville	White Women	6,017	241	4.00
Rocky Mount	White Women	7,213	288	4.00
Salisbury	White Women	7,327	286	3.90
Clemmons	White Women	6,440	211	3.28
Garner	White Women	6,920	224	3.24
Huntersville	White Women	15,897	462	2.91
Cary	White Women	41,695	1,092	2.62
Matthews	White Women	10,067	254	2.52
Pinehurst	White Men	5,810	146	2.52
Mint Hill	White Women	8,516	196	2.30
Boone	White Women	8,030	179	2.23
Durham	Asian Men	5,802	125	2.15
Cary	Asian Men	10,225	213	2.08
Pinehurst	White Women	6,453	100	1.55
Greensboro	Asian Women	5,164	79	1.53
Raleigh	Asian Women	8,480	119	1.40
Cary	Asian Women	10,799	139	1.29
Charlotte	Asian Women	20,786	221	1.07
Durham	Asian Women	6,412	64	1.00

Note: List includes demographic groups with populations over 5,000. Defendants is annualized by dividing the total number in our database by 7. Arrest Rate is the number of defendants per 100 residents.

Looking at the combination of race, gender, and place, we see that some groups have arrest rates 20 times higher than others. More than one-quarter of the entire population of Black men in Wilmington can be expected to be arrested each year, a number only slightly higher than that for Black men in Gastonia, Wilson, High Point, Greenville, Winston-Salem, or Goldsboro. At the other end of the spectrum, White and Asian women living in a range of places, including such large cities as Durham, Greensboro, Raleigh, and Charlotte, see less than 2 percent odds of arrest each year.

Putting It Together

We have clearly shown large differences in arrest rates depending on demographic and spatial factors. Table 5-6 shows how race, gender, age group, and place combine to produce extremely different rates of arrest. Because there are over 50,000 categories in this analysis, we do not present each of them here. Rather, the Table shows the lowest and the highest arrest rate for a number of different categories, from the simplest to the most complete analysis. In each case, we are careful to impose appropriate size thresholds so that the rates we show are based only on groups with sufficient data to have confidence in the results.

Table 5-6. Demographics, Place, and Arrests.

Type	Low Group	High Group	Low	High	Difference	Ratio
Statewide	--	--	3.12	3.1	0.0	1.0
Gender	Women	Men	2.23	4.5	2.3	2.0
Race	Asian	Black	0.74	5.6	4.9	7.6
Age	Over 65	18 to 24	0.52	8.0	7.5	15.4
Place	Pinehurst	Winston-Salem	1.15	7.6	6.5	6.6
Race and Gender	Asian Women	Black Men	0.51	8.7	8.2	17.0
Race, Gender, and Age	Asian Women Over 65	Black Men 25 to 34	0.04	17.9	17.8	415.3
Race, Gender, and Place	White Women Carolina Shores	Black Men Wilmington	0.47	23.4	23.0	50.4
Race, Gender, Age, and Place	Asian Women Over 65 Cary	Black Men 25 to 34 Wilson	0.08	47.2	47.1	557.3

Note: Place is restricted to incorporated municipalities with population greater than 5,000. Race, Gender, and Place are restricted to group populations greater than 1,000 and exclude unincorporated regions. Race, Gender, Age and Place also have these same restrictions. Low and High show the lowest and highest arrest rates across the group indicated. Statewide, the rate is 3.12 overall. Difference is the high rate minus the low rate. Ratio is the high rate divided by the low rate.

Table 5-6 first shows the overall annual rate of arrest across our entire database. Each year, approximately 3.1 percent of the population has some form of arrest. This number goes up and down slightly from year to year, and it includes all arrests from capital murder down to traffic violations, as discussed in Chapter 2. (It does not include people issued citations for infractions without also a more serious charge.)

Next, looking at gender differences, the Table shows that women have a rate of 2.23 and men one of 4.5 percent. This will come as no surprise, but the precise value is of interest. Men are more than twice as likely as women to be arrested. Then, it shows differences by race. The racial group with the lowest rate of arrest is Asian-Americans, with a rate of 0.74, and the highest rate is for African-Americans, with a rate of 5.6, almost eight times higher. Looking next at age groups, those over age 65 have an arrest rate of 0.52 percent, and those aged 25 to 34 have a rate of 8.0, almost 16 times higher. Finally, as we might suspect from the discussion in earlier sections of this chapter and from Figure 5-6, place matters. Residents of Pinehurst (a nationally renowned golf community) have an arrest rate of 1.15; this compares to the high value of 7.6 in Winston-Salem.

It is clearly important to understand, for example, that age groups differ by a factor of 15 in their rates of arrest, that gender explains a difference of about twice, that race equates to a factor of eight, and so on. These are powerful effects. The Table then shows the combined effects when we put two or more of these factors together.

Looking at race x gender first, we see that Asian-American women have an arrest rate of 0.51 and Black men a rate of 8.7, and that his is greater than the difference of either race or gender alone, and which generates a ratio of 17. Similarly, when we look then at race x gender x age group, the differences are even starker: 0.04 for Asian-American women over 65 compared

to 17.9 for Black men aged 25 to 34; one group is 415 times more likely to be arrested than the other. Looking at Race, Gender, and Place, as we also did in Tables 5-5 and 5-7, we see differences ranging from 0.47 (White women in Carolina Shores) to 23.4 (Black men just 50 miles away in Wilmington), a ratio of over 50. Finally, when we combine all the categories into a single continuum, the rates of arrest range from 0.08 (for Asian American women over age 65 in Cary) to 47.2 percent (for young Black men in Wilson). To say that these differences are substantial would be an understatement. The combination of Race, Gender, and Age produces rates of arrest more than 400 times higher for some groups than others; and when we add Place to this analysis, the odds of arrest for different groups differ by a factor of 500 times. While every demographic factor matters, the real work here is being done by race, age, and place.

Table 5-6 provides a powerful reminder of the different experiences people have with the criminal legal system, some having almost no contact and others a very high rate of arrest. This review of demographics and place has documented enormous, perhaps shocking, differences in arrest rates across demographic groups. But place matters in many ways, and it operates within single urban areas in ways that cannot be understood by a state-wide analysis, and which adds to the story we are telling. In the next section, we use methods similar to those we used in Chapter 4's zoomed-in look at Durham to review spatial and demographic patterns of arrest in each of the largest metropolitan areas of the state.

Arrest Rates by Neighborhood in the State's Largest Metro Areas

We showed in Figure 5-3 the high- and low-arrest rate areas of Durham, where these are defined as the top- and bottom-15 percent when measured by the share of the residents of the neighborhood who are arrested in any given year. In this section, we show identically formatted maps for each of the state's largest cities identifying the high- and low-arrest neighborhoods.

Then we show a map similar to Figure 5-2, showing how arrest rates vary across the city for each of the six largest demographic groups by race and gender. Finally, we provide a table summarizing arrest rates by these same demographic categories for those in high-arrest, low-arrest, and other neighborhoods, as well as the city totals. We look in order at Charlotte, Raleigh, Greensboro, Winston-Salem, and Fayetteville.

Charlotte

Arrests are concentrated in an arc running from east to west north of downtown Charlotte. Figure 5-7 makes this clear and also identifies numerous enclaves in various areas of the city corresponding to low-arrest areas. Those familiar with the city will recognize the neighborhoods we have identified.

Figure 5-7. High- and Low-Arrest Neighborhoods in Charlotte.

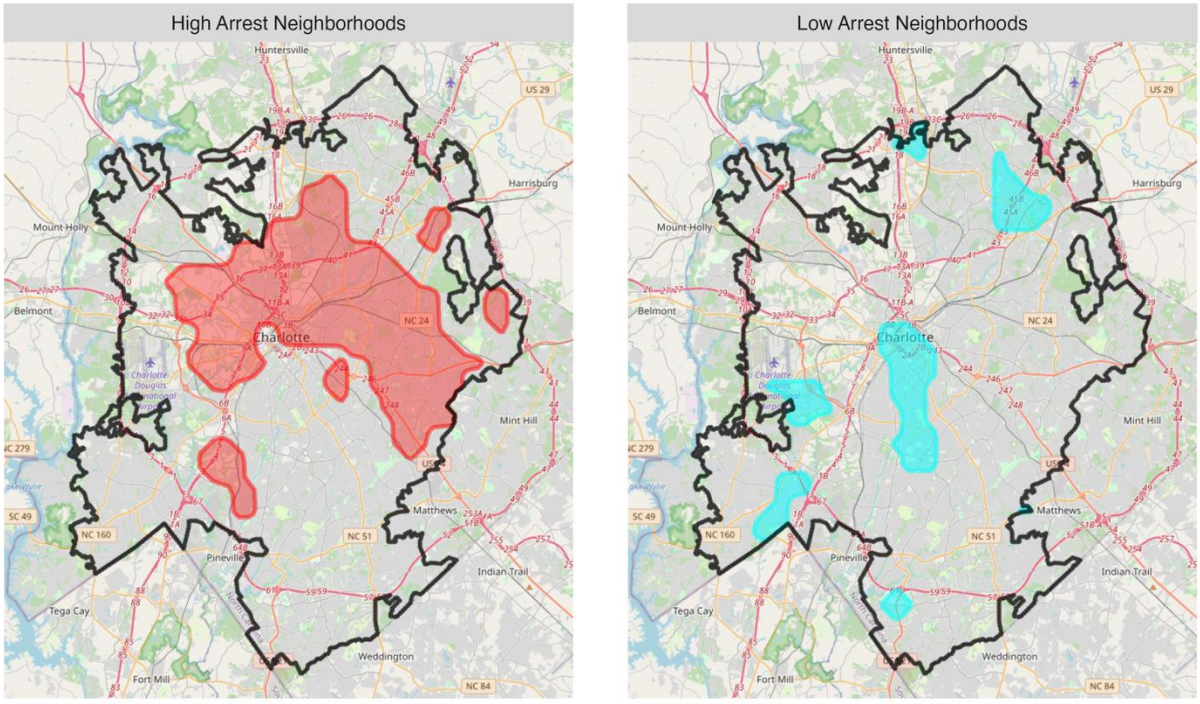
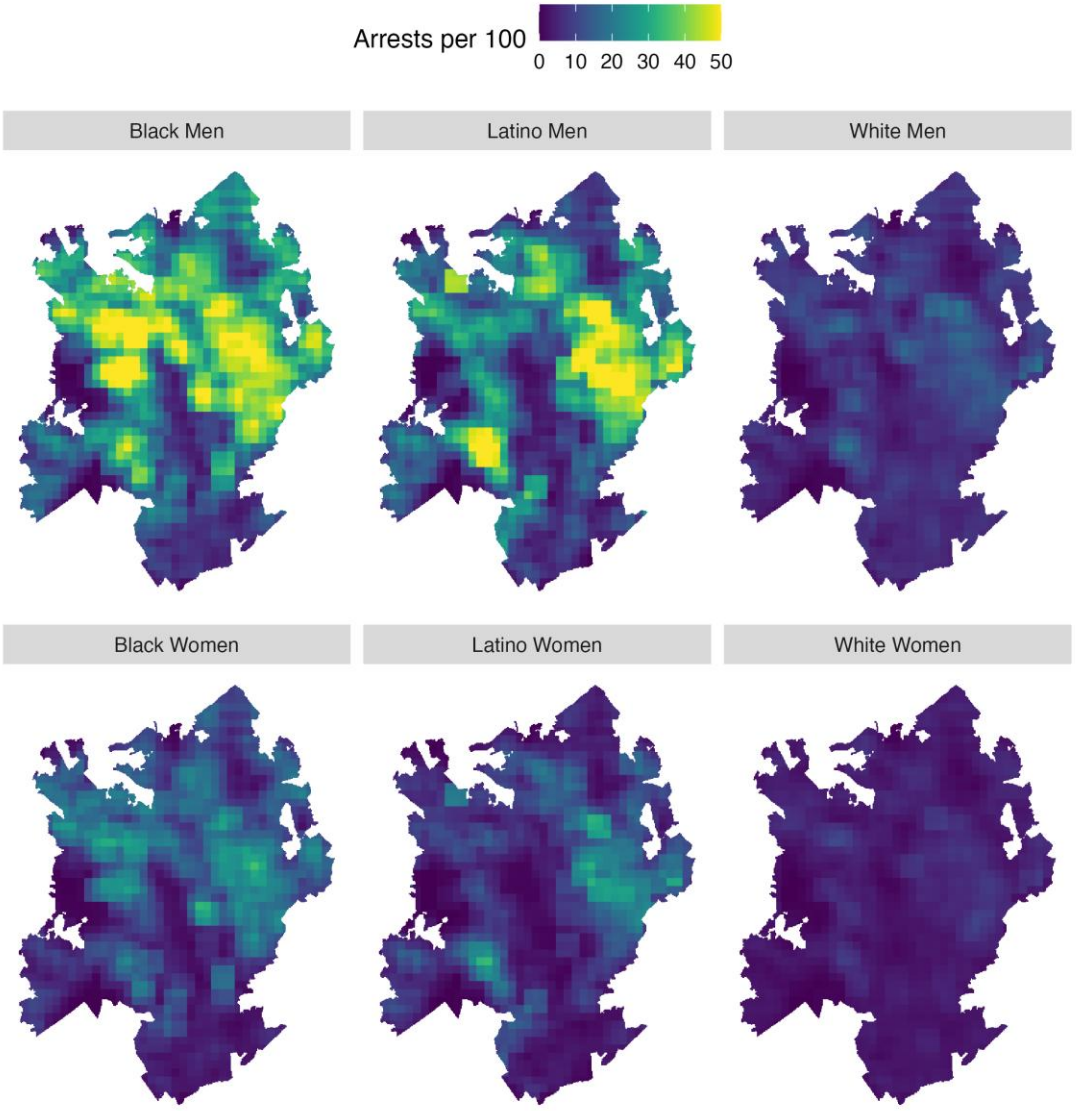


Figure 5-8 shows where arrests are concentrated, and Table 5-9 shows the summary statistics associated with the high- and low-arrest areas of the city as identified in Figure 5-7.

Figure 5-8. Arrest Rates by Demographics and Location, Charlotte.



As we saw for Durham in Chapter 4 and in Figure 5-2, Charlotte also shows a pattern where arrests are concentrated in the areas we have identified, but these arrests are particularly concentrated among Black men. Latine men show similar but less pronounced patterns or arrest, and White men show a slightly higher likelihood of arrest in the high-arrest neighborhoods. However, these numbers pale to what the Figure shows for Black and Latine men.

Table 5-7. Arrest Rates by Demography and Neighborhood, Charlotte.

Class	Black Men	Latine Men	Black Women	White Men	Latine Women	White Women	City
High Arrest	41.2	33.1	18.0	8.4	12.4	4.4	13.2
Low Arrest	8.9	3.0	3.0	2.9	0.9	1.5	2.6
Other	18.4	12.4	8.2	5.9	4.7	3.0	5.7
Entire City	19.1	12.9	8.0	5.8	4.8	3.0	6.1

The bottom row of Table 5-7 summarizes the demographic differences in odds of arrest in Charlotte; these range from 19.1 percent for Black men to just 3.0 percent for White women, with an average of 6.1 for the city's residents overall. High-arrest areas show a total rate of 13.2, but this ranges from over 40 percent for Black men to 4.4 percent for White women. In low-arrest areas of the city, Black men see a rate of 8.9 percent, and Latine women show the lowest rate at 0.9 percent. These patterns make clear that location as well as demographics have a great deal of explanatory power. Our analysis of Charlotte shows a pattern similar to what we saw previously and explored in more detail for Durham.

Raleigh

Figure 5-9 shows that southeast Raleigh is a clear outlier in terms of arrest rates and that low-arrest areas, as in Charlotte, are scattered in a few distinct places around the city. Figure 5-10 mirrors what we saw in Figure 5-8 for Charlotte as well: Arrest rates for Black individuals are particularly high in the neighborhoods we identified. As in Charlotte, this affects Latine men but has little effect on White men. The numbers laid out in Table 5-8 also mirror these stark differences; Black men have almost a 40 percent annual chance of arrest in high-arrest areas, whereas white women in those same areas have less than a five percent chance. City-wide, these rates range from 17.7 to just 2.8, a six-fold difference.

Figure 5-9. High- and Low-Arrest Neighborhoods in Raleigh.

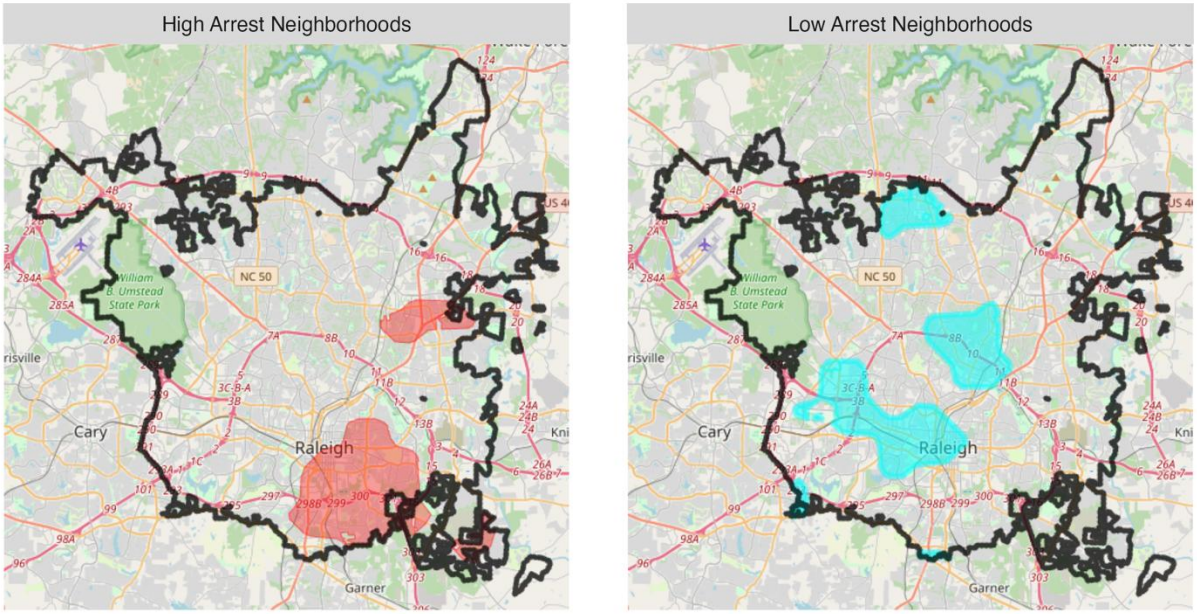


Figure 5-10. Arrest Rates by Demographics and Location, Raleigh.

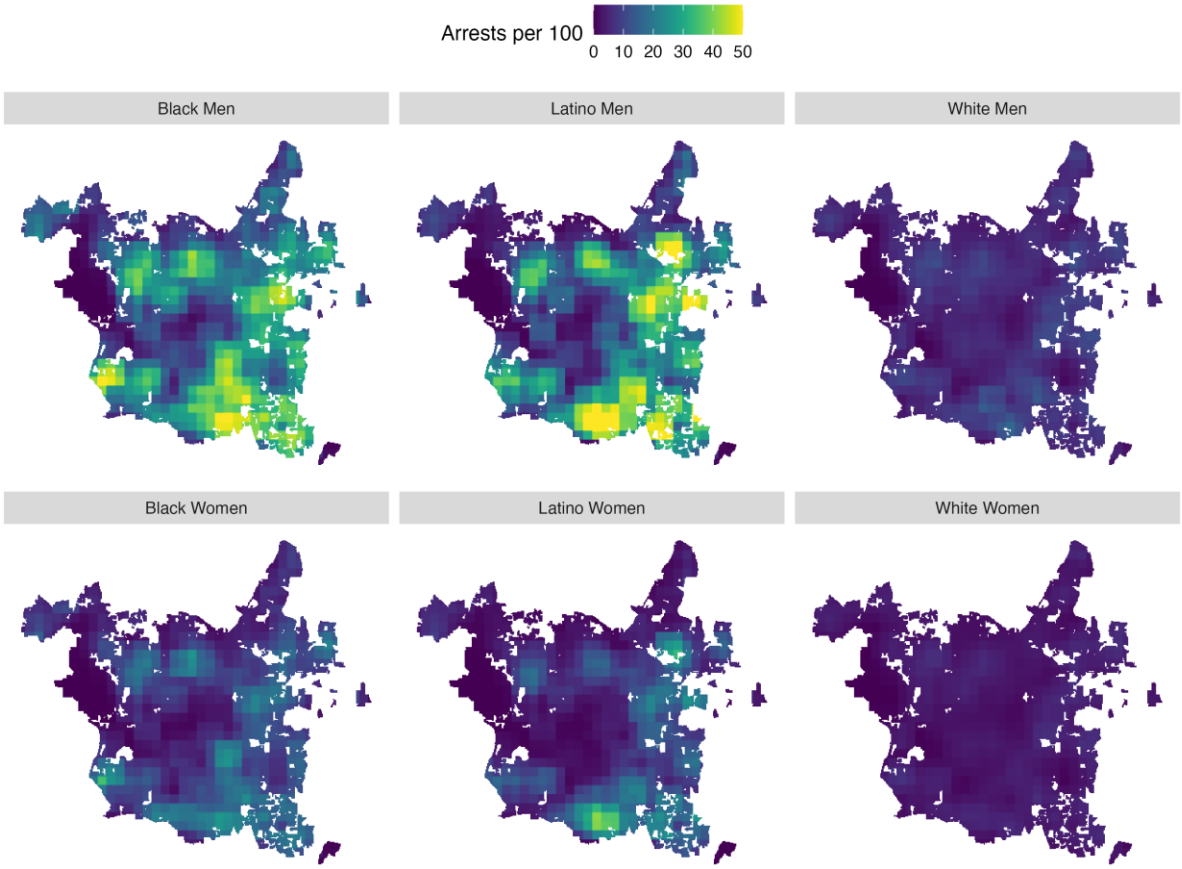


Table 5-8. Arrest Rates by Demography and Neighborhood, Raleigh.

Class	Black Men	Latine Men	Black Women	White Men	Latine Women	White Women	City
High Arrest	36.7	34.4	16.2	7.8	15.6	3.6	12.2
Low Arrest	11.6	8.2	4.6	3.2	3.0	1.6	2.9
Other	20.8	18.1	9.8	6.2	6.8	3.2	6.1
Entire City	17.7	14.1	7.7	5.4	5.4	2.8	5.4

Greensboro

Greensboro shows a "crescent" around the south, east, and north of the city reflecting a concentration of arrests, and as before, several distinct neighborhoods with very low rates of arrest. As before, Figure 5-12 shows that Black and Latine men see particularly elevated rates of arrest in these high-arrest zones, but the pattern is less stark for White men. Table 5-11 shows over 40 percent annual odds of arrest for Black men in high-areas areas compared to 4.7 percent for White women in those same neighborhoods, and city-wide a range of arrest rates moving from over 19 percent for Black men to 2.5 percent for White women, a disparity even larger than what we saw in Charlotte, Raleigh, or Durham.

Figure 5-11. High- and Low-Arrest Neighborhoods in Greensboro.

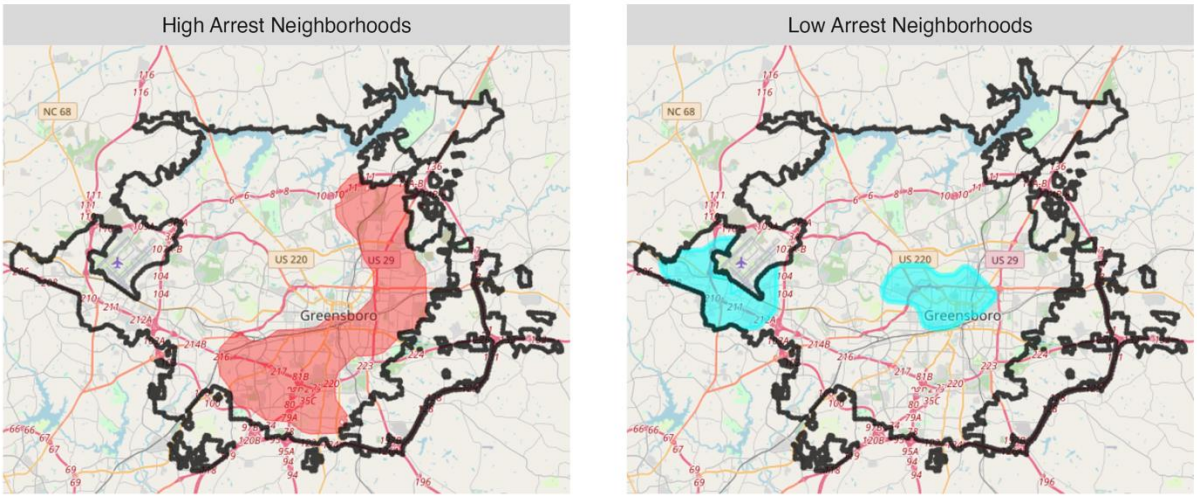


Figure 5-12. Arrest Rates by Demographics and Location, Greensboro.

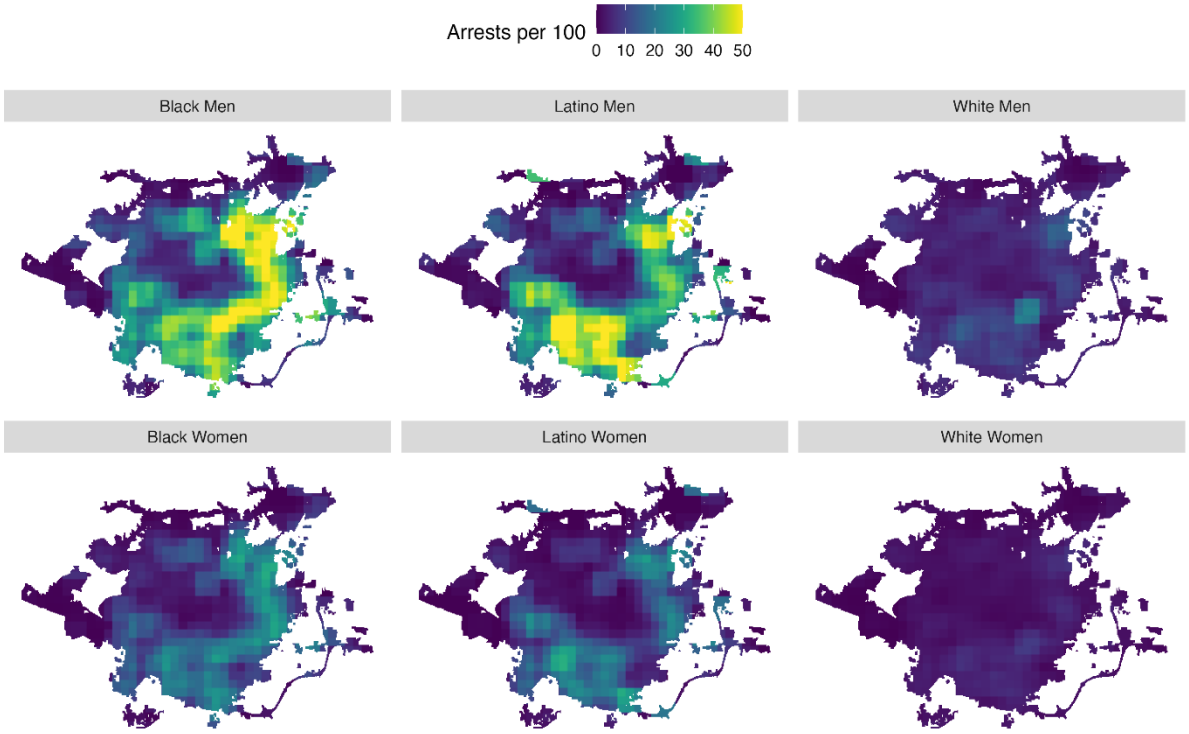


Table 5-9. Arrest Rates by Demography and Neighborhood, Greensboro.

Class	Black Men	Latine Men	Black Women	White Men	Latine Women	White Women	City
High Arrest	40.9	37.7	19.7	10.6	14.9	4.7	13.3
Low Arrest	10.9	4.7	3.4	3.1	1.1	1.3	2.4
Other	18.6	12.6	8.6	4.9	5.0	2.2	5.4
Entire City	19.3	14.2	8.1	5.5	4.9	2.5	6.1

Winston-Salem

Like Greensboro, Winston-Salem shows a large crescent-shaped high-arrest area mostly concentrated to the east of Highway 52, with a distinct low-arrest area to the west of downtown extending northward to the campus of Wake Forest University. As in Durham, the historically black Winston-Salem State University is contained entirely within the high-arrest area and Wake Forest is in the low-arrest zone. Arrest rates show similar geographic patterns as in the other cities we have explored, but they are higher overall (7.6 percent compared to 6.1, 5.4, 6.1, and 5.5 percent in Greensboro, Raleigh, Charlotte, and Durham respectively). Table 5-10 shows

arrest rates ranging from 22.2 for Black men to 3.2 for White women city-wide and from 40.9 to 5.1 in the high-arrest areas of the city. These patterns should now look familiar.

Figure 5-13. High- and Low-Arrest Neighborhoods in Winston-Salem.

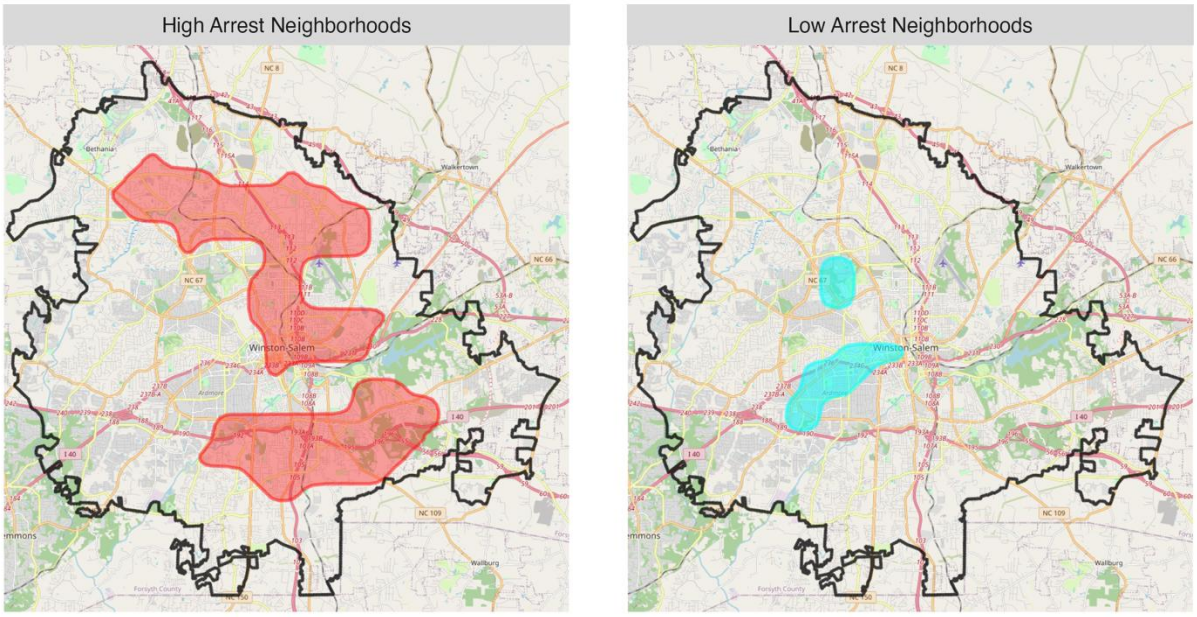


Figure 5-14. Arrest Rates by Demographics and Location, Winston-Salem.

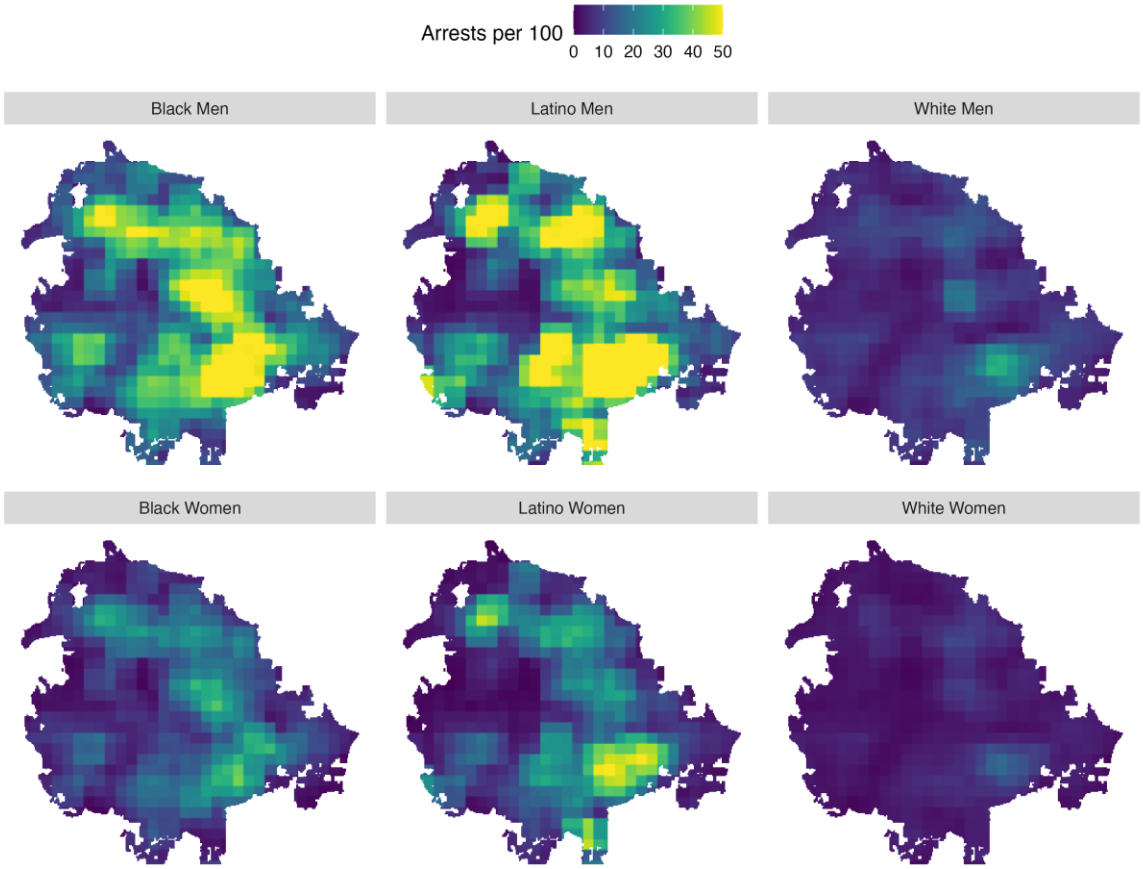


Table 5-10. Arrest Rates by Demography and Neighborhood, Winston-Salem.

Class	Black Men	Latine Men	Black Women	White Men	Latine Women	White Women	City
High Arrest	40.9	40.7	20.6	10.5	23.4	5.1	14.9
Low Arrest	12.7	8.9	5.2	3.9	3.6	1.6	3.5
Other	22.2	20.2	9.8	5.9	9.2	2.8	6.7
Entire City	22.2	20.3	9.8	6.8	9.4	3.2	7.6

Fayetteville

Finally, we review data from Fayetteville. The large area in the upper-left of Figure 5-15 is Fort Bragg; large parts of this are uninhabited, at least according to the Census. The low-arrest area shown in the right pane of Figure 5-15 is the residential area of the base and some areas immediately outside of it. In contrast to the other cities, here we see a single low-arrest area and

several distinct high-arrest areas throughout the city. Similar to the other cities we have looked it, the arrest rates for Black men correspond strongly with these high-arrest zones, whereas the connection appears to be weaker for Latine and White men. Table 5-11 shows a city-wide arrest rate of 7.0, and a range from 17.1 for Black men to just 3.2 for Latine women. In high-arrest areas, the rate is 34.3 for Black men and 7.8 for White women. Overall, the pattern is familiar.

Figure 5-15. High- and Low-Arrest Neighborhoods in Fayetteville.

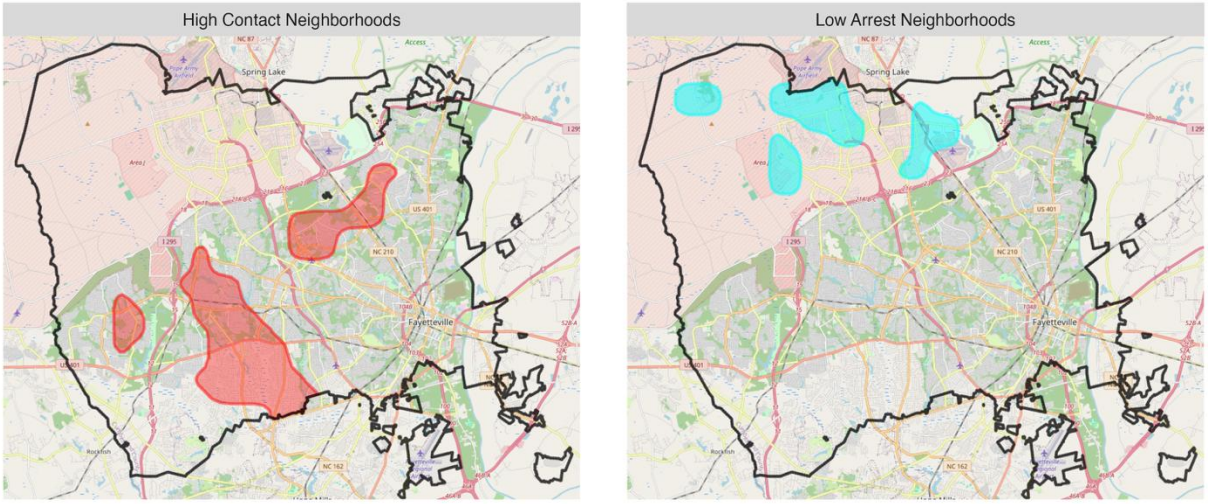


Figure 5-16. Arrest Rates by Demographics and Location, Fayetteville.

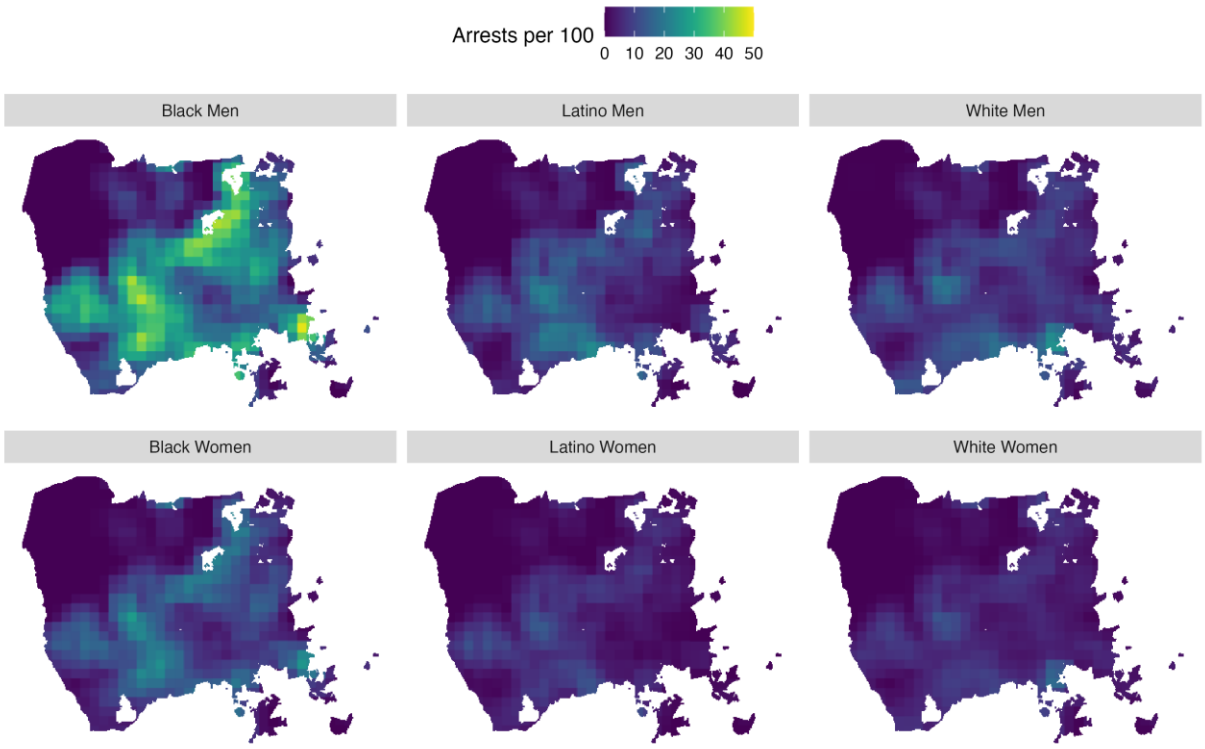


Table 5-11. Arrest Rates by Demography and Neighborhood, Fayetteville.

Class	Black Men	Latine Men	Black Women	White Men	Latine Women	White Women	City
High Arrest	34.3	15.9	18.0	12.0	9.0	7.8	14.5
Low Arrest	1.6	0.9	0.3	1.2	0.2	0.5	1.0
Other	17.6	5.7	8.7	6.1	3.0	4.0	6.8
Entire City	17.1	6.6	7.8	6.7	3.2	3.9	7.0

Arrests, Multiple Arrests, and Dismissals

In the section above, we showed the high rates of arrest for Black and Latine Men living in the areas of North Carolina's major cities with the highest and lowest arrest rates. Table 5-12 replicates this analysis for the entire state and adds additional information. The same areas that generate all these arrest also generate large numbers of arrests, and percentages of all arrests, that lead to a full dismissal of all charges. This occurs even when the same person is arrested on multiple occasions. The Table first replicates the analyses from the Tables above to show arrest

rates by demographics and neighborhood type for the entire state. Black men in high arrest areas, no matter which city, have arrest rates of 40.5 percent annually; this is compared to 4.9 percent in low-arrest zones, and 8.7 percent state-wide. For Latine men, the numbers are 31.5 in high arrest zones, 2.3 in low-arrest areas, and 6.5 overall. Other demographic groups show much lower levels, even in the high-arrest areas. All this is consistent with what our city-by-city analysis showed above.

Next, the Table shows the rate at which each demographic group experiences an arrest for which all charges are later dismissed. This means that the district attorney voluntarily chose not to pursue the charges, dismissing all of them. Numbers follow the same patterns as in the previous analysis. Finally the Table shows multiple arrests (e.g., the rate at which people experience multiple arrests in a given year, per 100 in the population), and full dismissal of all charges even from these multiple-arrest incidents. The numbers are lower, but the patterns remain the same.

Table 5-12. Arrests, Dismissals, and Other Outcomes by Race-Gender and Neighborhood Type.

Type	Neighborhood Type	Black Men	Latine Men	Black Women	White Men	Latine Women	White Women	All Groups
All Arrests	High Arrest	40.5	31.5	17.9	10.2	13.5	5.0	12.9
	Low Arrest	4.9	2.3	2.2	2.2	0.8	1.2	1.9
	Statewide	8.7	6.4	3.9	3.7	2.7	2.0	3.1
All Charges Dismissed	High Arrest	20.7	9.6	10.4	4.7	4.9	2.6	6.0
	Low Arrest	2.1	0.6	1.2	0.9	0.3	0.5	0.8
	Statewide	3.8	1.6	2.0	1.7	0.8	0.9	1.4
Arrested Multiple Times	High Arrest	17.0	6.1	5.1	2.4	2.1	0.9	3.0
	Low Arrest	1.2	0.3	0.4	0.3	0.1	0.1	0.2
	Statewide	2.8	1.1	0.8	0.8	0.4	0.3	0.6
Arrested Multiple Times and All Charges Dismissed	High Arrest	5.1	1.1	2.1	0.7	0.3	0.4	0.9
	Low Arrest	0.3	0.1	0.2	0.1	0.1	-	0.1
	Statewide	0.7	0.1	0.3	0.2	0.1	0.1	0.2

What can we conclude from this analysis of multiple arrests and dismissals? First, the patterns we documented about arrest rates in each of the major cities are replicated when we look state-wide. Second, many of these arrests appear to be "junk." That is, in roughly half the cases, all the charges are dismissed. For example, Black men in high-arrest areas see a 40.5 percent arrest rate, but a 20.7 percent full dismissal rate. This implies that, in the estimation of the District Attorney, the arrests did not merit prosecution. Similarly, individuals in those zones suffer multiple arrests in the same year, but one-third of these cases are fully dismissed, over and over. We can conclude that the high-surveillance policing apparent in the high-arrest areas of the state, and each of its major cities, is producing a lot of low-quality arrests. We will return in later chapters to discuss the implications of this for citizens living under such systems. While it may seem beneficial that the District Attorney dropped charges, it races the question: Why were they arrested in the first place?

Conclusion

Chapter 4 provided a deep investigation into patterns of policing in one city, Durham. This chapter has broadened that analysis to over 50,000 demographic and spatial units across the state. We have looked at demographic identity groups based on race, sex, age-group and across more than 800 different municipal and county groups. Arrest rates per 100 members of the population differ by factors of more than 500 when we combine all this together. The detailed analysis we have presented also allows us to identify the demographic or place-based characteristics that matter the most, and how they combine. Age, race, and gender matter the most, but these combine with place in a way that works to the detriment of those already the most disadvantaged. Over and over again, in each city we investigated, we show that a large share of the arrests derive from a limited (and recognizable) zone within the city. Police activity in these

high-arrest areas of each city can be expected to differ dramatically from what occurs in other areas. We have documented stark differences and intersectional disadvantage on a massive scale. Those with identity-based advantage retain that advantage even when residing in “high-arrest” zones. Those with identity-based disadvantage see it amplified in high-arrest areas and can never lose it wherever they might move.

Appendix 5A. Comparison of HDHS to High-Arrest Neighborhoods

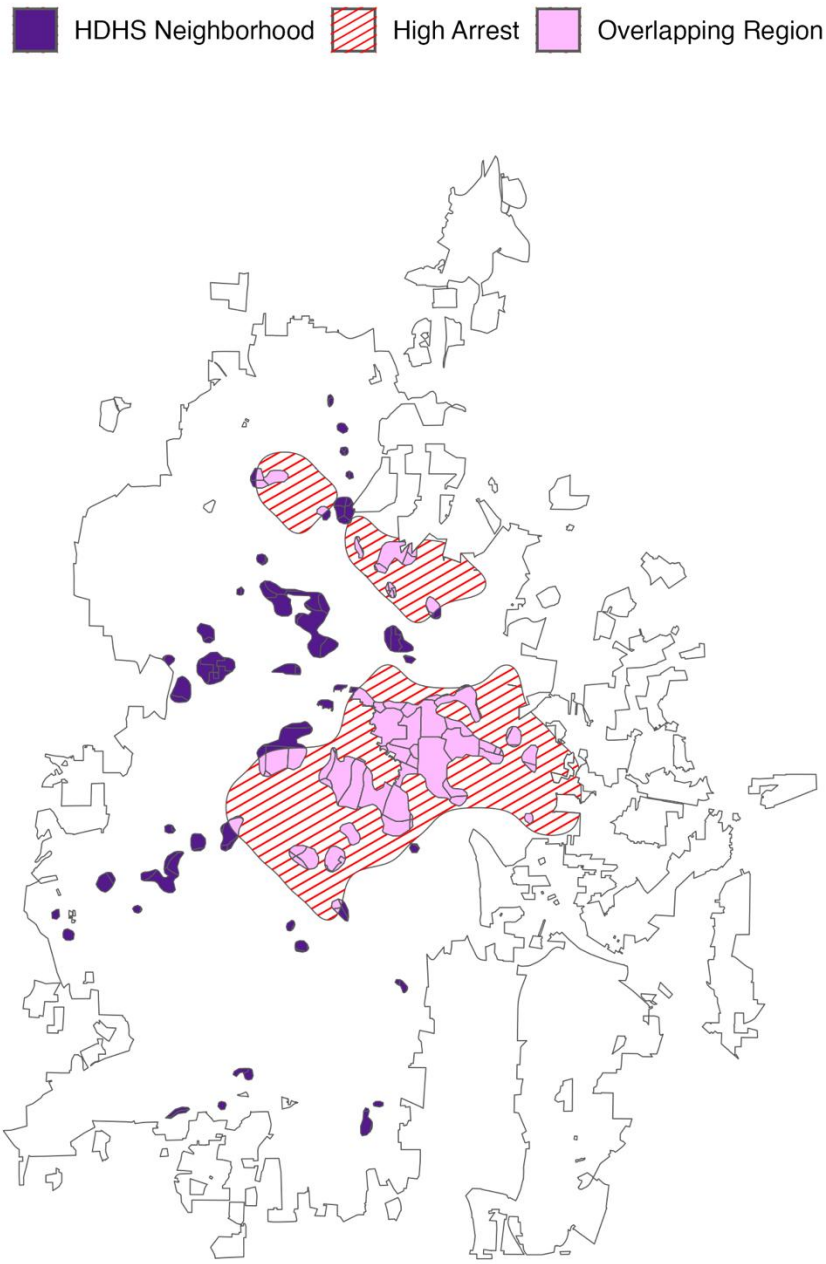
Chapter 4 used police 911 and directed patrols to identify "high demand, high surveillance" (HDHS) and other types of neighborhoods in Durham. For the rest of the state, we do not dispose of those police data. Rather, we know the address of each person arrested, and in Chapter 5 we have identified "high-arrest" and "low-arrest" areas of each of the major cities in the state. Table 5A-1 shows that the two methodologies identify similar areas in Durham. Fifty percent of the area identified as HDHS is also in a High Arrest area, but there is almost no overlap with the low demand areas.

Table 5A-1. Degree of Overlap between Various Neighborhood Types in Durham.

Type	High Arrest	Other
HDHS	50.5	49.5
HDLS	15.6	84.4
LDHS	0.7	99.3
LDLS	2.2	97.8
Downtown	17.2	82.8
Other	15.1	84.9

Figure 5A-1 provides a visual representation of this degree of overlap.

Figure 5A-1. Comparison of HDHS and High Arrest Neighborhoods in Durham.



These analyses suggest that while the two methodologies do not produce identical results, there is substantial overlap. None of our substantive conclusions would change if we relied on one rather than the other method.

Appendix 5B. Estimating Arrest Rates for 50,341 Demographic Groups

Drawing upon data from the NCAOC, we estimate the proportion of North Carolina residents who appear in the NCAOC database each year. To appear in the database means that they were arrested for a "criminal" offense; note that this includes the more serious traffic violations but does not include minor issues classified by the state as "infractions." This Appendix provides an overview on how we construct reasonable point estimates along with credible intervals for various demographic subgroups in the state.

Step 1 – Identifying North Carolina Demographic Subgroups

As described in the text, we begin by identifying every group based on race, age, gender, and place. There are five race/ethnicity groups (Black, White, Latine, Native, and Asian); two gender groups (men and women); six age groups (18 to 24, 25 to 34, 35 to 44, 45 to 54, 55 to 64, and 65 and older); and xxx geographic places (census designated places and unincorporated regions of each county). The product of these four categories generates 50,341 subgroups, which we then populate using estimates from the 5-year American Community Survey (2014-2018).

Step 2 – Identifying a Numerator (Number of People Arrested)

We use observations from the NCAOC database to construct numerator values. Note that the AOC database has a record for every charge against a person, and the same person may also be arrested on different occasions throughout the year, or across multiple years. We match to a unique identifier for each person using a probabilistic matching algorithm based on: Name, date of birth, race, gender, and address, and we count each person only once in any given year even if they have multiple charges stemming from a single incident or if they are arrested more than once in a year. Note that if the person moves or provides a different address to the Courts, this will appear as a different person with otherwise identical demographics (age, gender, race).

Step 3 – Identifying a Denominator (Number of Residents)

We use 5-year ACS estimates to construct denominator estimates. In some cases, for example for certain minority groups in rural areas, ACS estimates are zero or close to zero, which can sometimes result in misleading estimates about rates of contact. We eliminate anomalous estimates of arrest rates by using the upper estimate of the population figure using the 95 percent confidence interval. This avoids any estimates suggesting that the number arrested is greater than the estimated population. Table 5B-1 illustrates this process.

Table 5B-1. Illustration of ACS Estimates and Upper Bound for Selected Groups.

Location	Place GEOID	Race	Gender	Age Cohort	ACS Estimate	Upper Bound, 95% CI
Greensboro	3728000	Latine	Women	45 to 54	1,061	1,257
Raleigh	3755000	Black	Women	Over 65	6,519	7,381
Wilmington	3774440	White	Men	45 to 54	5,064	5,440
Winston-Salem	3775000	Native	Men	45 to 54	71	126
Charlotte	3712000	Latine	Men	55 to 64	3,209	3,392
Greensboro	3728000	White	Men	45 to 54	8,072	8,673
Charlotte	3712000	Latine	Men	45 to 54	6,673	6,927
Fayetteville	3722920	Black	Women	25 to 34	7,657	8,108
Raleigh	3755000	Asian	Men	35 to 44	1,669	1,979
Greensboro	3728000	Asian	Women	55 to 64	392	528
Charlotte	3712000	Native	Men	35 to 44	254	412
Raleigh	3755000	Asian	Women	35 to 44	1,535	1,899
Fayetteville	3722920	Black	Women	18 to 24	5,528	6,011
Greensboro	3728000	Black	Men	35 to 44	6,454	6,949
Fayetteville	3722920	Black	Men	18 to 24	6,311	6,793
Wilmington	3774440	Asian	Men	55 to 64	43	83
Fayetteville	3722920	White	Men	25 to 34	9,106	9,770
Greensboro	3728000	Black	Women	25 to 34	10,666	11,525

Table 5B.1 shows, for example, that the number of Native American men aged 45 to 54 in Winston Salem is estimated by the ACS to be just 71. The 95 percent confidence interval, however, is 126. We use the larger number in calculating our rates. Note that for large population

groups, the estimate and the 95 percent upper bound are similar. For example, for the elements in Table 5B.1 with at least 2,000 estimated residents, the upper bound of the confidence interval is just 7.5 percent higher than the estimate, but for those with lower populations, it is 47 percent higher (and it is even higher for those groups with the lowest estimated population sizes. So, this adjustment has little effect for large population groups, but a greater effect for the less populated groups. By using the upper-bound of the population estimates, and putting these in the denominator, we reduce the apparent arrest rates, and this effect is greater for small groups than for larger ones.

Step 4 – Estimating Arrest Rates

After identifying every demographic group across the state, we estimate the proportion of each group that appears in our NC AOC database; that is, those who were arrested. This is simply the numerator (individuals arrested) described in Step 2 divided by the denominator explained in Step 3 (number of residents).

We estimate arrest rates in two different ways. The first involves a simple ratio where we take the 7-year average—numerator divided by 7—and divide it by the denominator.

The second involves a binomial random intercept model where the number of successes equals those arrested (numerator) and the number of trials equals the population size (denominator).

As we explain in our on-line appendix, the second methodology produces more accurate values, and has the additional value of allowing for estimates of credible intervals. The method involves smoothing parameters across both time and space so that in the presence of missing data relevant information from neighboring years and neighboring geographic places can be used. Because this method smooths over space (e.g., neighboring areas) as well as time, it makes the

most efficient and complete use of all the data available. Note, however, that some geographic areas (e.g., the ocean, lakes, airports, parks) have no residents at all or very low population numbers. This can sometimes induce misestimates for bordering areas. We are sensitive to these possible errors in presenting our data and pay close attention to possible anomalies by looking for extremely high arrest rates in low-population categories. Note that this is not particularly concerning for low arrest rates (no or few people arrested, but many in the population category). For high arrest rates, just a few people being arrested could generate an extremely high apparent arrest rate if the underling population category is, for example, fewer than five individuals. This affects only a small share of observations and we treat the estimates with appropriate care in our presentations and analyses.

6

Disadvantage, Historical Legacies, and Surveillance

We continue our explorations of social identity, geography, and the likelihood of arrest in this Chapter. Building on the analysis from Chapter 5, we construct a single continuum of advantage based on demographics and geography. We show a remarkable correlation between this index and the odds of arrest, with high-advantage individuals rarely arrested and low-advantage individuals arrested at high rates. This allows us to combine what were treated as separate variables in Chapter 5: Social identity and residential location. Where one lives can be considered part of an intersectional identity just like race, gender, or age.

After showing a clear connection between our new intersectional definition of identity-based advantage or disadvantage and the likelihood of arrest, we move on to a more detailed analysis of geography. First, we show that the average income of the neighborhood where one lives is highly correlated with arrest rates. However, this increase is by no means equal for people of different demographics. White and Latine women are rarely arrested no matter what the neighborhood income may be. Black men, on the other hand, show a strong increase in the odds of arrest depending on the average income of the neighborhood where they live, with White and Latine men also showing such a relation, though a more modest one.

Our second exploration of geography focuses on the historical legacies of "redlining". We take advantage of the magnificent archival work of the "Mapping Inequality" project at the University of Richmond (see Nelson et al. 2023). This team has put together historical redlining maps from the 1930s which were mandated by the federal Home Owners' Loan Corporation (HOLC). These maps divided each American city into four categories of "residential security". "Security" in this case means the safety of investing in this area for a bank or savings and loan

corporation, and the areas were generally ranked from A "best" to D (variously defined as "hazardous", "blighted", "poor", or "fourth grade"). This meant that people living in areas categorized as "hazardous" or "blighted" generally could not get loans from banks. The maps collected by this team are available at their website and are in the public domain. Each of the largest cities in North Carolina is included, with the exception of Raleigh. We overlay these historical maps, which were used by the federal government to determine which bank loans could receive mortgage guarantees, with the geographic areas that we identified in Chapter 5 that correspond with low- and high-arrest rates (and the more detailed analysis we conducted for Durham in Chapter 4). This analysis shows that neighborhoods identified as "blighted", "undesirable", or "hazardous" continue to exhibit the greatest arrest rates, and that those areas deemed "best" or "most desirable" continue to this day to show the lowest arrest rates. Of course, these historical continuities are not perfect, as much has changed in the period since the maps were made 90 years ago: Downtown areas have grown, some previously "blighted" areas have been gentrified, freeways have decimated certain areas, cities have grown into areas previously unoccupied, and so on. Nonetheless, the old redlining maps show a powerful likeness to the maps we showed in Chapter 5 concerning arrest rates.

A Continuum of Social (Dis)Advantage

Kimberlé Crenshaw (2017) defines intersectionality as "a lens through which you can see where power comes and collides, where it interlocks and intersects" (n.p.). When studying criminal legal system outcomes, this lens provides a way to understand how various social identities correlate with different relations with state institutions. For example, a young Black man will not experience the criminal legal system the same as an older Black man who will, in turn, not experience the system similarly as an older Black woman. These differences emerge through the

charges defendants receive, the legal representation each defendant can afford, and the ability to contemplate a prosecutor's plea bargain deal. These nuanced differences of experiences, however, do not always translate into our descriptive models on legal system outcomes.

We construct a continuous scale where we use previous works on social identity and disadvantages in the criminal legal system to assign disadvantage points to defendants based on their identity-related characteristics. This measure provides a way to test whether common expectations of social disadvantage translate to poor legal system outcomes. We use age, gender, race, and an estimate of economic status to create this score. Our estimate of economic status derives from the average value of real estate in the neighborhood where the individual lives. Because all of these bits of information are also available through the US Census, we can use the Census as a baseline to calculate rates of contact per 10,000 individuals of a given demographic and economic profile. To our knowledge, this has not been previously estimated for an entire US state. Because we want to see if this index of (dis)advantage is related to arrest rates, and whether those areas that are home to more people scoring high in this cumulative index of multiple identity-based disadvantages, we do not use the same neighborhood scores based on police surveillance or arrest rates in constructing the disadvantage score.

Racial/Ethnic Disadvantage

We begin by focusing on the role of race/ethnicity and the social disadvantages that are associated with being a member of a specific racial group. Here we expect Blacks, Latine, and Native Americans to be at the greatest social disadvantage when entering the criminal legal system. First, and foremost, Black Americans have been the direct targets of the carceral state since first being brought to the US as enslaved people. As Bruce Western describes, "We can read the story of mass imprisonment as part of the evolution of African American citizenship.

Each piece of this story – pervasive incarceration, unemployment, family instability – shows how mass imprisonment has created a novel social experience for disadvantaged blacks that is wholly outside of the mainstream of social life" (Western 2006, 193).

Similarly, Hispanic Americans have been the target of this nation's immigration laws. NC counties have seen their Hispanic populations increase over time as the state's agricultural and migrant worker economy have drawn new members of the community. One consequence of this growing population has been law enforcement's use of state traffic and vehicle laws to target individuals for immigration enforcement (Baumgartner et al., 2018). Finally, Native Americans make up a disproportionate share of prison and jail populations throughout the United States (Wang, 2021). In North Carolina, Robeson County houses the state's largest Native group, the Lumbee tribe. This same county has historically suffered from poverty, racial strife, and miscarriages of justice, particularly with respect to the Black and Lumbee populations (Segrest 1988).

Going into the criminal legal system, we can expect many of these outside social disadvantages to translate into institutional disadvantages. Additional factors such as lower educational attainment, income status, and access to quality legal representation all make it difficult for defendants from these backgrounds to navigate the judiciary. We therefore assign one point (+1) to all NC-AOC defendants who belong to these racial/ethnic groups (e.g., Black, Hispanic, Native American) and assign zero to defendants who do not (e.g., White and Asian-Americans).

Gender Disadvantage

Next, we focus on the role of gender and how the criminal legal system treats men and women differently. To begin, the criminal legal system is very gendered. In our database, men make up

large shares of the overall population, from a small majority of traffic offenses to over 90 percent of some infraction categories, such as violent crimes. Previous work on gender and legal sentencing has described the gender imbalances of charging and sentencing (Hedderman & Hough, 1994). Specifically, holding fixed the severity of the crime, women tend to receive more lenient sentences from institutional actors, such as judges and prosecutors (Hedderman & Hough, 1994). This is not to say that women are consistently advantaged in the legal system, as many offense categories place women at a great disadvantage. The most noticeable example here are self-defense laws where prosecutors rarely extend the law's protection to women who kill intimate partners in self-defense (O'Brien, 2020). Nonetheless, based on overall patterns, we assign one point (+1) to all male NC-AOC defendants and zero to all female defendants.

As we described in the preface of this book, the NC AOC database only includes sex recorded as male and female. We do not want to diminish the fact that recording sex from the perspective of the state, which falls strictly on the sex that was assigned at birth, erases our ability to document the harms of policing that fall on the transgender community (Carpenter and Marshall, 2017). While we state that being recorded as male carries a disadvantage, we do not mean to imply that they are the "most" disadvantaged. If we were able to identify those in the NC AOC database who are transgender, they would certainly carry more disadvantage than cis-gendered people.

Age Disadvantage

For our third characteristic, we focus on defendant age and the various social disadvantages that come with being young versus old in the criminal legal system. As discussed in previous chapters, youth may generally bring more social advantages and cultural appeal, but in the law enforcement context, it is definitely a liability. Not only are younger people more likely to be

surveilled and arrested by the police, but they are more likely to lack access to the same material and legal resources that older defendants might take for granted. This includes access to quality legal counsel, which many young defendants cannot afford without family assistance. Based on these expectations, we assign the following points to defendants based on their age at the time of their offense: + 1 if 18 to 34, + 0.75 if 35 to 44, + 0.5 if 45 to 54, + 0.25 if 55 to 64, and + 0 otherwise. We use U.S. census age cohort categories to facilitate comparisons with published census data.

Economic Disadvantage

Finally, we focus on the role of economic disadvantage and how it structures a defendant's experience inside the criminal legal system. We approximate the socioeconomic status of defendants by geocoding their residential home addresses. We then map them to a 1x1 square kilometer grid and estimate the median household income for each grid. We assign points based on a defendant's geographic location. These points correspond to the percentile ranking of the local income estimate, rescaled from 0 to 1. We then reverse the scale so that high values (close to 1) represent the poorest areas and low values (closer to 0) are the wealthier areas.

Race and Economic Disadvantage

The various elements of our index of disadvantage are in some cases related to each other, particularly race and poverty. For example, White and Asian individuals are more likely to be on the higher end of the economic advantage scale than Blacks, Latine, and Native individuals. Of course, younger people typically have less income than those in their 50s or 60s, and women statistically make less money than men. So, the various demographic elements of our index of disadvantage are correlated with the economic disadvantage index that is also part of the overall measure. Figure 6-1 shows how five racial groups differ with respect to economic disadvantage.

It combines a “violin” plot with a “box” plot. The red contour with varying widths is the violin plot; the width of the figure is proportionate to the number of people at that point on the economic disadvantage scale. The box in the center of each plot indicates the 25th and 75th percentiles, with the line inside the box indicating the 50th percentile or median value. Thus, Figure 6-1 conveys a lot of information about the link between our racial categories and economic disadvantage.

Figure 6-1. Economic Disadvantage and Race.

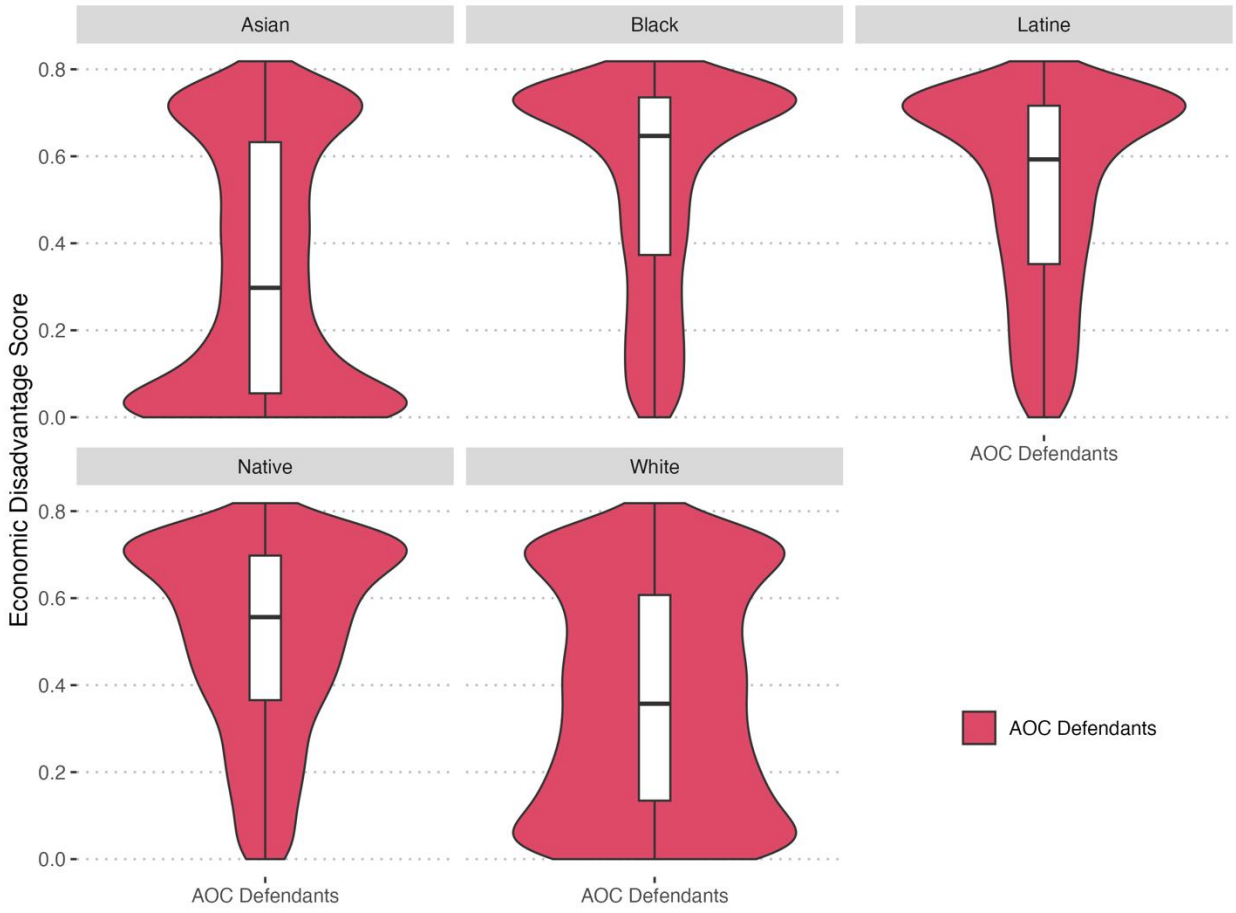


Figure 6-1 clearly demonstrates that people of different races are distributed across the index of economic disadvantage in very different ways. For example, in the first graph, among Asian-Americans, a great deal of clustering occurs at or near the very bottom of the index of

disadvantage. Among Black people, in the second graph, and Latin individuals in the third one, more clustering occurs at the top, among those highest in disadvantage. Black, Latine, and Native American individuals show many people high in disadvantage but few low on the scale. Asian-American individuals show many at the very lowest end of the scale, but also some clustering at the top, indicating a bifurcated or bimodal distribution. White individuals constitute the largest category, and also show somewhat of a bimodal distribution.

The correlation among different elements of our index of disadvantage is important to keep in mind. Race correlates with economic status. Younger people tend to have fewer economic resources than older ones, as well. So when we combine all the elements of our index into a single one, we are generating a single score for each person that summarizes a variety of disadvantages that they may face when interacting with the criminal legal system. Young black men are more likely also to be poor. Older White women are more likely to be wealthy. So, while we make an additive scale that combines all these factors into a single number, we must remain attentive to intersectional differences.

An Index of Disadvantage

Using reported defendant information on race/ethnicity, gender, age, and residential address, we construct a five-point scale that distinguishes, at one extreme, older white women from high income neighborhoods from, at the other end of the index, younger black men living in the state's poorest neighborhoods. This additive scale attempts to capture the multiple identities of NC-AOC defendants while ordering them along a unidimensional scale of social disadvantage. High scores on this scale reflect high disadvantage.

The scale is constructed as follows:

- Race: +1 for those who are Black, Hispanic, or Native American; zero for White and Asian-Americans.
- Sex: +1 for males; zero for females.
- Age: + 1 if 18 to 34; + 0.75 if 35 to 44; + 0.5 if 45 to 54; + 0.25 if 55 to 64; and zero otherwise.
- Economic: +1 for those in the lowest percentile of neighborhood housing value, decreasing continuously by percentile ranking to 0 for those in the very highest housing value areas.

Note that each of the four variables in the scale, race, sex, age, and economic status, contributes a maximum of one point on the scale, which goes from 0 to 4. The resulting index of disadvantage would have a score of zero for any individual who was most advantaged on each of the four indicators laid out above: White or Asian; Female; Aged 65 or older; and living in a high income neighborhood. By contrast, someone at the opposite end of the distribution (e.g., a young Black / Hispanic / Native American male living in a poor neighborhood would have a high score on the index. The index is normalized to vary between zero and one with one indicating the maximum degree of disadvantage.

Figure 6-2 shows the range of scores on the index of disadvantage. Note that because the economic disadvantage score is continuous, the age-group variable is in five groups, and race and sex are dichotomous, the resulting index shows clusters relating to race, gender, and age-group. Also note that no White or Asian woman can have a score lower than 2, and no Black, Latine, or Native man can have a score higher than 2. This is by construction in how the index is made.

Figure 6-2. An Index of Disadvantage.

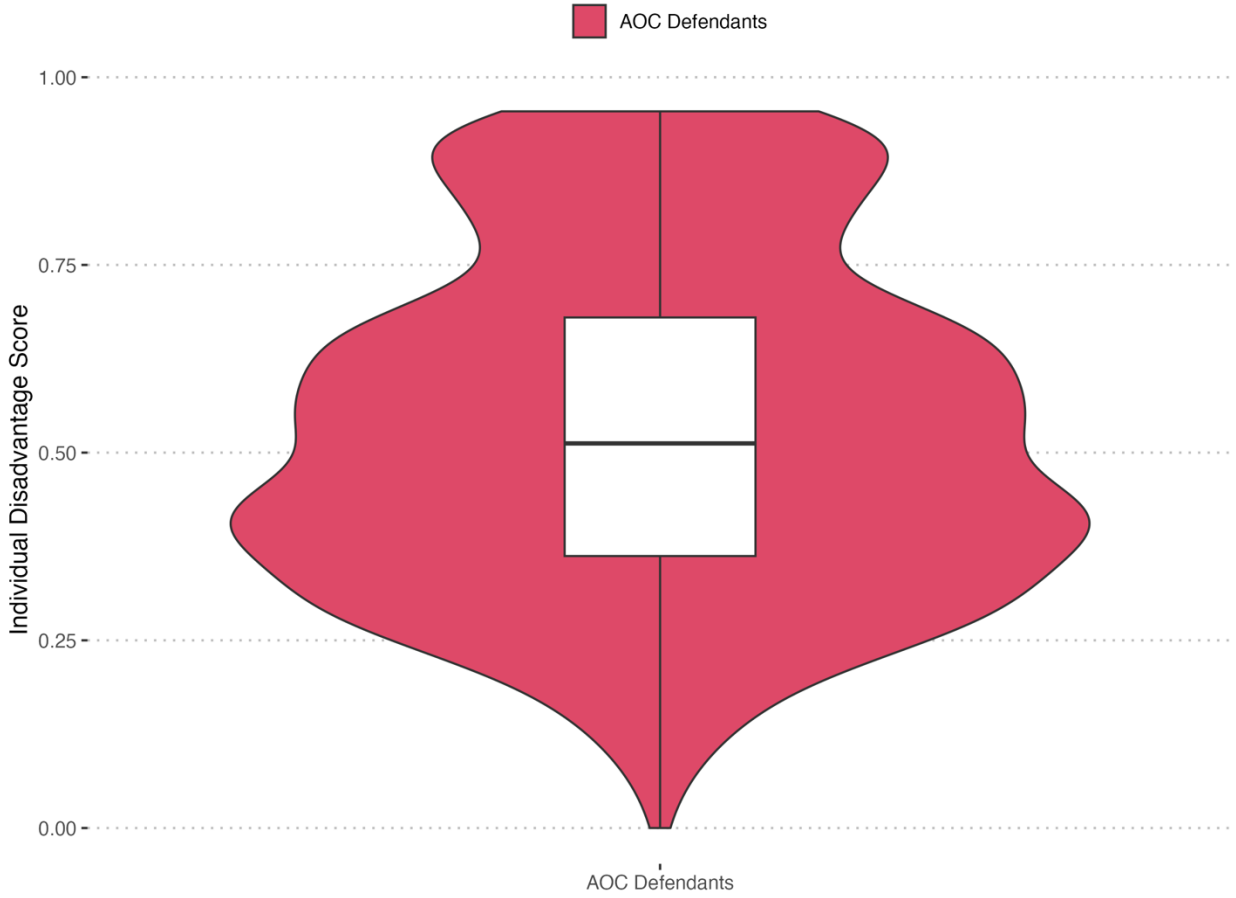
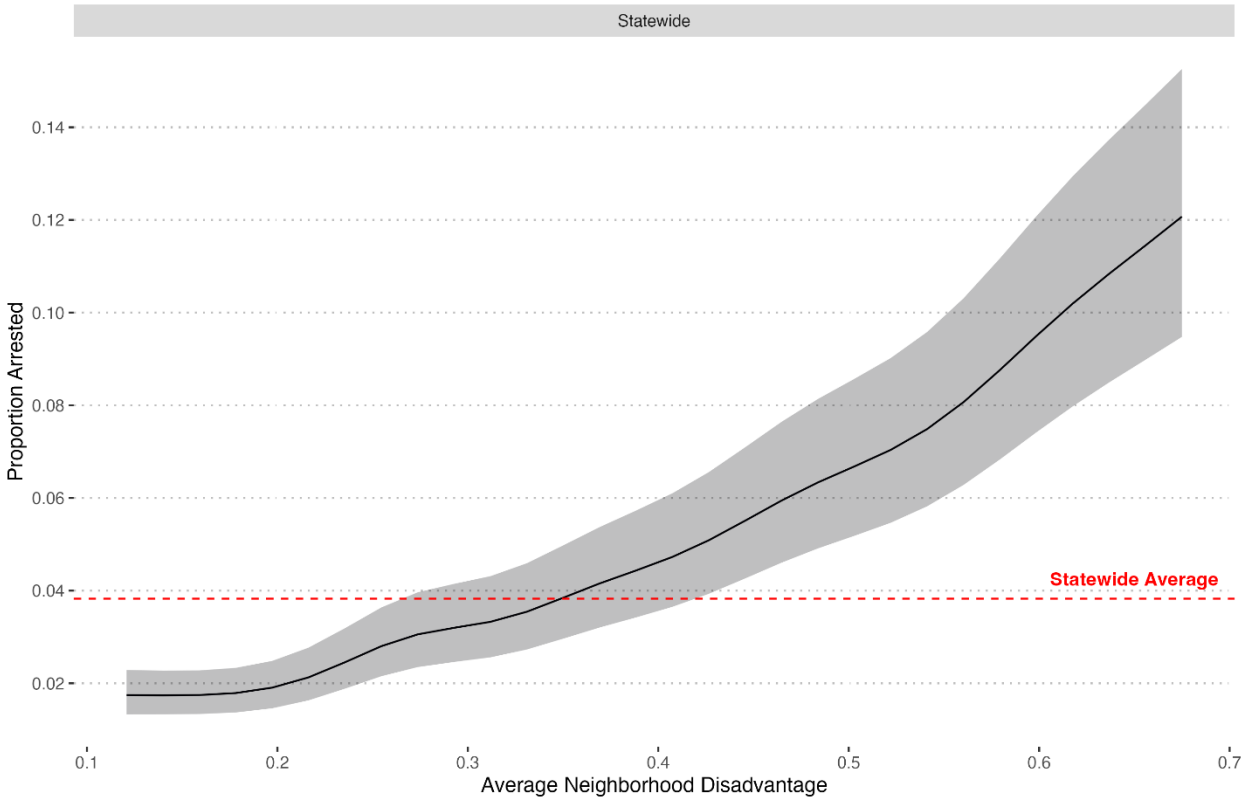


Figure 6-2 shows the same type of plot as those shown in Figure 6-1. The central box indicates the range from the 25th percentile to the 75th, with the median indicated by a line in the center. Looking at the distribution across our entire index of disadvantage, we see few observations at the very bottom (e.g., White or Asian women above 65 years old, living in the most expensive neighborhoods), those we see more at the top of the scale (e.g., young minority men living in the poorest neighborhoods). While the cale covers the full range, and there is a lot of variation, the distribution shows relatively few people interacting with the criminal legal system at the very lowest end (say, the bottom ten percent) of our scale of disadvantage.

Social Disadvantage and the Odds of Arrest

Now that we have in place an index of disadvantage and can assign each individual a score, it is a simple matter to assess how many of each group have contact with the criminal legal system. Of course, we cannot calculate the odds of arrest for each person in our database because by definition if they are in our database, they have been arrested. Rather, we can summarize by neighborhood. Here, we use geographic aggregations of 1 x 1 kilometer, resulting in thousands of neighborhoods across the state. Figure 6-3 shows how the average disadvantage score correlates with the share of the local population who is arrested.

Figure 6-3. Disadvantage Scores and Arrest Rates.



As we recall from Chapter 3, the average annual statewide arrest rate is just under 4 percent of the population; this is reflected in the red line in Figure 6-3 and corresponds to a neighborhood disadvantage score of approximately 0.35 on a scale of 0 to 1. Those scoring very

low on the disadvantage scale (e.g., between 0.1 and 0.2) have a rate of arrest approximately half of the statewide average. By contrast, those at the higher end (0.6 to 0.7) have a rate approximately 4 times higher than the average. From the low end to the high end of the scale, we move from a two percent annual rate of arrest to about 12, six times higher.

Even though we have built our index of disadvantage with respect to age, race, gender, and economic status, it is important to understand that these factors do not all weigh equally. Figure 6-4 breaks down the relation shown in Figure 6-3 by race-gender groups. Disadvantage is clearly cumulative, not merely additive. Black men are in a category of their own.

Figure 6-4. Disadvantage and Arrest, by Race-Gender Group.

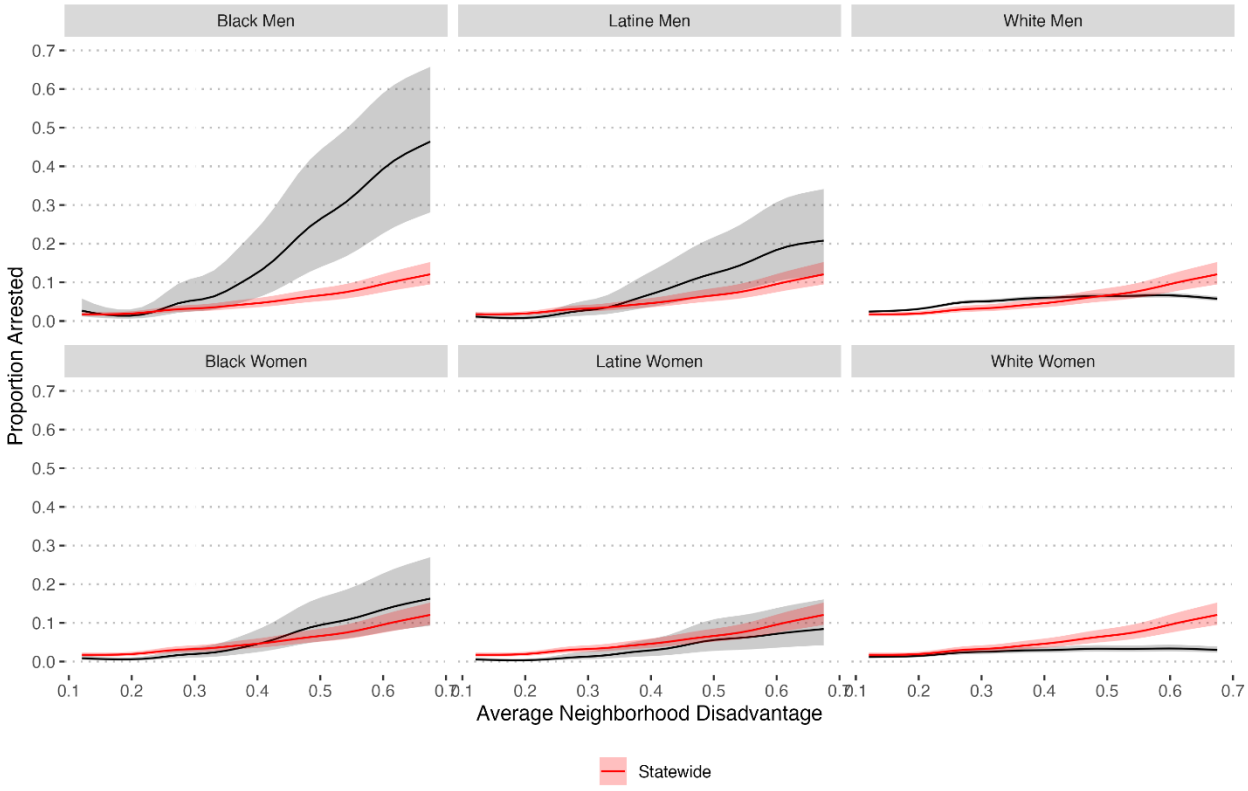


Figure 6-4 replicates the relation shown in Figure 6-3 (statewide average) in red and then shows the relation between neighborhood disadvantage and arrest rates separately for each of six

groups.[18] Black men stand out with extraordinary arrest rates compared to the other groups (reaching as high as 45 percent odds), with Latine men and Black women also seeing higher rates of arrest in high-disadvantage areas compared to the state average. White men and women, by contrast, see very little increase in arrest rates as we move from comparing low to high-disadvantage areas of the state. These patterns are consistent with the idea that, when patrolling in high-disadvantaged areas, the police are much more likely to arrest Black and Latine men rather than White people living in those areas. Of course, we saw in Chapters 4 and 5 that high-disadvantage neighborhoods are disproportionately populated by minority individuals. So, the relations we are looking at here between identity, place, and arrest are highly cumulative.

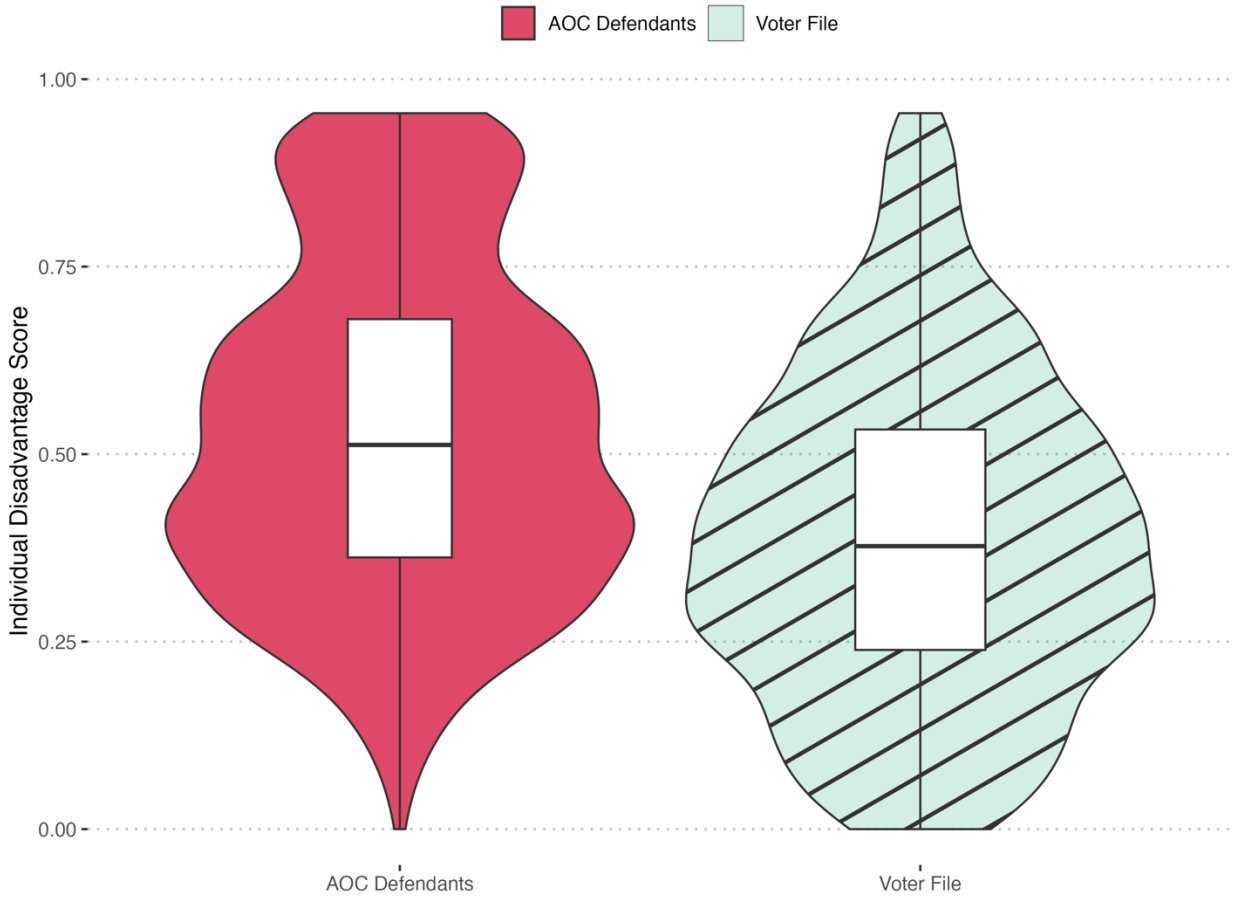
Comparing Defendants with Registered Voters

We can gain an important perspective on who interacts with the criminal legal system by applying the same procedures we just outlined to create an index of disadvantage for all North Carolina voters. The NC State Board of Elections makes available a public file of all voter registrations, including age, race, gender, and address (see North Carolina State Board of Elections, 2022). We can therefore apply the same methodology as used above to this database, generating the exact same scores for each individual in the voter file. Of course, the voter file is not a representation of the population; it skews somewhat toward the advantaged side. Nonetheless, the file includes over 7 million individuals, and it allows us to compare the degree to which the AOC defendants in our database are similar or different from all registered voters.

[18] We do not include age group here because doing so generates so many categories that the estimates become less accurate for each. However, doing so would certainly strengthen the relations we are showing.

Figure 6-5 illustrates the distribution of our disadvantage score for NC-AOC defendants compared to registered voters. Figure 6-6 breaks this down by race, and Figure 6-7 shows equivalent maps of the state showing how levels of disadvantage differ by geography.

Figure 6-5. Disadvantage Scores, AOC Defendants and Registered Voters.

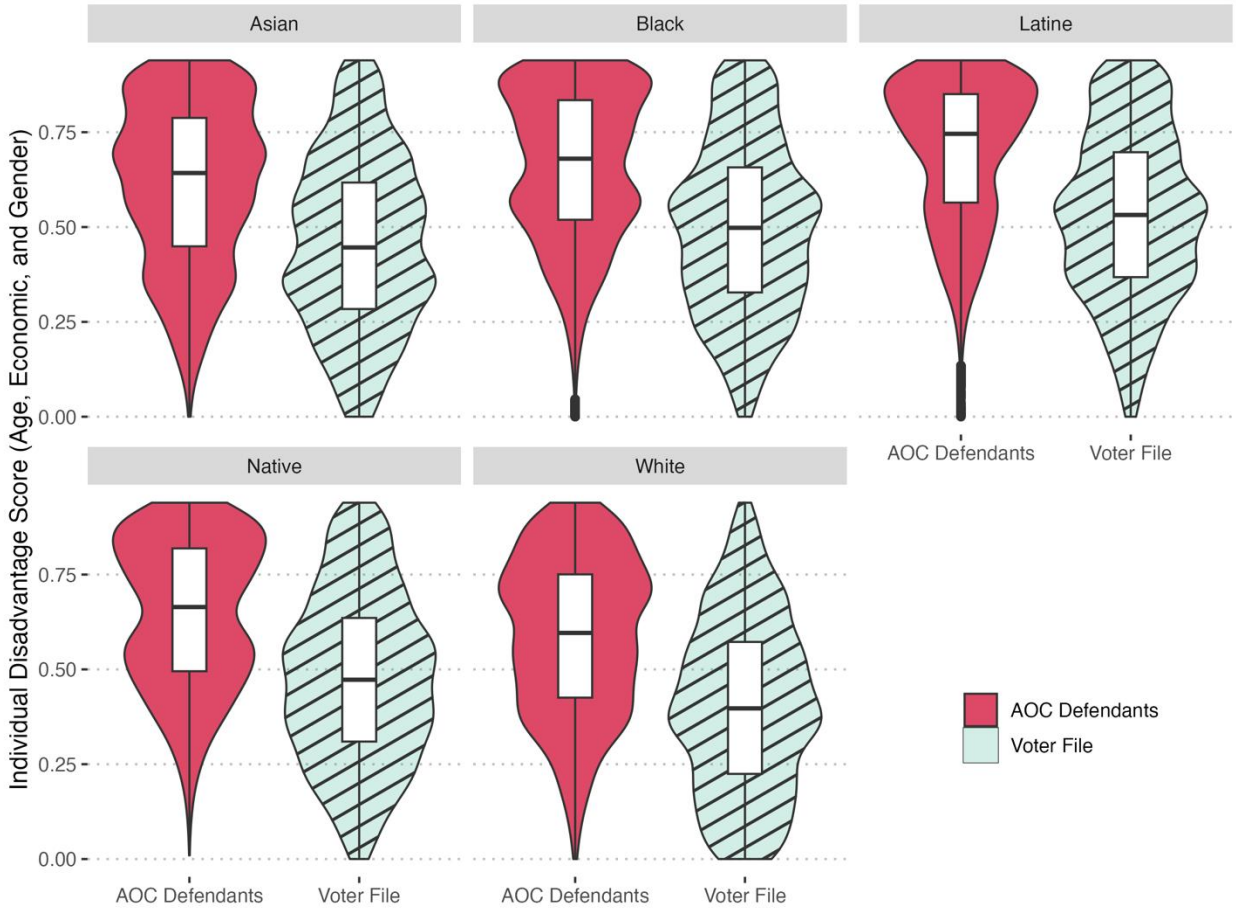


The typical registered voter has low scores on our disadvantage scale; the median (peak) value is approximately 0.3 on the scale going from 0 to 1. By contrast, the median value for those who have been arrested is approximately 0.5. The AOC distribution has precious few observations at the bottome, and the voeter registration distribution has very few at the top. Both have many cases in the middle, but this comparison makes clear that the AOC database skews toward poverty and marginazliation, virtually excluding the most advantaged among the states's

residents, while the voter file has the opposite characteristics, almost excludeing the most disadvantaged.

This is a simple demonstration of what should already be clear to the reader: The criminal legal system interacts mostly with people of relatively great disadvantage. Because our index of disadvantage includes both economic status as well as more standard demographic variables, this analysis goes further than simply stating that members of minoritized racial groups are more likely to be arrested. Compared to registered voters, the "clientele" of the criminal legal system is young, Black, male, and poor. Voters, on the other hand, differ sharply from this profile. Figure 6-6 breaks this down by race.

Figure 6-6. Disadvantage Scores, AOC Defendants and Registered Voters, by Race.

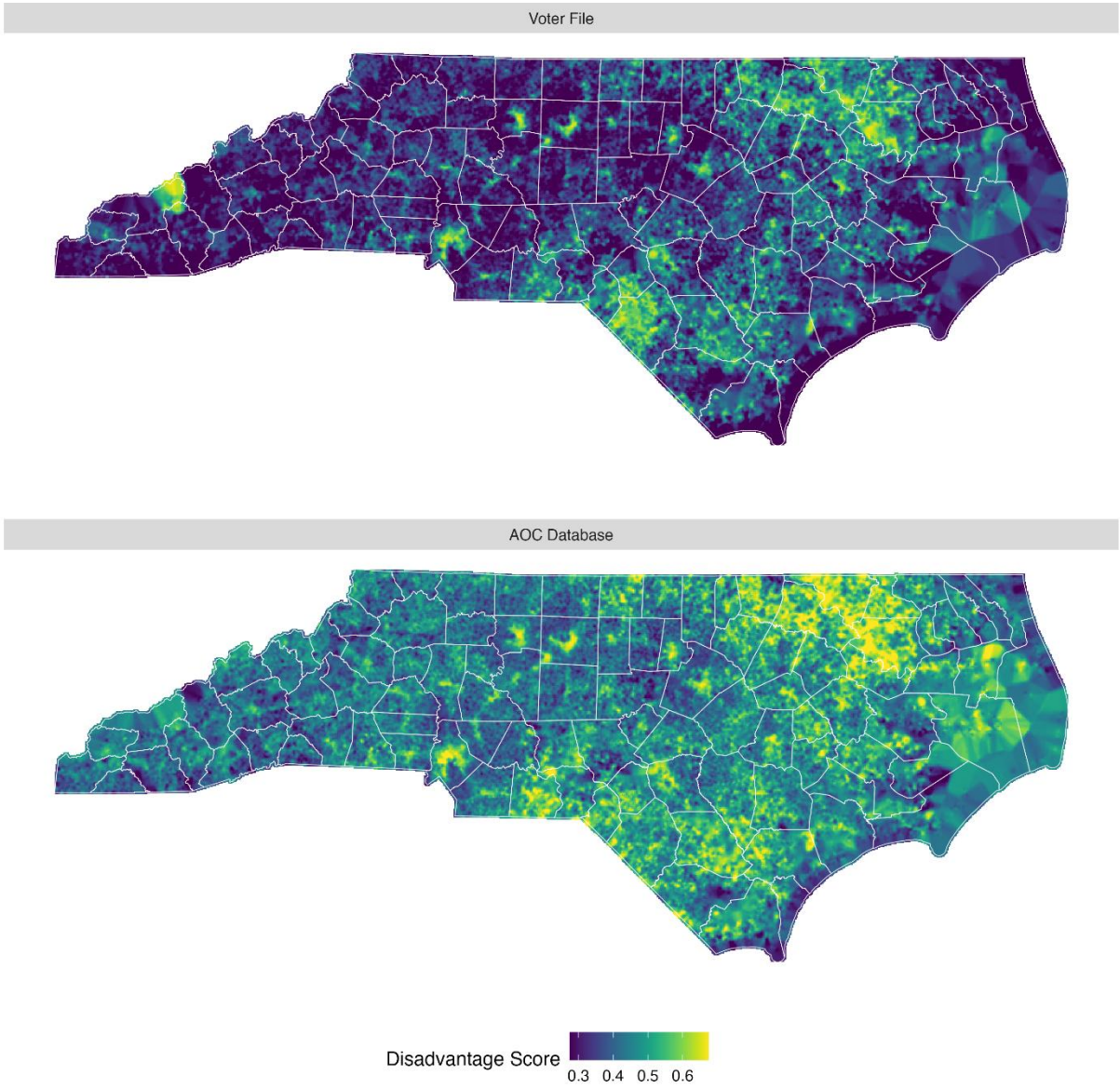


Note: The index of disadvantage shown in Figures 6-2 and 6-5 includes race in the calculation of the index itself. Figure 6-6 includes all the same information except race, then shows it separately for each racial group.

Within each racial group, we see a similar pattern for the AOC defendants to skew to the highest levels of disadvantage and voters to come from the low-to-moderate range on our scale. Particularly for Black, Latine, and Native American individuals, the AOC file skews sharply to the most disadvantaged compared to voters. White and Asian populations show similar patterns, however, with voters much more likely to be drawn from those low in disadvantage and AOC defendants drawn from the other end of the scale. In sum, the general pattern we observed in Figure 6-5 is re-created within each racial group.

Figure 6-7 displays the geographic distribution of individuals with high and low disadvantage across the state, first for all registered voters, and second for those appearing in the AOC database.

Figure 6-7. Map Showing Disadvantage Scores, AOC Defendants and Registered Voters.



The map at the top of Figure 6-7 illustrates graphically where rich and poor voters are clustered. As it relates to all registered voters, it most likely skews somewhat toward individuals with low disadvantage compared to all residents of the state. Still, clear pockets (dark on the

map) are visible where the average voter is much better off (along the coast and in certain pockets of the middle and western parts of the state. Similarly, brighter and lighter colors show where more voters come from higher on the scale of disadvantage; these are clearly visible in the north-east part of the state, historically an area with many Black residents, in the area near Robeson County in the south-center, and in sparsely populated Swain County, on the border to Tennessee. Smaller but clearly defined areas are visible in some of the major cities as well: Charlotte, Winston-Salem, Greensboro, Durham, and Raleigh.

Looking then at the map in the lower part of the Figure, patterns are generally the same but the entire map brightens up in every area of the state. This reflects the fact that, no matter where we look, voters are drawn from the lower end of the index of disadvantage, and AOC defendants are drawn from the higher ends.

This brief analysis comparing our database to that of the Bureau of Elections makes clear that: 1) the criminal legal system on average affects individuals of high disadvantage; 2) this tendency is even stronger among Black, Latine, and Native individuals; and 3) geography also matters significantly. We turn to a deeper analysis of the issue of geography and how it interacts with race in the next section, in which we make use of "redlining" maps from the 1930s.

The Legacy of Historical Redlining Practices

We showed in Chapters 4 and 5 the power of place. Geography plays an important role in determining one's odds of arrest. In each major city of the state, we identified in Chapter 5 clear areas where arrest rates are particularly low, and those where they are substantially elevated compared to other neighborhoods. In this section, we show the degree to which these contemporaneous differences correspond to historical redlining in the 1930s. These high- and low-arrest arrest correspond powerfully with maps used by banks in the 1930s to determine the

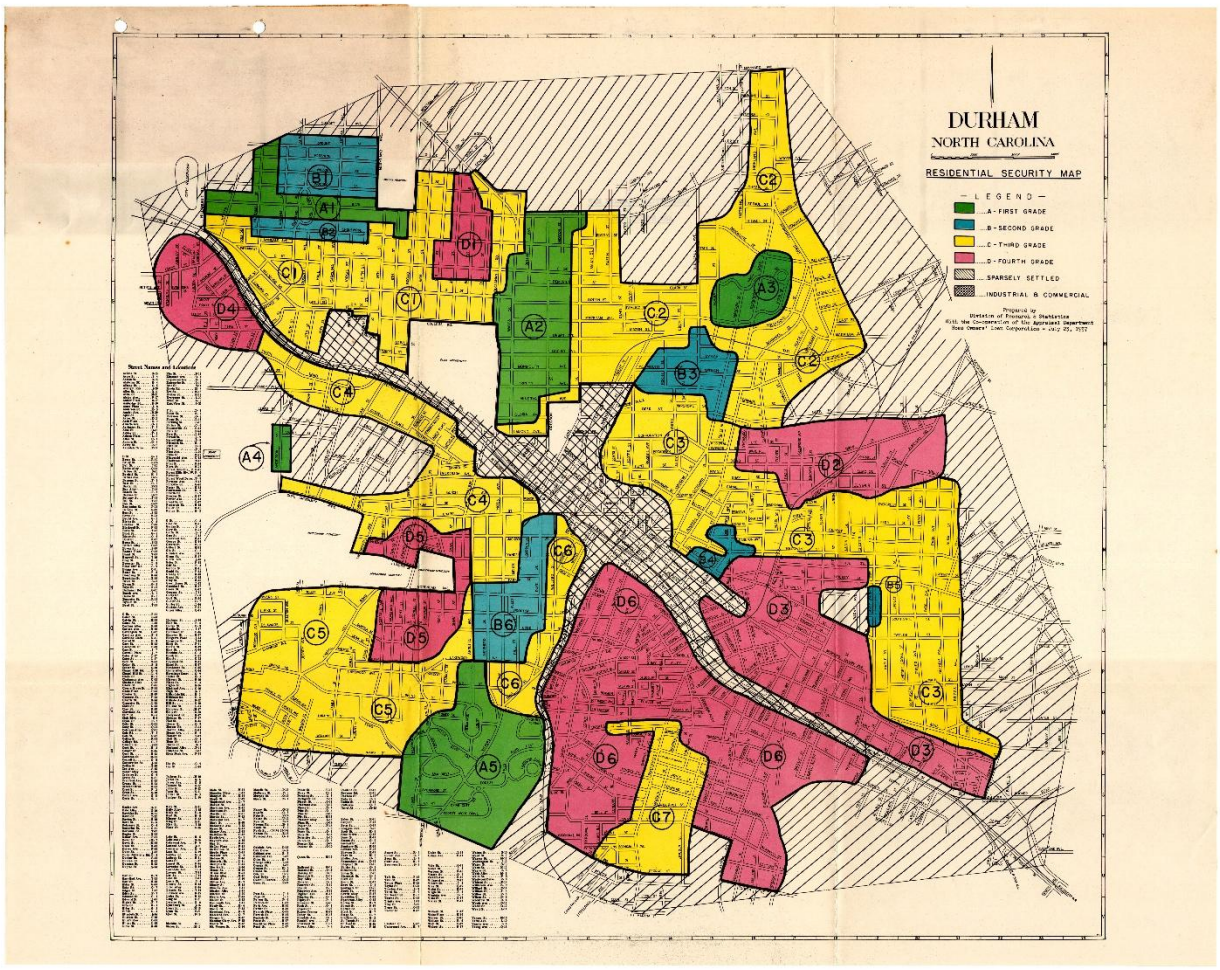
"security" of home loans. These are the famous "redlining" maps, so named because zones outlined in red were typically deemed "undesirable" and homeowners or purchasers in these areas were not able to get bank loans or mortgages. Richard Rothstein (2017) explored the lasting legacies of redlining in his book, *The Color of Law*, as well as the powerful role of government agencies at all levels of the federal system in promoting, or in some cases requiring adherence to this system of enforced racial segregation.

As we mentioned in the introduction to this Chapter, Prof. Robert Nelson, Director of the Digital Scholarship Laboratory at the University of Richmond, has gathered and made available more than 300 historical "redlining" maps from the 1930s which were mandated by the federal Home Owners' Loan Corporation (HOLC) at the time (see Nelson et al. 2023). For North Carolina, these include the cities of Asheville, Charlotte, Durham, Elizabeth City, Fayetteville, Goldsboro, Greensboro, Hendersonville, High Point, New Bern, Rocky Mount, Statesville, and Winston-Salem. (Maps for other cities, including Raleigh and Wilmington, were apparently destroyed or in any case are not available.) All of these maps are available for download at the "Mapping Inequality" website mentioned above, and we have also included the North Carolina cities just mentioned on the website associated with this book. The electronic maps can be useful because they allow the reader to zoom in and see greater detail, including street names, that may be hard to read in the printed versions.

Durham

Figure 6-8 shows the redlining map for Durham.

Figure 6-8. Historical Redlining Map for Durham.



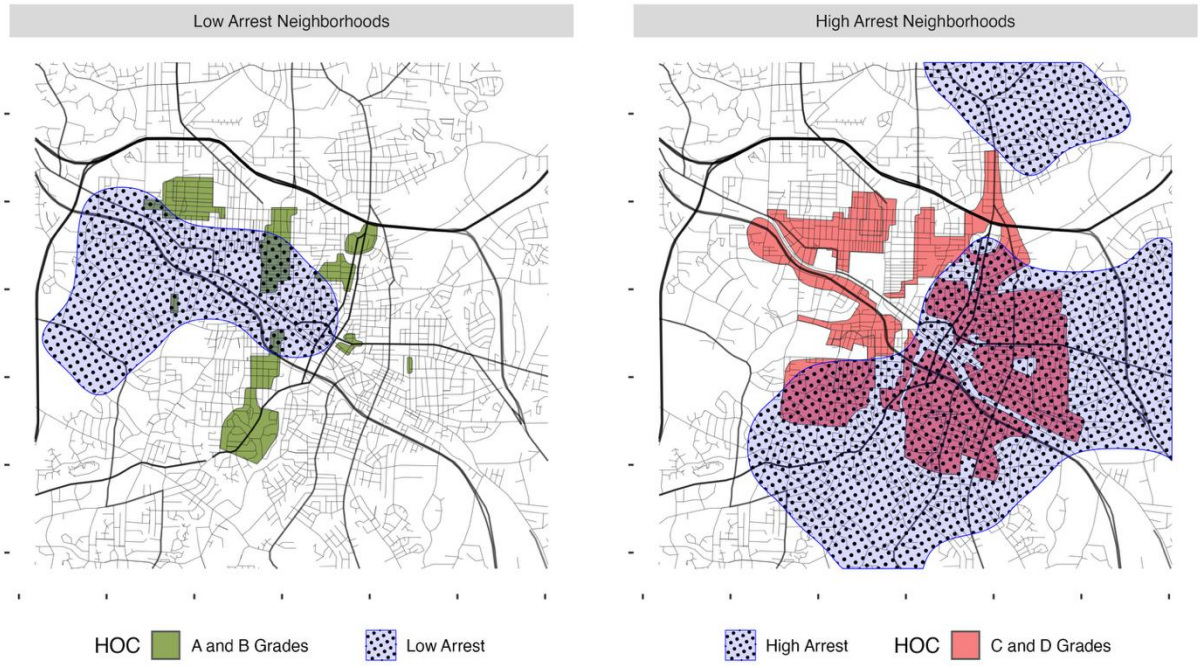
Note: Map courtesy of Nelson et al. 2023.

The map is dated 1937 and labeled “residential security map” but readers should understand that in this context, security means the relative security to a bank in lending money or issuing a mortgage for a property in the different zones. The zones are labeled from first to fourth grade, in colors going from green (first grade) to blue to yellow to red (fourth grade). The cross-hatched area running through the center of the map is “industrial and commercial” and the hatched area on the outskirts of the map refers to “sparsely settled” areas. Note also the narrow strip running south from downtown through the center of the city; this is a railroad spur, currently the American Tobacco Trail. It clearly divided the large “fourth grade” area in the south-east of the city from the more “desirable” areas to the west. Of course, much has changed

since 1937, including the construction of freeways and the growth of the city well beyond the borders of this map.

We presented extensive information about police calls, surveillance, and arrests in Durham in Chapters 4 and 5. In Chapter 5 we then extended these analyses to cover all the major cities, and we distinguished between high- and low-arrest areas of each city. Figure 5-3 showed those areas for Durham. Figure 6-9 reprises the analysis from Figure 5.3 and overlays the areas identified there with those on the map just shown. Note that in this rendition, the area of the city shown on the map corresponds to the 1937 map, and is therefore smaller than what we showed in Figure 5.3. That is, Figure 6-9 covers only that part of the city that was also shown in Figure 6-8 just above.

Figure 6-9. Low- and High-Arrest Neighborhoods Overlaid with Historical Redlining Areas, Durham.



Note: Redlining data courtesy of Nelson et al. 2023.

Looking first at the low-arrest areas, only one appears within the boundaries of the 1937 map, and it appears far to the left and towards the top of the left-hand pane in Figure 6-9. This

area is quite diverse with regards to the classifications laid out in 1937, with areas ranging from first to fourth grade included in the area. This suggests substantial change and gentrification of some areas, continuity for others (e.g., Club Boulevard, the long green strip in the 1937 map now partially contained in the low-arrest area). The yellow-shaded areas in Figure 6-9 show the A and B grade neighborhoods from 1937; these are generally toward the west rather than the east, but the current low-arrest area is considerably further to the west and appears distinct from the historically more "desirable" areas of the city.

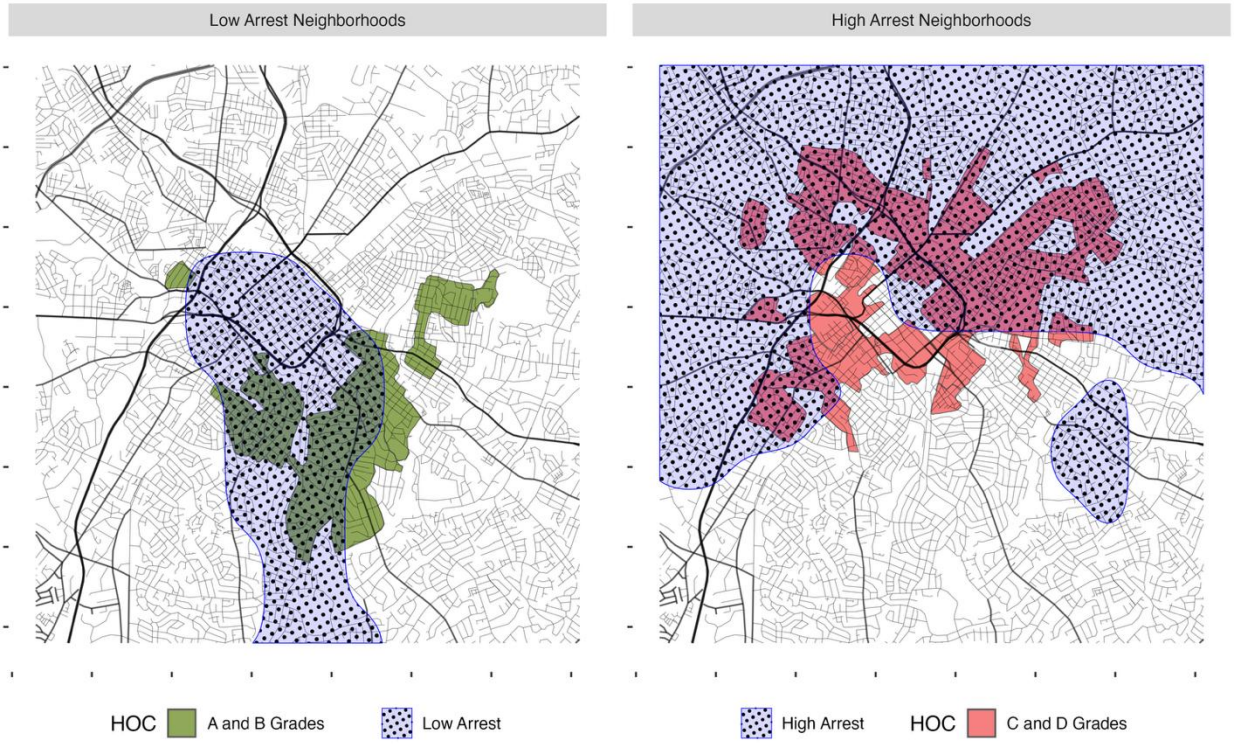
Looking at the right side of the Figure, we see much more continuity of poverty, redlining, disadvantage, and arrest. The high-arrest area of the city, from Figure 5-3, encompasses a large share of the eastern part of the city, and subsumes the vast bulk of the areas shaded in red or yellow in the 1937 map, corresponding to the third- and fourth-grade areas of the city. There is one area previously "first grade" now subsumed in the high-arrest area; this is the Hermitage Court and Overhill Terrace area near the American Tobacco Trail. This trail had previously been a railroad the literally divided a first-grade section from a fourth-grade area: the "wrong side of the tracks". Overall, with some changes as one might expect after 90 years, the areas considered "blighted" in 1937 and ineligible for home mortgages continue today to generate more police activity, surveillance, and arrests. While Durham has changed, particularly as the wealthy population has moved further from the city center, the patterns of division between rich and poor that were apparent in 1937 remain connected to patterns of arrest today.

Charlotte

We saw in Figure 5-7 the high- and low-arrest areas of Charlotte. In Figure 6-10 we replicate those maps while overlaying them on the historical redlining map from 1937. Similar to Figure 6-9, we identify the A and B grade areas in the early maps and overlay those on the "low-arrest"

zones of the city, and in the right-pane of the Figure we show the “C” and “D” grade neighborhoods from the historical map and overlay that on the “high-arrest” areas of the city. In the same manner as for Durham, the maps are smaller, covering only the parts of the city that were included in the earlier maps. Cities have grown substantially since 1937 of course. (We do not replicate the 1937 HOLC map here, but it is available on-line at our book website and Nelson et al. 2023).

Figure 6-10. Low- and High-Arrest Neighborhoods Overlaid with Historical Redlining Areas, Charlotte.



Note: Redlining data courtesy of Nelson et al. 2023.

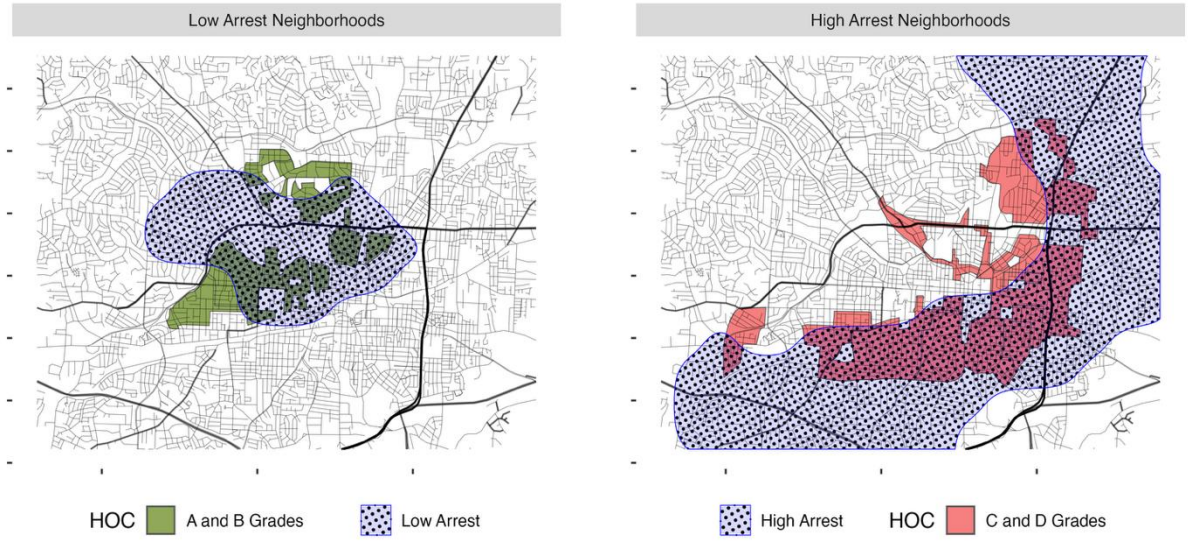
Figure 5-7 showed a number of low-arrest areas scattered throughout the city. In the central portion of the city corresponding to its 1937 residential patterns, just one of these areas is included; it overlaps substantially with those parts of the city graded A or B in the historical map. Similarly, Figure 5-7 showed a large “high-arrest” area covering in a crescent shape the northern

part of the city. Figure 6-10 shows the part of that zone in the central part of the city, and that it overlaps substantially with the “C” and “D” areas in the historic map. Those familiar with Charlotte will recognize that many areas previously in the “C” and “D” areas are now part of the downtown business and commercial district. To the extent that the residential areas remain residential, there is even higher overlap, and also those areas that were previously near the “C” and “D” zones are now included in the high-arrest areas.

Greensboro

We mentioned earlier that historical maps for Raleigh were apparently destroyed, so we cannot replicate the analysis for the capitol city; we move on to Greensboro. Figure 6-11 presents the same analysis as that just presented for Charlotte. It can be compared to Figure 5-11.

Figure 6-11. Low- and High-Arrest Neighborhoods Overlaid with Historical Redlining Areas, Greensboro.



Note: Redlining data courtesy of Nelson et al. 2023.

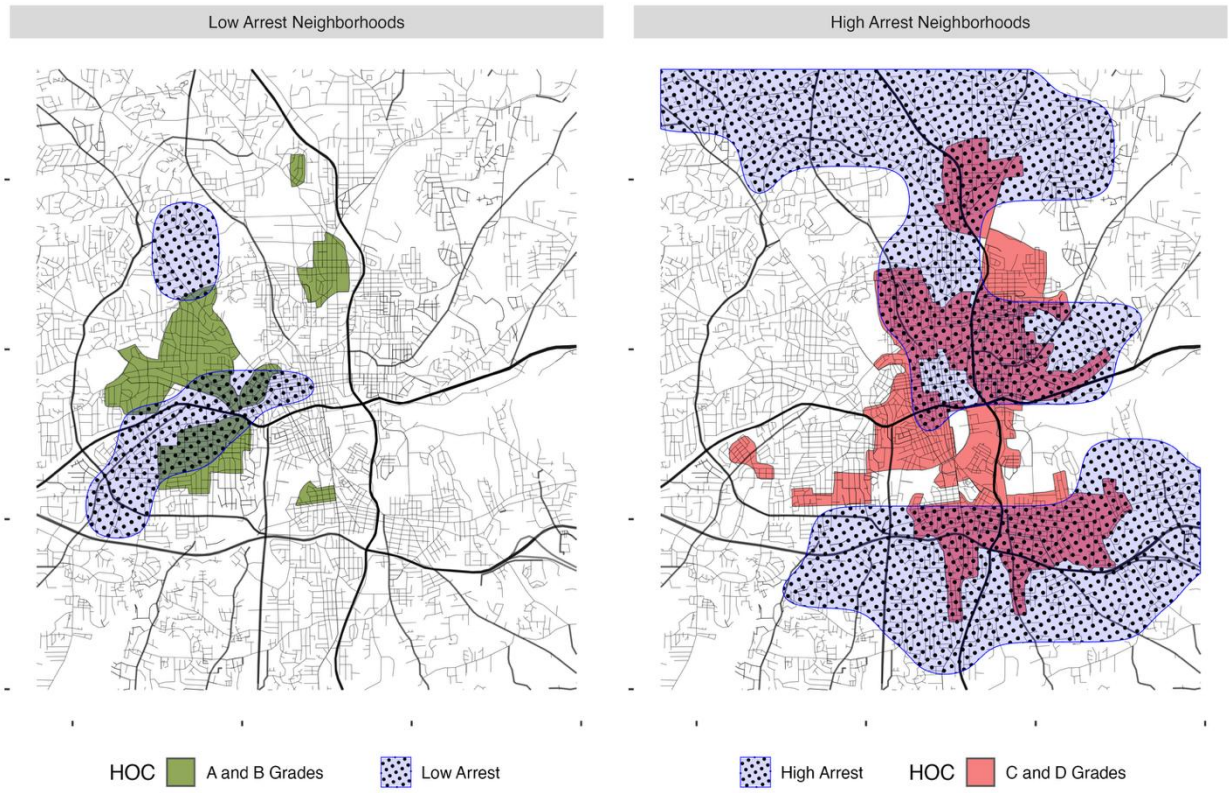
Figure 5-11 showed low-arrest areas in various places in the center, north, and west of the city, but with just one visible in Figure 6-7 in the historical area of the city. It corresponds strongly with the A and B grade neighborhoods in the 1937 map. Similarly, Figure 5-11 showed

a large crescent from south to north around the east side of the city, much of which is still visible in Figure 6-11. This also corresponds powerfully to the historical redlining patterns.

Winston-Salem

Figure 6-12 shows the equivalent analysis for Winston-Salem, corresponding to the maps presented in Figure 5-13.

Figure 6-12. Low- and High-Arrest Neighborhoods Overlaid with Historical Redlining Areas, Winston-Salem.



Note: Redlining data courtesy of Nelson et al. 2023.

Figure 5-12 showed a single low-arrest area in the western part of the central city of Winston-Salem, and Figure 6-12 shows how well this corresponds to the historical map of A and B grade areas of the city. In fact, it corresponds most closely to the single A grade area of the city near Buena Vista and Reynolda Park. By contrast, virtually the entire east side of the city is

in a high-arrest area, and this corresponds very closely to the historic areas designated Grade C and D.

Fayetteville

Fayetteville had a single low-arrest area, but it is in the north of the city near Fort Bragg and not part of the 1937 historical map (see Figure 5-15) In Figure 6-13 therefore we show only the high-arrest areas and how these correspond to the C and D Grade neighborhoods.

Figure 6-13. High-Arrest Neighborhoods Overlaid with Historical Redlining Areas, Fayetteville.

Note: Redlining data courtesy of Nelson et al. 2023.

Fayetteville differs from the other cities we have shown in that the C and D grade areas in 1937 are clustered near the downtown area but the current high-arrest zones are further on the outskirts of the historic area of the city. This is in stark contrast to the historical continuity that is apparent in the other cities shown.

The maps we have presented here, combined with those available on-line, may be convincing to many readers that there is a strong path-dependency or historical legacy of disadvantage, and that this legacy is passed on in physical spaces. Historical redlining, mandated by government policies and implemented by private and public actors alike, generated disinvestment in large areas of each major city of the country (see Rothstein 2017). Areas that were redlined saw inferior public services, over-crowding, lack of commercial centers such as banks, grocery stores, and other amenities at the same time as they were over-stocked with liquor establishments, pollution, and other noxious elements. Naturally, those with financial means stayed away.

While many of these patterns have changed over time, as downtown commercial districts have grown, industrial areas have been closed and eventually replaced by residential or other uses, and as certain areas near downtown have gentrified, our examples demonstrate that a footprint of disadvantage remains and is visible today in high-arrest rates, particularly for members of racial minorities who live in those areas. While these areas faced historical disinvestment and have faced continued economic challenges in the decades since, they have also been subject to proactive policing. Our detailed analysis of policing patterns in Durham in Chapter 4 made clear that those living in the low-arrest areas can purchase freedom not only from noxious odors, trains, and industrial neighbors; that they gain not only better schools and

greater distance from crime; but they also purchase freedom from police surveillance. On the other hand, those living in what were formerly classified as the least desirable areas of the city faced and continue to face not only a lack of economic opportunity, commercial amenities, and nutritious food options, but they also face high police surveillance. In sum, the segregation of our cities was not only about race and class. It created "containment zones" for various types of disadvantage and it made it possible to have two kinds of policing. One was a gentle form of policing that was mostly absent but present when requested. The other was a much more proactive form of policing. Recall from Chapter 4 that certain areas of Durham see over 1,000 police patrols in a month, roughly 30 blue lights per day on the same city block. As we also noted there, only one in one-hundred of these police interactions with members of the public results in an arrest, so we have to understand the level of police surveillance in some areas is astronomical compared to what many of us, if we live outside of those zones, have ever experienced.

We turn in the next section to more systematic comparisons across the historic residential zone categories and our own low- and high-arrest zones. These statistical comparisons reinforce the spatial analyses just presented.

Analyzing the Correspondence between Historical and Contemporary Disadvantage

For the cities analyzed in the previous section, we can identify which defendants in our AOC database live in neighborhoods identified by the HOLC in1937 as Grade A through D. Of course, this is only a subset of our entire database, since it does not include rural areas or large parts of current-day Charlotte, Durham, and other cities included where population growth and city limits have expanded into geographic areas that were not heavily populated in 1937. And, as we noted above, some areas that were previously Grade D (redlined) have been gentrified, replaced by the

expansion of downtown commercial districts, destroyed by highways, and so on. Still, by looking statistically at all of these areas, and presenting summary statistics allowing a direct comparison of them, we can see if the general patterns that seem observable in the maps describe in the previous sections also correspond to a more systematic comparison. Indeed they do. Table 6-1 provides a series of comparisons, using both the historic HOLC grades as well as our low- and high-arrest areas of each of the major cities in the state.

Table 6-1. Selected Characteristics of Neighborhoods Defined by Historic HOLC Grades and by Current Low- and High-Arrest Rates.

	HOLC Grades				Our Categories	
Average Values:	A	B	C	D	Low	High
Arrest Rate per 100 Population	3.4	7.1	9.6	11.7	0.50	13.6
Disadvantage Score (Voter File)	0.3	0.42	0.54	0.61	0.41	0.58
Household Income (000s)	168	45	22	17	73	22
Percent White (Voter File)	79.5	64.9	42.5	23.5	8.2	58.1
Percent Black (Voter File)	5.1	24.3	42.9	61.9	12.5	4.8
Percent of Area in High-Arrest Area	7.0	32.2	42.0	72.3		
Percent of Area in Low-Arrest Area	23.6	18.0	7.3	9.6		
Percent of Area in Grade A HOLC Area					1.40	0.10
Percent of Area in Grade D HOLC Area					0.70	3.2

Looking first at arrest rates, we see a movement from 3.4 percent for those areas previously defined as HOLC Grade A, to 11.7 percent for Grade D areas. Note that these numbers are higher than one might expect because these are all urban areas and some areas that were previously Grade A are no longer as exclusive, given the 90 years that have elapsed since 1937. Still, the progression from lower to higher arrest rates is clear. Looking at the same variable, arrest rates, these are 0.50 for our “low-arrest” areas and 14.6 for those we define as high-arrest zones. This is less remarkable as it is true by construction of the variables. The more remarkable part is how this corresponds to historical bank lending practices from almost 100 years ago.

Next, the Table shows average scores on the index of disadvantage, taken from the voter file, not the AOC defendants. This moves from 0.30 to 0.61 and similarly from 0.41 to 0.58 as we move from Grade A to D and from low- to high-arrest areas.

Household income goes down from $168,000 on average to $17,000 in the Grade A to Grade D zones, and similarly drops remarkably when we compare the largely overlapping low- and high-arrest zones. The percent White living in the area, the percent black shift dramatically in predictable ways as well.

The degree of overlap between the historic HOLC Grades and our current low- and high-arrest areas are summarized next: the percent of the historical zones currently in a high-arrest area moves from 7.0 to 72.3 as we move from Grade A to Grade D neighborhoods, and the share in a low-arrest area today declines form 23.6 to 9.6. This answers the question of whether the degree of overlap in the maps presented in the previous section were substantial; it is.

Finally, the last two comparison show the percentage of the area of a city currently defined as low- or high-arrest that were previously categorized as either Grade D or Grade A. Grade A areas account for 1.4 percent of the area currently defined as low arrest, but just 0.1 percent of those that are high-arrest. Grade D areas move from 0.7 percent of the low-arrest zones to 3.2 percent of the high-arrest areas. (Numbers are low because most low- and high-arrest areas are in areas of the city not covered by the historic maps.) The patterns laid out in the maps earlier in this chapter correspond strongly to the statistical patterns made apparent in Table 6-1.

Table 6-2 uses the more detailed analysis we conducted for Durham in Chapter 4.

Table 6-2. Comparison of Durham Neighborhoods by HOLC Grade.

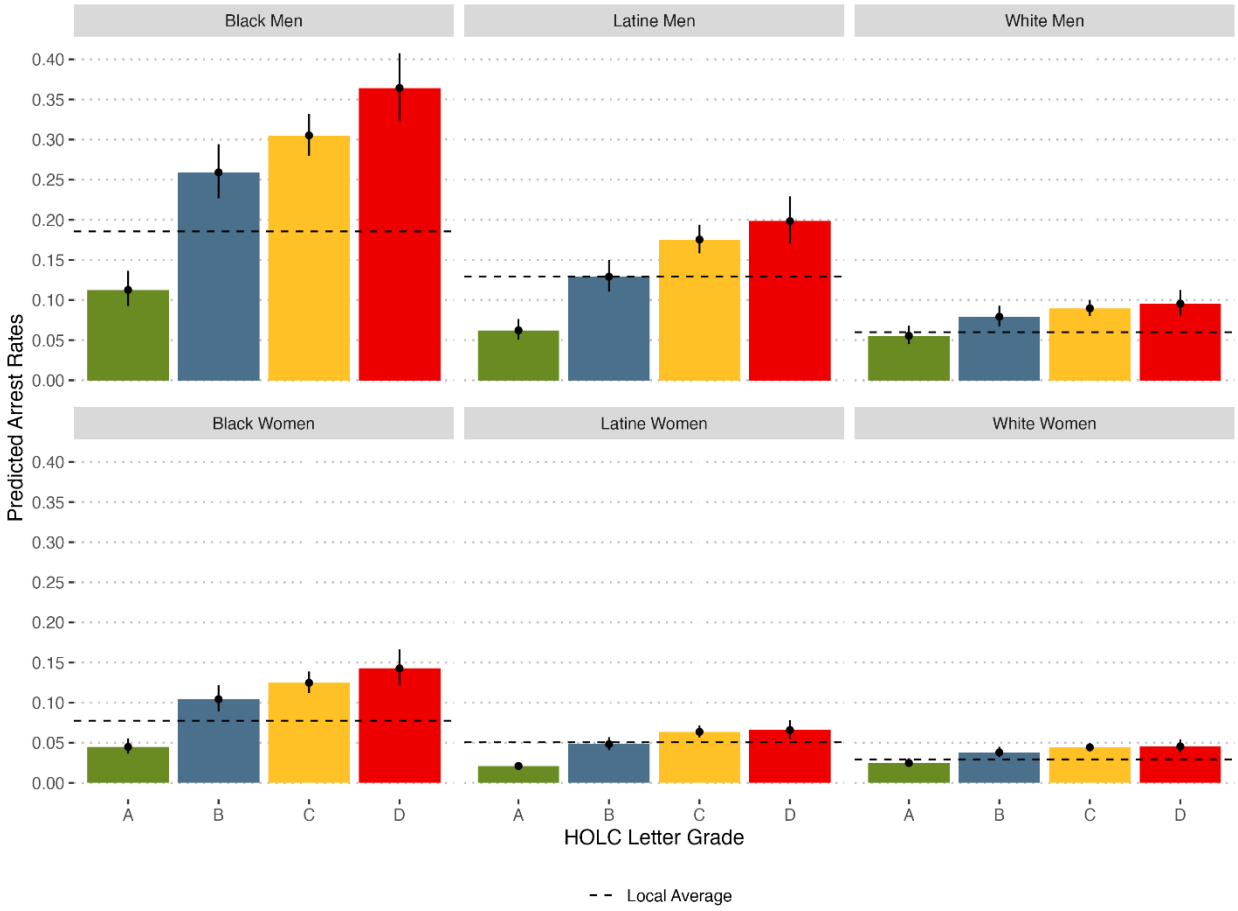
	HOLC Neighborhood Grade			
Comparison	A	B	C	D
Share of Population	1.2	0.9	6.6	4.3
Proportion of Area in HDHS Area	4.8	9.6	39.0	64.9
AOC Defendants	0.4	1.9	14.6	11.0
Directed Patrols	0.7	1.4	12.4	14.0
Emergency Complaints	0.8	1.4	12.9	10.2
Officer-Initiated Acts	0.9	3.0	14.4	11.2

Note: Numbers do not add up to 100 because many current neighborhoods are unclassified in the historic maps of 1937.

Approximately 13 percent of the Durham population currently lives in a neighborhood previously classified in the HOLC maps. Those living in the Grade D areas represent 4.3 percent of the city population, and 64.9 percent of this area is currently defined as a HDHS neighborhood (see Chapter 4 for that definition); these residents are 11.0 percent of all those listed in the AOC database; the areas see 14.0 percent of all the directed police patrols in the city; 10.2 percent of all the 911 calls (emergency complaints); and they represent 11.2 percent of the officer-initiated contacts with citizens. If we compare the share of defendants, patrols, complaints, and officer-initiated acts to the share of the population coming from these previously redlined areas, they are over-represented by factors of 2.6, 3.3, 2.4, and 2.6, respectively. This is a significant historical legacy.

Table 6-1 showed how the HOLC Graded neighborhoods have arrest rates currently ranging from 3.4 to 11.7 as we move from Grade A to Grade D. Figure 6-14 shows how this varies by race and sex.

Figure 6-14. Arrest Rates by HOLC Grade, by Race-Sex Category.



Figures 6-1 and 6-4 showed that we can never ignore race when looking at disadvantage, and that even when considering a general index of various forms of disadvantage, race and sex continue to play an important role in explaining contact with the police. Figure 6-14 shows that, controlling for neighborhood, Black men face extraordinary odds of arrest when they live in areas previously defined as redlined. Table 6-1 showed that arrest rates generally go up from 3.4 to 11.7 when moving from Grade A to Grade D. But these rates move from approximately 10 to 35 when the analysis is limited to Black men. Latine men see much increased arrest rates as well depending on the historic neighborhood grade, and Black and Latine women also show such a correspondence. These relations are much weaker, and the values are much lower, for White men

and for women, however. In fact, a White man living in a previously Grade D (relined) area has a lower predicted probability of arrest than a Black man living in an area previously Grade A. So, while the Black man can reduce his odds of arrest by moving to a different area, it never even approaches the value for White men.

Conclusion

This chapter has provided powerful evidence about the intersectional disadvantage for young men of color as they interact with the criminal legal system. Looking at economic disadvantage as well as identity-based characteristics of every person living in North Carolina, we showed not only that one's economic situation is highly correlated with race, but also that, even controlling for economic status, race continues to add an additional disadvantage to those who are so marginalized. Comparing the voter registration list with the set of defendants appearing in the NC AOC database, we showed that one skews toward the most advantaged and the other skews in the opposite direction. Looking separately at each race category, we saw that this pattern was consistent for each of them. As authors such as Crenshaw (2017) have theorized, no single additive index of marginality can capture the multiplicative disadvantages that come with intersectional identities. Poor young men of color living in high-arrest zones do not experience just a combination of those factors; the police focus on them in terms of surveillance is higher than would be expected if we simply added together their various identity characteristics. At the same time, the multiplicative advantages to those at the other end of the disadvantage scale, those who are most advantaged, are so advantaged by their multiple identities that their interactions with the criminal legal system appear to be completely out of place in those rare instances when they do occur.

We also documented the powerful effects of history. The legacies of redlining and housing segregation have powerful effects across the state today. But these legacies hit hardest in the category already most disadvantaged by other forms of marginalization: Black and Latine men.

7

Pleading Guilty to Something that Never Happened

Louisiana motorist Ronald Greene was killed in 2019 by state troopers after a high-speed chase and arrest. Trooper Kory York faced felony charges of negligent homicide and malfeasance when body-camera video showed him dragging Greene by his ankle shackles and forcing him to lie on his stomach, leading to his death. Six troopers participated in a brutal beating of Mr. Greene, in which they beat, punched, and kicked Mr. Green, restrained him on his stomach, and used tasers multiple times. York pled no-contest and was duly convicted. However, he did not plead to the charges originally filed; he pled no contest only to misdemeanor battery. This case sparked outrage and was one of many where law enforcement officials appeared to be punished with a slap on the wrist for official misconduct or homicide. The family of the victim was understandably outraged at the plea agreement, questioning whether there could ever be accountability (see Mustian 2024).

The terms of Trooper York's plea of no-contest required him to serve a year of probation and to testify against another trooper at trial. He retained, however, his pension and could not be named in a wrongful death suit since he had made no admission of guilt. So, clearly, Trooper York benefited greatly from the opportunity to avoid trial and to accept a lesser punishment. One could argue that the District Attorney benefited as well, since the terms required Trooper York to testify in court against another officer, something that is difficult to achieve in other circumstances. The losers in this case were the family members of the victim, who saw that the person most responsible for the death of their loved one would receive almost no punishment. There was another loser there as well: the truth. Trooper York did not engage in behavior that could be described as misdemeanor battery. Louisiana law defines "second degree battery" as

"battery when the offender intentionally inflicts serious bodily injury" and specifies the maximum punishment as imprisonment for up to eight years at hard labor, plus a fine of up to $2,000 (see Louisiana Code, Section 14.34.1); it is a felony, and punished quite severely. Simple battery, a misdemeanor, carries a maximum punishment of six months in prison and a fine of up to $1,000 (Section 14.35). Lesser punishments are also possible. Considering that Mr. Greene died as a result of this interaction, it seems clear that simple battery is an inappropriate and inaccurate conviction. However, that is the legal conclusion of the case.

The lenient (and possibly fictional) conclusion of the Louisiana criminal legal system in the case of Trooper York may seem to be an outlier. But in fact, it is quite common for individuals to plead guilty to reduced charges. Indeed, very few are found guilty of the charges for which they were arrested. Because of the vast scope of the criminal legal system, and the huge numbers of low-level offenses routinely charged against so many individuals, prosecutors, defense attorneys, and judges routinely deal with the vast majority of cases through a plea bargain. But, in order to induce a guilty plea, the system has to offer something to the defendant: reduced charges, or the dismissal of some charges in exchange for a plea of guilty to another. Often, as we will see, people plead guilty to things that never, in fact, occurred.

In this chapter, we assess a system that induces guilty pleas by the hundreds of thousands by offering the dismissal of some charges and the reduction of others to "lesser included offenses." That confusing phrase refers to the practice by which a person charged with a certain crime, say first-degree murder, may be convicted of lesser charges such as second-degree murder, manslaughter, criminally negligent homicide, or other lesser charges related to the original crime, but carrying much lower punishment. Drunk drivers can be convicted of reckless driving. Those committing assault with a deadly weapon can be convicted of assault. Those

committing attempted murder or felony battery can be convicted of misdemeanor battery (see the example with which we started this chapter). The system, either established by statute or through judicial precedent, allows a conviction to a lesser "included" charge if the evidence does not support the higher charge, but does support the lower one. So, one cannot be convicted of car theft if the original indictment reads murder and no car theft occurred. But, for lesser-included charges, one can be convicted of something that was never actually charged. (For a chart showing lesser included offenses for various charges, see New York State Defenders Association 2023.)

Because very few people go to trial before a jury, almost every case involves a guilty plea to something. In negotiating these pleas, prosecutors can dismiss some charges entirely, allow a person to plead guilty to a lesser-included charge, or they can insist on going to trial in order to obtain a conviction as charged. In some cases, one may be able to negotiate a plea agreement where the most serious conviction is at the same level of punishment severity as the charge at the time of arrest. For example, if a person faces five charges, a prosecutor might retain the highest-level charge but dismiss the lower charges in exchange for a guilty plea. Or, a person may face multiple counts of a particular crime (murder, assault, possession of stolen property, robbery, larceny, selling drugs…) and plead guilty to one or some of them, seeing the others dismissed.

Another consideration is that, particularly for serious crimes, individuals are often charged with multiple offenses associated with the same behaviors. Consider a store robbery gone bad, with a homicide. The person so accused could be charged with trespassing (if they were on the premises after being asked to leave), kidnapping (if they ordered any store occupants to move to a particular place, or prevented them from leaving), robbery (if they took something of value), possession of stolen goods (if they have the items they stole), attempted murder (if

they shot or acted toward someone with intent to kill, but did not kill), murder (if a person was killed in the situation), and other crimes that might have stemmed from an attempt to flee the scene or avoid arrest (e.g., avoiding arrest, obstruction of justice, assault on an officer, and so on). If there were multiple victims, there could be several counts of some of the charges. Stealing a radio from a car could involve charges of breaking and entering into an automobile (even if the car was unlocked with the windows down), burglary, possession of stolen property, and / or charges relating to attempting to sell the radio. The practice of "piling on" multiple charges that derive from the same behavior gives an opportunity to the DA to dismiss some of them but retain others. With fewer charges initially filed at the time of arrest or arraignment, there is less opportunity for bargaining. So, the plea-bargaining system has many implications, including an incentive for the police and prosecutors to over-charge.

This system can work for the individual whose case is being adjudicated because they may see a significantly lower punishment. It works for the state because it allows prosecutors to dictate the terms of punishment and to avoid costly and uncertain trials. It works for the court because it reduces the judicial work-load. But these legal fictions can also undermine public trust. They can make individuals charged with a crime believe that the legal system is "just a game" and that one can avoid accountability for one's actions by "taking a plea." Individuals facing charges may rightly feel that charges were added on at the front end merely for the purpose of dropping them at the back end in order to enhance the DA's bargaining position in the plea negotiation. Victims are ill-served when the court's final verdict suggests that the crime against them was less serious than initially alleged, or that the most serious element of the crime did not happen.

We explore a number of scenarios here, but they all point in the same direction: From the bottom to the top of the criminal legal system, only 20 percent of charges lead to a finding of guilt at the same level as the offense charged immediately after arrest. This rate is even lower for the most serious charges. Rather than being found guilty of what the police allege the person did, about half of all charges are dismissed, and in the other cases the person pleads guilty to a lesser charge, often to something that never occurred.

Our point is not to complain about people receiving some leniency from the courts from time to time, nor that there is something wrong with what DA's and judges are agreeing to. It is to emphasize to the reader who may not be familiar with the day-to-day workings of any state court system that the first challenge is to manage the crushing workload associated with low-level crimes and infractions. Second, a lot of leniency is built into the plea bargaining system, and a wide range of acceptable, even likely, outcomes can follow from a single arrest incident. When we think about the punishments associated with each crime (that is, the punishment grid, described in Chapter 2), we have to keep in mind that these punishments relate to final verdicts, not initial charges. The punishments many times can be relatively tough, particularly for high level crimes. However, comparing charges on which people are initially indicted to those on which they are eventually issued a verdict, we see a huge slippage. This is where the action is, and we will return to this in later chapters assessing how individuals of different social identities come through the system; naturally some will do better than others.

A second important element in this system is that leniency may not be available for those with multiple interactions with the criminal legal system; those experiencing their first interaction with the legal system benefit from these reductions more than those with multiple previous arrests, particularly in a short time period. Most people would find this a reasonable

system, but few might recognize the dramatically enhanced odds of harsh outcomes for those who are over-policed. We will come back to this point at several points in later chapters.

A final point is about deterrence and trust in the system. Everyone charged with a given crime cannot go to trial to defend themselves from those charges; there are too many cases. Therefore, a vast and routinized system encourages DA's to offer reductions in charges based on factors such as whether a person has previous convictions or other characteristics known to DA's offices but not to the general public. Individuals are encouraged to accept these, and often times if they do not accept, then they can expect the DA to insist on a harsher punishment (read: conviction level) if the person goes to trial. All this cannot help but make people in the system believe that it is a game and that the goal is to get the best possible deal. This is far from what one might hope if the goal is to make people respect the law and accept the consequences for their actions. A system designed to do that would be much more expensive, prohibitively so in the eyes of many lawmakers and judicial actors, apparently.

These dynamics are by no means limited to the lower levels of the criminal legal system. In fact, we see it across the board, from the most trivial infractions to first degree murder. In the following sections, we compare charges to verdicts, showing the commonality of reduced or dismissed charges. Then we zoom in on two particular aspects of the system, one at the low end, speeding tickets, and several at the high end, serious felonies such as rape, assault with intent to kill, and murder. We see the same system at work. Finally, we look at the methods of disposition across the system: plea agreements and guilty pleas, even for the most serious felonies.

Guilty Pleas, Dismissal of Charges, Reduction of Charges, and the Rare Jury Trial

A person expecting "their day in court" would be sadly disappointed in the NC criminal legal system. Just a tiny fraction, well below one percent, or charges are decided in a jury trial. Much

more common are dismissals of charges by the District Attorney or pleas of guilty as part of a plea agreement. The NC AOC database on which we rely includes information about the plea and verdict for each charge, as well as on the "method of disposition" of each charge: Was it disposed by a jury trial, by being dismissed, by a guilty plea in front of a judge, or by other means? Table 11-1 shows guilty pleas, and Table 7-2 focuses on methods of disposition.

Table 7-1 shows the share of guilty and not guilty pleas to each level of offense charged by the state. The overall N of just over 4 million refers to every charge in the state for which there was a resolution. (That is, it omits charges which were dismissed.)

Table 7-1. Guilty and Not Guilty Pleas by Level of Charges.

Charged	Not Guilty		Guilty		Total	
Offense Level	N	%	N	%	N	%
Infractions	6,883	2.9	227,183	97.1	234,066	100.0
Traffic	55,912	2.2	2,539,016	97.8	2,594,928	100.0
Misdemeanors	96,334	12.6	670,107	87.4	766,441	100.0
Felonies	8,170	2.2	365,542	97.8	373,712	100.0
Class A Felonies	189	19.6	775	80.4	964	100.0
Overall	170,211	4.2	3,845,880	95.8	4,016,091	100.0

Note: Guilty includes GU (guilty), GL (guilty to lesser); GA (Alford plea); RS (responsible); RL (responsible to lesser); and NC (no contest / nolo contendere). Not guilty includes NG (not guilty) and NR (not responsible).

Over 95 percent of all charges moving to judicial resolution are associated with a plea of guilty. Even among felonies, this number is 98 percent. In the 964 cases with capital murder charges (e.g., Class A felony), fully 80 percent of the charges were resolved with a plea of guilty. Of course, most guilty pleas include negotiations so that the person pleads guilty to a lower-level offense class than the one originally charged, thereby reducing their punishment from what might otherwise occur. But to say that plea bargains are common in the state judicial system is an understatement. Jury verdicts are rare, as are pleas of Not Guilty. The vast majority of cases, not just a small majority, are settled with a plea agreement, generally to lesser charges, with other charges voluntarily dismissed by the district attorney.

Charges Dismissed, even for Violent and Sexual Crimes

Table 7-2 shows the method of disposition for crimes of violence, including those listed in Chapter 2 as "violent" as well as those coded "sexual with contact." The database includes just over 700,000 such charges, for which we know the method of disposition for almost 695,000. We might consider these to be the most important or severe cases in the entire criminal legal system: violent assaults against people and sexual crimes including rape and sexual assault. In these cases, we might expect District Attorneys to be particularly attuned to the need for strong punishments and for juries to be involved in adjudicating these cases. However, in fact we see no difference from the general trends we will explore in greater detail throughout this chapter; just 0.66 percent of these cases go to a jury, and 60 percent see a voluntary dismissal by the DA. Of course, the defendant may see other charges and plead guilty to other serious crimes. However, dismissal of charges is the most likely outcome, by far, even for the most serious crimes in the NC criminal legal system.

Table 7-2. Method of Disposition for Charges Involving Violence or Physical Sexual Assault.

Method of Disposition	N	%
Jury	4,566	0.66
Judge	149,085	21.47
Voluntarily Dismissed by the DA	414,046	59.63
Dismissed with Leave by the DA	6,310	0.91
Waived by Clerk of Court	8	0.00
Superseding Indictment	87,874	12.66
Waived PC (Transfer to Superior Court)	6,672	0.96
Other	25,763	3.71
Total	694,324	100.00

Note: Includes charges coded as "violent" or "sexual with contact."

Victims of violent crimes rightly expect that those charged with crimes against them will be convicted if the evidence allows it. But fewer than one percent of violent felonies are adjudicated by a jury; more than 20 percent are ruled by a judge, generally indicating a plea agreement to a lesser crime. It may shock the reader to see that 60 percent of such crimes are

dismissed; generally, these are associated with a plea agreement for the accused to plead guilty to another charge in exchange for a given charge to be dismissed. Thus, we see individuals charged with such crimes as statutory rape (a B-1 Felony carrying extensive prison time) pleading guilty to indecent liberties with a child (a Level F Felony carrying much lower punishment), or individuals charged with second degree rape (Felony, Level C) pleading guilty to Assault on a Female (Misdemeanor, Level A-1). It is possible that some of the charges did not have enough evidence to be proven beyond a reasonable doubt to a jury. However, it is also possible that an overworked prosecutor decided it was "in the interests of justice" to accept a plea agreement so that the accused would at least be punished for something.

Charges and Convictions Compared

Table 7-3 shows the outcomes of over 6 million arrest-incidents. (Recall that an arrest-incident can involve multiple charges all stemming from the same actions.) For each incident, the Table lists the most serious charge facing the individual at the time of arrest, and then the most serious conviction that derived from all of those charges. To those not already familiar with the workings of the criminal legal system, the numbers are shocking.

Table 7-3. Most Serious Charges at Time of Charge and Conviction, by Offense Level.

Offense Level	Convicted As Charged		Reduced to Lower Felony		Reduced to Misdemeanor		Dismissed		Total Charges	
	N	%	N	%	N	%	N	%	N	%
Felony Class A	152	8.4	757	41.9	6	0.3	901	49.9	1,806	100.0
Felony Class B1	638	12.8	1,655	33.3	247	5.0	2,433	49.0	4,969	100.0
Felony Class B2	149	9.7	523	34.1	109	7.1	749	48.8	1,534	100.0
Felony Class C	1,123	11.2	3,204	31.8	1,118	11.1	4,603	45.7	10,062	100.0
Felony Class D	3,049	15.6	5,794	29.6	1,609	8.2	9,076	46.3	19,601	100.0
Felony Class E	3,029	14.7	3,279	15.9	3,663	17.8	10,423	50.6	20,595	100.0
Felony Class F	6,903	31.8	1,151	5.3	4,098	18.9	9,440	43.5	21,716	100.0
Felony Class G	13,734	32.7	4,507	10.7	3,794	9.0	19,876	47.3	42,048	100.0
Felony Class H	74,266	27.4	9,538	3.5	57,930	21.4	126,594	46.8	270,589	100.0
Felony Class I	32,927	24.3	5	0.0	37,022	27.3	64,616	47.7	135,553	100.0
Misd. Class A1	49,103	19.6	-	-	13,030	5.2	188,962	75.3	250,820	100.0
Misd. Class 1	161,847	27.9	-	-	30,045	5.2	388,766	67.1	579,571	100.0
Misd. Class 2	70,348	23.1	-	-	9,088	3.0	224,602	73.9	303,900	100.0
Misd. Class 3	142,197	34.7	-	-	9,729	2.4	257,813	63.0	409,531	100.0
Traffic - Class A1	446	48.2	-	-	253	27.4	222	24.0	925	100.0
Traffic - Class 1	62,363	27.9	-	-	35,192	15.7	126,199	56.5	223,475	100.0
Traffic - Class 2	46,719	14.5	-	-	119,523	37.2	155,239	48.3	321,594	100.0
Traffic - Class 3	627,631	16.3	-	-	1,402,429	36.4	1,815,736	47.1	3,853,693	100.0
Infraction	3,263	12.2	-	-	-	-	23,587	88.4	26,669	100.0
Total	1,299,887	20.0	30,413	0.5	1,728,885	26.6	3,429,837	52.8	6,498,651	100.0

Note: “Convicted as charged” includes a small number of cases where the conviction was actually to a higher offense level. This involved only 0.2 percent of all the cases shown, and over 95 percent of these enhanced convictions were for Class 3 Traffic violations.

Looking first at the top row of data shown, 1,806 arrest-incidents involved a charge of first-degree murder, the only charge which qualifies as a Class A Felony. Of these, 8.4 percent led to such a conviction, 152 cases out of 1,806. Another 42 percent were convicted of a lower-level felony, a small handful were convicted only of a misdemeanor, and 49.9 percent saw all charges dismissed. Note that the Table reports the most serious convictions stemming from all the charges in the same arrest incident. So "Dismissed" means that all the charges were dismissed, not just one or two out of a larger number. If a person faced three Class A Felony charges and pled guilty to one of them, with the other two dismissed or reduced, this would be reflected as one charge and one conviction, since the table is reporting on the most serious charge and the most serious conviction stemming from the incident. In other words, we may be under-estimating, rather than over-estimating the leniency of the system here.

Table 7-3 presents the charges in descending order of seriousness, from Class A felony on down. It is perhaps most instructive to look at the columns showing the percentages "convicted as charged" and "dismissed." Looking first at "convicted as charged," none of the most serious felony classes (Class A through Class E) shows as many as 16 percent convicted of the same class of offense as the person was facing at the time of arrest. Typically, about half of all these charges are dismissed, with 30 to 40 percent convicted of a lower-level felony. This last statistic (pleading guilty to a lower-level felony) is consistent with a system promoting plea bargains, though the earlier statistic (half of all serious cases being dismissed) suggests something else entirely: false arrest, incomplete police investigations causing the prosecutor to decide there is not sufficient evidence to proceed, or something else. Because we are looking at arrest-incidents, not only charges, dismissal refers to dismissal of all charges.

Lower-level felonies (Class F to I) have slightly higher rates of seeing the person be convicted as charged, but still we see approximately half of all of these charges dismissed. Similar patterns obtain for misdemeanors, though here we see even higher shares being dismissed, often three-quarters of all charges. The most common (but serious) traffic violations, Class 3, see just 16 percent of people being convicted of the same class as their initial charge, with large shares being reduced and half being dismissed.

In order to dive deeper into what appears to be a key element of the criminal legal system, we look at particular aspects of the system in the two following sections. First, we look at speeding tickets, and later we look at some of the most serious felonies in the database: rape, attempted murder, and assault with intent to kill. We see surprising similarities.

The Case of Speeding

Our database includes 2.39 million occurrences of serious speeding violations (that is, where the allegation of the officer is that the driver was exceeding the speed limit by more than 15 mph). Of these, 2.3 million were resolved with some kind of verdict or resolution (the remaining number were still pending at the end of 2019, when our data collection came to an end). Of these 2.3 million speeding charges, 1.2 million were "clean" speeding charges in the sense that there were no other charges associated with the incident. It is not uncommon for a speeding charge to be associated with another charge from the same incident such as expired tags, failure to wear a seatbelt, and so on. We ignore all these cases for the moment and focus on the 1.2 million incidents where a police officer pulled a motorist over and charged them with speeding by more than 15 MPH over the posted speed limit or over 80 mph, and no other charge. (That is, we focus here on offense code 5450, NC GS 20-141-(j1).) This offense, one of the most common offenses in our database, is a Class 3 misdemeanor punishable by a fine of $50, court costs, and leading to

4 points on the license where 12 points in a period of 3 years leads to suspension of the driver's license and where any points are also associated with increased rates for car insurance under the "safe driver insurance plan" used by many state insurers. Reducing the charges to offense code 4450, speeding less than 10 miles over the posted limit, is an infraction and results in fewer points, a lower fine, and the ability to pay the fee on-line without the need to appear in court. Therefore, this reduction is very beneficial to the driver. Even better for the driver, the charge could be reduced to an equipment charge. Strangely perhaps to those unfamiliar with the system, the most common outcome of a speeding charge in North Carolina is a reduction to "improper equipment – speedometer" (code 4418). Section 20-123.2 of the NC General Statutes reads as follows:

> § 20-123.2 Speedometer.
>
> (a) Every self-propelled motor vehicle when operated on the highway shall be equipped with a speedometer which shall be maintained in good working order.
>
> (b) Any person violating this section shall have committed an infraction and may be ordered to pay a penalty of not more than twenty-five dollars ($25.00). No drivers license points, insurance points or premium surcharge shall be assessed on or imputed to any party on account of a violation of this section. Source: https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_20.html.

And section 20-141(o) lays out that such a violation is a "lesser included offense" for various speeding violations, with few limitations.

Clearly, seeing a moving violation reduced to an equipment violation is a vast improvement in the situation for any driver, and a small industry of attorneys helps individuals with their speeding tickets each year. With 2.39 million such tickets over seven years, this is over 300,000 such tickets per year. Looking only at the 1.2 million where no other charges were assessed, Table 7-4 shows the outcomes of these "simple" speeding tickets.

Table 7-4. Convictions following 1.2 Million Charges for Speeding.

Description	Code	Class	Number	Percent
Improper equip - speedometer	4418	I -	558,990	46.3
Speeding	4450	I -	390,220	32.3
Speeding	5450	T - 3	85,944	7.1
Improper muffler	4486	I -	18,698	1.6
Exceeding safe speed	4467	I -	10,998	0.9
Other			45,438	3.8
Dismissed			97,422	8.1
Total			1,201,205	100.0

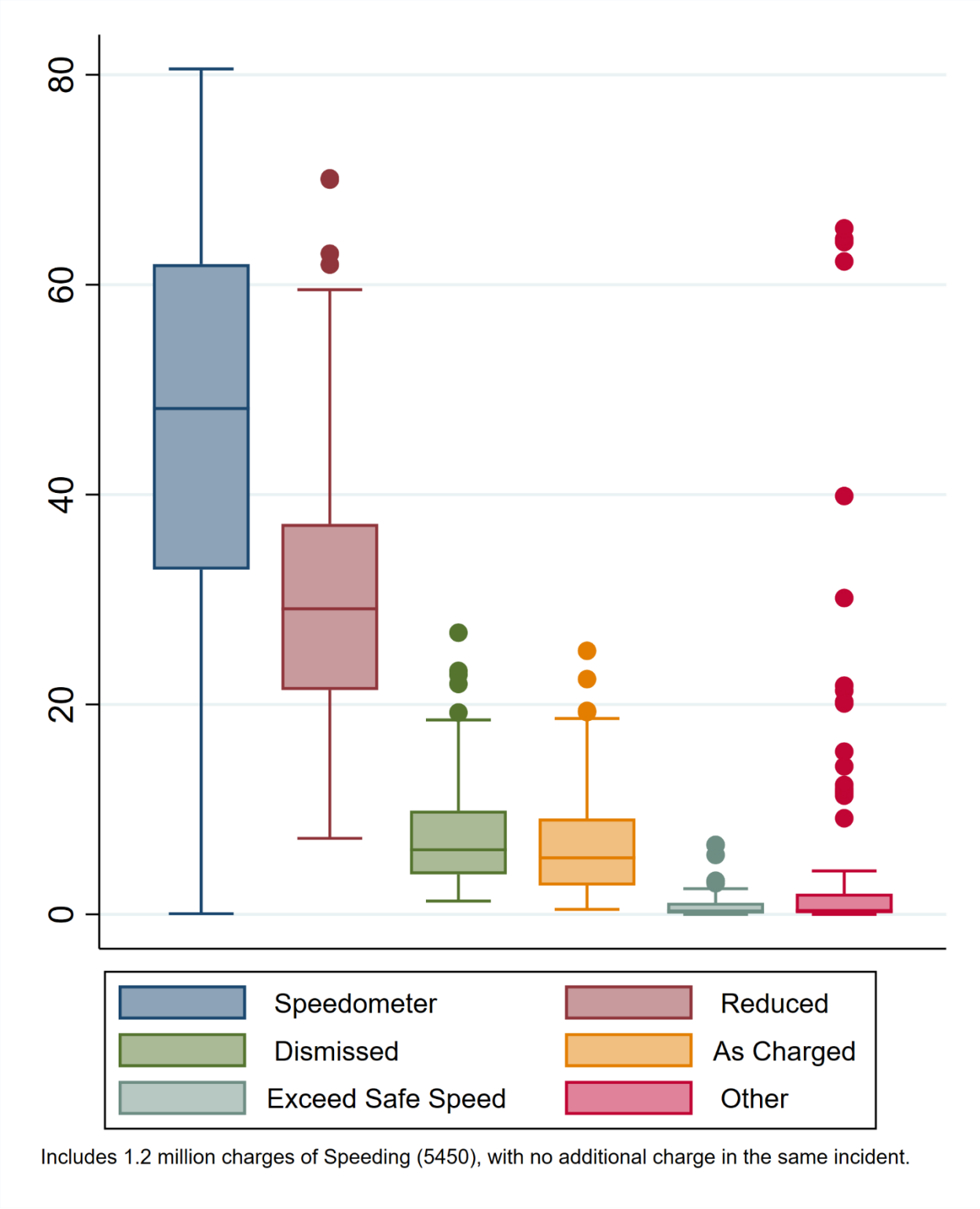
Note: The table reflects the verdicts associated with those charged with code 5450, speeding, in incidents that involved no other charges.

Statewide, just seven percent of those charged with offense code 5450 are so convicted. A roughly similar number (eight percent) get the best possible outcome, dismissal of the charge. Thirty-two percent of those charged with speeding over 15 miles over the limit see these charges reduced to a lower level of speeding (offense code 4450), but fully 46 percent of the charges are reduced to broken speedometer. A few are reduced to "improper muffler," an equipment violation, not a moving violation. Some are reduced to "exceeding safe speed", an infraction with fewer points. And about four percent of the cases see miscellaneous other outcomes.

The legislature explicitly allows the reduction of charges for speeding (as long as the violation is less than 25 MPH over the speed limit) to broken speedometer, and a reduction in charges from a higher fine and punishment to a lower level of speeding is what makes plea bargaining possible, avoiding hundreds of thousands of court appearances throughout the state each year. It is worth pondering and understanding the implications of these common systems, however. At the core, if the two sides agree and the judge allows, the state allows a fiction. The condition of the speedometers in our state is unlikely to be as dismal as implied by the idea that 100,000 individuals are convicted of driving with a broken speedometer each year.

Figure 7-1 shows the wide distribution of outcomes from speeding charges across the 100 counties of the state. For each outcome, the bars reflect the range of outcomes, expressed as a percentage of all outcomes for that county.

Figure 7-1. Outcomes of Speeding Charges across North Carolina Counties.



Includes 1.2 million charges of Speeding (5450), with no additional charge in the same incident.

The horizontal line at the center of each part of the figure shows the median outcome; for almost every county, the most common outcome by far is “broken speedometer,” followed by

reduced speeding charges. Next most likely is to see the charges dismissed, followed by being convicted of the charge initially alleged. Smaller numbers are convicted of "exceeding safe speed," as discussed above. Then the Figure shows that in a few counties various and idiosyncratic other outcomes are more likely.

This includes Iredell County, which shows 65 percent of its convictions for "faulty muffler" (code 4486); Hyde, 30 percent city / town violation (8410); Tyrell, 16 percent city / town violation (8410), 24 percent traffic control device violation (8501); Edgecombe, 59 percent failure to wear seat belt – driver (4470); Nash, 60 percent failure to wear seat belt – driver (4470); and Wilson 57 percent failure to wear seat belt – driver (4470). If one wonders what these verdicts have in common, they are all infractions, and none are moving violations. The fact that the allegation was that the driver was speeding by over 15 mph does not preclude the courts from reaching the conclusion that actually what they were doing was not wearing a seatbelt, rather than speeding. If the DA offers it, and the court will accept it, of course the driver benefits from agreeing to such a fiction.

Not only are there numerous idiosyncratic outcomes shown in Figure 7-1, but there is also wide variation in the main outcomes: broken speedometer, for example. This is not only because certain small counties are outliers. Durham County, with 16,000 charges, converted 32 percent of them to broken speedometer. Forsyth, with 23,000 charges, did so 81 percent of the time. Other large counties showed these results: Mecklenburg (95,000 charges, 50 percent broken speedometer); Wake (110,000 charges, 16 percent broken speedometer); Guilford (47,000 charges, 72 percent resolved as broken speedometer). So, even in these large counties with tens of thousands of these charges, the "broken speedometer" outcome ranges from 16 percent to 81 percent. Speeders are advised to be adjudicated in Forsyth County, not Wake.

No county in North Carolina convicts a large share of those charged with speeding more than 15 MPH over the limit with that exact same crime. However, they appear to follow idiosyncratic patterns in exactly how to offer a plea, or which plea to offer, to induce the driver to accept what is offered. No matter the system, they find a way to reduce the vast majority of traffic charges from a Class 3 misdemeanor to an infraction. Many move the charge entirely out of the moving violation category completely, saving the driver significant consequences with their insurers. Others do not offer this generosity, but they all reduce charges in the vast majority of cases. The system is the same, but the solutions can be creative, and they differ substantially from county to county.

Linking Traffic Stops with AOC Records

North Carolina has the longest-running data collection on traffic stops, with data on over 25 million traffic stops available state-wide since 2002 (and since 2000 for the State Highway Patrol; see Baumgartner et al. 2018). Looking from 2002 through 2020, approximately 10.5 million of the total 25 million traffic stops were for speeding violations, by far the most common stop purpose listed in the database, 42 percent of total traffic stops. Each year, the number of speeding-related stops ranges from approximately 400 thousand to over 650 thousand stops. Most of these (approximately 78 percent, ranging from 71 to 84 percent) result in a citation or arrest. A simple speeding ticket would typically lead to only a citation, but approximately 2 percent of drivers are arrested as a result of the speeding violation, typically for driving while intoxicated, possession of contraband, or something else unrelated to speeding. A speeding violation itself would not normally lead to arrest; it seems fair to assume that those arrested after a speeding violation would also receive a citation for speeding, and the numbers below count them as such. In any case, arrests represent only two percent of the results of speeding stops, and

citations alone are 63 percent of the outcomes. Others are resolved by the officer with either no action (3 percent), a verbal warning (18 percent), or a written warning (14 percent). These data allow us to assess the scope of state investment in speeding control, and to compare the NC AOC database on which we rely to another independent source of data. Figure 7-2 shows the total number of speeding stops and the subset of those stops leading to a citation. Each citation, theoretically, should generate an entry in the courts database, and those from 2013 to 2019 should be available to us.

Figure 7-2. Traffic Stops and Citations for Speeding.

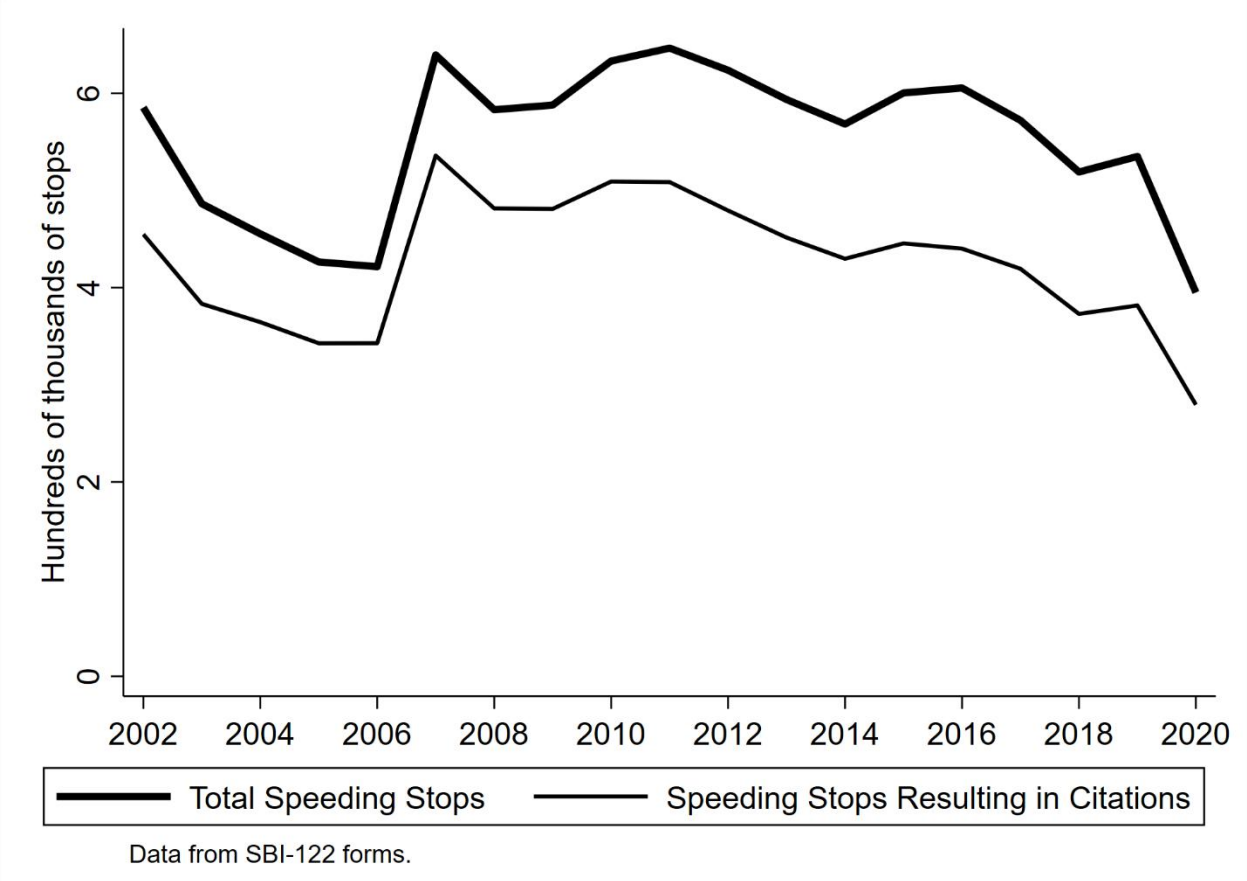


Figure 7-2 shows what was described above, approximately 4 to 6 hundred thousand traffic stops per year, with about three-quarters of these leading to a citation. From 2013 through 2019, this would reflect 4 million speeding violations and 2.94 million citations. Our database includes 1.8 million speeding violations. What would explain the missing 1.1 million

observations? The most likely explanation is that those speeding violations were for code 4450, which is an infraction. Our courts database has only "criminal offenses", not infractions. So, a person with a speeding ticket for under 15 MPH above the limit (code 4450) would not be expected to appear. (We have such cases in our database only when the same arrest-incident included a misdemeanor or felony-level charge as well.) In general, the two datasets do not correspond perfectly, but there is a high level of correspondence between them and good reasons why the SBI statistics would show more observations than we would expect to see in our courts database.

These data on traffic stops, combined with the data on reduction in charges discussed in the previous section, suggest an interesting interpretation. State troopers and other sworn officers regularly pull over a half-million individuals each year for speeding. Of course, this comes at great expense to the state and various police departments and sheriff's offices. Troopers, officers, and deputies are lenient at the scene of the traffic stop about 25 percent of the time, presumably because in their judgment a warning and perhaps a stern talking-to will deter the driver sufficiently, or perhaps because the observed level of speeding was only marginal. In any case, there is some leniency at the discretion of the officer, declining at the scene to issue a citation, though the officer conducted a stop for an observed violation of the speed limit. It seems most likely that the vast majority of those pulled over for speeding are guilty, though of course they have a right to contest the charge. (Indeed, any motorist would know that the vast majority of those not pulled over were guilty as well, few drivers scrupulously observe the speed limits.)

One might expect, given that police officers have the first opportunity to decide on leniency and that everyone pulled over must have been (in the judgment of the officer) guilty of the offense, that the leniency would stop at the moment of citation. But we saw above that only

seven percent of those charged with speeding code 5450 are convicted of that offense. Slightly more common that "convicted as charged" is "dismissed" – complete dismissal. But the real surprise in the system is the high statistical odds of a dramatic reduction. The most common reduction is highly advantageous to the driver, since "broken speedometer" is an equipment rather than a moving violation and involves no points on the license and has no implications for the cost of automobile insurance. If this is not possible then other reductions to infraction-level speeding are also very common; in fact, that conviction is over four times as likely as a conviction of the crime alleged by the arresting officer. To put this in plain language, the Court concludes that the officer was in fact inflating the speed of the driver, clearly an unlikely conclusion if one is not familiar with the dynamics of plea bargaining.

With a half million speeding violations coming into the system every year, some method of dealing with the huge volume is fundamental. The state conveniently has an on-line form where individuals can request a reduction in charges for any speeding ticket and where the local district attorney can offer a plea agreement to a reduced charge. If the driver pays the fee before the court date, the driver need not attend court (see "Online Request for Reduction of Speeding Fact Sheet for Public Users" available at https://www.nccourts.gov/help-topics/traffic-and-vehicles/traffic-violations). More importantly, perhaps, the judge and the district attorney's office need not be there either.

This deep dive into the seemingly inconsequential world of speeding tickets is for a purpose. First, it gives an idea of the scope of the low-level infractions with which the criminal legal system is literally overloaded. Traffic stops along constitute 1.0 to 1.7 million occurrences per year, with speeding a large share of these. If each person charged with a crime insisted on "their day in court", even for the most routine offenses, the state would need to increase the

number of courtrooms, judges, public defenders, and the staffs of district attorneys. Plea bargains are the one and only manner of dealing with the large scope of low-level infractions. Of course, they also affect high-level criminal violations as well, but for now the point is that the criminal legal system is very strongly oriented to a method and a system of managing an overwhelming caseload. The vast bulk of that caseload comes from low-level infractions, with traffic being one of them, but (as we saw above), drug possession cases also constituting a huge logistical burden on the system.

A second reason to explore these low-level events is to understand how much can change from the moment of arrest to the final verdict. A speeding ticket for 18 miles over the limit can be transformed into an improper muffler, to speeding by 8 miles an hour, to not wearing a seatbelt, or to driving with a broken speedometer. Rolling through a stop sign in a residential neighborhood can become a broken speedometer, as it did to a Political Science colleague of one of the authors. While the driver was of course pleased with the reduction in charges since it had many positive consequences for him, it is still worth puzzling over what this actually means. The state of North Carolina agreed to a complete fiction, that this driver thought he had come to a stop (presumably because his faulty speedometer read zero) when he failed to stop at a stop sign. Most of us can tell whether our car comes to a full stop, and few rely on the speedometer reading to tell us whether we have done so. But, in the legal fiction that is the plea-bargaining system, if the DA's office agrees to it, and the driver and the court accept, then this fiction is a legal fact. So much is this embedded in the code that the legislature explicitly allows it, as it did by including "broken speedometer" as a "lesser included offense" for any charge of speeding (see NC GS § 20-141 (o)).

The Most Serious Crimes: Commonly Dismissed, Often Reduced, Rarely Leading to Conviction as Charged

One might think that the dynamics of plea bargaining described in the previous section are limited to such prosaic matters as speeding. Everyone wants a little leniency when faced with a serious speeding ticket, and what is the harm of reducing some share of these, particularly for those with no previous offenses? Surely, one might think, such leniency would not apply to the most heinous crimes such as murder, sexual assault, and rape. The data in this section will dispel such wishful thinking.

Table 7-5 lists the numbers of charges and verdicts for the most serious crimes in our database, Class A, B1, and B2 felonies. The Table shows the raw numbers for each offense, and the number of verdicts as a percentage of the number of charges. If this number were 100, then each person charged with that offense would be convicted of it. Also, if a person were charged with 10 counts of the offense, then a value of 100 would mean that they were convicted on each count. If the number is 10, then for each 100 individuals charged with that offense, only 10 are convicted of it, or a person charged with 10 counts would be convicted of only one of them. We will explore reductions, plea bargains, and dismissals of charges in later sections of this chapter. For now, we focus just on what percentage of charges lead to a finding of guilt for that exact charge.

Table 7-5. Charges and Verdicts, Felony Class A, B1, and B2 Offenses.

Felony Class	Code	Offense Description	Charges	Verdicts	%
A	0935	First degree murder	3,543	261	7
B1	1137	Stat rape/sex offn def >=6yr	4,210	275	7
B1	1107	Statutory rape of child <= 15	1,927	87	5
B1	1112	Stat sex off with child <= 15	1,914	125	7
B1	1116	First degree sex offense child	1,485	91	6
B1	3641	Stat sex off w/child by adult	1,234	72	6
B1	1111	First degree statutory sex off	682	64	9
B1	1103	First degree rape	684	46	7

B1	1132	First degree sexual offense	613	73	12
B1	3636	Sexual offense with a child	587	32	5
B1	3640	Stat rape of child by adult	574	28	5
B1	1131	First degree force sex offense	547	18	3
B1	1104	First degree forcible rape	520	19	4
B1	0944	Second degree murder	454	669	147
B1	3635	Rape of a child	305	13	4
B1	1120	First degree rape child	285	16	6
B1	3631	Incest child < 13 def >= 4	285	35	12
B1	1110	First degree statutory rape	266	40	15
B1	3632	Incest child 13/14/15 def >= 6	246	27	11
B1	5247	M/p/s nuc/bio/chem weapon	2	0	0
B2	0951	Attempted first degree murder	2,064	149	7
B2	3838	Int child abuse-ser bod inj	836	51	6
B2	1151	Human trafficking child victim	198	11	6
B2	0942	Second deg murder w/o regard	156	94	60
B2	0943	Second deg murder dist drug	90	7	8
B2	1142	Attempt 1st degree rape	81	10	12
B2	1127	Atmpt 1st degree forcible rape	78	2	3
B2	1144	Attempt 1st degree sex offense	75	21	28
B2	1129	Atmpt 1st degree force sex off	44	5	11
B2	4706	Repeat felony death by vehicle	1	0	0
Total			23,986	2,341	9.8

The numbers in Table 7-5 differ from those presented in Table 7-3, because Table 7-5 refers to each individual charge and Table 7-3 referred only to the most serious charge facing the individual at the time of arrest. For example, in the first row, Table 7-5 shows 3,543 charges for first-degree murder. Table 7-3 showed 1,820 such cases; this is because many individuals faced multiple charges. In Table 7-3, we saw that just 152 out of 1,806 individuals facing Class A felony charges were so convicted, or 8.4 percent. Here, we see that while there were 3,543 Class A charges filed, only 261 verdicts followed, 7 percent of the number of charges. (Table 7-5 also shows code 0944, second degree murder, a Class B1 felony with a minimum presumptive punishment of 18 years in prison, with 454 charges but 669 verdicts; we will see below that many of those arrested for higher-level offenses are found guilty of lower-level ones, and this is

such an example.) So, while Table 7-3 reported on the highest-level charges, Table 7-5 reports on all charges. Both, however, tell a similar story.

Table 7-5 should read like a person's worst nightmare. These are the most serious, heinous, and awful crimes in the North Carolina court system. Reading down the columns, we see over 4,000 statutory rapes as well as thousands of other crimes related to sex with minors. Every offense after the first one down to code 0944, second degree murder, is a sexual crime, most with child victims. In all, the Table lists 14,977 such sexual crimes (from offense code 1137 down to code 1104). From these, we see 930 convictions, with many of the individual charges seeing rates of conviction for the charged offense of 5 percent or lower. Even human trafficking of a child (offense code 1151) sees convictions equal to just 6 percent of charges.

Because Table 7-5 includes every charge at the very highest levels of the legal system, it is fair to view it as the list of the most serious crimes alleged to have occurred in the state during the period of our study. Of almost 24,000 charges, we see fewer than 2,400 convictions, just under 10 percent.

So, what was occurring in the section above about speeding tickets is also happening at the very top of the criminal hierarchy, with the most serious crimes.

Just as when an individual who speeds by 20 mph over the limit, but who pleads guilty to driving with a broken speedometer is agreeing to something in their self-interest but which did not in fact occur, the same thing is happening here. First-degree murder is not the same as second degree murder. The punishments are not the same because of the matter of premeditation. Either the person was over-charged at the time of arrest, and the lower punishment is appropriate but the first charge was not, or else the first charge was appropriate, and the second one is a fiction. Consider the thousands of cases of rape in the system. Was a person raped, or did the person

facing those charges actually commit a lower-level offense such as battery? Most likely, rape would not have been charged if the victim had not alleged it and the police had not corroborated those serious allegations. So, when we see the plea-bargaining game happening at this level of the criminal legal system, the consequences are far different than what we saw above with speeding tickets. Victims are involved here. And they are told to accept a conclusion from the criminal legal system that is not only a fiction, but also in many cases an insult.

Rape, Attempted Murder, and Assault with Intent to Kill

Let's take a look at the 675 charges for first-degree rape from Table 7-5. How were these cases resolved? Six of these cases were not yet resolved at the end of our data collection, leaving 671 initial rape charges. These derived from 331 individual arrest-incidents involving 2,727 total charges, as many of those charged with rape were also charged with other crimes. The number of rapes alleged at the time of the crime ranged from 1 to 8, with two being the most common number of rape charges per incident. One person charged with 8 rapes was convicted of 4 of them; two others charged with 8 rapes were not convicted of any charges of rape. Overall, just 33 of the 331 incidents where rape was charged led to a conviction of that offense, 10 percent.

Table 7-6. Outcome of 331 Incidents Involving a Charge of First-Degree Rape.

Conviction class	Typical offense	N	%
Felony class B1	First degree rape	46	13.9
Felony class B2	Attempt 1st degree rape	3	0.9
Felony class C	Second degree rape	30	9.1
Felony class D	Robbery with dangerous weapon	9	2.7
Felony class E	Second degree kidnapping	20	6.0
Felony class F	Indecent liberties with child	36	10.9
Felony class G	Possession of firearm by felon	1	0.3
Felony class H	Assault by strangulation	8	2.4
Felony class I	Crime against nature	4	1.2
Felony class unspecified	Attempted kidnapping	1	0.3
Misd. class A1	Assault on a female	27	8.2
Misd. class 1	Contributing del of juvenile	6	1.8
Misd. class 2	Simple assault	3	0.9
Dismissed or acquitted		137	41.4
Total charges		331	100.0

Table 7-6 reports the most serious conviction deriving from any charge facing the person at the time of arrest when they were also arrested for rape. The most common outcome, 41 percent, was to see all charges dismissed. Just 14 percent, 46 cases, led to a conviction of a Class B1 felony, and most of these were for rape (some were for rape of a child, or for other similar charges; in any case, these all share the same punishment). Thirty cases were reduced to Second degree rape, a Class C felony; 20 were reduced to a Class E felony, such as second degree kidnapping; 36 were reduced to a Class F, such as indecent liberties with a child, and 27 cases were reduced to a Class A1 misdemeanor, such as assault on a female. Table 7-6 lists the full range of outcomes for these 331 cases, by the Offense Class of the most serious conviction. Note that the "typical offense" listed there is not the exact offense for all of those convicted in that offense class; however, it is the most common or reflects the type of crime included in the conviction class.

Table 7-7 shows the outcomes of 906 arrest-incidents in which a person was charged with attempted first-degree murder. Results are similar to those just shown.

Table 7-7. Outcome of 906 Incidents Involving a Charge of Attempted First-Degree Murder.

Conviction class	Typical offense	N	%
Felony class A	First degree murder	13	1.4
Felony class B1	Second degree murder	14	1.5
Felony class B2	Attempted first degree murder	68	7.5
Felony class C	AWDWIKISI	77	8.5
Felony class D	Robbery with dangerous weapon	38	4.2
Felony class E	AWDW serious injury	132	14.6
Felony class F	Assault serious bodily injury	27	3.0
Felony class G	Possession of firearm by felon	20	2.2
Felony class H	Larceny from the person	12	1.3
Felony class unspecified	Accessory after the fact (f)	6	0.7
Misd. class A1	Assault with a deadly weapon	28	3.1
Misd. class 1	Obstructing justice	2	0.2
Misd. class 2	Resisting public officer	2	0.2
Misd. class 3	Discharge firearm in city	1	0.1
Misd. class unspecified	Injury to personal property	1	0.1
Traffic - class 1	Flee/elude arrest w/mv (m)	1	0.1
Dismissed or acquitted		464	51.2
Total		906	100.0

Attempted first-degree murder is a Class B2 felony. Among those charged with this crime, some were also charged with more serious crimes, such as first-degree or second-degree murder (Class A and Class B1, respectively). Table 7-7 shows that about 10 percent of those charged with attempted murder were convicted at that level of offense, or higher. About half saw all charges dismissed, similar to the previous example. Many others were reduced to various forms of assault: Assault with a deadly weapon with intent to kill, inflicting serious bodily injury (AWDWIKISI), a Class C felony; AWDW (assault with a deadly weapon) inflicting serious injury, Class E; or even assault with a deadly weapon, a misdemeanor. This example clearly shows that the results for rape are no anomaly.

Table 7-8 looks at 4,349 cases in which a person was charged with Assault with a deadly weapon with intent to kill, inflicting serious bodily injury (AWDWIKISI), a Class C felony.

Table 7-8. Outcome of 4,349 Incidents Involving a Charge of AWDWIKISI.

Conviction class	Typical offense	N	%
Felony class A	First degree murder	23	0.5
Felony class B1	Second degree murder	54	1.2
Felony class B2	Attempted first degree murder	55	1.3
Felony class C	AWDWIKISI	446	10.3
Felony class D	Robbery with dangerous weapon	155	3.6
Felony class E	AWDW serious injury	895	20.6
Felony class F	Assault serious bodily injury	133	3.1
Felony class G	Possession of firearm by felon	88	2.0
Felony class H	Habitual misdemeanor assault	75	1.7
Felony class I	Assault phy inj le/prob/par of	6	0.1
Felony class unspecified	Accessory after the fact (f)	26	0.6
Misd. class A1	Assault with a deadly weapon	402	9.2
Misd. class 1	Communicating threats	16	0.4
Misd. class 2	Simple assault	22	0.5
Misd. class 3	Discharge firearm in city	6	0.1
Misd. class unspecified	Injury to personal property	8	0.2
Traffic - class 1	Hit/run fail stop prop damage	3	0.1
Traffic - class 2	Reckless driving to endanger	1	0.0
Traffic - class unspecified	Traffic offense - free text	5	0.1
Infraction	Fail to notify DMV addr change	1	0.0
Dismissed or acquitted		1,930	44.4
Total		4,349	100.0

About ten percent of those charged with AWDWIKISI, a Class C felony, were convicted at that offense class, with another 3 percent convicted of even higher charges stemming from the same arrest-incident, such as murder or attempted murder. As in the previous examples, almost half the cases led to dismissal of all charges, and reductions to Class E (Assault with a deadly weapon, inflicting serious injury), Class F (assault causing serious bodily injury), or misdemeanor charges (Class A1, assault with a deadly weapon). One person originally charged with AWDWIKISI was convicted only of failing to notify the DMV of an address change.

It makes sense that everyone charged with a certain crime may not be convicted of the same crime. Evidence may not be sufficient to convince a jury beyond a reasonable doubt, for example, that a person who committed assault did so with the intent to kill the victim. Victims of assault may decide they do not want to go through the pain of the trial, particularly in rape or sexual assault cases where their own testimony may be traumatizing. But while any one of these particular explanations might fit some of the cases we explored above, none of them explains the entire system. Why would half of all murder or attempted murder charges eventually be dismissed, with so many others reduced, sometimes drastically? What is the point of convicting someone of failure to notify the DMV of an address change when the original charge included assault with a deadly weapon, with the intent to kill the victim, inflicting serious bodily injury? Presumably, such a charge cannot be brought unless the injury is apparent, and it would not be brought lightly, considering that it is a Class C felony. But such is the system that we have. From speeding tickets to the most serious offenses in the criminal legal system, charges are reduced or dismissed, and only a fraction of those arrested are convicted of the crime which motivated their arrest.

In sum, we see from the lowest level of the judicial system (traffic tickets) to the highest (violent sexual assaults, child sexual abuse and trafficking, attempted murder, serious assaults with intent to kill) a system in which verdicts are routinely downgraded compared to charges because of the crush of millions of cases moving through the system each year. While we can dismiss some speeding tickets without too much increased danger to society, it is worth wondering why we do so. Why not mean it when we say that we have pulled a person over for speeding, and that there will be a consequence for that? Would that not make us better drivers and keep the roads safer? And, when we arrest someone on multiple charges of child sexual

assault or statutory rape, don't we mean it? If so, why would we routinely and in very large percentages of the cases allow for dramatic reductions in the charges before a plea agreement? One possible reason is simply the crushing workload of the system.

All of this may leave the victim or victims wondering if their assault was indeed important in the eyes of the law, since the legal system is downgrading it from what it was to a fictional account of something much less severe than what really happened in order to close the case.

Solving One Problem, Creating Another

Like many states, North Carolina faced a prison overcrowding issue in the 1980s, a result of tougher penalties for drunk driving, minimum sentences for certain drug offenses, and an increase in the crime rate (see Freeman 2009). Further, judges had wide discretion in sentencing, and incarcerated individuals gained as much as one day of reduced sentencing for each day of good behavior in prison, effectively reducing many prison sentences in half. As elsewhere, these situations were held to be untenable so the General Assembly created the Sentencing and Policy Advisory Commission in 1990, eventually leading to the current Structured Sentencing system that has been in place since 1994 (see Lublitz 1993). All of the punishments described in this chapter are mandated through the structured sentencing system that the legislature adopted as part of these reforms.

One of the key issues the Sentencing Commission sought to solve was the "revolving door" aspect of the prison sentencing system. Because of over-crowding in the state's prisons, individuals gained parole at higher and higher rates, and even harsh felony sentences were reduced dramatically. Robin Lubitz was Executive Director of the Sentencing Commission and published this description of its work:

> The impetus for the creation of the Commission was the growing recognition that the state's criminal justice system was in crisis. Sentences had little predictability or meaning, offenders served only a fraction of their sentences, misdemeanants rotated in and out of prison, and alternatives to prison were undermined by the lack of any credible threat of imprisonment. To many, these problems were symptomatic of a deeper crisis—an ever-widening gap between the state's sentencing practices and its correctional resources.
>
> Much of this imbalance stemmed from the state's efforts to control its prison population. In response to a series of lawsuits regarding prison overcrowding, the state placed a cap on its prison population in 1986. However, it took no corresponding steps to regulate sentences, so the burden of complying with the prison cap fell to the Parole Commission. As prison admissions skyrocketed, the Parole Commission was forced to release offenders earlier and earlier. During these years, annual admissions to prison grew 62 percent but prison capacity only increased by 7 percent.
>
> Before the cap was instituted, felons served, on average, about 40 percent of their sentences. Today, they are serving only about 18 percent of their sentences. The situation is much worse with misdemeanants. The typical misdemeanant sentenced to the Department of Correction for two years is now released within two weeks.
>
> This dramatic shortening of sentences has undermined the viability of programs designed to divert offenders from prison. Many offenders have apparently decided that a short period of incarceration is less onerous than the conditions of the alternative programs. Increasingly, felons are rejecting probation and requesting to be sentenced to prison (a. right they have under the North Carolina constitution). A recent study by the North Carolina Department of Correction found that 44 percent of offenders admitted to prison self-reported that they had rejected probation (Lubitz 1993, 129).

It seems clear that the legislature had a serious problem to solve in the early 1990s when sentencing reforms were carried out. The Commission sought to do a number of things, including some laudable ones such as decreasing the punishments for property crimes as compared to violent crimes against persons. They sought to target the punishments on the most serious violent physical offenses and to reduce punishments for those with lower level, drug-related, and property crimes. The reform eliminated prison altogether for misdemeanants and those convicted of Class H and I felonies, substituting community punishments and probation. At the same time, however, and probably without meaning to do so, the new system simply transferred power to the District Attorneys. The system they were attempting to reform gave too much power to the

Parole Commission and generated a system of punishment that could not be trusted; people were released after serving literally only a small fraction of their sentences. There is no surprise that this system was seen as inherently unfair and so the system was, rightly, revised. We will explore the details of the creation of structured sentencing further in Chapter 11.

What we have now simply moves the point of concern from the punishment after conviction to the plea-bargaining process before punishment. Under the current system, as we have described in this chapter, prosecutors dismiss huge proportions of all charges, knowing that each conviction comes with a mandatory minimum sentence. Just as judges before them had used their discretion to ensure that individuals were sentenced to a certain punishment for a certain crime, now the DA's have the opportunity to interpret the mandated structured sentences to achieve what they want or believe is reasonable. By over-charging, then dropping and reducing charges, the DA can avoid trials, generate guilty pleas, and punish individuals for their crimes. But, as we saw in this chapter, the system we have today is at least as faulty as the system that it was designed to replace. Individuals charged with rape, attempted murder, and assault with a deadly weapon with the intent to kill the victim are typically convicted of much lesser crimes, many of which could well be considered insults to the victims.

Structured sentences mandate particular punishments for each conviction, including multiple counts of the same offense. As the punishment is generally not negotiable (outside of the range of sentences mandated by the system), the only way to avoid sometimes absurd sentences is to avoid convictions. Hence, the plea-bargain, the reduction in charges, the dismissal of multiple charges in exchange for a plea of guilty to some of them, and other facts that we have documented in this chapter. Recall from Chapter 2 that some individuals are charged with hundreds of offenses. Under the structured sentencing system mandating a given punishment for

each conviction, the only way to avoid hundreds of years of prison time to a person guilty of forgery or passing bad checks is to ask them to plead guilty to just a few of the charges and not to press the others. How many charges are enough? That is for the prosecutor to decide.

By leaving the power and the discretion to dismiss and reduce charges and negotiate pleas in the sole hands of the prosecutors, but mandating that judges sentence those convicted of certain crimes to standardized sentences, we have in no way solved the problem that the Structured Sentencing Act was designed to solve. Rather, we have shifted the locus of the problem from judges and the Parole Commission to the prosecutors. Such a reform has done little to serve the public nor to instill confidence that people will be punished appropriately and fairly for their crimes.

8

Social Disadvantage and Judicial Outcomes

Introduction

In this chapter we turn our attention to a systematic analysis of how individuals emerge from the judicial process: Are they convicted as charged, convicted of lesser charges, do they see their charges dismissed, and so on? And of course we look at how these outcomes differ by social disadvantage.

We know from the previous chapter that surprisingly large numbers of individuals see their charges dismissed, and that only a small share are convicted as charged. All this suggests a system where plea bargaining plays a special role, since individuals may not be induced to plead guilty unless they get something back in return, such as dropping some charges or reducing others. Further, we know from Chapter 5 that individuals living in high-arrest areas of the state see elevated arrest rates but that many of these arrests lead to charges that are fully dismissed by the District Attorney. In this Chapter, we explore these dynamics in more detail. The first section addresses the general relation between the levels of charges at the time of arrest and at the time of conviction. Next we look at the type of attorney (if any) who is retained or appointed for the arrested individual; this has a large impact on final outcomes. Finally we present multivariate statistical models predicting favorable and unfavorable outcomes. These models include whether one is convicted as charged; convicted of slightly reduced charges; convicted of substantially reduced charges; sees one's charges fully dismissed; sees a higher percentage of charges dismissed; spends a longer elapsed time from arrest to resolution.

Arrests and Convictions

We made clear in Chapter 7 that most arrests do not lead to a conviction at the same offense class; vast percentages are dismissed or reduced, with only about 10 percent or fewer typically being "convicted as charged." Table 8-1 presents a full matrix of data showing, for everything from Capital Murder (Felony Class A) down to misdemeanors traffic violations, and infractions, exactly how many people charged at one level were convicted at various other levels. Because the Table is very wide, it is divided into two parts. In each part, the columns indicate the highest level charge at the time of arrest, and the rows indicate the highest level of conviction. Cell entries show the number of arrest incidents leading to each outcome. Note that dismissals are listed at the bottom, as is the total number of initial charges.

Table 8-1. Highest Level Charges and Convictions.

Highest Level Conviction		Highest Level Charge at Time of Arrest										
		101	201	202	203	204	205	301	302	303	304	305
Felony - A	411	-	-	-	-	-	-	-	-	-	-	-
Felony - B1	410	-	-	-	-	-	-	-	-	-	-	-
Felony - B2	409	-	-	-	-	-	-	-	-	-	-	-
Felony - C	408	-	-	-	-	-	-	-	-	-	-	-
Felony - D	407	-	-	-	-	-	1	-	-	-	-	-
Felony - E	406	-	-	-	-	-	-	-	-	-	-	2
Felony - F	405	-	4	6	2	9	1	1	-	-	-	1
Felony - G	404	-	-	-	-	-	-	-	-	1	1	-
Felony - H	403	-	-	-	-	1	-	1	-	5	22	13
Felony - I	402	-	-	-	-	-	-	-	5	-	25	3
Felony - Unspec.	401	-	-	1	1	-	-	-	-	-	3	1
Misd -A1	305	-	-	-	-	-	-	21	2	25	11	44,822
Misd - 1	304	1	1	36	3	4	-	222	142	82	142,333	2,242
Misd - 2	303	1	2	28	27	30	1	70	117	59,821	5,936	7,853
Misd - 3	302	-	6	488	182	17	-	350	127,415	3,764	11,234	1,049
Misd - Unspecified	301	-	1	2	1	3	-	30,002	872	874	5,718	714
Traffic - A1	205	-	-	-	2	-	345	45	4	2	1	1
Traffic - 1	204	-	10	530	38	52,331	3	6,006	901	926	951	189
Traffic - 2	203	-	484	9,215	39,476	7,001	124	1,971	1,206	838	923	280
Traffic - 3	202	1	48	542,297	17,777	8,804	2	10,203	2,542	1,560	2,132	255
Traffic - Unspec.	201	2	941	349	130	776	1	589	119	106	181	160
Infraction	101	282	2,433	1,212,504	84,517	15,315	84	1,982	4,606	1,496	2,602	254
Dismissed		692	9,000	1,363,123	98,989	90,469	149	41,648	179,570	152,300	267,990	144,858
Total		979	12,930	3,128,579	241,145	174,760	711	93,111	317,501	221,800	440,063	202,697

Note: The table continues on the next page. Offense Classes are listed in the first column. The second column shows a numbering system used for each class (Felony, Class A is number 411, for example). That numbering system is used as the heading for the columns. Each column header therefore represents an offense class at time of arrest, with the number corresponding to the Class indicated in the first column.

Table 8-1. (Cont.)

Highest Level Conviction		Highest Level Charge at Time of Arrest											
		401	402	403	404	405	406	407	408	409	410	411	Total
Felony - A	411	17	-	2	3	-	5	9	7	3	1	160	207
Felony - B1	410	84	1	1	6	3	5	35	17	6	602	385	1,145
Felony - B2	409	9	-	2	1	1	2	11	14	148	41	36	265
Felony - C	408	2	-	2	2	1	4	3	1,099	95	208	15	1,431
Felony - D	407	45	-	3	11	-	15	2,807	277	101	98	207	3,565
Felony - E	406	10	1	15	6	7	3,096	1,405	1,146	192	126	25	6,031
Felony - F	405	16	12	14	8	6,906	346	148	959	86	970	40	9,529
Felony - G	404	93	62	473	14,448	182	796	2,356	228	47	34	10	18,731
Felony - H	403	246	296	68,903	3,362	522	1,631	1,311	369	20	24	6	76,732
Felony - I	402	177	33,008	10,175	1,143	296	829	121	279	2	75	1	46,139
Felony - Unspec.	401	5,838	1,032	2,255	310	50	233	62	64	8	5	31	9,894
Misd - A1	305	374	888	3,465	537	2,225	2,360	659	825	89	183	3	56,489
Misd - 1	304	2,896	29,582	43,634	2,069	888	791	665	191	8	37	2	225,829
Misd - 2	303	1,225	2,080	3,341	683	487	295	130	50	8	2	2	82,189
Misd - 3	302	253	2,833	1,560	207	47	98	30	12	-	2	-	149,547
Misd - Unspec	301	455	209	846	60	48	41	27	11	1	2	-	39,887
Traffic - A1	205	-	-	2	-	43	3	17	-	1	-	-	466
Traffic - 1	204	125	171	2,339	29	216	22	3	2	-	-	-	64,792
Traffic - 2	203	207	219	517	25	63	21	8	1	-	2	-	62,581
Traffic - 3	202	261	351	400	54	47	10	3	-	2	-	-	586,749
Traffic - Unspec	201	16	66	274	5	162	5	1	3	3	2	-	3,891
Infraction	101	112	217	187	30	15	6	6	1	-	-	-	1,326,649
Dismissed		19,174	27,109	54,054	7,202	3,444	4,204	3,000	1,308	131	423	45	2,468,882
Total		31,635	98,137	192,464	30,201	15,653	14,818	12,817	6,863	951	2,837	968	5,241,620

Table 8-1 shows a lot of information, 5.2 million outcomes in fact. If we start with the most serious charges in the system, Felony, Class A (e.g., the column labeled 411, we see that 968 such arrests were made. Of these, 160 were convicted at the same level, 385 were convicted of a B1 felony, 36 of a B2 felony, and so on. Forty-five cases were fully dismissed.

The Table makes clear a diagonal structure where cases on the diagonal are "convicted as charged." Very small numbers of cases lead to convictions at a higher level than the charge; many of these related to Categories 401, 301, and 201; these are unspecified offense levels within the felony, misdemeanor, and traffic categories. For example, conspiracy could be at various classes, depending on the underlying or associated crime. Therefore, there is some slight variability in the outcomes for these cases. In general, though, we can define a variable as follows:

First, people are "convicted as charged" if their offense class at conviction is equal to or more severe than their highest charge at arrest. Second are outcomes where the highest offense class at conviction is within three classes of that at the time of arrest. These individuals are seeing moderate improvements in their outcomes, considering their initial charges. Fourth are cases where the conviction level is 4 or more classes lower than the arrest level; these are very positive outcomes for those individuals. Finally, the bottom of the table shows many cases where all charges are completely dismissed; this is the best possible outcome from the perspective of the arrested individual. We will use this variable in the following analysis to assess the relative severity of punishment. It obviously must be correlated with the offense level at the time of the initial arrest, and Table 8-1 lays out how we do this.

Table 8-2 shows the distribution of the judicial outcome just described.

Table 8-2. Distribution of Judicial Outcomes.

Outcome	N	%
Convicted as charged (or higher)	1,191,165	22.7
Slight reduction in offense level	1,450,833	27.7
Significant reduction in offense level	130.740	2..5
All charges dismissed	2,468,882	47.1
Total	5,241,620	100.0

Source: Calculated from Table 8-1.

About 23 percent of arrests lead to a conviction at the same offense level as the initial charge; 28 percent are reduced from one to three offense classes; three percent are reduced by four or more offense classes, and 47 percent of all arrests lead to the charges being fully dismissed. (This analysis excludes individuals who may still be "in the system", with their charges not yet resolved.

Now that we have a variable describing how one fared in the judicial process after arrest, we can investigate what predicts good or bad outcomes. We turn to this now.

Type of Attorney

Our first analysis is based on what type of attorney does one have. Table 8-3 lays out how this variable is distributed across individuals listed in our dataset.

Table 8-3. Attorney Type.

Attorney Type	N	%
Retained	1,111,451	18.2
Public defender	458,808	7.5
Court-appointed	774,211	12.7
Self	372,434	6.1
Waived the appointment of counsel	908,538	14.9
Missing data	2,468,504	40.5
Total	6,093,946	100.0

Large numbers of observations are listed with "missing" attorney type or "waived". These tend overwhelmingly to come from low-level (class 3) traffic and misdemeanor cases that may have been handled without the appointment of an attorney. So, the database appears to

conflate self-appointed, waived, and missing data with together constitute 61.5 percent of the observations, when calculated by person arrested.

In our statistical models to follow, some of these individuals are excluded, including these groups: a) juveniles; b) individuals with multiple addresses; c) individuals with missing geographic information, race, gender, or age; and e) those residing outside of North Carolina. This explains why the N in Table 8-2 (just over 6 million) differs from that in Table 8-2 (5.2 million).

We can show the importance of social disadvantage by looking at statistical models predicting who uses which type of attorney. Here, the baseline category is those with no recorded attorney type, and we predict the use of appointed, public, self, and retained attorneys with the statistical model specified in Table 8-4.

Table 8-4. Regression Model for Attorney Type.

Attorney Type $= f(x_1$	Race x Gender
$+ x_2$	Age Group)
$+ x_3$	Highest Level Charge at Time of Arrest
$+ x_4$	Total Number of Charges
$+ x_5$	Probation Violation Alleged: 0=no; 1 = yes
$+ x_6$	Prior Points: 0 = none; 1 = one or more
$+ x_7$-x_{19}	Offense Category: 0 or 1 indicating each of the following: Driving, Vehicle, Violent, Weapon, Sex with Contact, Sex with No Contact, Property, Substance, Drug, Peace, Poverty, Order, Wildlife
$+ x_{20}$	Prosecutorial District: 0 or 1 for each of 44 districts
$+ x_{21}$	Neighborhood Disadvantage Score
$+ x_{22}$	Week of Year: values, 1 to 52
$+ x_{23}$	Year)

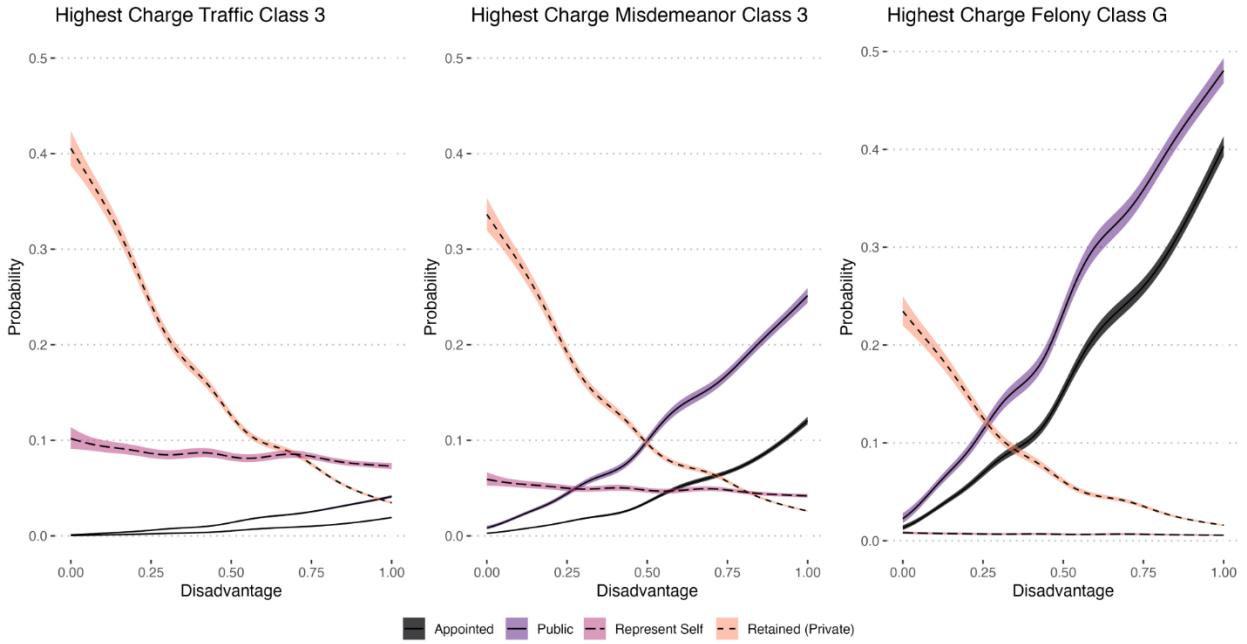
Note: the last three variables listed, Disadvantage, Week, and Year, are splines. This allows nonlinear relations. Neighborhood Disadvantage Scores are defined based on the NC Voter file, not the criminal defendant database. See Chapter 6 for details on this distinction.

The model can be interpreted as follows. First, we control for race, gender, and age group as in the analysis presented in previous chapters. Next, we include a variable for the highest level charge faced by the defendant at the time of arrest; this controls for the seriousness of the

offense. Then we include a variable for the number of charges, for similar reasons, as well as whether or not the person was charged with a probation violation or had prior points. We include fixed effects for the offense category and prosecutorial district, and control for time (week, as well as year) and for the average disadvantage score of people living in the same neighborhood as the defendant. This is the most complete model we can present with the data available. It allows us to asses, holding all factors in the model constant, the effect of any one of those factors on the outcome variable of interest.

Figure 8-1 shows the results of this model, for three different legal scenarios. The first looks at a relatively low level traffic case; the second a misdemeanor Class 3, and finally a Felony Class G, one of the most common categories of felonies. In each case, we show the predicted probability of using various types of attorneys across different levels of neighborhood disadvantage. The hypothetical individual is a Black man aged 25 to 34 in Mecklenburg County with two charges, no probation violation and no prior points.

Figure 8-1. Social Disadvantage and Attorney Type: Three Scenarios.



Looking first at the left pane, showing a traffic violation, we see a high rate of use of retained attorneys for those at the lowest points on the index of disadvantage. This value declines sharply as the disadvantage score increases. Next most common among the advantaged is self-representation, but this becomes the most common expectation among those with the greatest levels of disadvantage. Neither public nor appointed attorneys are common for these traffic cases.

In the case of misdemeanors, we see a similar dynamic with regard to privately retained attorneys: the most advantaged defendants use them, and the most disadvantaged defendants do not. Public defenders and court-appointed are virtually absent among those with greatest advantage, but become the most common attorney types for those at the high end of the scale of disadvantage.

Finally, looking at individuals facing Felony Class G charges, we see that the most advantaged of them use a private attorney, that virtually no one represents themselves in such a serious legal matter, and that public defenders and court-appointed ones become much more common as disadvantage increases.[19] All in all, this analysis shows important and stark differences in type of attorney based on disadvantage as well as seriousness of the legal matter. We look next at judicial outcomes.

[19] Note: Our understanding of public defenders and court-appointed attorneys is that this varies substantially by county or judicial district. Some judicial districts have larger public defender offices than others, which explains why court-appointed attorneys are more common in some cases. The geographical variability associated with this is not incorporated into our model, and in the specific example of Mecklenburg County, it would more likely be a public defender. Because this distinction in attorney types for indigent defendants is largely geographical, our results may be interpreted as suggesting either one or the other will be used, but the distinction between them should not be emphasized based on our models.

Social Disadvantage, Attorney Type, and Judicial Outcomes

We are now in a position to present a model predicting and explaining the impact of various contributor variables on the quality of the outcome that each person experiences after an arrest. Did they find themselves convicted as charged; did they get a reduction; were their charges reduced or dismissed; was the process quick or drawn out? We assess each of these outcomes with an identical model, changing only the outcome as we explain in the text below. The model is the same as that in Table 8-4, but here we include the attorney type as a predictor variable for the quality of outcome. Table 8-5 shows the model.

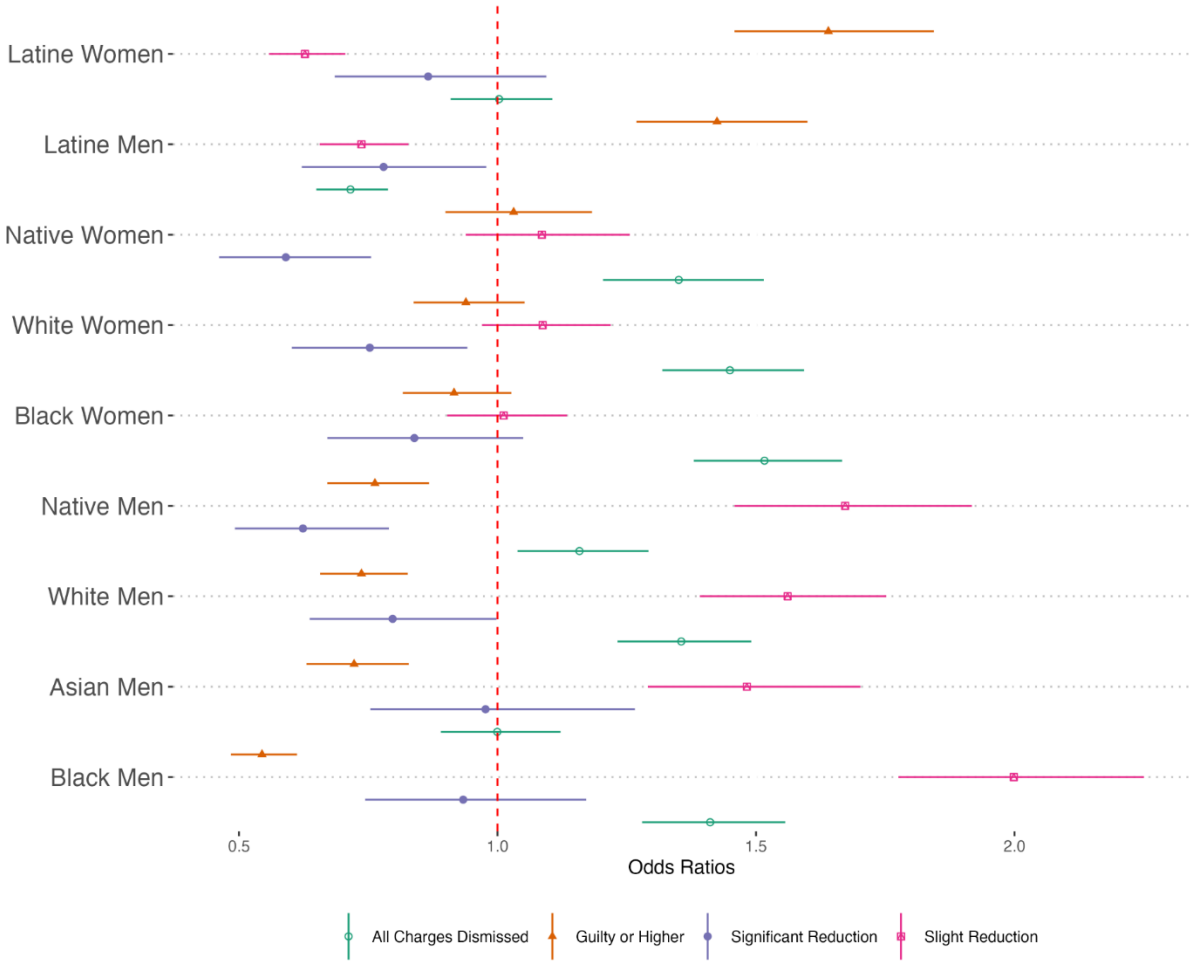
Table 8-5. Regression Model for Judicial Outcomes.

Outcome = f (	x_1	Race x Gender
	+ x_2	Age Group)
	+ x_3	Highest Level Charge at Time of Arrest
	+ x_4	Total Number of Charges
	+ x_5	Probation Violation Alleged: 0=no; 1 = yes
	+x_6	Prior Points: 0 = none; 1 = one or more
	+x_7-x_{19}	Offense Category: 0 or 1 indicating each of the following: Driving, Vehicle, Violent, Weapon, Sex with Contact, Sex with No Contact, Property, Substance, Drug, Peace, Poverty, Order, Wildlife
	+ x_{20}	Prosecutorial District: 0 or 1 for each of 44 districts
	+ x_{21}-x_{25}	Type of Attorney: 0 or 1 indicating each of the following: Retained Private, Appointed, Public, Waived, Self
	+ x_{26}	Neighborhood Disadvantage Score
	+ x_{27}	Week of Year: values, 1 to 52
	+ x_{28}	Year)

Note: the last three variables listed, Disadvantage, Week, and Year, are splines. This allows nonlinear relations.

Figure 8-2 shows odds-ratios for three different outcomes based on demographics. The figure shows three different outcomes, drawn from Table 8-2 above: Guilty as charged, slight reduction (3 or fewer offense classes), and significant reduction (4 or more classes). Note that full dismissal

Figure 8-2. The Impact of Race and Gender on Odds of Different Judicial Outcomes.



Note: Reference group is Asian women.

The categories in Figure 8-2 are listed in descending order of the least favorable judicial outcome: being found guilty of the offense charged. Latine men and women have approximately 50 percent higher odds of this outcome than the reference category, Asian women. Black, Asian, White, and Native men all have significant reductions in such odds, with the odds-ratio for Black men being almost as low (0.5) as the coefficients for Latine men and women are high (approximately 1.5).

Looking next at slight reductions, or relatively positive judicial outcomes, the relations are largely inverted, with Black, Asian, White, and Native men all with significantly increased

odds of reduction, and Latine men and women with reduced odds. As before, Native, White, and Black women see no change in odds from the baseline.

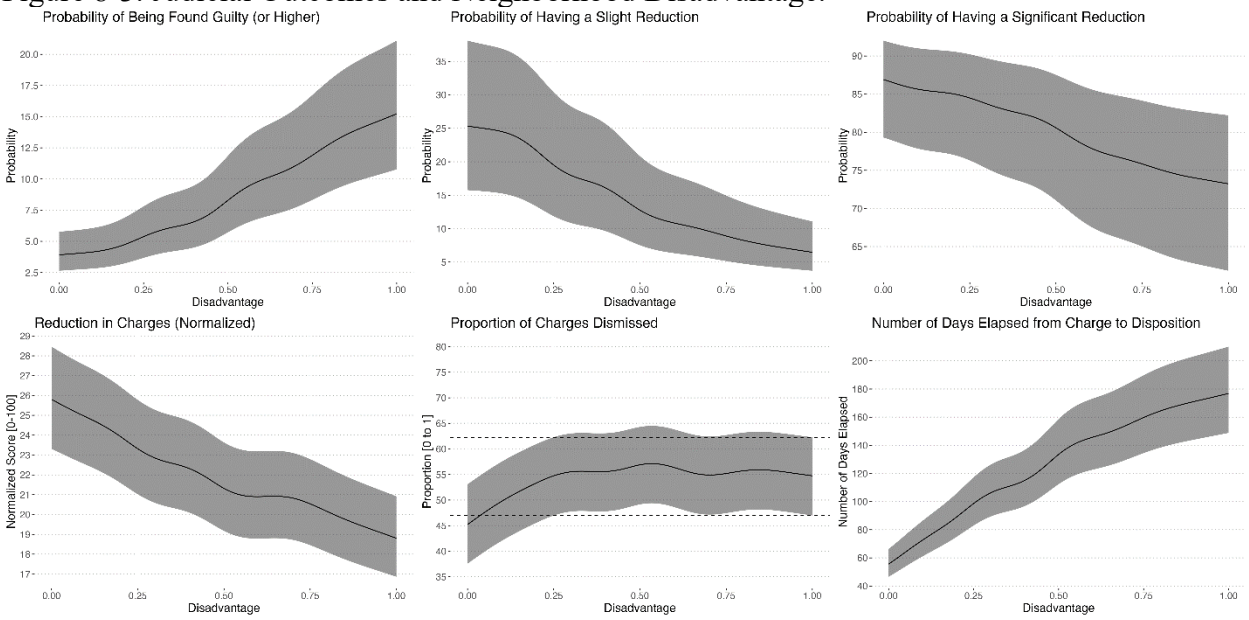
Looking at significant reductions, Table 8-2 showed that there were very few such cases, and Figure 8-2 shows generally insignificant results with wide confidence intervals.

Finally, looking at the likelihood of complete dismissals, these generally correlate with modest reductions. Overall, Figure 8-2 shows that individuals of various identity characteristics based on race and sex, but otherwise statistically held to be similarly situated, experience considerable differences in judicial outcomes. Some of these may at first appear to be counter-intuitive. Black men, generally the most disadvantaged group in the system, are half as likely as others to be convicted as changed, almost 1.5 times as likely to see their charges completely dismissed, and approximately twice as likely to see a moderate reduction in charges between arrest and conviction. This contrasts with Latine individuals (both men and women), who see highly elevated rates of being found guilty as charged, compared to others.

The judicial system starts with police surveillance and continues through charging, plea-bargaining, and rendering verdicts. These results, combined with others in previous chapters, suggest that, with regards to race and gender, the policing and surveillance system may sometimes be at odds with the prosecutorial system.

We complete this analysis with Figure 8-3 by looking at six different judicial outcomes based on neighborhood disadvantage. We look at the four outcomes just discussed, a revised measure of proportional reduction in charges, and the elapsed time between arrest and resolution.

Figure 8-3. Judicial Outcomes and Neighborhood Disadvantage.



Note: Predicted scenario is for a Black man 18 to 24, with one unspecified Class drug or substance-related felony charge, in Mecklenburg County, using a public defender.

Since each of the relations shown in Figure 8-3 is displayed over the same comparison variable, the neighborhood disadvantage score, we can interpret all the graphs in the same manner. Looking first at the odds of being found guilty as charged, these odds increase substantially as disadvantage goes up. The probabilities move from approximately 4 percent for the most advantaged people in the system to approximately 15 percent for those with the greatest disadvantage, a substantively important movement. Slight reductions show the opposite trend, with the most disadvantaged less likely to see them. We see the same with significant reductions and with a normalized measure of reductions in charges. (This is simply a proportional measure where the outcome is measured as a proportion of the reduction that could have happened, given the initial changes.[20]) Looking next at the share of charges dismissed, we see no relationship with neighborhood disadvantage; roughly similar shares (40 percent) of all defendants see charges

[20] If the initial charge was Traffic Class 3, it could only go down by two levels before reaching the lowest level, dismissal. If the initial charge was Felony Class C, it could go down by 18 levels before reaching the same level. This measure normalizes that difference.

dismissed. Finally, those at the high end of the disadvantage scale spend much more time in the system. The elapsed time from charge to resolution of the charges moves from about 60 to 180 days. This last element is also consistent even for cases where all the charges are dismissed. The most advantaged people in the state see the resolution come in two months but the more disadvantaged spend six months in legal limbo.

Prior Points, Surveillance, and Social Disadvantage

We noted in Chapter 2 that the NC punishment grid establishes much more severe punishments for those with prior points (e.g., previous serious convictions; see Table 2-9). It is therefore important to understand the impact of prior points when looking at judicial outcomes because a person with prior points, convicted of the same level of offense, will see more punishment. It should not surprise the reader, after reading Chapters 4, 5, and 6, that individuals living in high-arrest areas, who have been surveilled so much more by the police and are arrested at much higher rates, also tend to have more prior points. These prior points will cause them to suffer considerably enhanced punishments if convicted at the same level as another with no points. Table 8-6 shows the distribution of population, defendants, and those with prior points across the high- and low-arrest neighborhoods introduced in Chapter 5.

Table 8-6. Prior Points by Neighborhood Arrest Rate.

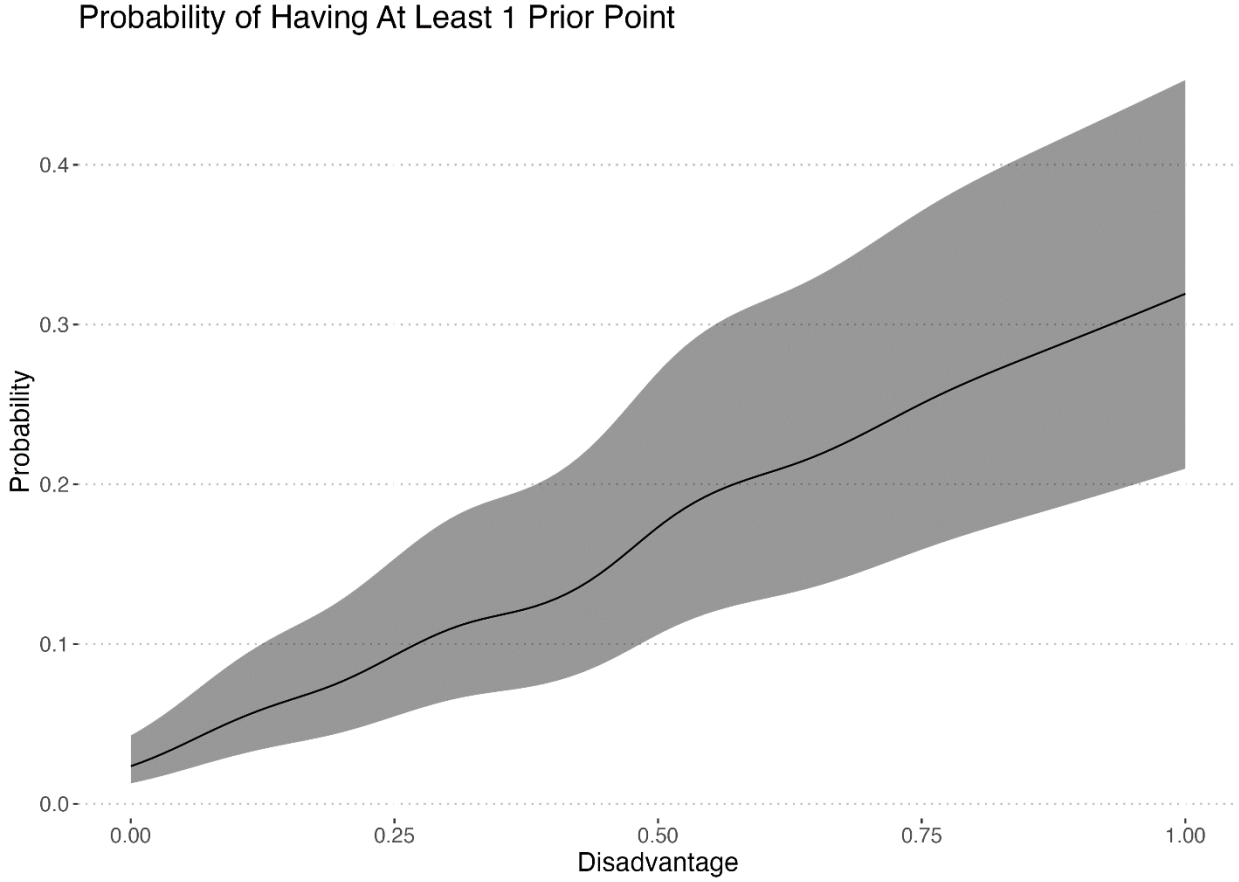
Neighborhood	Population		Defendants		Defendants with Prior Points		Percent of Defendants with Prior Points
Type	N	%	N	%	N	%	
High Arrest	1,071,452	10.1	839,462	17.6	105,210	22.3	12.5
Low Arrest	777,431	7.3	116,220	2.4	9,687	2.1	8.3
Statewide	10,645,235	100.0	4,769,227	100.0	472,041	100.0	9.9

Overall, about 10 percent of the state population lives in what we have defined as a high-arrest area of their community, and 7.3 percent live in low-arrest areas. These areas generate 17.6

and 2.4 percent of the defendants in our database, however. To a great extent, this is by construction as we define high- and low-arrest areas by the arrest rates. Looking at who has prior points though, shows that defendants with prior points are ten times more likely to come from high-arrest zones rather than low-arrest ones. While the percentage of defendants who have prior points moves only from 8.3 to 12.5 as we go from low- to high-arrest zones, there are so many more defendants coming from the high-arrest areas that 22 percent of all defendants in the database with prior points come from those high-arrest areas, though these represent just 17.6 percent of the defendants and 10.1 percent of the population. By contrast, just 2.1 percent of the defendants with period points come from low arrest zones, though these zones generate 2.4 percent of the criminal defendants and house 7.3 percent of the state's residents.

Figure 8-4 shows the relationship between neighborhood advantage and the likelihood of having prior points. It is based on the same regression model as presented in Figure 8-3.

Figure 8-4. Predicted Likelihood of Having Prior Points, by Neighborhood Disadvantage.



Note: See Figure 8-3.

Most people have no prior points. However the absence of prior points is a near-certainty for those defendants who live in the most advantaged neighborhoods of the state, and it mores to 30 percent odds when we get to the most disadvantaged areas. As punishments for the same level of conviction are strongly enhanced (often doubled) for those with prior points, it is important to consider this when assessing the overall relations between social characteristics of criminal defendants and their judicial outcomes.

Conclusion

This chapter has demonstrated powerful evidence about the relation between social identity and criminal legal outcomes. We turn in the next section to assess whether these factors indicate a broken system, or one working precisely as it was intended to.

Part III

Discriminatory Intent

The chapters in Part II have clearly documented many examples of disparate impact in the North Carolina criminal legal system. In this Part, we shift our focus to what is perhaps a more difficult analytic problem: Were these racially disparate outcomes that we observe part of the design of the legislature when it passed the relevant laws? In Part III, we get to the heart of the matter that motivates us in this book. After all, many have documented disparate impact, so while we believe the chapters in Part II have done an important service in documenting these things and explaining them in fine detail, we cannot say that we were documenting something new and surprising to the vast literature on disparate impact of the law in the past several chapters. In the chapters that follow, we first explain what we mean by discriminatory intent, reviewing what legal scholars and the courts have previously suggested constituting proof of it. We go beyond these previous definitions, however, in several ways. Our first expansion beyond the traditional definition of discriminatory intent is to explore the linkages between legislative crafting and police implementation of the law. Laws written with language that leaves considerable discretion to the police (or to district attorneys) in how to enforce the law may open the door to disparate impact, and this may (or may not) be exactly what the legislature was expecting. If there is reason to believe that the legislature expected the enforcement of a vague or overly broad law would be disparate in its focus on some racial groups rather than others, then we can consider that to have been part of the intent, even if the law is written in race neutral terms or when we cannot find racially discriminatory language in the law.

A second extension we make in assessing legislative intent is to consider the recursive nature of public policy: Policy feedback. Policies that have been on the books for decades (or in

some cases centuries) generate outcomes that are generally well known to policymakers. In some cases, when unwanted outcomes are pointed out, lawmakers tweak the law in subsequent iterations of the policy process in order to correct or fine-tune the legislation and rectify the problem. In other cases, social groups complain that a law is unfairly being applied to their detriment, but the law remains unchanged. This lack of action in the face of observed disparate impact may stem from an impossibility in designing a better system that avoids the unwanted and unintended consequences that are pointed out. But we must take seriously the possibility that refusal to take action to remedy a large racial disparity in the implementation of some part of the criminal code reflects a legislative approval of that disparity. If it was the intent of the legislature, and they achieved it, then certainly they would not want to change it. If it was not the intent, and they fail to correct it when there is a feasible solution, then this is either a sign of indifference to inequity, or one of approval of the disparity. This is consistent with discriminatory intent. Distinguishing between intent and approval of, acceptance of, or indifference to an observed disparity when given the opportunity to fix it is to make a distinction without a difference.

We explore these dynamics in the following chapters with a number of historical case studies. In a dramatic shift form the highly statistical approaches we used in the previous chapters, here we focus on archival research. We look at the 1937 traffic code, laws regulating protests and riots (1969), capital punishment (1972, 1976), the drug laws of the 1980s and 1990s, the 1994 Structured Sentencing Act, laws regulating gang activities (2005), the Racial Justice Act (2009), and its rescission (2011). In each of these historical examples, we assess legislative intent using different historical methods and document that, far from being unexpected and unwelcome blips in the system, racialized enforcement of the law was exactly the point.

9

Identifying Legislative Intent

Introduction

In previous chapters we have shown the various ways in which the intensity of law enforcement surveillance and contact differs across demographic groups. Some groups, most notably Black people living in lower-income neighborhoods, experience much more intense policing compared to others, such as wealthier white people living in areas with higher average income and relatively less police surveillance. We have shown how this differs by age, race, gender, and place. We have also shown the areas of the criminal code that are associated with disparate rates of arrest of various demographic groups. In this chapter, we move beyond documenting large racial and place-based disparities in arrests and turn to the question of whether the laws themselves were designed with racially discriminatory intent. While many people have studied disparate impact, and we have done so as well in previous chapters, discriminatory intent is relatively under-studied in the social science literature on race and politics. But we should care about whether various laws just happen to have disparate impacts or whether they are doing exactly what they were designed and intended to do. While it may seem impolite, impolitic, or just not nice to suggest it, we find little reason to believe that racial motivations would be left at the door when lawmakers consider legislation. Because we want to understand how politics, lawmaking, and law enforcement work, and what are the causes of the monumental differences in law enforcement activity in different geographic and demographic communities, we address this question head-on with no assumptions that lawmakers "just wouldn't do that." Perhaps they do.

Suggestions of the impact of race in policymaking are by no means absent from the literature. David Bateman and collaborators (2018) conducted extensive analyses of lawmaking in the US Congress over many decades of policymaking, showing how the political power of Southern Democrats was cemented into the system by the one-party structure of the South before the 1980s, the unified voice that this group had on issues affecting race relations, and the many policy implications of this. Social Security was designed to omit domestic workers and farm laborers, for example, omissions that had massive racial implications. The law itself does not state the racial motivation, but the bargaining position of Southern democrats on this and many other pieces of legislation was that if large numbers of Blacks were to benefit, a law would simply not pass. The results of this were sometimes racialized policy design, as in the Social Security example, and sometimes wide discretion for state officials to implement federal programs, allowing federal funds to flow, but with implementation in accordance to "local practices" which in the South were clearly racialized.

Similarly, Richard Rothstein's (2017) extensive analysis of housing policies makes clear the racialized intent encapsulated in federal housing policies, including that for veterans and the federal involvement in red-lining practices by accepting them when federal mortgage policies could easily have been designed to disallow such racially discriminatory practices. Of course, Michelle Alexander (2010) has critiqued the massive incarceration system in terms very much consistent with what we are arguing. So our point is not that we are the first to suggest racially discriminatory intent, far from it. Rather, we want to shift focus now from documenting disparities to exploring where they come from. Are they evidence of a system off its rails, or signs of a system working exactly as intended?

Despite the growing body of literature that robustly documents the disparate impact of law enforcement systems, there are many that have not yet been persuaded of the racialized intention of the law. The courts have been resistant to amend laws based on differences in outcomes alone, and large swarths of the general public have been hesitant to deem the criminal legal system as being built on racist foundations based on observed outcomes. Many people resisting these conclusions might point to a belief that racially disparate outcomes are likely due to the underlying behaviors of different groups, despite limited data showing such differences (Piquero and Brame 2008).

In addition, relying on an argument of disparate impact requires us to wait until parties can prove that disproportionate harm has fallen on a specific group of people, and that such harm could have been avoided. In other words, continuing to draw conclusions on the harms of areas of the criminal code by highlighting the harms after they have been done, is highly inefficient.

Furthermore, by relying on disparate impact arguments, we run the risk of assuming that criminal law was written in a racially neutral manner, and that somewhere down the line various factors resulted in the disproportionate use against certain demographics. Although we believe that disparate impact is an important area of inquiry, we turn our attention to more institutional and systemic reasons why we observe disparate impact in criminal law, asking the central question: Were these laws designed to have the impact that we observe, including disparate racial impact?

Before we delve into our analysis, it is worth asking a clear question: Why would a legislative body *not* have racially discriminatory intent? If such a question seems out of bounds, is this because it is impolite or because it is so improbable as to be nearly inconceivable? When we consider that many laws remaining on the books today were passed during previous

generations when racialized laws were common and accepted, can we be so confident that maintaining a segregated racial order would not have been at least one of the considerations in the minds of many lawmakers, perhaps even a prime one? We need not answer this question at the moment. However, we pose it so that readers will understand what the real question is.

Realistically, why would elected officials considering laws in, say, 1937 when Jim Crow was the law of the land, not be expecting that these laws should be part of a system that upholds laws rooted in White supremacy? Similarly, is it reasonable to think that legislators and elected officials generally, not to mention journalists, advocates, and other commentators, had no idea that the drug laws of the 1970s and 1980s would have a disparate impact by race? And, more importantly, when they considered this likelihood, what was their response: Did they immediately pull back from it because of the expected racial impact, or did they go forward nonetheless, seeing that relative lack of impact on white or privileged communities as a virtue or a sign of a well-designed piece of legislation, perhaps even of their own cleverness? It seems unlikely that informed opinion at the time many laws were passed would have been unaware that a given law might have a disparate impact. Rather, the question is whether this was seen as a feature or a bug. If a bug, was it such a serious bug that it needed to be fixed? These are the key questions with which we engage in this chapter, and in the following ones.

In the sections that follow, we present a theoretical framework for understanding the interplay between four major components of law enforcement and criminal lawmaking: disparate impact, discriminatory intent, law enforcement discretion, and policy feedback. Understanding the connection between these three factors gives insight into why criminal laws were created, how criminal law is enforced, the outcomes of criminal laws, and the ability of lawmakers to amend or revise laws in the face of policy feedback showing how they are enforced. In

subsequent chapters, we use a range of historical methods to uncover whether certain key areas of the North Carolina criminal code were intended to target a group of people from their moments of inception. But for this chapter, our goal is to set up the analysis by exploring the various ways in which discriminatory intent may translate into eventual disparate impact.

We do not mean to imply that the criminal legal system presents problems or should be called into question only when discriminatory intent can be identified. There are, of course, areas of the law that might have originated with no intention to target certain groups, but somewhere down the line have been applied in a manner that produces disparate outcomes. There could also be areas of the law that were developed with the intention to target certain groups that did not have that outcome. All these areas are worthy of attention. Instead, we focus our analysis on those instances where there were, or may have been, discriminatory motivations to pass certain laws that did result in disparate impact and join a growing group of researchers and advocates to shift the focus from the criminal legal system as being bad because it results in racial differences, to uncovering the ways that the criminal legal system has been used as a tool to oppress certain racial groups from its inception. This form of inquiry therefore shifts from critiques of individual behaviors or outcomes towards critiques of the entire system of law.

We are not the first to attempt to prove legislative discriminatory intent. Previous academic scholars, legal advocates, and community organizers have all attempted such an endeavor (Alexander 2010, Rothstein 2017, Climate Justice Alliance n.d.). We join this group by highlighting not only the court approved methods of proving discriminatory intent, but offering additional scenarios that, we argue, should also be considered instances of discriminatory intent.

Disparate Impact

As we have highlighted throughout this book, most social science research on law enforcement systems has focused on whether laws result in disparate impact or not. The basic assumption underlying this method of analysis is that those laws that have disparate outcomes by racial groups should be focused on while those areas of the law that have equal outcomes by race or sex groups tend to not be called into question. In this book, we define disparate impact as an area of the law that results in an overrepresentation of a demographic group by 140 percent of their population share. Recall from Chapter 3 that different parts of the criminal code result in different degrees of disparate impact.

Given the nature of law enforcement, it is highly unlikely to be able to classify a criminal law as either completely neutral or where enforcement is limited only to one demographic group.[21] Most likely, the impact of criminal laws falls somewhere between these two extremes. In fact, we found only one law on the books that appears to have a neutral effect across demographic groups: Failure to stop for a stopped bus (code 5428). Table 9-1 shows the percent of charges by race-sex groups for this specific charge compared to their demographic share for the 10,361 charges under this crime code.

[21] Note, however, that some laws such as those regulating people with uterus' reproductive choices may lead to the arrest only of people with uterus, by definition. As the criminal legal system only categorizes men and women, most of these people would be categorized as "women" in the data.

Table 9-1. An Example of Equity: Failure to Stop for a Stopped Bus.

Race-Sex Group	Population (%)	Charges (%)	Ratio
White Female	32.2	30.6	0.95
White Male	30.8	33.4	1.08
Black Female	11.4	11.1	0.97
Black Male	10.0	10.8	1.08
Latine Male	4.9	5.12	1.04
Latine Female	4.5	4.0	0.89
Asian Female	1.5	0.8	0.53
Asian Male	1.4	0.7	0.50
Native Female	0.6	0.3	0.50
Native Male	0.6	0.3	0.50
Total	98.0	97.1	

For all the demographic groups with more than 4 percent of the population, the share of those arrested is within 10 percent of the share in the population. No other element of the criminal code has an impact as neutral as this crime code. Note that laws may have equal impact, slightly disparate impact, or highly disparate impact. Some examples of highly disparate-impact laws include the following (for a more complete list please refer to Tables 3-2 to 3-6 in Chapter 3):

- Failure to return rental property (code 2649), where Black females are 41 percent of those charged, but 11.4 percent of the population, a ratio of 3.6.
- Threatening phone calls (code 5338), where Native American males are 2.9 percent of those charged, but 0.6 percent of the population, a ratio of 4.8.
- School attendance law violation (code 3822), where White women are 48.8 percent of those charged, but 32.2 percent of the population, a ratio of 1.5

While there will naturally be some variation in the share of people who are arrested under any given law, it is striking that so few criminal codes are applied in a neutral manner. Why is this? Is it because this is the only crime that people across race-sex demographic groups commit equally? Or maybe it that the safety of school children is such an important that there is limited discretion from law enforcement? Many explanations offered by social scientists for why we

observe disparate outcomes hinge on differences in behaviors of various demographic groups (Harris, et al. 2009, Blumstein 1982), the role of racism in law enforcement (Romero 2006), (Harris, et al. 2009), policies and laws from specific time periods (Fellner 2009), and social environments (Crutchfield, et al. 2012). Previous chapters in this book have added to this growing list by demonstrating the role of geography and neighborhoods in law enforcement discretion, contact, and surveillance. What is the role of discriminatory intent in producing these disparate outcomes?

Discriminatory Intent

There has been considerable confusion and debate surrounding definitions of discriminatory intent and acceptable methods of proving it in the social science and legal academic literature. In this section, we provide an overview of these debates and then highlight where our work is situated within this scholarly and legal terrain.

The law and legal scholarship typically recognize two forms of discriminatory conduct within the enforcement of the law: disparate impact and discriminatory intent. The difference between the two centers on whether there was intent for a racially disparate outcome to occur or if there was a racially discriminatory motivation at play when a policy was being developed (Moreau 2010). Discriminatory intent is discrimination. Though the Supreme Court has never provided a clear-cut definition of discriminatory intent, in its simplest terms, it is when there was a decision, policy, or rule created with the intention that it will be used disproportionately against a group of people on the basis of a protected class identity. Such discrimination is unconstitutional. Because it is unconstitutional, any law where such intent was demonstrated would be ruled invalid. Therefore, legislators may go out of their way to hide or camouflage any such intent, since to reveal it would render the policy moot. When considering the intent of the

legislature, therefore, we must be aware that: legislators are human, subject to the same implicit biases and cultural norms and expectations as others; that they generally operate in an institutional environment with substantial resources; and that if discriminatory intent were demonstrated in their deliberations, it would render any resulting legislative product legally invalid.

Surprisingly, the role of intent in unconstitutional discrimination is fairly recent in doctrinal articulation (Huq 2018). After several decisions that highlighted the court's skepticism on the role of intent when invoking the Constitution's protection against discrimination, the US Supreme Court made clear in the landmark decision of *Washington v. Davis* that in order to bring about a claim of intentional discrimination, there had to be "discriminatory racial purpose" (Washington V. Davis 1976). In the early 1990s, the courts decided that the law must not "infringe upon or restrict practices because of their religious motivations" (Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah 1993), thereby deeming intent to be a central component when invoking the Constitutional protection against discrimination because of race, ethnicity, or religion (Huq 2018).

Some legal scholars have suggested that there is more than one category of discriminatory intent. Eric Schnapper (1982) argues that much of the doctrinal confusion surrounding discriminatory intent is because the court has failed to distinguish between goal and means of discrimination. Goal discrimination involves the "invidious consideration of race" in the objective that a government policy seeks to achieve, whereas means discrimination involves the "invidious consideration of race" in selecting the method of achieving the policy objective (Schnapper 1982). When policy or law decision makers are faced with developing or enacting a law or policy, there are a few considerations that they must take. First, they need to consider the

goal of the proposed action—what is the legislation or policy attempting to achieve? Second, they need to consider how to go about achieving the stated goal. In considering the goal and the means of some government action, there will naturally be some undesirable outcomes along the way, conferring benefits on some individuals and disadvantages to other individuals, and it is down to the decision-maker to weigh whether those anticipated consequences are worth the end.

It might be useful to consider some examples of very clear examples of racist goals of the law or means for achieving a goal. The most common examples of racially discriminatory goals include segregating individuals based on race, denying the right to vote for Black people, extending privileges to White people, and excluding access to other racial groups. Others have called this "direct discrimination", where the action is taken knowing that it is based on prejudices against that group. For example, a legislature might believe that Black people are inherently mentally inferior to White people and therefore should not be granted the right to vote. Indeed, many of the laws in the United States before the Civil Rights Movement were written with direct discrimination. During the era of chattel slavery, laws were written to enslave people based on their race based on White supremacist ideology. Following the abolition of slavery Black codes were restrictive laws written to limit the freedoms of people based on their race. The Jim Crow system was designed to segregate people based on the same White supremacist ideology that justified slavery (Alexander 2010). In each of these cases, the goal of the law was to discriminate based on race.

Clear examples of means to achieve some goals that burden certain racial groups while benefiting other racial groups include urban renewal in the 1960s and the creation of the interstate highway system. The stated goal of the government was the need for interstate highways, and the decision to build the highways through Black neighborhoods and not White

neighborhoods clearly placed a higher burden on Black over White people. Similarly "urban renewal" projects often tore apart Black neighborhoods while imposing little burden on Whites (see Segrue 2005). Another way to think of this "means" form of discriminatory intent is as a collateral consequence of a racial-neutral decision. Some scholars have referred to this as "racially selective indifference" (Brest 1976). The interstate-highway system may not have had any discriminatory intent with respect to its goals; but the means that were used had significant racial implications. Means-based discrimination can be thought of as discrimination in implementation or policy design. Goals-based discrimination is more direct. Both are unconstitutional if they can be demonstrated.

In some instances, apparently racially neutral means are specifically designed to achieve racially discriminatory ends, as when written examinations unrelated to the subject matter of the job have been used for promotion and hiring decisions, or when literacy tests or "grandfather clauses" were used for voting following Reconstruction. If previous discriminatory practices have rendered Black people, on average, less able to pass such tests, and there is no substantive value in the test itself, then the test can be seen as a demonstration of discriminatory intent (Griggs v. Duke Power Company 1971).

It is also possible to see racially disparate outcomes coming about through means that may not be intended by the legislature, but rather on the basis of inadvertent error, ignorance or indifference to the likely outcome of any particular policy or program. For an example from our own employment domain, consider university administrators deciding when to hold faculty meetings. If those administrators do not have children in school, they may be unaware of school vacations or afternoon pick-up times. With no intent to impose burdens on faculty members who do have children in school and who must abide by these constraints, they may inadvertently

schedule meetings at times that are convenient for some, but burdensome for others. Generally, they do not do this multiple times because of the feedback that they receive from unhappy colleagues.

Contrast the situation where a university administrator thoughtlessly but without malice schedules a series of meetings at times that are differentially burdensome to some members of the faculty to that where a legislature enacts laws that have disparate impacts. Key questions include: Was it really by error? Will those adversely affected have access to the decision-makers in order to point out the disparate impact? If advised of the adverse impacts, will the law be corrected or revised? In the case of the 3pm faculty meetings, one can expect that those adversely affected will make their voices heard and the administrators will find another time that works for a greater share of those expected to attend. The decision-makers made an error; it was brought to their attention, and they fixed it. Of course, if the administrators had done this on purpose, with knowledge of the likely effects, then most likely they would not reschedule. So, a key question is whether policymakers take steps to remedy adverse situations when these are pointed out. If they do, then the idea that they were inadvertent in the first place gains traction. If they do not, they may have been seeking the observed outcome; they may be indifferent to and comfortable with it; or there may be some compelling reason why it is necessary. A related question is whether those adversely affected by a government decision have the means or ability to point it out to those in charge. If they do not, or if the decision-makers ignore them on purpose, then we can say that there was indifference to the adverse effect.

We will return to this issue of "indifference" in later sections. By looking at legislative response after adverse impacts are pointed out or can easily be determined, we may be able to distinguish inadvertent mistakes from legislative hostility to the over-burdened group.

Judicial Standards to Demonstrate Discriminatory Intent

The first time the Supreme Court signaled its willingness to entertain a range of strategies for identifying discriminatory intent was in *Village of Arlington Heights v. Metropolitan Housing Development Corporation* (1977). In *Arlington Heights*, the Court held that disproportionate impact was not sufficient to prove that a government action violated the Equal Protection Clause. In considering what evidence may be used to prove intent, the Court canvassed a wide range of methods including disparate impact, historical background, contemporary statements by officials, and trial testimony of decision makers under oath.

The various ways that the Court has classified the different methods of intent fall into one of two buckets: direct and circumstantial evidence. Direct evidence is the direct proof of a fact, whereas circumstantial evidence is indirect evidence that does not prove a fact, but gives rise to logical inference that a fact exists. In the following sections, we highlight the various methods that the Court has used to prove discriminatory intent under these two categories. An important caveat is that not all of these methods are "approved" for all areas of the law. Our goal in surveying these methods is to provide the reader with insight into methods that have been used in past legal struggles.

Direct Evidence

Direct evidence of discriminatory intent is direct proof of the fact. Direct evidence includes evidence that, "if believed, proves the fact without inference or presumption" (Coghlan v. American Seafoods Co. 2005). The clearest forms of direct evidence are express classifications, which include the semantic content of a law or an official admitting to having considered race as a basis for their action. Other examples of direct evidence of discrimination include "any statement or document which shows on its face that an improper criterion served as the basis for an adverse action" (Fabela v. Socorro Independent School District 2003).

Semantic Content and Plain Meaning of the Words

Perhaps the most straightforward of the methods to go about proving discriminatory intent is the plain meaning of the words of the text or the semantic content, described by legal scholar Lawrence B. Solum as "the semantic context of a legal text is simply the linguistic meaning of the text" (2010, 98). This method simply states that a law is discriminatory if the law states, in the plain meaning of the words and definitions at the time of passage (*Caminetti v. United States*, 1917), that it should be applied differentially to groups according to race, ethnicity, or religion. While the logic of relying on the meaning of the words makes intuitive sense, it is unlikely to yield successful attempts given that laws are not written to explicitly mention race anymore. In some cases, the courts have been sensitive to the specific use of vocabulary that may signal specific groups, rather than explicitly mentioning a racial group (Huq 2018).

Official Statements

Another direct method that has commonly been used in the courts to prove discriminatory intent is examining the official statements from an official responsible for state action. Under this method, discriminatory intent can be established if the official makes a statement to another person that signals the action will be used improperly against a group of people. One such example of this is found in *Cooper v. Harris*, a 2017 North Carolina racial gerrymandering case where the Court identified statements on the North Carolina Senate floor made by legislators responsible for the map making, stating the maps "must include a sufficient number of African-Americans" in the challenged district (Huq 2018).

Direct evidence of discriminatory intent in the form of explicitly identity-based laws or public or recorded statements by decision-makers expressing a racially discriminatory intent are relatively rare, for obvious reasons. Generally, we must look for circumstantial evidence.

Circumstantial Evidence

While semantic content and official statements offer direct evidence of discriminatory intent, a range of methods have been or could be adopted to prove discriminatory intent in an indirect fashion. Such examples include statistics demonstrating a clear pattern of discriminatory effect, specific sequencing of events, historical background of the decision, departure from normal procedure, the relevant legislative or administrative history, and a consistent pattern of actions from decision-makers that impose a greater harm to a protected class of people (Village of Arlington Heights v. Metropolitan Housing Development Corporation 1977). The *Arlington Heights* decision directs the courts and agencies to consider the totality of the circumstances or a cumulative assessment of the evidence at hand. An example of such an approach is seen in *North Carolina State Conference of the NAACP v. McCrory* (2016), a successful challenge to North Carolina's voter ID law on the basis of discriminatory intent to disenfranchise Black voters in violation of the Fourteenth and Fifteenth Amendments and the Voting Rights Act of 1965. In striking down the district court's decision, the Fourth Circuit stated that "th[e] error resulted from the court's consideration of each piece of evidence in a vacuum, rather than engaging in the totality of the circumstances analysis required by *Arlington Heights*" (N.C. State Conference v. McCrory 2016).

Historical Background

Examining the historical context of a law or policy can be one method to show circumstantial evidence of discriminatory intent. Under this method, if one can show a history of the state engaging in discriminatory actions to target a protected group, including the creation of laws to target a specific group, repealing protections for groups, and other official actions, even if those actions are written in a neutral manner, then a case can be made for discriminatory intent.

For example, in *North Carolina State Conference of the NAACP v. McCrory*, the court considered "North Carolina's history of race discrimination and recent patterns of official discrimination, combined with the racial polarization of politics in the state" particularly relevant in determining discriminatory intent in Senate Bill 824, which required voters to provide one of ten authorized photo IDs to vote in state elections. The court found "the record is replete with evidence of instances since the 1980s in which the North Carolina legislature has attempted to dilute the voting rights of African Americans" p.33 (N.C. State Conference v. McCrory 2016).

The court considered the long history of efforts to disenfranchise African Americans in North Carolina, including the 1899 Act to Regulate Elections, literacy tests, poll taxes, accusations of Black voters engaging in fraudulent practices, and gerrymandering. The court, convinced by this history, found that "a series of official actions taken for invidious purposes," and held that the district court "erred in ignoring or minimizing these facts" (p.31).

The Sequence of Events Leading to the Decision

Another method of proving discriminatory intent hinges on the sequencing of events that lead to a decision. Under this method, the motivations of an official, or officials, can be deduced by examining whether there is a pattern of discrimination leading up to the policy or law in question. Unlike historical background, which considers a wide range of factors contributing to the collective history and often spanning a much longer time period, the sequencing of events method tends to be confined to the actions leading up to a specific piece of legislation.

In *North Carolina State Conference of the NAACP v. McCrory* the Fourth Circuit noted that the sequence of events leading to H.B. 589, including "the General Assembly's eagerness to at the historic moment of *Shelby County's* issuance, rush through the legislative process the most restrictive voting law North Carolina has ever seen since the era of Jim Crow", as persuasive

evidence of the General Assembly's discriminatory intent (*North Carolina State Conference of the NAACP v. McCrory* 2016, 229).

Legislative or Administrative History

As outlined in *Arlington Heights*, courts can also consider the legislative or administrative history in proving discriminatory intent. The examination of legislative or administrative history requires the examination of the documents and proceedings that take place during the creation of a law. Such documents include congressional committee reports, legislative debates, committee hearings, and earlier versions of the bill. These documents are critical to understanding what was being considered when debating and drafting legislation.

In the NC voter ID case, the record revealed that the General Assembly had requested a report on voting patterns by racial groups in the state which revealed the provisions outlined in the proposed legislation would disproportionately target Black people. The court held:

> This data revealed that African Americans disproportionately used early voting, same-day registration, and out-of-precinct voting, and disproportionately lacked DMV-issued ID … In sum, relying on this racial data, the General Assembly enacted legislation restricting all — and only — practices disproportionately used by African Americans. When juxtaposed against the unpersuasive non-racial explanations the State proffered for the specific choices it made … we cannot ignore the choices the General Assembly made with this data in hand. (*N.C. State Conference of the NAACP v. McCrory* 2016, 48a)

Statistical Evidence of Discriminatory Effect Alone is Generally Insufficient

The courts have been particularly wary of allowing disparate impact claims alone to prove discriminatory intent or violations of the Eight Amendment. In the landmark death penalty decision of *McCleskey v. Kemp (1987)*, the US Supreme Court held that studies showing that the death penalty has a racially disproportionate impact do not mean that there was an Eighth Amendment violation *unless* a discriminatory purpose can be proven. Taking at face value the evidence presented that the State of Georgia operated a death penalty system that was rife with racial differences, particularly by the race of the victim, the Court ruled that this had no bearing

on the matter. The burden was on the plaintiff to show the intent to discriminate, in their particular case, based on race, gender, or another protected element. In sum, while statistical evidence of disparate impact may be part of a pattern of evidence used to show intent, it is not sufficient by itself. This line of reasoning is not confined to death penalty litigation. In *Arlington Heights*, the court held that, while evidence of disparate impact could be used as a component in establishing discriminatory intent, it could not prove intent without further supporting evidence.

The factors above are those commonly used in legal analyses and in judicial decisions about the constitutionality of legislation that has been challenged. But there are other signs of discriminatory intent. Some of these have been used in the courts, and some have not. We turn our attention to these additional factors now.

Law Enforcement Discretion

An important, and often overlooked, component of legislative intent is the degree of discretion that the law leaves to members of the law enforcement community. Broadly speaking, law enforcement discretion is defined as the power of the police to make a choice. Early understandings of police discretion held that discretion could only occur when the officer was acting outside of the norms or rules of the agency (Sellin 1938). Later definitions of police discretion have posited that law enforcement officers, and law enforcement agencies, have discretion when "the effective limits on his power leave him free to make a choice among possible courses of action or inaction" (Davis 1969).

Research on police discretion has shown that there are various factors that influence law enforcement decisions. Some of these factors are legally relevant, such as jurisdiction and seriousness of the crime, and some are not, such as race and the neighborhood where actions occur. Most of the work in this book so far has presented the non-legal factors that contribute to

police discretion, such as race, geography, and the sex of a person. Exploring police discretion in this way assumes that discretion comes only at the point of the law enforcement decision. While this is likely the case in some areas of the law, if the state passes a law that is intended to result in disparate impact, then there necessarily must be an understanding that the law will be applied in such a way. Law enforcement discretion can, in some ways, be dependent on how the law is written, who it is written by, and the expectations of how it should be enforced. Judges, prosecutors, defense attorneys, police officials, and sheriffs are typically consulted during the legislative process and have ample access to decision-makers, many of whom are former law enforcement officials themselves. (For example, the current Governor of North Carolina, Josh Stein, served for eight years as Attorney General, as did the governor before him, Roy Cooper.) It is reasonable to expect that policymakers enacting new laws have good understandings of how police may implement these new laws, and we will show specific examples in the chapters to come of where laws were specifically written with the expectation of differential enforcement.

Ambiguous Language

One way in which law enforcement is granted discretion is through ambiguity in the language of the law. Ambiguity within the law typically refers to scenarios where there is a lack of clarity in the wording of the law or where there is uncertainty in the application of a term (Schane 2002). Ambiguity is usually raised as an issue in contract law, where there is a need for the court to intervene to settle disputes on the meaning of the terms of a contract. Ambiguity in criminal law arises when a criminal statute is unclear or ambiguous. The vagueness doctrine, also called the void-for-vagueness doctrine, which has been hailed as "among the most important guarantees of liberty under law" (Sunstein 2018), is a constitutional requirement that a State cannot take away life, liberty, or property under a law that fails to "give a person of ordinary intelligence adequate

notice of what conduct is prohibited" or lacks "sufficient standards to prevent arbitrary and discriminatory conduct" (Manning v. Caldwell for City of Roanoke 2019, Carolina Youth Action Project v. Wilson' 2023).

The vagueness doctrine also limits the arbitrary enforcement of the law (Goldsmith 2003). If a criminal law is deemed too vague or obscure for the average person to understand then the law is void. Another remedy to vagueness is the rule of lenity, which holds that if a law is unclear or ambiguous, then the court should apply it in a way that favors the defendant. Though once a useful tool in the courts, the rule of lenity has largely fallen out of practice (Price, 2004).

Ambiguous laws in criminal legislation, we suggest, are laws that have been written with such vague language that grants law enforcement substantial discretion in deciding how to enforce the law on the spot. The vague or ambiguous use of language means that there is no clear understanding of what behaviors would deem an action in violation of a law. When ambiguous laws grant broad discretion to police it can lead to an increased likelihood of disparate outcomes either because it allows individual officers to act on underlying prejudice or biases (Glaser 2024, Charbonneau and Glaser 2021) or, as we will explore later, it allows the law to be implemented in preconceived discriminatory ways. A clear example of ambiguous language of the law is criminal code 4401 defined as "imped[ing] traffic by slow speed" under NCGS 20-141(h), which states:

> [n]o person shall operate a motor vehicle on the highway at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law; provided, this provision shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles

According to the text of this law, there is no defined speed limit that a driver would clearly be in violation of the law. Instead, it is down to the police officer to decide if the speed is

slow enough. Of the 821 charges in our database, Black men account for almost 24 percent of the total charges, despite being just 10 percent of the North Carolina population. Similarly, Latine men account for around 5 percent of the population, yet are close to 18 percent of 4401 charges. These two groups are therefore over-represented by large shares; the vagueness of the law may be what allows this disparity to emerge, since the observing officer can choose whether or not to apply the law after they see who is engaging in the behavior.

Another example is the aggravating circumstance in death penalty litigation of homicides deemed to be "especially heinous, atrocious, or cruel", "vile", "horribly inhuman", or 'depraved", which, when found, can lead to more severe sentencing for a defendant. Unlike other aggravating circumstances, such as robbery or having a victim who is a member of law enforcement (both of which are easily verifiable based on objective standards), these ambiguous standards offer no clear line. With no clear line, District Attorneys may seek death in some cases but not in others, leading to differences in how the standard is applied state to state, over time, and, possibly, based on the identity of those involved in the crime (Welner, et al. 2018).

Of course, absolute clarity in all legislative texts may not be possible, and perhaps is not desirable in all cases. But where objective standards are replaced by subjective ones, or where police or prosecutors have wide leeway in deciding whether or not to enforce a law, the legislature has opened the gates to possible disparate treatment based on identity.

Broad Language

Related to, but distinct from, ambiguous language are criminal laws that are written so broadly that they essentially deem every action illegal and therefore give law enforcement discretion in deciding whom to arrest. This is not a new concept within the legal world. The term overbreadth

is used within constitutional law to describe a statute that reaches far beyond the subject matter it was originally intended to regulate.

A recent example of a law being struck down because of overbreadth is *United States v. Alvarez (2012)* and the Stolen Valor Act. In mid-2007 Xavier Alvarez was invited to give remarks at the Walnut Valley Water District Board of Directors. At the meeting, he stated that he was a retired marine and during his service was awarded the Congressional Medal of Honor. Both statements were false, and Mr. Alvarez was charged with two counts of falsely representing that he was awarded a Congression Medal of Honor under the Stolen Valor Act of 2005, which makes it a crime to falsely claim receipt of military declarations or medals. The United States Supreme Court held that the Stolen Valor Act violated the Free Speech Clause of the First Amendment because Congress drafted the Act too broadly and attempted to limit speech that could cause no harm.

Borrowing from this legal standard, we propose that another way of thinking of overly broad laws is those that are written in such a way that deems almost every action criminal, thus granting police huge discretion in whom to target. An example of a North Carolina criminal law that fits into this category is criminal code 4454 (failure to stop at a stop sign). Of course, there certainly may be a select few among us who do comply with every road law, but it is much more likely the case that we have all, at some point, not come to a complete stop at a stop sign. Indeed, some observational studies have shown that the majority of drivers do not come to a complete stop at stop signs (Woldeamanuel 2012). By deeming most drivers in violation of a criminal law, it is then down to the discretion of the police of whom to charge. Like ambiguous laws, overly broad laws can lead to disparate outcomes. Of the 38,354 charges in our database for failure to

stop at a stop sign, 32 percent were against Black men despite being just 10 percent of the population.

Of course, overly broad laws abound throughout the criminal legal system (see Silvergate 2011). The traffic code is replete with laws that are routinely broken (note particularly that speeding does not have a "buffer zone" by which one is not breaking the law if one is only slightly over the speed limit. Therefore, on a routine basis, virtually every driver is speeding. If they are not, they may be found in violation of laws that prohibit driving behaviors such as "impeding traffic by slow speed" (code 4401), "unsafe movement" (4458), "improper turn" (4447), or any number of other traffic or vehicle codes. The traffic code is by no means the only area in which routine behaviors are criminalized but rarely enforced. Trespassing, sleeping in a public park, having an open container of alcohol, jaywalking, carelessness with fire, littering, failing to have dog tags or a dog on a leash, making excessive noise after a certain time at night, and many other behaviors we may see in everyday life are generally prohibited by law. While these laws are on the books, they are rarely enforced. Of course, having the laws on the books allows the police to enforce them when the situation calls for it, for example if a dog is routinely left off lead and bites the neighbors, or if a teenage party gets out of hand and becomes a nuisance to the neighbors. But when laws are routinely broken, but no enforcement action follows, it becomes clear that the police may be able to pick and choose when to enforce them. More importantly, they can pick and choose against whom to enforce them.

On the other side of the spectrum are laws that are written with such specificity that they strictly limit when the law can be enforced. For example, NCGS 14-12.12 states that it is a crime to "place a burning or flaming cross on property of another or on public street or highway or on any public space". The wording of NCGS 14-12.12 is highly specific, and it is not hard to

imagine what would constitute a violation of this law, the only discretion granted to law enforcement is whether to charge and arrest a person or not. Our point is not that laws are generally too broad or ambiguous; it is that some are narrow and clear, and others are not, and that this may be a sign of discriminatory intent.

Privileged Access to the Legislative Bargaining Table

Another reason that law enforcement are granted broad discretion is that they usually have a seat at the table when legislation is being created. In many ways, this makes sense. When creating laws or policies, it is a wise decision to have input from the key stakeholders and experts in the area of the law being created. For example, if traffic legislation is being considered, it would make sense to involve legislators, urban planners, local residents, highway or transportation engineers, advocacy groups, law enforcement, social scientists who can help anticipate any potential disparate impacts, and any other relevant parties. Having a diverse group at the table with different viewpoints, and a process that weighs the various voices in a meaningful way, would help in crafting legislation that not only centers public safety but also helps anticipate possible disparate impacts or other problems before they occur. However, if there is an exclusion of some voices and an overreliance on others, then legislation is likely to be skewed toward the preferences of those at the table. These concerns give meaning to the general adage: "If you're not at the table, then you are probably on the menu."

As we will show in later chapters, law enforcement representatives are systematically included at the table of people creating criminal legislation. This privileged access to the legislative table results in placing higher value on law enforcement perspectives, which stresses the role of criminal law in solving societal problems, and excludes perspectives that place

community needs or preventative steps at the forefront. As we expand upon in the next section, this access also bridges the gap between legislative intent and disparate outcomes.

When considering whether disparate impacts are intended or unintended, it is helpful to consider who is at the table, and why that group was invited. As marginalized social groups are often targeted for adverse legislation, one question is whether those at the negotiating table understand the likely impact of a piece of legislation. If they do not, they could make inadvertent errors. To the extent that the bargaining table includes a wide variety of voices, this possibility is lessened. Or, those who may be adversely affected by the proposed rule may make their voices heard during the legislative process and the law may be enacted over their objections and in spite of their warnings of its adverse impact. We will come back to this issue in later chapters. A key issue in assessing legislative impact is legislative response to later demonstrations of adverse impact. Where a law was inadvertently written in such a manner as to generate a disparate impact, and the lawmakers had no such intention, then they might rectify the situation in a later legislative session, even years later. Where the disparity is pointed out to them and they take no action, then we must conclude that they are relatively indifferent or accepting of the disparity.

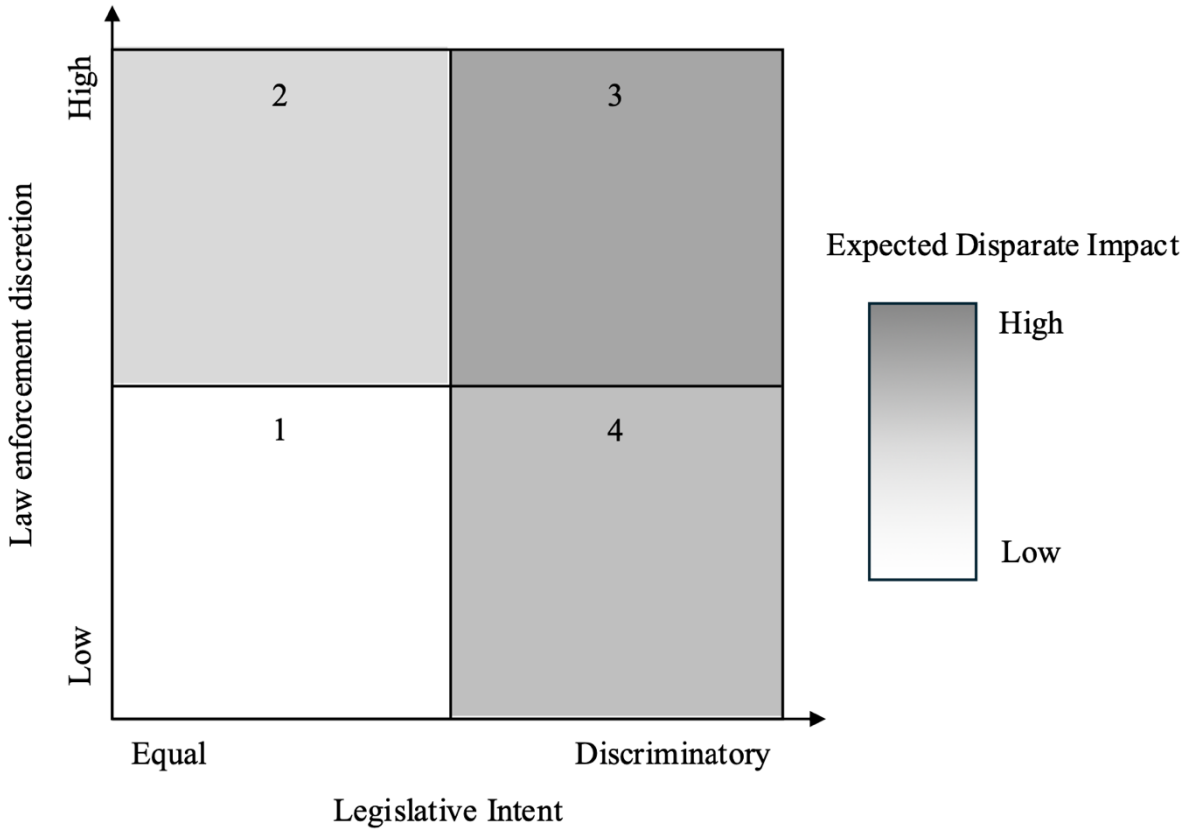
The Interplay of Legislative Intent and Law Enforcement Discretion

In most scholarly work, law enforcement discretion and legislative intent are treated separately. In some ways, this makes sense. The legislature passes a law that may or may not be motivated by an intention to target a certain group of people. Separately, the police are tasked with enforcing the laws and may or may not leverage their discretion in deciding whom to enforce the law against. These two are usually treated as separate processes.

However, it is highly unlikely that intent at the time of the creation of legislation and law enforcement discretion work in isolation of each other because of the privileged access that law

enforcement has to the legislative table. Law enforcement is well aware of the intentions of the legislators, and legislators are well aware of how the police will enforce the law. This means that if there was an intention for a law to target a group of people then there must be an expectation that the police will enforce the law in a discriminatory manner. Figure 9-1 provides a visual portrayal of this argument.

Figure 9-1. The Interaction between Law Enforcement Discretion and Discriminatory Intent.



We display legislative intent on the x-axis, ranging from equal intent on the left to discriminatory on the right. Law enforcement discretion is displayed on the y-axis, ranging from low to high. We can then place criminal laws, based on how they were created and the discretion granted to the police, in each quadrant, labeled one to four. We can also anticipate whether there

will be disparate impact based on the two factors, indicated by the shading of the quadrant, ranging from low anticipated disparate impact in white to high expected disparate impact in grey. These are of course over-simplifications, but we hope that it provides a starting point to be able to understand the interplay between each component.

Quadrant one, low discretion and equal intent, includes laws that are designed with no discriminatory intent and are written with such specificity that they do not grant much discretion to the police. We expect this category to produce the lowest levels of disparate impact. Quadrant two, high discretion and equal intent, includes laws that are created with no discriminatory intent but which grant law enforcement significant discretion in how to enforce them. These laws may result in medium levels of disparate impact depending on police behavior. Quadrant three, high discretion and discriminatory intent, are laws that are created with discriminatory intent and are written in a way that grants significant discretion to the police. Naturally, laws in quadrant three result in the most disparate impact. Laws in quadrant four have discriminatory intent but are written in a way that grants low discretion to the police. These laws may result in some degree of disparate impact, perhaps against a specific targeted group, but less so than if police discretion were high. Figure 7-1 is designed simply to point out the possible interactions between intent and discretion. Note that just because there is law enforcement discretion, they need not always use it to the detriment of minorities. But they may.

Inaction in the Face of Observed Disparate Impact

While most of our discussion has focused on definitions of discriminatory intent, methods of uncovering whether discriminatory intent by the legislature exists, and the role of law enforcement discretion, it is also helpful to consider what it means when the legislator enacts a law that later is demonstrated to produce disparate impact. Does the legislature or other

governmental bodies take action to remedy the situation or no? Can we infer intent from the failure to act when adverse outcomes are pointed out in public debates, research studies, and journalistic investigations?

In a way, failure to take remedial action when disparate impacts are documented is perhaps the most telling demonstration of adverse legislative intent. For example, there is no mystery or surprise in the disparate impact adversely affecting African-Americans in the criminal legal system. Calls for reform, demonstrations of inequal treatment, and reams of literature documenting these outcomes have been developed. State agencies routinely gather data to track the demographics of those affected by given policies, especially within the law. Occasionally, as when punishments for crack and powder cocaine were moved in the direction of greater equality (but not eliminated), we see legislative recognition of an unacceptable situation.

One recent example was the Task Force on Racial Equity in Criminal Justice (TREC), established by Governor Roy Cooper in June 2020, and co-chaired by Attorney General (now Governor) Josh Stein and Supreme Court Justice Anita Earls (see https://ncdoj.gov/trec/). The Group's 2024 year-end report lists 125 recommendations for improvements to the criminal legal system ranging from "eliminate cash bail for Class I, II, and III misdemeanors unless risk to public safety" (#79) to "analyze and report on racial disparities in sentencing laws and recommend possible changes" (#115) and "prohibit capital punishment for people with serious mental ill ness and people 21 or younger" (#117), ending with recommendation #125: Establish the Commission for Racial Equity in the Criminal Justice System as a permanent, independent commission (see TREC 2024, 47-49). The executive order that established the Task Force expired on December 31, 2024, and it was disbanded. In spite of the Task Force's having been eliminated, NC Senate Leader Phil Berger targeted it in a news conference in September 2025

while promoting “Iryna’s law”, HB 306, which expanded the death penalty and mandated pre-trial detention for thousands of criminal defendants: Berger said: “’That task force advanced weak-on-crime policies that kept the murderer on the streets,’... ‘We cannot keep our citizens safe if our policies favor criminals over public safety’” (Carswell 2025). In sum, not only may the legislature ignore evidence that racial disparities are present in the implementation of laws, but they may not like the message and may take the very actions that are being cautioned against by those looking at the data and expressing alarm.

Some forms of disparate impact may be great, but perhaps truly not intended. For example, various traffic enforcement actions related to undocumented driving (e.g., driving without a valid driver’s license, driving without proof of insurance) have strongly adverse effects in the Latine community, and in some cases local district attorneys have agreed not to prosecute these cases. One question is whether the traffic laws from the 1930s that mandated having a driver’s license or car insurance were designed on purpose with the intent to discriminate against the Latine population; we do not think this corresponds to the historical record, mostly due to the fact that the Latine community was such a small percentage of the North Carolina population in the 1930s. But the disparate impact of certain driving offenses against Latine people is a fact today.

In other examples, such as drug laws currently having disparate impacts on Black and White populations, it seems clear that the disparate impact was predictable at the time of the legislation and indeed that it was at least partially intended. We can look at whether the legislature acts when disparate impact is demonstrated to understand this better.

We should state from the get-go that disparate impact litigation is fairly limited in criminal law, in part due to the seminal 1987 Supreme Court case *McCleskey v. Kemp* (1987).

McCleskey, a Black man, was convicted and given a death sentence of murdering a police officer. In a writ of habeas corpus, McCleskey argued that a statistical study proved that the imposition of a death sentence was in some part explained by the race of the victim and the accused. While the Supreme Court held that statistical evidence, absent evidence of purposeful discrimination, alone could not amount to a constitutional violation, internal memos written by the Justices in the *McCleskey* case highlight some important elements of the Justices' thinking around disparate impact claims broadly.

First is the sentiment that if the Court allowed McCleskey to make a disparate impact claim in death sentencing, then it would create a slippery slope that would allow disparate impact claims relating to non-capital charges, indeed throughout the entire criminal legal system. In a memo to file dated September 30th, 1986, Justice Powell wrote, "if similar statistics were produced, the rationale of McCleskey's argument would apply to all crimes" (McCleskey v. Kemp, n.d., p. 33)

A second point illuminated by the *McCleskey* internal memos is that not only were the statistical claims of racial discrimination accepted, but that the racial discrimination in capital cases was unavoidable. Allow us to quote Scalia's January 6th, 1987, memo fully:

> I plan to join Lewis's opinion in this case, with two reservations. I disagree with the argument that the inferences that can be drawn from the Baldus study are weakened by the fact that each jury and each trial is unique, or by the large number of variables at issue. And I do not share the view, implicit in the opinion, that an effect of racial factors upon sentencing, if it could only be shown by sufficiently strong statistical evidence, would require reversal. Since it is my view that the unconscious operation of irrational sympathies and antipathies, including racial, upon jury decisions and (hence) prosecutorial decisions is real, acknowledged in the decisions of this court, and ineradicable, I cannot honestly say that all I need is more proof. I expect to write separately to make these points, but not until I see the dissent (McCleskey v. Kemp, n.d., p. 147)

Scalia's comments in the unpublished memorandum show that there was somewhat of an understanding by the highest Court of the land that racial discrimination was real and that it was "ineradicable". Here, behind closed doors, the Court knew that there are, and perhaps always would be, racial discrimination. Yet even in the face of this fact, the Court was unwilling to act to remedy such an injustice. It is this form of inaction or avoidance that we argue should be considered a form of discriminatory intent: where past, existing, and future racial disparities exist, and when faced with an opportunity to correct course, inaction was the path taken. In his discussion of *Mcleskey*, attorney John Charles Boger referred this as "Grand Racial Avoidance" (2018), whereby the justices turned away "from the reality of widespread racial discrimination in Georgia's capital sentencing system and an acquiescence to Scalia's cynical perspective" (p. 1680).

The unpublished *McCleskey* memo's highlight another important factor: that much of the reasoning that goes into making a decision regarding a law or policy is rarely made public. In those few instances that supporting documents are uncovered, it becomes clear that what is presented in the wording of the law does not always match the real motivations of the decision-maker. The *McCleskey* example was brought to light because Supreme Court Justice Powell was meticulous in his record keeping. But no such law exists that mandates Justices or legislators preserve their personal or legislative files. In North Carolina, as of 2023, legislators are considered custodians of their own files and can make decisions about what can and cannot be destroyed (Section 27.9.(a) G.S. 121-5). As we have highlighted in this Chapter, many of the methods of proving discriminatory intent through direct evidence depend on having access to personal files or supporting documents of legislative action. In a world where it is becoming

increasingly difficult to gain access to these files, one major addition to the list of proving legislative intent is inaction in the face of observed disparate impact.

Action in the Face of Disparate Impact: Disparate Impact Litigation

Although the example of *McCleskey* highlights an example of inaction in the face of observed racial differences in the law, there are numerous examples where legislators have intervened when confronted with evidence of disparate impact. We will explore some of these examples in greater detail in subsequent chapters, but for now we will focus on the use of disparate impact litigation itself as an example of how the legislator can, and has, intervened in the face of inequality.

Begin with the fact that disparate impact litigation is itself an example of the government intervening to correct a past racial inequality under the law. In recognizing the detrimental effects of race-based discrimination in employment against Black people, highlighted by organizers, lawyers, and scholars during the civil rights movement, the federal government allowed for litigation based on unequal treatment. Disparate impact litigation was a tool developed by government agencies under the Civil Rights Act of 1964 (Johnson 2014), reaffirmed under *Griggs v. Duke Power Company (1971)*, in which aptitude tests for internal promotions were ruled by the Supreme Court to be in violation of Title VII of the 1964 Civil Rights Act, and then solidified with a provision in the Civil Rights Act of 1991 that codified the standard of proving disparate impact. While the 1964 and 1991 Acts were targeted to employment discrimination, it serves as an important example of the willingness of the government to intervene and enact policies that counter harmful race-based practices of the past. In this instance, when the federal judicial branch was faced with evidence that hiring practices were resulting in the disparate impact against African-Americans, they instituted policies that

would help counter this trend. Although there have since been several attempts to reel in this protection (Johnson 2014), disparate impact litigation remained a valuable tool for racial equity in employment practices for decades.

It is not lost on us that, at the time of writing this book, the country is living through a renewed attack on measures designed to limit racial- and sex-based discrimination. On April 23rd, 2025, Donald Trump signed an executive order "Restoring Equality of Opportunity and Meritocracy", which attempts to eliminate the ability to bring about disparate impact discrimination litigation. Racial preferences in college admissions have been eliminated, and the Supreme Court held hearings in October 2025 on whether race should be eliminated as a consideration in Voting Rights Act cases, potentially affecting legislative districts throughout the South. All of these actions are part of a larger movement to eradicate many of the protections against racial discrimination that have been developed over the past six decades. The executive order begins with words that acknowledges, and accepts, disparate outcomes in no uncertain terms, "[a] bedrock principle of the United States is that all citizens are treated equally under the law. This principle guarantees equality of opportunity, not equal outcomes". The executive order goes on to note that disparate-impact litigation is one of the tools used in a "pernicious movement" that "endangers this foundational principle".

In sum, disparate impact has been seen as a first step in an effort to eradicate it unless it can be shown not to derive from pernicious intent. Now, government authorities are attempting to eliminate it from consideration even when it may be overwhelming.

Conclusion

In the chapters that follow, we select areas of the criminal code and examine the intent of the legislatures when either enacting new criminal laws or reforming existing ones. We use the range

of methodological techniques that we have outlined in this chapter to explore the origins of anti-Klan laws, anti-protest laws, gang laws, laws for certain types of drugs, capital punishment, reforms in structured sentencing, and the traffic code. In our historical examination, we show that the creation of criminal law by the legislature, at least in the areas of the law that we examine, are done with the motivation to both target racial groups and to control behaviors that they associate with that group.

10

Finding Legislative Intent Through Official Documents:

The Case of Protest and Gang Laws

Introduction

As highlighted in the previous chapter, legislative intent may be documented in several ways, ranging from direct to indirect evidence, with a litany of methods to uncover the evidence. In this chapter, we will delve into various state archives and use one of the most direct methods of proving discriminatory intent that we have at our disposal: Words spoken by legislators or included in official legislative, administrative, and personal documents associated with the passage of the laws. That is, we look at the documents associated with the passage of various laws and search for those sections where lawmakers reflect on the need for the law, indicating what they are attempting to do, the problems they are attempting to address. We ask a simple question: Was the "problem" they sought to address understood in a racialized manner?

Repression of Protest with the Creation of Criminal Law

Protest has long been a powerful tool for race- and class-subjugated communities to exert political power not available to them through more conventional political activities (Gillion 2013, Lipsky 1968, Gause 2022, Wouters and Walgrave 2017) or for more general voicing of dissent. Protest, whether in the form of organized demonstrations, marches, civil disobedience, sit-ins, boycotts, strikes, uprisings, and even more subtle forms of dissent, have been used across history by otherwise politically powerless groups to demand change (Kelley 1994, Scott 1985, Aptheker 1993). Whether a protest movement is successful in changing government policy has been studied widely with researchers citing the role of media framing (Wasow 2020), the

cohesion of protest crowds (Mueller 2022), strong alliances (Steedly and Foley 1979), and stable information infrastructures (Hussain and Howard 2013) as factors leading to the success of a movement.

Some protest movements have been subject to intense repression from the state, such as the Dakota Access pipeline protests, the Civil Rights Movement, or the anti-Immigration Custom Enforcement protests. While other protest movements have been valorized by the state, such as the U.S. Women's March of 2017. In seeking to understand why some protests are subject to state suppression, researchers have pointed to the role of media framing (Nelson and Kinder 1996), … This media framing often reflects dominant cultural response to the protest. For example, the Black Panther Party and its activities were largely vilified in the mainstream media as it was portrayed as a threat (see Davenport 2009) whereas other movements, such as the movement for equal rights for women or the movement for attention to climate change have been portrayed more favorably. These portrayals apparent in media coverage of a protest movement can also be reflected in state response. Does that state see the movement as one that needs to be repressed, or what that needs to be taken seriously and perhaps incorporated into the political process with response to its demands?

Political repression is widely defined as "repressive actions directed at individuals and groups based on their current or potential participation in noninstitutional efforts for social, cultural, or political change" (Earl, Political Repression: Iron Fists, Velvet Gloves, and Diffuse Control 2011, 262). Most definitions and measurements of repressive actions are limited to actions by the state, though some broader definitions recognize repression from one non-state group to another (Tilly 1978). The list of state tactics to repress is as long as it is creative, ranging from standard police and military action to indirect tactics such as tax restrictions on not-

for-profit groups (McCarthy, Britt and Wolfson 1991)[22]. Sociologist Pamela E. Oliver has pushed researchers to broaden the definition of repression to include mass incarceration as a state tactic (2008).

We add to this vast body of movement repression literature by using historical methodologies outlined in Chapter 7 to show how the creation of criminal statutes related to protest activity has been used to repress and punish specific protest movements in an intentional manner. In the pages that follow, we show that when race- and class-subjugated communities, or other groups that protest in support of oppressed groups, engage in protest activity, the state responds with creating laws with the intent to target their activities. We focus on two moments in North Carolina history to juxtapose the state's response to protest movement spearheaded by two racially distinct groups: the Ku Klux Klan resurgence in the 1950s and the Civil Rights Movement in the 1960s. Specifically, we adopt a range of methods, including conducting legislative histories, examining the sequencing of events leading to the passage of law, examining the vagueness of the wording of the law, and the disparate outcomes of those laws, to show present a case of discriminatory intent.

Ku Klux Klan Legislation

An internet search for the word "terrorist" would likely result in images of young or middle-aged men with brown skin, probably wearing clothing that signals ties to the Middle East. It would probably take a while to sift through these biased portrayals of "terrorists" before encountering one of the oldest groups of terrorists still in existence in the United States—the Ku Klux Klan (Newton 2007). The Ku Klux Klan (KKK) began as a private social club in 1866 in Pulaski, Tennessee whose founding members were White men in their twenties from "good" families

[22] For a comprehensive taxonomy of repression tactics see (Earl 2003)

(Newton 2007). The founding members shaped the KKK after the southern collegiate fraternity Kuklos Adelphon, founded at the University of North Carolina at Chapel Hill in 1812 (Newton 2007), an institution where all three of the co-authors of this book have either attended as a student, are a member of the faculty, or both. Just one year after their founding, and coincidently around the same time that Black people were gaining some political power following the abolition of slavery, the KKK expanded its mission beyond "hav[ing] fun, mak[ing] mischief, and play[ing] pranks on the public" to engage in guerilla warfare against any group that jeopardized their "southern way of life", which included the continued enslavement and subjugation of Black people.

The KKK quickly became one of the most powerful political bodies in the United States and had chapters in every state of the country. Klan members were also members of state governments, elected, career, and appointed officials within the federal government, the U.S. Supreme Court, law enforcement, and in the White House. And it has been a long lasting organization, with the Southern Poverty Law Center listing 72 active KKK chapters still in 2015.

Across the Klan's history, its violent nature has been recognized and legislative attempts to curtail Klan activity have occurred from time to time. The first was the Ku Klux Klan Act of 1871 passed by Congress, which contained several provisions to prevent the coordinated political violence and intimidation. The Act, along with other efforts from the federal government, seemed to be partially successful in prosecuting Klan members, and by the early 1870s the Klan had diminished in size and ended the "first era" of the Klan.

In 1915, the Klan reemerged as a highly centralized organization, with paid full-time recruiters in every state (MacLean 1994). This tactic proved to be resoundingly successful, as membership rapidly climbed and reached its peak in the mid-1920s with an estimated five

million members (VCU n.d.). To expand involvement beyond White men, parallel orders emerged, including the Women of the Ku Klux Klan and the Junior Klan organized in 1923 and 1934, respectively (MacLean 1994). The Klan's main tenants were "racism, right-wing populism, opposition to labor, sexual conservatism, antipathy to the social gospel, even anti-Catholicism" (MacLean 1994, 160). The second phase of the Klan began to decline in the late 1920s and by the late 1930s it had essentially disbanded again. Unlike the first phase, there was no legislative action that reined in the Klan. Instead, historians have pointed to the demise of the second phase as a combination of internal problems, hypocritical leaders, factionalism, opposition from the press and civic leaders, failure of leaders in elected positions to fulfill promises made to them, and the international fall of fascism observed in the late 1930s and early 1940s (MacLean 1994).

The success brought by the Civil Rights Movement in the 1950s gave way for the third chapter of the KKK to emerge. Both the *Brown* decision, the Civil Rights Act of 1964, and the 1964 Freedom Summer led to an upsurge in Klan membership and activity (Lewis 2013). Like the first phase of the Klan, some state governments responded by passing legislation to curtail activity. Unlike the efforts made in the previous century, legislation did not carry the same severity of punishment. In the 1950s, the North Carolina Senate introduced S.B. 140, which was passed in 1953 and became Article 4A, entitled, "Prohibited Secret Societies and Activities", of Chapter 14 of the NCGS. The Bill included several statutes that directly prohibited activities taken by the Klan. The article included 11 punishable statutes, most of which were considered a class 1 misdemeanor, which carries a maximum penalty of 120 days in jail and a discretionary fine, while three others were considered a class I felony, which carries a maximum penalty of

three to 12 months in prison. Table 8-1 presents the list of KKK statutes with their associated punishments.

Table 10-1. Laws to Repress KKK Activity.

	Statute	Associated punishment	Minimum punishment (with no prior convictions)
1	14-12.3 Certain secret societies prohibited	Class 1 Misdemeanor	1-day community punishment
2	14-12.4 Use of signs, grips, passwords or disguises or taking or administering oath for illegal purposes	Class 1 Misdemeanor	1-day community punishment
3	14-12.5 Permitting, etc., meetings or demonstrations of prohibited secret societies	Class 1 Misdemeanor	1-day community punishment
4	14-12.6 Meeting places and meetings of secret societies regulated	Class 1 Misdemeanor	1-day community punishment
5	14-12.7 Wearing of masks, hoods, etc., on public ways	Class 1 Misdemeanor	1-day community punishment
6	14-12.8 Wearing of masks, hoods, etc., on public property	Class 1 Misdemeanor	1-day community punishment
7	14-12.9 Entry, etc., upon premises of another while wearing a mask, hood, or other disguise	Class 1 Misdemeanor	1-day community punishment
8	14-12.10 Holding meetings or demonstrations while wearing masks, hoods, etc.	Class 1 Misdemeanor	1-day community punishment
9	14-12.12 Placing burning or flaming cross on property of another or on public street or highway or on any public place	Class 1 Misdemeanor	1-day community punishment
10	14-12.13 Placing exhibit with intention of intimidating, etc., another	Class H Felony	5-month community or intermediate punishment
11	14-12.14 Placing exhibit while wearing mas, hood, or another disguise	Class H Felony	5-month community or intermediate punishment

Note: Minimum punishments from structured sentencing from 1994.

There is no way to know exactly how many Klan members were arrested, if any, under the anti-Klan laws passed in the early 1950s; no one in our database of 13.5 million charges appears associated with any of the charges listed in the Table. But it serves as an important contrast to how the state responds to limit the actions of different groups. Most notably is the

very precise language that is used in describing offenses. For example, statute 14-12.12 states that it shall be illegal to "plac[e] a burning or flaming cross on the property of another or on public street or highway or on any public place". This precise language leaves little discretion for law enforcement to interpret actions. For instance, a person would not be found in violation of that statute if a person were to burn something other than a cross on another's property, further, it is entirely down to the discretion of the police officer whether they deem a burning object a cross at all. This becomes especially important when contrasted with laws designed to curtail civil right protest actions.

Unsurprisingly, the state's toothless efforts in the 1950s to curtail Klan activity were not very successful and during the 1960s the North Carolina Klan grew to be the most prominent Klan chapter in the country, with membership totaling more than all of the southern states combined (Cunningham 2013). Klan rallies became a fixture across the state but was more so concentrated in the eastern part of the state ranging from small gatherings to huge crowds. In a letter from the State Highway Patrol addressed to Governor Daniel K. Moore dated August 10, 1965, it was reported that a "Ku Klux Klan rally was held on Monday, 9 August 1965, from 8:00 p.m. to 10:30 p.m. on the Lloyd Cole farm in Duplin County… Approximately 1200 to 1400 people attended" (Lambert 1965). It does not appear that Klansmen were arrested frequently, though in 1966 Bob Jones, the Grand Dragon of the North Carolina KKK, was arrested by the State Bureau of Investigations on charges of perjury related to a divorce in which Jones lied about being separated from his wife for two years and not one, which was a requirement for divorce at the time (Durham Sun 1966).

Documents made public from the Federal Bureau of Investigations show that KKK membership in North Carolina was rising in the 1960s, with some estimates of membership of

around 6,000 people across the state in 1966 (FBI n.d.) with other estimates of upward of 10,000 members (Cunningham 2013). Despite purported efforts to halt the growth of the Klan by then Governor Moore, including the creation of a so called anti-KKK committee, the FBI reported that Klan "informants had reported that J. R. Jones, Grand Dragon, North Carolina United Klans of America, was contacted by Governor Moore in an effort to obtain Klan support for a road bond issue in North Carolina" (FBI, n.d., p20). The road bond issue in question refers to the $300 million road bond package that was used to build highways through the middle of Black neighborhoods throughout the state, a project commonly known as urban renewal. In another memo, the FBI implies that Governor Moore's anti-KKK committee was never created with the intention to stamp out the organization: "[d]ue to the fact that Governor Moore, on previous occasions, has sought and has been refused the political support of the North Carolina Klans, it is entirely possible that the anti-Klan committee is a purely political effort on the part of the Moore administration to lessen political resistance to his campaign" (FBI, n.d., p. 21)

While we do not mean to imply that there was a clandestine operation between the state and the Klan, the willingness of the Governor of North Carolina to seek assistance, apparently on several occasions, from a White Supremacist terrorist organization for political support to pass a measure that would later be used to decimate thriving Black neighborhoods forces those not already convinced to call into question the racialized motivations of law makers of that time.

Indeed, if one were driving through North Carolina in the 1960s, there would be no mistake that the Klan was in full operation. Billboards were erected across the state welcoming people to "Klan Country". A sign erected in Smithfield in the late 1960s, less than 30 miles from the Governor's mansion read, "This is Klan Country 'Love it or Leave it' help fight communism & integration". The sign was not removed until 1977. Another 50 miles east was a similar sign

reading, “United Klans of America, Knights of the Ku Klux Klan Unit 73 Welcomes You To Ayden”, and another in neighboring town Greenville with the same message. Figure 10-1 reproduces one of these Klan welcome signs.

Figure 10-1. Ku Klux Klan Sign Welcomes Visitors.

Source: East Carolina Manuscript Collection, Sleeve 66, folder d, box 40

In July 1966, the Law and Order Committee headed by Governor Moore (coincidently the same committee that sought to stamp out civil rights protestors, which we will turn to in the next section), declined to revoke the NC charter of the Klan, stating that the committee agreed that “it should not recommend to Secretary of State Thad Eure that procedures be initiated to revoke the klan’s certificate of authority to do business in North Carolina” (Charlotte Observer 1966).

Criminalizing Civil Rights Movement Protestors

The Civil Rights Movement gained significant momentum in the mid-1950s with the landmark *Brown* decision striking down school segregation. While the decision was a decisive win for the Civil Rights Movement, it prompted extreme backlash from White supremacists and motivated the state to swiftly enact laws to restrict public protest and civil disturbances. North Carolina was particularly steadfast in its efforts to resist civil rights gains for the Black population.

In August 1954, following the *Brown* decision, the Governor William B. Umstead established the Special Advisory Committee on Education and appointed Thomas Pearsall, former NC Speaker of the House, as chairman. The committee concluded that racial integration within public schools could not, and should not, be attempted and presented the Pearsall Plan, which sought to legally circumvent full integration. The Pearsall Plan recommended legislation that was later enacted by the General Assembly in March 1955 as the Pupil Assignment Act. The Act created vague criteria for the transfer of students between schools and in practice created procedures that deterred Black students from requesting transfers, while making it relatively easy for White students to transfer to different schools, resulting continued segregation (Peebles-Wilkins 1987).

Albert Coates, an academic who founded the Institute of Government at the University of North Carolina and who will appear again in Chapter 12, led and submitted a study to then Governor of North Carolina William B. Umstead which laid out various legal routes that could be adopted to resist integrating the North Carolina public school system following the *Brown* decision. The report, which was entitled "The School Segregation Decision", presented three options for the state to take. First, the state could "take the course the Supreme Court has made in its decision—let it enforce it; and meet the Court's efforts to enforce it with attitudes ranging from passive resistance to open defiance" (Coates and Paul 1954, 3). Second, it could "proceed

to mixed schools without delay in unthinking acquiescence which ignores the fearful problems of adjusting to the law" (Coates and Paul 1954, 4). The final suggestion, which was adopted not only by the state of North Carolina but the country as a whole, was to proceed with snail pace to the Supreme Court's orders and effectively resisting integration through doing it as slowly as possible, "making haste slowly enough to avoid the provocative litigation and strife which might be a consequence of defying the decision" (Coates and Paul 1954, 4).

Over the next decade, Black communities fought to abolish the Jim Crow system and secure their rights with ongoing and intense actions. North Carolina became a hotbed for civil rights actions, including Greensboro sit-ins, the founding of the Student Nonviolent Coordinating Committee at Shaw University, and the final stop on the Journey of Reconciliation.

In April 1968, following the assassination of Dr. Martin Luther King, Jr., and years of uprisings in defense of Black civil rights, public protests captured the attention of the North Carolina legislature. In response to the civil rights uprisings and lack of legal authority to engage law enforcement in repressing the movement, Governor Moore reformed the Governor's Committee on Law and Order (GCLO) in 1967, which was a direct result of the sweeping Omnibus Crime Control and Safe Streets Act of 1968, and the establishment of the Law Enforcement Assistance Administration, was a federal law that provided federal grants to state and local governments to aid in their efforts to reduce crime. The committee comprised of fifteen individuals, including the Attorney General (who, coincidently, was also a member of the Pearsall Committee previously discussed), Commissioner of Motor Vehicles, Director of the State Bureau of Investigation, District Solicitor of Superior Court, Commissioner of Revenue, Director of the Department of Administration, Chairman of the NC Good Neighbor Council, Adjunct General of NC, three Sheriffs (Rockingham, Catawba, and Wake counties), and two

Chiefs of Police (Winston-Salem and Wilmington). The advisory committee included another 15 individuals, including two additional law enforcement officers and two professors from the University of North Carolina's Institute of Government (Order 1969). One of the advisory members, Burlington Chief of Police Alfred H. Garner, was later investigated by the FBI following several cases of police brutality against Black citizens in Alamance County.

The GCLO was tasked with studying the existing criminal code, recommending new legislation, and providing guidance on how to reform and build local and state law enforcement agencies with the influx of funding from federal legislation. One particular focus was the various aspects of the law that pertained to riots and civil disorders.

In February 1969, the GCLO released a report, *Proposed Legislation Relating to Riots and Civil Disorders*[23], which presented an overview of existing laws relating to civil unrest and protest and put forth proposed legislation. The proposed legislation outlined in the report was formulated into House Bill 321 and ultimately enacted by the North Carolina General Assembly as Article 36A of Chapter 14 of the General Statutes. The introduction of a June 1969 report from the GCLO entitled, *Assessment of Crime and the Criminal Justice System in North Carolina*, frames the civil rights uprisings as, "recurring riots and civil disturbances in American cities have provided a most striking and visible example of crime in the streets. All but a few Americans have been affected by these outbursts of violence and disorder" (GCLO, 1969). Protests during the 1950s and 1960s civil rights movement was portrayed as one the gravest public safety failings, which could only be remedied through the criminal legal system. Around the same time, the House passed and sent to the Senate a measure that would punish students at

[23] URL: https://archive.org/details/proposedlegislat19nort/page/n9/mode/2up?ref=ol&view=theater

state-supported universities who engaged in civil rights protests and rescind their scholarship and fellowships (Winston-Salem Journal 1969). Table 10-2 presents the civil rights protest-related statutes. 10 of the statutes in table 2 appear in the AOC data, and account for almost 40,000 charges during the time period we study.

Table 10-2. Laws to Repress Civil Rights Activity.

	Statute	Associated punishment	Minimum punishment (with no prior convictions)
1	14-288.2: Riot, Inciting to Riot	Class 1 Misdemeanor	1-day community punishment
		Class H Felony if there is property damage in excess of $1,500 OR any participant has in their possession a deadly weapon	5-month community or intermediate punishment
2	14-288.3. Provisions of Article intended to supplement common law and other statutes.		
3	14-288.4. Disorderly conduct	First offense: Class 1 misdemeanor	1-day community punishment
		Second offense: Class I felony	4-month community punishment
		Third or more: Class H felony	5-month community or intermediate punishment
4	14-288.5. Failure to disperse when commanded	Class 2 misdemeanor Can be elevated to 14-288.2 (class 1 misdemeanor)	1-day community punishment
5	14-288.6. Looting; trespass during emergency	Class H felony	5-month community or intermediate punishment
6	14-288.7. Transporting dangerous weapon or substance during emergency; possessing off premises	Repealed in 2012 Class 1 misdemeanor	1-day community punishment
7	14-288.8. Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction	Class F felony	13 months intermediate or active punishment
8	14-288.9. Assault on emergency personnel	Class F felony	13 months intermediate or active punishment

9	14-288.10. Frisk of persons during violent disorders; frisk of curfew violators		
10	14-288.11. Warrants to inspect vehicles in riot areas or approaching municipalities during emergencies		
11	14-288.12. Powers of municipalities to enact ordinances to deal with states of emergency	Repealed 2012 Class 3 misdemeanor	1-day community punishment
12	14-288.13. Powers of counties to enact ordinances to deal with states of emergency	Repealed 2012 Class 3 misdemeanor	1-day community punishment
13	14-288.14. Power of chairman of board of county commissioners to extend emergency restrictions imposed in municipality	Class 3 misdemeanor	1-day community punishment
14	14-288.15. Authority of Governor to exercise control in emergencies	Repealed 2012 Class 2 misdemeanor	1-day community punishment
15	14-288.16. Effective time, publication, amendment, and recission of proclamations	Repealed 2012	
16	14-288.17. Municipal and county ordinances may be made immediately effective if state of emergency exists or is imminent	Repealed 2012	
17	14-288.18. Injunction to cope with emergencies at public and private educational institutions		
18	18-38.1. Authority of the Governor to direct closing of A.B.C. stores		
19	18-129.1. Authority of the Governor to limit sale of nine and malt beverages		
20	14-49. Malicious use of explosive or incendiary	Class D felony	44-month active punishment
		Class G felony	10 months intermediate or active punishment
		Class E felony	20 months intermediate or active punishment
21	14-50. Conspiracy to injure or damage by use of explosive or incendiary; punishment	Repealed in 1994	
22	14-50.1. Explosive or incendiary device or material defined	Provides definition	
23	14-34.1. Discharging firearm into occupied property	Class E felony	20 months intermediate or active punishment

		Class D felony	44-month active punishment
		Class C felony	50-month active punishment
24	14-132. Disorderly conduct in and injuries to public buildings and facilities	Class 2 misdemeanor	30 days community punishment

Note: minimum punishments were pulled from structured sentencing from 1994. Some of the statutes appearing in the table are used as a filler or for definition purposes and therefore do not carry a punishment.

Unlike the anti-KKK legislation presented in Table 10-1, the anti-civil rights protest legislation adopts much broader language and carries far heftier punishments. One such example of vague or broad language is the definition of a riot. Under statute 14-288.2 a riot is defined as a "public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property". We should also note that the definition of a riot within the law is strikingly similar to how a slave insurrection was defined. In his examination of slave revolts, Historian Herbert Aptheker notes that Texas legally defined a slave insurrection as, "an assemblage of three or more, with arms, with intent to obtain their liberty by force" (Aptheker 1993). In contrast to the very specific wording of the anti-KKK laws, the vague language of anti-civil rights protest laws grants significant discretion to law enforcement to make on the spot decisions of who to invoke the law against. Indeed, broad discretion was an intentional feature of the legislation, giving the "governor, municipal and county governments broad authorities during uprisings" (Winston-Salem Journal 1969).

Of course, this was not a tactic unique to the North Carolina legislature. The 1967 Kerner Commission Report devoted several chapters to the need for police procedures in controlling disorders. Many states across the country passed similar laws giving the police broad power and

discretion in charging protestors. On April 11, 1968, Congress passed the Anti-Riot Act. In 1968 Michigan enacted legislation that increased punishment for "riot" activity (Israel 1969).

It was clear at the time that protest legislation passed was designed to be aimed at Black protestors, as demonstrated by numerous newspaper articles published throughout the 1960s both nationally and within North Carolina. A 1967 article references the U.S. House approval of a 1967 bill called "the first federal legislation specifically aimed at Negro ghetto riots" (Robesonian 1967). An article appearing in *The Herald-Sun* in 1963 commented on the passage of recent legislation aimed at Black protestors:

> If anything, final passage of these bills now could make a bad situation worse. They would fortify the Negro's belief that the levers of public power are set against him and his only effective response is through extra-legal protest demonstrations. For clearly these tough new penalties are directed at Negroes. They are not proposed as remedies for a general weakness in the penalty provisions… It would be folly, too, to think tough penalties would end the demonstrations. The threat of added months in jail might thin the ranks of the demonstrators. But class legislation of this sort won't reduce the "disrespect of the law" that one legislator cited as the reason for seeking longer jail terms and heavier fines. (Herald-Sun 1963)

The Black-owned newspaper calls out a legislator for using "disrespect of the law" and notes the futility of such legislation. Here, the paper is referring to Representative George Uzzell (R-Rowan County, who was responsible for steering two bills to increase penalties for trespass and contempt of court to be used against protestors. Another article with the title "House Yells Approval of Negro Bills" reported that "[a]nti-segregation demonstrations in Raleigh and other cities of the State were not mentioned, but Uzzell had said Tuesday the bills would "take care of things like that" (News and Observer 1963). The bill increased the punishment for trespass from 30 days to two years.

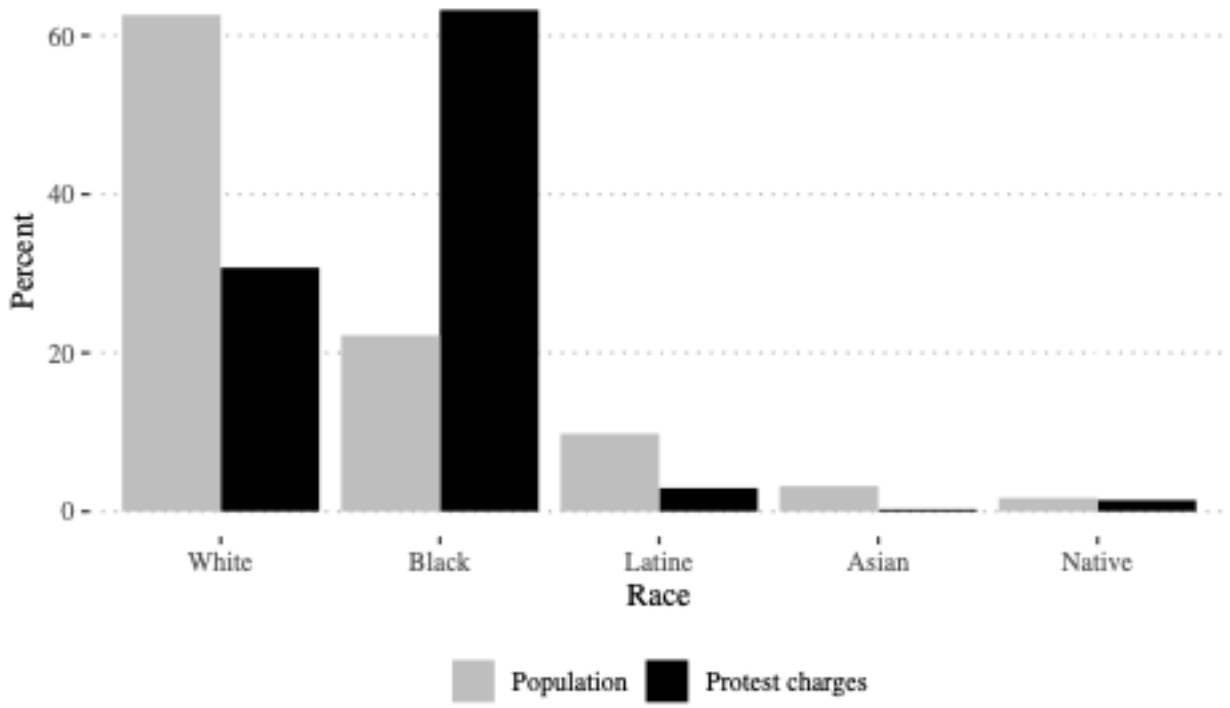
We could go on for entire volumes analyzing the historical evidence that points to the intent of the legislature, both within North Carolina and across the United States, for the creation of laws in the 1960s to target protest activity. Given the range of examples we have provided,

which shouldn't leave the reader with much doubt over the motivations behind legislators' actions. After all, this was the same time period when states were seeking legal advice about how to refuse to comply with the mandates of school integration handed down in *Brown*, and during a time when, according to FBI reports we cited earlier, the Governor was negotiating with the KKK to bring their support for an "urban renewal" bill associated with highway construction. In sum, there is little reason to doubt the racialized intent to state and national crackdowns on the civil rights protests of the 1960s. We move on in the next section to see whether the intention of the 1967 protest laws, the targeting of Black demonstrators, persists today.

The Enduring Legacy of Anti-Black Protest Laws

The laws that were passed criminalizing protest activities are still on the books and, unsurprisingly, tend to target Black protestors. To understand how the specific laws passed by the GCLO in 1967 are used by law enforcement today, we subset the NC AOC charges to those statutes that were recommended by the committee and then look at who has been charged with those offenses. To be clear, we do not intend to imply that every person charged under a GCLO statute was engaging in protest activity, but examining the data in this way allows us to understand the legacy of protest laws with an underlying racially motivated intent. Figure 10-2 shows the racial share of charges for all the protest statutes appearing in the AOC data and compares those rates with their population share. We omit anyone whose race is listed as other or unknown. The Black bar indicates the percent of total civil rights protest laws charges for each group, and the grey bar shows the percent of people in the general population for each race. If the Black bar is higher than the grey bar for any racial group, then they are over-represented in protest charges.

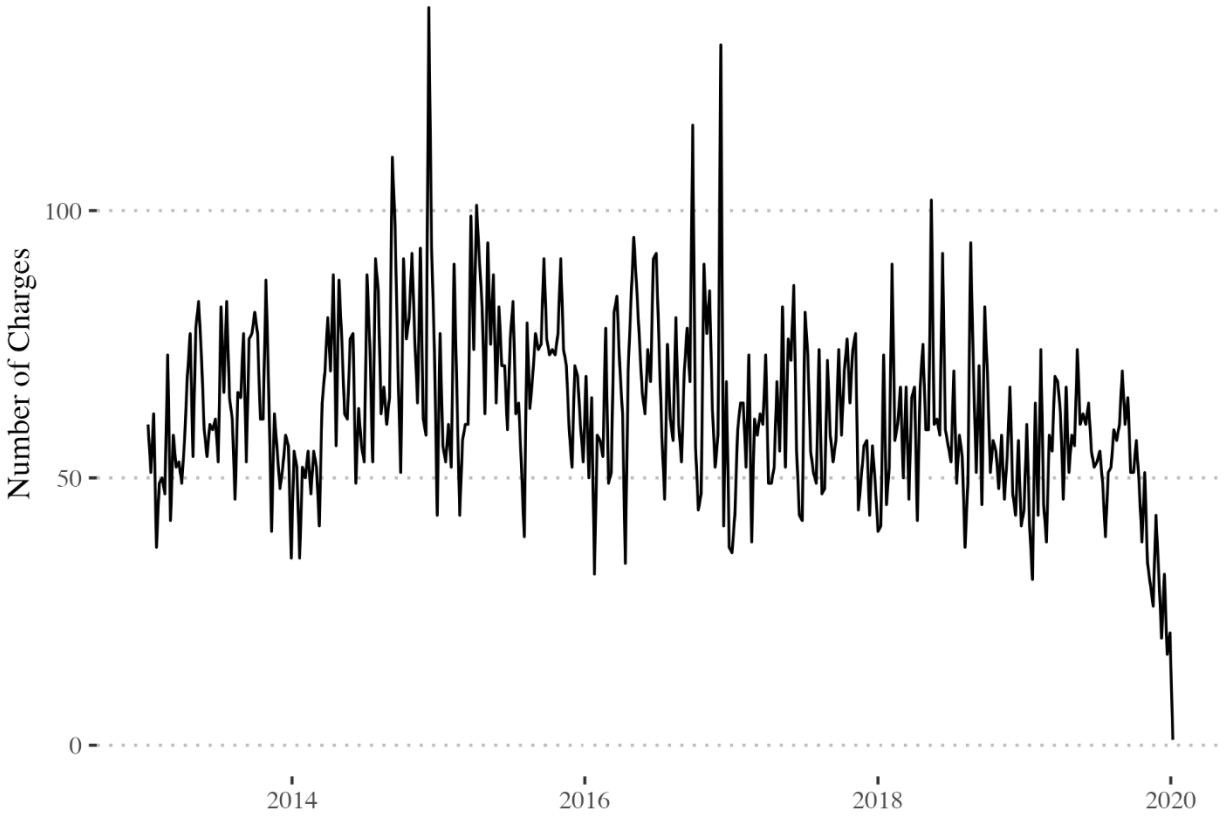
Figure 10-2. Riot and Civil Disobedience Charges, by Race.



It is very clear to see that the percent of Black people charged under protest-related laws (63.2 percent) is far more than their population share (22.2. percent). No other racial group is charged at a higher percent than their population share. While these data show provide some striking nods to the legacy of protest laws in targeting Black people in North Carolina, it isn't possible to infer the context of these charges based on Figure 10-2 alone. Because the NC AOC database provides the date that any charge is made, as well as the address of the person who received those charges (and the county in which the charge was filed), we can get more granularity and information on the events surrounding protest-related charges. This allows us to answer the question of whether the protest laws of the late-1960s are still being enforced against protest activity, which protests are being policed, and whether there are differences between different races of protestors who are ultimately charged under existing laws. To begin, we calculate the number of protest-related charges by week across the whole state to ascertain

whether there are specific periods when these laws are being used by law enforcement. Figure 10-3 shows the number of protest-related charges by week for the entire dataset.

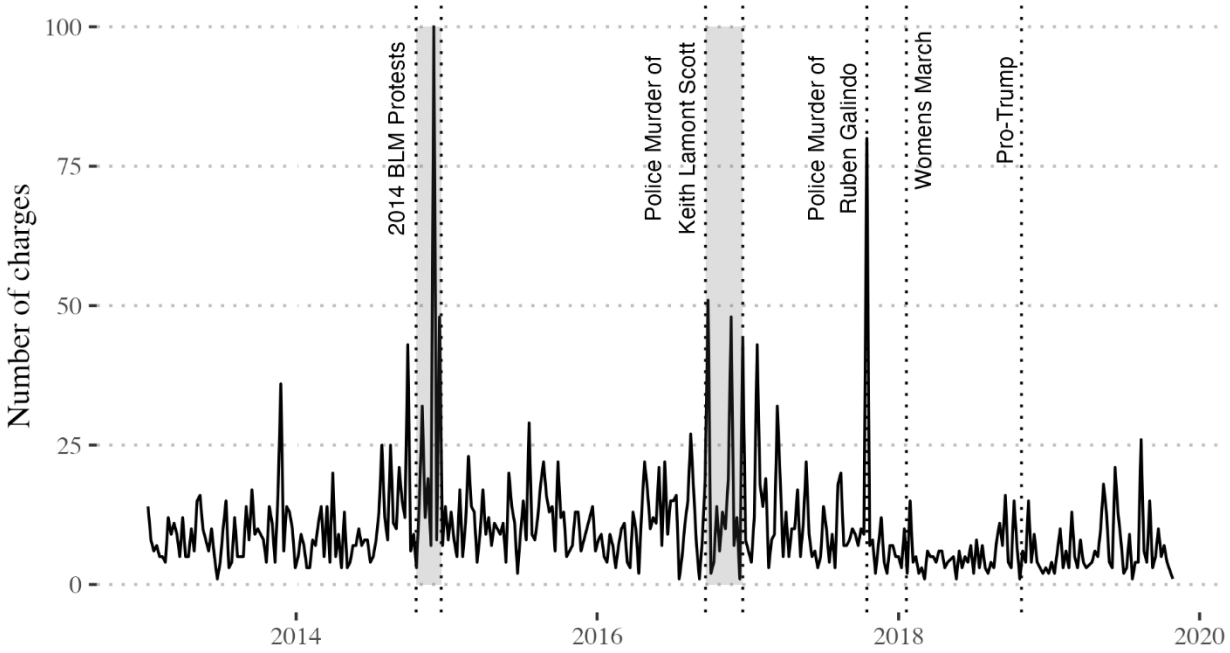
Figure 10-3. Number of Protest-Related Charges, by Week.



As can be seen in Figure 10-3, there are very specific moments when people are charged under protest-related crime codes. But again, there is no way to know exactly what was going on at the time of these charges, given that these charges are aggregated to the entire state. To make clear that certain protests are subject to increased policing, and particular races of people have higher charges when protests do occur, we need to look at more specific geographic areas. To do this, we add the number of protest charges by week and then separate out the data by county to pinpoint select protest activity in each county using the Crowd Counting Consortium dataset

(Crowd Counting Consortium n.d.), we provide the percent of charges against Black people in the caption of each graph. While we do not have the precise location of each criminal charge, we do know the county in which the charge was filed. If there is a spike in the number of protest-related offenses on the same date, then we can be confident that a protest has occurred in that county. Figure 10-4 show protest charges in Mecklenburg County.

Figure 10-4. Mecklenburg County Protest-Related Charges and Selected Protest Events.



Note: 83.5 percent of all protest charges are against Black people in Mecklenburg County

Figure 10-4 shows that there are indeed increased charges for protest-related crimes around times when protests take place. Focusing on Mecklenburg County, where the city of Charlotte is located, we have been able to identify that during the three period with the highest frequency of charges for protest-related crimes, there were two events. The first included the period of time at the end of 2014 where the country saw the 2014 Black Lives Matter uprisings following the murders of Michael Brown and Eric Garner. The second major spike in protest charges coincided with the police murder of Keith Lamont Scott, a 46-year-old Black man who

was shot by a police officer on September 20th, 2016 while he was facing away with his hands at his sides. The event prompted a series of protest events over the week following the murder. There were 52 protest charges during the week, with 38 of them against Black people. The third spike in charges was in December 2014, which coincided with protests aimed to raise the minimum wage to $15. These are not, of course, the only large-scale protests that occurred in Mecklenburg, as indicated by the vertical lines that do not overlay with a spike in protest charges, such as the Women's March that took place on January 20th, 2018 in Charlotte with roughly 5,000 people in attendance (Crowd Counting Consortium n.d.) and a pro-Trump rally held in Charlotte on October 26th, 2018 with roughly 9,000 in attendance (Crowd Counting Consortium n.d.). These last two protests led to no discernible increase from the baseline number of protest-related charges that occur each month, a handful.

To further demonstrate the tendency for law enforcement to target specific types of protests and the aggressive policing of protests with racially progressive content, we identify and extract the highest protest charge weeks in the NC AOC database. For each, we then calculate the number of White and Black people charged, finally using a combination of the Crowd Counting Consortium data and our own research through news reporting, we document the protest event that happened in the county and week. These data are displayed in Table 10-3.

Table 10-3. Protest Charges and Associated Events.

County	Week ending	Number of charges	Known protest event	White charges	Black charges
Wake	8-Oct-18	148	Stop Kavanaugh protest	0	147
Harnett	11-Feb-19	144	Against Trump's national emergency declaration	0	144
Harnett	12-Feb-18	138	Annual Social Justice March in Raleigh	2	56
Mecklenburg	1-Dec-14	100	Protest Ferguson decision	5	93
Mecklenburg	16-Oct-17	80	Police shooting of Ruben Galindo	2	78
Durham	16-Apr-18	75	National School Walkout	0	75
Chatham	26-Jun-17	60		0	60
Durham	28-Nov-16	55	Anti-Trump protests	0	55
Vance	10-Jun-19	54	Confederate statue pulled down in Raleigh	0	54
Wilson	1-Sep-14	54		0	54
Richmond	21-Mar-16	53		0	53
Mecklenburg	26-Sep-16	51	Police shooting of Keith Lamont Scott	7	38
Mecklenburg	15-Dec-14	48	BLM protest	2	36
Mecklenburg	21-Nov-16	48	Anti-Trump protest	2	46
Mecklenburg	23-Jan-17	43	Immigration Ban protest	2	40

Table 10-3 highlights two notable things. First, most known protest events during weeks with high protest-related charges are usually all associated with the political left. Second, the overwhelming majority of charges during these events were against Black people. Of the 1,051 people that were charged during all the weeks listed in Table 10-3, 1,029, or roughly 98 percent, of those charged were Black. We cannot know for sure whether all these charges were associated with the listed protest events, though they do coincide with significant protest events and are significantly higher than the median weekly charge rate by county, which is just two charges.

Readers should be left with little doubt that the 1960s-era protest laws are being enacted in precisely the way the legislature of the 1960s intended. These laws were created to stifle resistance from those advocating for the expansion of civil rights to oppressed groups, and

particularly those who were Black or fighting for the protection and advancement of Black people. Our work in this section shows the exact same trend playing out today.

Racial Framing of North Carolina's 1990s Gang Laws

A second prominent area of racialized legislative intent apparent in North Carolina's criminal code stems from a set of laws related to involvement in gangs. In exploring documents produced by legislative committees tasked with building out legislation related to gangs; we show that there is little wiggle room to think legislators tasked with passing laws did not have very specific groups in mind when developing those laws.

Gangs in the Early United States

Gangs have been a fixture of the United States since Europeans colonized the United States. With a huge influx of groups into the United States, which had not yet developed welfare services or adequate housing to cater to the growing population, conditions were ripe for groups to develop their own units of protection—gangs (J. C. Howell 2015). The early 19th century saw a rapid expansion of these groups, specifically in the New York City area, largely in part due to corruption from businessmen, politicians, and the police department. Confrontations between these early gangs and the state were common, with gangs organizing large-scale protests against government actions. The Conscription Act of 1863, which gave the president power to draft citizens for the Civil War, prompted significant backlash from the gangs of New York City. In addition to their frustrations of the draft, the protests of 1863 were also an expression of White people losing jobs to Black laborers who would accept work for lower pay, as noted by James Haskins, "[t]he controlling inspirations of the mob was to destroy the city, and secondly to destroy the city's Negro population" (Haskins 1974, 39).

The post-Civil war period saw a rise in gangs throughout the United States, most notably with the rise of the Ku Klux Klan in the south, as noted earlier in this chapter. The post-World War II era saw a change in gang membership from being predominantly White and European immigrant-based membership to increasingly Black and Brown (J. C. Howell 2015). With the increasing number of Black people migrating out of the south and toward Northern and Western cities beginning in the early decades of the 1900s, the racial and ethnic compositions of major cities quickly changed from being majority White to an increasingly heterogenous population. These population changes, along with social problems facing most working-class New Yorkers that was intensified by housing segregation, prompted a period of intense gang rivalries (J. C. Howell 2015).

Gang Legislation and Databases

Despite the long history and presence of gangs in the United States since the 18th century, it has only been within the past five decades that sweeping anti-gang legislation has been pursued by various states. Notably, these have consistently targeted street gangs, as opposed to larger more organized gang operations resembling the Mafia, motorcycle gangs such as the Hells Angels, or White supremacist gangs such as the KKK or Aryan Nations. Why, if the goal is to restrict criminal activity from organized gangs, would the legislature omit mafia-style organized crime organizations or motorcycle gangs well known for their drug-related and other criminal activities. Much of the reason for this was related to race.

Computerized monitoring of suspected gang affiliation or activity began in Los Angeles County in 1987 with the creation of the Gang Reporting, Evaluation, and Tracking System (GREAT) (Carhart 2021). The following year, the California Legislature became the first state to pass sweeping and comprehensive gang legislation (Pittman 2021). The legislation, known as the

Street Terrorism Enforcement and Prevention (STEP), established that "[a] person who actively participates in a criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in felonious criminal conduct by members of that gang, shall be punished by imprisonment" (Cal. Penal Code § 186.22(a)). The legislation also targeted buildings and places utilized by suspected gang members for criminal activities and made the coercion of gang activity a criminal offense (Bjerregaard 1998). The same legislation defined a gang as, "any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the crimes (listed below), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity" (Pittman 2021). Very shortly after, gang databases proliferated across the country.

Though North Carolina was not a first mover in developing a gang surveillance system, the state followed a similar pattern to the California example. Before 1999, efforts to curtail gang activity throughout North Carolina varied from jurisdiction to jurisdiction. But in 1999, the Governor's Crime Commission, an offshoot of the same group that promoted and called for the anti-civil rights protest laws, focused its attention on curtailing gang crime in the state. A group of researchers, led by Douglas Yearwood who at the time was the Director of the North Carolina Criminal Justice Analysis Center of the Governor's Crime Commission, led the effort to publish reports on the history and prevalence of gangs in North Carolina (Governor's Crime Commission 2009). Following the publication of two reports in 2000 and 2004, the North Carolina General Assembly enacted legislation in its 2006/2007 legislative session to "fund gang intervention and suppression projects" (Governor's Crime Commission 2009, 9). There was no single committee

that focused on gang activity in the state and was instead an aim across several committees under the Governor's Crime Commission, with much of the work falling under the Criminal Justice Improvement Committee.

Following the publication of the initial 2000 report, which was based on a state-wide survey conducted in 1999, legislative attention to gang activity gained momentum. The state began tracking gang membership across the state and in 2005, HB 50 was introduced, which was the original bill that enacted the North Carolina Street Gang Prevention Act, which later became the North Carolina Gang Suppression Act. The North Carolina Street Gang Prevention Act defined a criminal street gang, created new offenses, established new punishments, and established a legal strategy for addressing gang activity under Article 13A Chapter 14 of the General Statutes. The definition of a criminal gang adopted by North Carolina is outlined in NCGS 14-50.16A, and defined as "[a]ny ongoing organization, association, or group of three or more persons, whether formal or informal, that (i) has as one of its primary activities the commission of criminal or delinquent acts and (ii) shares a common name, identification, signs, symbols, tattoos, graffiti, attire, or other distinguishing characteristics, including common activities, customs, or behaviors. The term shall not include three or more persons associated in fact, whether formal or informal, who are not engaged in criminal gang activity" (NCGS 14-50.16A).

In efforts to systematize data collection on gang membership across the state, a gang database, the North Carolina GangNET, a ready-to-use gang tracking software developed by SRA International and used by multiple agencies, was adopted by the Durham County Sheriff's Office in 2003 through grants from the Governor's Crime Commission (North Carolina Department of Public Safety 2014). In 2004, the Charlotte Mecklenburg Police Department

acquired the software to track gang activity in the western part of the state (North Carolina Department of Public Safety 2014). In 2012, the Governor's Crime Commission consolidated the system into a single central database for access across the entire state and became the main source of data used in statewide reports to the General Assembly (North Carolina Department of Public Safety 2014). In the following section, we examine these reports, focusing our attention on how a gang is defined and the language and imagery used, to determine whether there was any racial motivation in the passage of anti-gang legislation.

Examination of North Carolina Governor's Crime Commission Gang Reports

To assess the legislative intent of gang laws, we gathered all documents produced by the Governor's Crime Commission[24], and examined their contents to determine who was in the minds of the legislature when they passed gang suppression laws. The advantage of this approach is that we are able to read the precise materials that were presented to the legislature when they were making those determinations.

We focus first on the content of the 2000 report, which initiated the legislature's interest behind the passage of anti-gang laws. The 2000 report is based on a 1999 survey of gangs in North Carolina, is full of conflicting information, and would likely make those who are professional survey administrators shudder. The survey consisted of a 73-item questionnaire, with 1,137 surveys mailed to criminal justice professionals throughout the state, including sheriff's offices, police departments, juvenile court counselors, probation officers, detention facilities and training schools, and School Resource Officers. Of the surveys sent out, 433 were completed and returned. Though the report does not list the questions on the survey, it does

[24] We extend a special thanks to Teiari Matthews, an undergraduate in Baumgartner's undergraduate research seminar, for assistance in collecting and analyzing materials.

report some findings of select questions under subsections of perception of youth crime (not actual reported crime rates) and attributes of youth gangs.

The first set of questions asks respondents whether they *perceive* an increase in youth crime, without any reference to actual increases in reported crime data. The report notes that over 77 percent of respondents "reported that general youth crime has increased over the past five years" (Yearwood and Hayes 2000, 30) with perceived increases across all types of crimes. The report then goes on to state that respondents perceived that the typical youth offender is more violent than the typical offender five years ago, that they are more likely to have a firearm, that they are more likely to use drugs, that they are younger, and that they are more likely to offend as a part of a group. Interestingly, the report notes that, "[d]ata from the United States Department of Juvenile Justice and Delinquency Prevention (1999) suggest that the proportion of juvenile crime committed in groups has not changed appreciably during the past 24 years" (Yearwood and Hayes 2000, 34).

In their assessment of perceptions of youth gangs in the state, the authors report that respondents to not perceive that youth gangs have become more violent since they were first identified in their communities, though they report a perception that there has been an increase in gun possession. The authors report that "[m]ore than half of the survey participants (55%) responded that they have noticed no change in the members' ages. Twenty-seven percent did report that the gang members are getting older which implies that they may be getting younger" (Yearwood and Hayes 2000, 42).

In assessing the racial attributes of members of North Carolina's youth gangs, the report notes that 33.3 percent of reported gangs, "were comprised of strictly African-Americans, while all White gangs constituted 23 percent of the gangs. Asian gangs accounted for 10.8 percent,

followed by Latino and Hispanic with 6.5 percent" (Yearwood and Hayes 2000, 43). In a later section, they go on to note that in schools there is a perception of a higher percentage of African-American gang members compared to non-school settings (52.7 percent), and White gang members of around 20 percent of the total. Yet, in the executive summary of the report, the authors notes that, "today's gang members are predominately, but not exclusively, Black and Hispanic males" (Yearwood and Hayes 2000, 12). Nowhere in the report does it stress the prevalence of or concern over White gang members.

Not only is it concerning that the survey, and subsequently the basis for the passage of legislation, was based on perceptions of youth crime rather than systematically collected data, but it should also raise concern that the content of the report is full of contradictions. Even when faced with reports that law enforcement perceives White gangs to constitute around one quarter of membership, the report continually stressed the domination of Black and Latine gangs in the state. Shockingly, the 2000 report found that most law enforcement jurisdictions denied that there was a gang problem, yet the authors stressed that there was a tendency to "deny the denial", stating that, "[a]gencies must identify and gather intelligence information on groups that are likely to become gangs at a later date in the future" (Yearwood and Hayes 2000, 53). These assertions, as we will discuss next, laid the foundation in shaping legislative and public perceptions of who is believed and portrayed as gang members.

The Unsubstantiated Narrative of Black and Latine Gangs

Despite the reported low numbers of Latine gangs from the 2000 report, in September 2005 the Governor's Crime Commission published a report entitled, "The Nature and Scope of Hispanic/Latino Gangs in North Carolina". Like previous reports, the 2005 report was based on results from a survey measuring perceptions of Latine gangs, citing an increase in the number of

reported Latine gangs, the perception for Latine gangs to be "[m]ore violent" and to "[c]omit more illegal activity" (Rhyne and Yearwood 2005, 15). Again, it is important to stress that these assertions are based entirely on the perceptions of the responding law enforcement officials.

Chief among the issues with studying gangs is the inconsistent definition of what a gang is. The GCC adopted a three-prong definition as outlined by Malcolm Klein, and includes (1) a group of three or more individuals with (2) a unique name and other identifiers who (3) demonstrate a commitment to crime as evidenced by prior or current criminal activity (1995). With the introduction of GangNET in 2003, the way in which gangs were defined took a strict definition used by the technology. A 2008 GCC report acknowledges the discrepancy between reported number of gangs the inclusion criteria of GangNET, "[w]hile 1,446 gangs were identified by respondents, only 550 of these groups met the study criteria for being defined as a gang. The over reporting of 896 groups as gangs provides some concern in the validity of having no uniform definition of 'gang'" (NCCJAC 2008, 4). While it is not possible for us to know which gangs are included in the NC GangNET database, research has shown that the strict criteria of GangNET gang definitions leads to an underrepresentation of White people and an over inclusion of Black, Latine, and Asians (K. B. Howell 2011). Further, a National Youth Gang Center survey asked law enforcement personnel to identify youth gangs as "a group of youths or young adults in your jurisdiction that you or other responsible persons in your agency or community are willing to identify as a gang" (National Youth Gang Center 2007). This definition, as expressed in the 2008 GCC report, opens an invitation for personal opinions and biases, and without the expressed inclusion, "[l]aw enforcement personnel may, or may not, include groups such as prison or motorcycle gangs, hate groups, and any other number of unsupervised teen groups" (NCCJAC 2008, 2).

Despite acknowledgement from the GCC itself of the issues with gang definitions and potential exclusion of White supremacist and other hate groups, it did not prevent them from forging on with portrayals of gangs as almost exclusively Black and Latine. The GCC published six reports to the legislature annually from 2008 to 2013, compiling these reports gives us just short of 350 pages to examine for any explicitly racial references. We focus on the evoking of racialized gangs across three groups, Black, Latine, and White, using the criteria outlined in Table 10-4 which was derived from a cursory examination of the GCC reports, we then present the frequency of those words appearing across all GCC Annual Reports in Figure 10-5. We focus only on the GCC Annual Reports, as these documents were produced specifically for the legislature.

Table 10-4. Racialized Gang Keywords.

Racial Group	Racialized Terms
Black	"blood", "crip", "black", "african", "pistons", "folk", "gangsta", "valley", "lord"
Latine	"ms13", "latin", "suren", "sur13", "hispanic", "disciples", "18th", "mexican", "vatos", "salvatrucha", "malditos", "brownpride"
White	"white", "hells", "mongols", "outlaw", "aryan", "kkk", "caucasian"

Figure 10-5. Frequency of Racialized Gang Words.

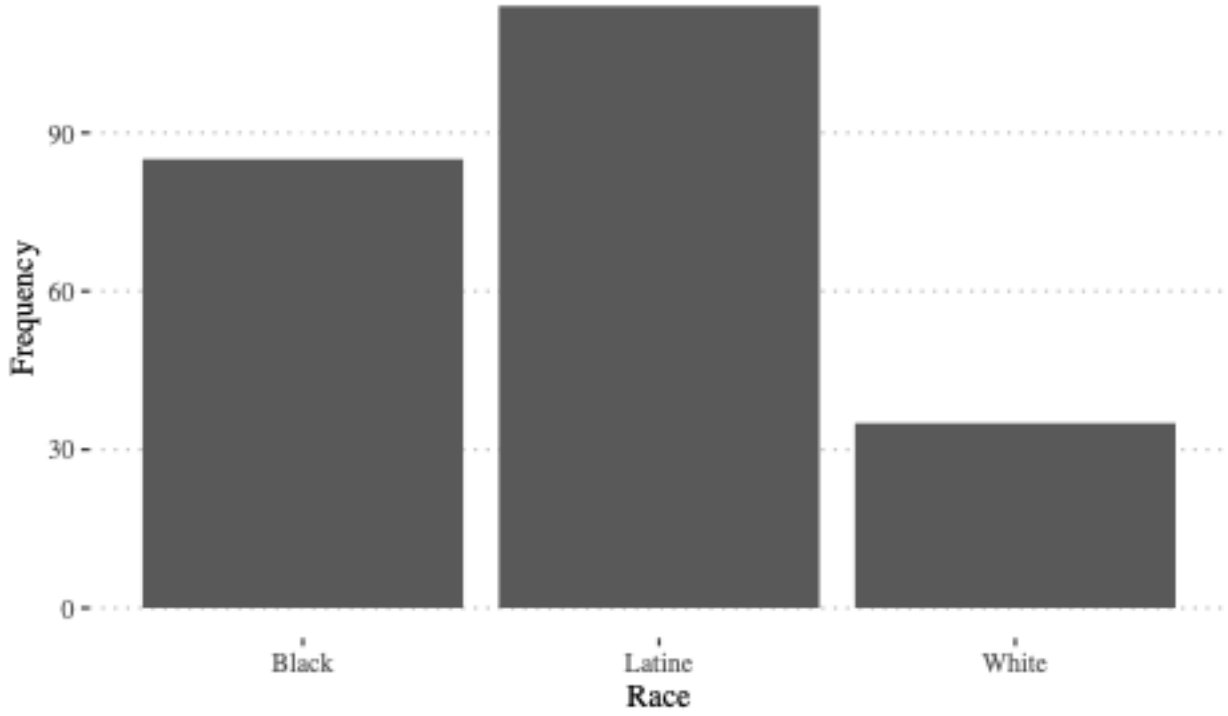
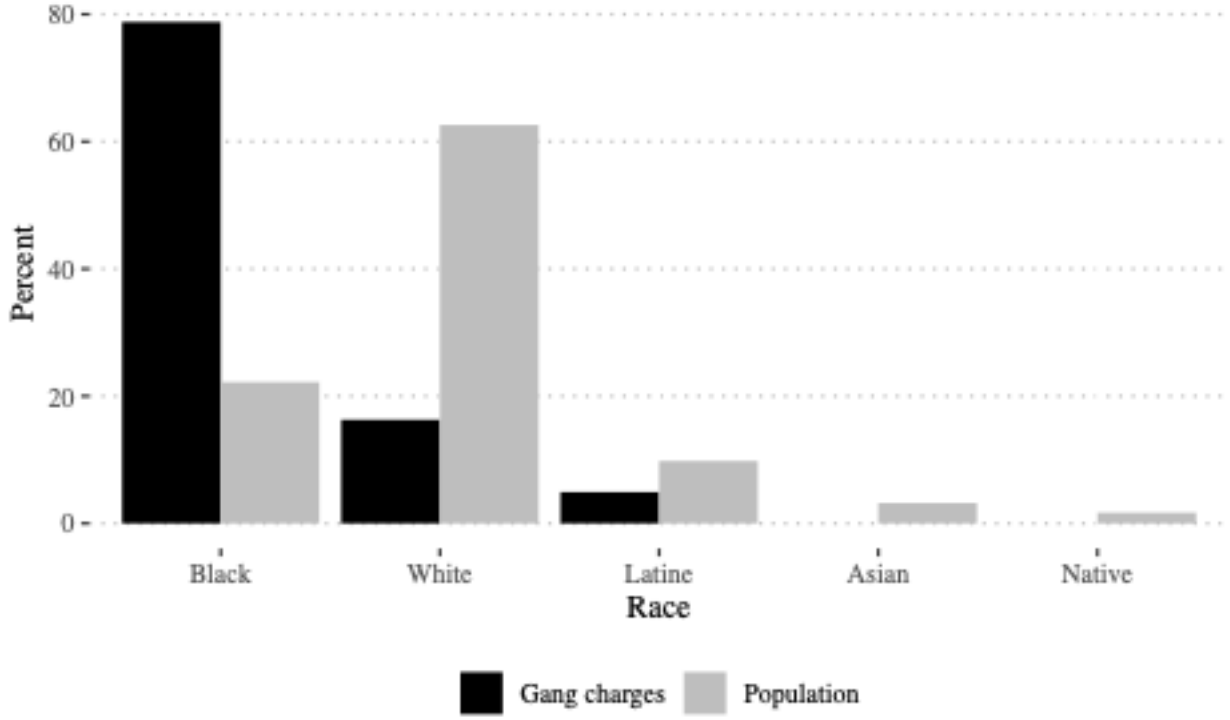


Figure 10-5 shows the frequency of racialized words appearing across all GCC Annual Reports with Latine related words appearing most frequently, followed by Black related words, and words related to White people the least common of the three racial groups. Similar to our point in the previous chapter, when the legislature is formulating laws that are based on literature that is heavily racialized, it is not difficult to imagine who they had in mind when passing these laws. The final point we would like to consider in this analysis is whether the gang laws show up in the NC AOC database in the way the legislature intended. Figure 10-6 presents the percent of gang charges by race, indicated by the black bar, we also provide demographic shares in grey for an easy comparison.

Figure 10-6. Gang Charges, by Race.



Likely unsurprising to the reader at this point is the reality that Black people are targeted under gang laws. Although Black people up just over 20 percent of the population, they account for almost 80 percent of gang related charges. While it is impossible to know the true number of people who are affiliated with gangs, the specific and racialized definition of a gang adopted by the state, as stated earlier in this chapter, fails to include many White people who are affiliated with gangs.

Conclusion

Our examination of Klan, anti-civil rights protests, and gang laws show startling examples of the North Carolina legislature enacting laws that are heavily rooted in White supremacy and racial biases. In the case of the Klan laws, the willingness of elected officials to overlook illegal activity, the passage of laws to curtail the expansion of the Klan that were seemingly never used, and the attempts of the Governor to gain political support of the Klan as recently as the 1960s,

signals not only the lax approach that the legislature took for the longest running terrorist organization in the United States but also hints at the approval of the existence of the Klan. This is in stark contrast to the very swift and punitive response to Civil Rights protestors by the very same government, demonstrating an enthusiasm to enact punitive laws to target largely peaceful Black protestors while being reluctant to restrict the activity of a large, secretive, and violent terrorist organization. This trend continues to the example of the gang laws passed in the early 2000s. In examining numerous reports presented to and produced by the state legislature, we found that when deciding to pass sweeping gang legislation, gang activity in the state was framed in explicitly racial terms. With the constant reference to Black and Latine gangs, it is difficult to imagine that legislators would be thinking of any racial group but Black and Latine people.

These historical examples are shocking enough, yet as we have also shown, protest laws and gang laws are being used to arrest individuals that the original framers of the law intended to target. Black people constitute the overwhelmingly majority of those arrested under anti-protest laws. Further, law enforcement seems to be using these laws to arrest at protests with particular content. Black people, who were heavily featured in government gang literature, are arrested at rates far exceeding their population share. Contrast this with the Klan laws developed in the 1950s, there is not one arrest recorded in our database under those statutes, yet there are plenty of examples of Klan activity in the state during the NC AOC database years. We can be confident that, in the cases we have presented in this Chapter, the intention of these laws is being fulfilled.

11

Action and Inaction in the Face of Observed Disparate Impact

Introduction

In Chapter 9, we made an argument for legislative intent to be inferred through the actions that the legislature decides to take (or not) when presented with evidence of disparate impact. We argued that if the legislature is presented with evidence that demonstrates that a law is applied disproportionately toward a particular racial group, its actions in response to this information can indicate their intention. If the legislature decides to intervene and offer some remedy, then their intention is to "correct" course, and the disparity can be seen as likely an inadvertent or unintentional one. However, if legislature decides to continue as is, then it is making a statement that the racial disparities that have been identified are not problematic. This suggests they may have been expected all along.

Our goal in this chapter is to identify a few contrasting instances where the North Carolina Legislature decided to act or not act when it was presented with evidence of racially disparate impacts. The main point is that when laws disproportionately impact White people, especially those who come from upper-class groups, there is a higher likelihood that the legislature will intervene to either enact or amend laws to limit the punitive response. On the other hand, when faced with evidence of a disparate impact against non-White groups or those from lower-income groups, the legislature either declines to intervene, or ratchets up its punitive response. This inflection point, we argue, reflects legislative intent. In other words, knowing that a law is producing differential outcomes and choosing to continue down that path means that the legislature intends for the outcome to persist.

There is one obvious point that we need to make at this stage: as we have demonstrated throughout this book, there are very few instances of a law disproportionately impacting White people in the first place. Therefore, finding laws that have resulted in a disproportionate impact against White people and have calls to be repealed or amended are extremely rare. In this chapter we examine the legislative response to two different drug crises that have racialized associations (cocaine and opioids), capital punishment, and punishment reforms in 1994 to show the various ways that the state responds when at this inflection point.

The Legislative Response to Drug Crises

Few areas of the law have received as much attention as laws relating to drugs. Laws relating to drugs of all kinds have been put under intense scrutiny by the public, law makers, community organizers, and researchers alike. The War on Drugs, waged by President Richard Nixon in 1971, has been singled out as one of the main drivers of mass incarceration and the striking over-representation of Black people in the criminal legal system (Alexander 2010, Weaver 2007, Schoenfeld 2012). The origins of marijuana laws have been linked to anti-Mexican sentiment (Campos 2013). The Harrison Narcotics Act of 1914, which regulated and taxed the importation, production, and distribution of opiates, attributed the use of opium to increased sexual relations between White women and Chinese users of the drug (cummings and Ramirez 2022). From the turn of the 20th century, drug use was linked with "alien" or "immigrant" cultures associated with the Chinese, Mexicans, and of course African-Americans as well (see Musto 1999).

Although there is evidence to suggest that drug use does not differ very dramatically across racial and ethnic groups (see SAMHSA for data on drug use by group), arrest rates do not follow this underlying pattern of supposed drug usage. Using the NC AOC database, we provide a breakdown of the percent of arrests for cocaine, marijuana, meth, and opioids (which includes

both heroin and other opiate variants) by race. We include only those charges that fall under a category where we can identify the specific drug associated with that charge. (This means that we omit here offenses that are defined as violations of the Controlled Substances Act where the violation is listed as relating to Schedule 1 through 5, since these include multiple types of drugs; Schedule 6 is included since that refers only to marijuana.) Many offense codes specifically refer to heroin or opioids, cocaine, meth, or marijuana, however, and these are all included. We provide the racial breakdown of identifiable drug charges in Figure 11-1. To make an easy comparison to the share of the population, the bar on the far right of the graph provides the percent of the population by race. We also provide the total number of charges for each drug type in parentheses under the drug type on the x-axis label.

Figure 11-1. Drug Charges by Type of Drug and Race.

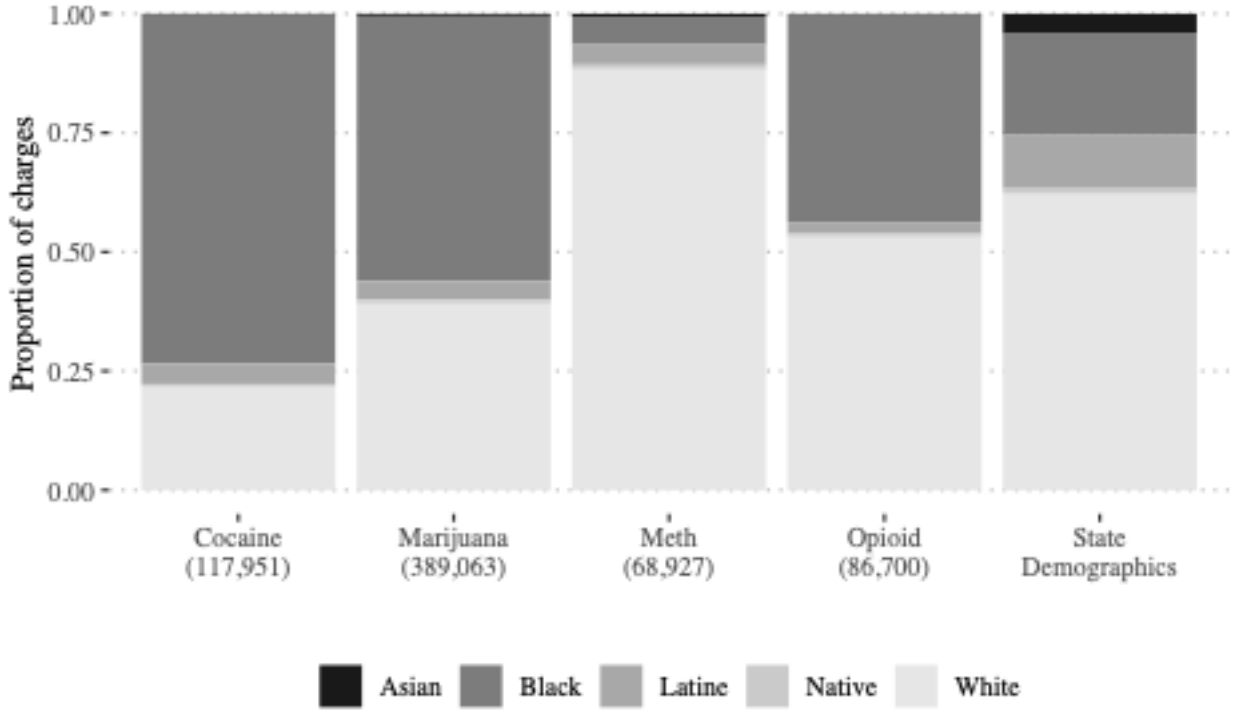


Figure 11-1 documents striking differences in who is arrested for crimes according to the type of drug in question. Black people are overwhelming the group accounting for the largest

share of arrests for cocaine and marijuana, whereas White people are the racial group with the greatest share of charges for meth and opioids, with rates roughly equal to or greater than their demographic share. We should note that the categories that we present do not allow for a distinction among drugs falling under the same umbrella. For example, we cannot know the difference in charge rate for people found in possession of heroin or fentanyl, or for crack versus powder cocaine, both of which are important distinctions. Nevertheless, the most important point that we wish to highlight remains that arrest rates across racial groups are very different based on the type of drug in question. The racial disparities of criminal charges and general drug use are well known to law enforcement and elected officials not only through documentation in arrest and incarceration data, but also in reports by federal and state agencies. The next question becomes, knowing these differences, does the legislature respond with a remedy to the underlying problem or do they continue with a punitive "solution"?

Though we have focused most of our historical analyses on the explicitly racial considerations that factor into the creation of criminal law, we would be remiss to not highlight the role of class, especially as we enter the terrain of the establishment and reform of drug laws. Not only is it important to consider the role of race in shaping which behaviors should and should not be criminalized, the social class of a group is also highly determinant of the treatment and empathy that is extended to a group. As previous researcher has highlighted, one of the reasons for the harsher sentencing of users of crack cocaine versus powder cocaine (federally at a ratio of 100-to-1) was the perception of crack cocaine as being used by predominantly Black people and powder cocaine perceived as being used by predominantly White people (Davis 2011). Similar comparisons can be made for drug use among poorer and more affluent groups. In

the following sections we tease out the differences in legislatures reactions to different drug crises

The Legislative Response to the Opioid Epidemic

In the early 2000s North Carolina, like much of the country, was faced with the rise in the use of opioids and the number of people dying from opioid-related deaths. The opioid epidemic has been roughly divided into three waves, beginning with the first wave witnessing an increased prescribing of opioids in the 1990s, the second wave showed as an increase in overdose deaths from the street drug heroin from 2010, and the third beginning in 2013 with a substantial increase in overdose deaths involving synthetic opioids. The third wave of the opioid crisis saw an interesting departure from previous legislative responses to drug enforcement. Instead of a "tough on crime" response, as was typical in previous attempts to curtail drug use including the legislative reaction to the use of meth as previously discussed, opioid addiction was seen as a health emergency with no one more culpable in than the greedy pharmaceutical executives associated with "big Pharma". While we are certainly not the first to highlight the discrepancies in the legislative response to the opioid epidemic, as opposed to the rise in use of other drugs that have documentation of higher use in other racial groups (Alexander 2010), we focus on North Carolina's legislative response to the opioid crisis specifically to show how quick the state was to reverse course for a drug crisis that was framed as a problem facing the White community, and especially those who may come from a more affluent background.

Evidence of the Disparate Racial Impact of the Opioid Crisis and Legislative Action

In response to the increasing rates of uses of opioid related deaths in North Carolina, in 2002 the Injury and Violence Prevention Branch in the Division of Public Heath of the North Carolina Department of Health and Human Services (DHHS) released a report on the preliminary findings

of drug usage and deaths from overdoses in the State. Based on this report, DHHS Secretary Carmen Hooker Odom created the Task Force to Prevent Deaths from Unintentional Drug overdoses. The report, addressed to Secretary Odom and Attorney General Roy Cooper, included the number of deaths by overdoses by race, finding that in 2001 just over 83 percent of all deaths were White people (NCDHHS 2004). Interestingly, the report found that most deaths stemmed from cocaine usage; however, as we will describe in the next section, there was no comparable urgent rush to correct cocaine addiction.

To highlight the growing concern of the opioid epidemic, in 2010s the Department of Health and Human Services began publishing data on unintentional opioid-involved overdose deaths. These short documents include the opioid-involved deaths by county, with the highest rates in the more rural western and eastern counties, the type of opioid used, and the demographics of those dying from opioid use. Although there are some differences in age categories (with people between 25 and 34 having slightly higher rates of deaths), the burden is overwhelmingly experienced by White people. According to the 2017 and 2018 reports, almost 90 percent of those with unintentional opioid-involved overdoses were White people (NCDHHS 2017, NCDHHS 2018).

It is clear, then, that the legislature was well aware of the racial differences in drug use and overdose deaths. The language used to reference people struggling with opioid addiction, which are largely White individuals, in reports from legislative bodies show a stark contrast to people with addictions to other drugs, as demonstrated by language on the main webpage of Attorney General Jeff Jackson, "[i]t is critical that we aggressively pursue the dealers and traffickers who push heroin on people with opioid addictions… Someone who has a substance use disorder has a chronic illness. Jail is not the best way to treat addiction" (Opioid Crisis n.d.).

Considering this information, the State Legislature quickly moved to pass a series of laws that addressed opioid use stressing the need for prevention and treatment over punitive actions. The first was the Strengthen Opioid Misuse Prevention (STOP) Act, which aimed to reduce the number of people becoming addicted to opioids by requiring medicine prescribers to follow a set of guidelines, including setting a five-day limit for prescription of drugs for acute pain, required prescribers to check databases to prevent doctor-shopping, and added a requirement for electronic prescribing. The Synthetic Opioid Control Act (2017) helped law enforcement target traffickers of the drug, which typically comes from outside of the country, by making all derivatives of the drug classified as a controlled substance under state law. In 2018, the Legislature passed the Heroin and Opioid Prevention and Enforcement (HOPE) Act, which gave tools to law enforcement to more effectively target the trafficking of fentanyl, protecting patient safety, and increasing funding for drug treatment and recovery services.

In 2019, then Attorney General, Josh Stein, in collaboration with the NC Department of Heath and Human Services Secretary Many Cohen, two insurance provider executives, and a coalition of public and private partners launched the public education campaign "More Powerful NC", to "prevent and confront opioid addiction by empowering people to fight against addiction in the communities" (Attorney General Jeff Jackson 2019).

When the Legislature Chose Not to Act

The opioid epidemic was, of course, not the first time that North Carolinians was suffering with addiction. As we previously noted, a report to the legislature in 2004 revealed that there were more deaths stemming from cocaine related overdoses than from opioids, yet there was no response to view this as a health crisis. As the reader may be aware, the criminalization of cocaine usage has historically been influenced by racial factors. In the early 1900s, medical

journals and news reports alleged that Black men on cocaine developed a superpower and resistance to fatal wounds and would become intensely violent.

In 1914, Edward Huntinton Williams, a reputable medical doctor, railroad executive, and philanthropist, authored an article appearing in the *New York Times* entitled, "Negro Cocaine "Fiends" Are A New Southern Menace", which describes in great detail how Black men would turn murderous after taking the drug. Williams noted that the reason why Black people were using cocaine in such high rates is because of their propensity to be addicts in the first place. Williams highlights that Black people tended to also be alcoholics, and one way that southern states, including North Carolina, dealt with this problem was to "pass laws intended to abolish the saloon and keep whiskey and the negro separated" (E. H. Williams 1914, 60). This limited access to alcohol, Williams argued, was what led the Black person to cocaine usage. Williams notes that while there is drug addiction across all races, "the negro drug "fiend" uses cocaine almost exclusively" (E. H. Williams 1914, 60). The doctor goes on to describe that the Black people in the South are more likely to use the drug because, "[m]ost of the negroes are poor, illiterate, and shiftless" (E. H. Williams 1914, 60). Black men using cocaine, he argued, lead to "fantastic hallucinations and delusions that characterize acute mania" (p. 60), "a temporary immunity to shock—a resistance to the "knock down" effects of fatal wounds" (p. 60), and that Black cocaine users acquire "deadly" accuracy in their gun shooting abilities, as evidenced by the case of the "cocaine nigger" in Ashville, N.C., who "dropped five men in dead in their tracks, using only one cartridge for each" (E. H. Williams 1914, 60).

The racialization and fabricated hysteria around the Black cocaine user only continued to intensify. The 1970s was an important period in the racial double standard of drug usage and sentencing (Ramsey 2023). The portrayal of Black drug users pushed the narrative of the drug

fiend, whereas White drug usage, especially among youth, was seen as experimentation and, in wealthier circles, a common staple in social settings (Ramsey 2023). The crack cocaine epidemic that hit the United States in the 1980s had an overwhelming impact on the Black community and was a large driver of the extreme racial disparities in drug sentencing (see US Sentencing Commission 1995). An examination of legislative documents within North Carolina reveals that the state was likely well aware of the rising use of cocaine, and the reported racial differences of its usage.

A 1993 report entitled, "Health Status of Blacks in North Carolina", outlined the racial differences in cocaine use in state, "[a] variety of sample surveys in North Carolina reveal high Black prevalences of … substance use (cocaine and marijuana)" (Surles, Graham and Atkinson 1993, 29). The same report notes that a study that tested the urine of people delivering babies in ten of the state's largest hospitals found that "[c]ompared to Whites, nonwhite women were over 30 times as likely to test positive for cocaine and 61 percent more likely to test positive for marijuana" (Surles, Graham and Atkinson 1993). Another report published in 1997 by the North Carolina Department of Crime Control and Public Safety (NCDCCPS) of the Governors Crime Commission highlights the rising use of both heroin and cocaine in the late 1900s, "[t]he trend of heroin and cocaine usage rising during the 1980s and 1990s" (NCDCCPS 1997, 4).

In addition to official reports, news coverage of crack cocaine usage portrayed the user as Black. An article, authored by a medical doctor, appearing in *The Charlotte Post* described this trend in very clear terms, with a particular emphasis on the use among Black women:

> Data from the National Institute on Drug Abuse suggests that the intensity of cocaine abuse among blacks causes adverse health consequences disproportionate to their representation in the general population… The young black cocaine user is likely to use the drug occasionally and be a frequent user of alcohol or marijuana. Cocaine use among black women is increasing and is often connected with issues of sexuality and relationships with men (K. D. Williams 1989, 9)

The framing of Black women as being one of the primary users of cocaine, particularly as it relates to their sexuality, was a common trope used to justify the support and passage of punitive policies that directly impact Black women. As Hancock (2004) describes, that the disgust that is invoked in framing certain subgroups of people, in Hancock's example Black women who receive public assistance welfare, can bolster support for anti-democratic policies. The same, then, can be said for the invoking of the lascivious "Jezebel", a trope that began during slavery, to ignite support for punitive measure to curb the uncontrollable Black woman.

Despite the knowledge of the increasing use of crack cocaine during this period, law makers and enforcers across the country adopted a punitive stance toward users of the drug, as opposed to preventative measures to address addiction. North Carolina was no different in this regard. Following federal legislation, North Carolina passed the Controlled Substances Act in 1971, which created a scheduling system for illegal drugs. In the following decades, punishments for drugs in general, but cocaine in particular, were ratcheted up. Throughout the 1980s, there were various bills introduced to make possession of cocaine a felony in the state. In 1989, the state made it a felony to possess any amount of cocaine (it had previously been one gram). As we noted in the previous section, in 2004 the legislature was again presented with evidence that cocaine use was prevalent in the state, with most overdose deaths stemming from the drug. As far as we can tell, there was no action taken at all to remedy this situation.

In highlighting the different legislative response to drug usage facing different racial groups, we do not wish to imply that a more punitive stance should have been taken to address increasing drug use among White North Carolinians. Instead, we use these examples to show that the legislature has it within their power to act very quickly to remedy a problem through non-punitive measures. Why then, did the legislature not take the same approach when faced with a

problem of apparent increased cocaine use among Black North Carolinians? The logical conclusion that we have reached is that the legislature, when presented with evidence of a significant problem facing Black people of their state, simply did not see it as a big enough problem to do anything about it. Their inaction was a signal that they were perfectly comfortable with these inequalities to persist.

Capital Punishment

North Carolina has a long history with the death penalty going back to colonial times, but our focus here will be on the "modern" period since 1972, with more attention to more recent events since 2009. There is little question that the long-run history of the state's death penalty system, like that in many other states, was heavily racialized. In the context of the death penalty, this meant less use of the punishment when the victim in the crime was Black, more use when the victim was White, and the use of the death penalty for the crime of rape of a White woman only when the accused offender was Black (see Kotch 2019). In the modern era (since 1972), North Carolina had the largest death row in the nation when its mandatory death-sentence scheme was invalidated by the US Supreme Court in 1976; it maintained a system of mandatory capital prosecution until 2001 (longer than any other state); and it has consistently housed one of the nation's larger death rows, with over 100 individuals currently housed there as of 2025. North Carolina is and has been a national leader in the use of capital punishment. Why?

As in other states throughout the country, North Carolina's leaders responded forcefully to the US Supreme Court's *Furman v. Georgia* decision in 1972, which invalidated all existing death penalty statutes and mandated the reduction in sentence from death to life (generally with parole) of more than 600 death row inmates across the country (see Garland 2012). It is important to recognize the evidence and arguments presented to the Court in *Furman* and the

nature of the majority and minority decisions there. The majority ruled against the death penalty in a fractured 5-4 vote where even those in the majority wrote separate opinions and offered different reasons for them. The main reason, garnering the greatest level of support among the justices, was the capricious and arbitrary nature of the death penalty. But race was closely connected to this argument. Justice Stewart noted that "these death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual…." Further, he noted that "if any basis can be discerned for the selection of those few to be sentenced to die, it is … race." But, he noted, racial discrimination had not been proved, so he did not use race as the basis of his decision (see *Furman v. Georgia* 1972, 309-310). Still, it was in the air. While there might not have been proof of it sufficient for Justice Stewart, racial aspects of the pre-*Furman* death-penalty system were troubling to many.

States, including North Carolina, moved quickly to reinstate their capital punishment systems, denying the racialized nature of the systems they had used until then. But the evidence was clear, as many scholars have noted (for examples see Banner 2002; Garland 2012; Mandary 2013; Steiker and Steiker 2016). So, while the motivations for the rapid reinstatements of various state death-penalty systems were certainly diverse, they were clearly driven by race. Complaints about "unelected judges" of the Supreme Court interfering with "Southern traditions" and the "Southern way of life" (see Garland 2005, 2012) must be understood to be referring to racial hierarchy. Whereas the death penalty in the period from 1900 to 1972 was commonly carried out in states such as New York, Massachusetts, and Pennsylvania, this was not the case in the post-*Furman* period; it became increasingly a Southern phenomenon (see Baumgartner et al. 2018, 338). Arguing that the Southern states rejected the Supreme Court precedent in *Furman* for reasons unrelated to race is like arguing they objected to *Brown v. Board* (1954) because of

concerns about states' rights. They said so, but the real reason was race and maintenance of the racial hierarchy in place at the time.

Of course, there were non-racial reasons and motivations to support the death penalty, and no one, not the Justices ruling in the minority in *Furman*, not those ruling in the majority in *Gregg*, not the Nixon administration, nor the leaders of any state seeking to re-establish the punishment argued that it was needed in order to maintain a racial hierarchy. The death penalty is mentioned in the US Constitution; it has been used throughout our history; and some believed it was an important deterrent to crime. It was certainly an American tradition.

But the death penalty also rose in response to lynchings. James Clarke (1998) shows clearly that judicial executions rose steadily from 1890 to reach a peak in 1935, precisely at the time when extra-judicial lynchings were on the decline. One replaced the other. Steiker and Steiker (2010) also review that historical period to remind us that an often-forgotten reason for the rise of the use of judicial executions (and the rapidity with which they were carried out at the time) was that such swift action within the judicial system was needed to eliminate vigilante lynchings conducted outside the judicial system. The Equal Justice Initiative explains: "As early as the 1920s, lynchings were disfavored because of the 'bad press' they garnered. Southern legislatures shifted to capital punishment so that legal and ostensibly unbiased court proceedings could serve the same purpose" (EJI 2017, 62).

North Carolina's legal response to *Furman* was to revert to the previous capital punishment statute, which carried a mandatory punishment of death for eligible crimes (see *State v. Waddell* 1973; *Woodson v. North Carolina* 1976). This was ruled unacceptable in *Woodson* (1976) and the state adopted a new system, requiring that prosecutors seek death, but giving the jury the option to sentence the offender, if convicted, either to life or to death. Such a system was

required under the *Woodson* ruling and is consistent with the Georgia system validated at the same time as the North Carolina system was ruled invalid (*Gregg v. Georgia*, 1976). Other states, however, allowed prosecutors to use their judgment about whether death was warranted; generally, they used it sparingly. North Carolina, on the other hand, mandated a capital prosecution wherever it was possible. This system remained in place until legislative reforms effective in July 2001 allowed state prosecutors the discretion to seek lesser punishments even when capital crimes occurred, and to allow for plea bargains in such cases. North Carolina's response to *Furman* was to fight to retain a strong capital punishment system and to have a high rate of death sentencing by national standards. This was resoundingly successful. The state has issued more than 500 death sentences since *Furman*.

Vague and Overly Broad Eligibility Factors

Like many states, North Carolina defined death-eligible crimes in the period after *Woodson* using elements of the "model penal code" (MPC) of the American Law Institute (ALI). This 1962 publication was widely ignored by the states before *Furman*, but when the Court struck down the laws as essentially standardless, the states looked for a standard. They found it in the ALI document. Several of the elements of the model code were explicit: that the person was currently serving in prison; that the person had a previous murder or violent felony conviction; that the crime was committed for financial gain; or that the killing occurred while attempting to escape from custody or capture by law enforcement officials. However, some were overly broad:

- The defendant knowingly created a great risk of death to many persons.
- The murder was committed while the defendant was engaged or was an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary or kidnaping (see ALI 1962, section 201.6).

The "risk of death to many" clause has been used to render capital-eligible any crime that occurs on a public street or in the presence of another individual. The "felony murder" clause includes any robbery, even when the individual in question was not the trigger-person.

Finally, the 1962 model code included:

- The murder was especially heinous, atrocious or cruel, manifesting exceptional depravity.

North Carolina's current statute, Section 15A-2000, incorporates each of these elements. To be clear, many states based their capital statutes on the ALI model code, and following *Gregg*, those which were rejected (e.g., North Carolina and Louisiana) looked to the Georgia statute for a model that would pass constitutional muster. But the evidence had been clearly laid out in *Furman*, and existing laws had been rejected because they were overly broad, rendering virtually any homicide, at the choosing of the District Attorney, eligible for a death sentence. While this discretion was rarely used, its application was marred by caprice (certainly) and racial bias (possibly), the Court ruled in *Furman*. It is hard to look at the states' collective re-enactments of capital punishment laws without understanding that they wanted to protect something that had long been a part of the US death-penalty system: A racial hierarchy. The fact that North Carolina was not alone in this does not mean that race was not central in the minds of the legislature when considering its response to *Furman*, just as it was in the states' collective responses to *Brown*.

ALI's 2009 Withdrawal of Section 210.6 of the Model Penal Code.

To the extent that one might think that the states were not motivated by racial factors when re-enacting their capital punishment laws following *Furman* because they were merely following guidance from the ALI, it is noteworthy that the ALI withdrew the relevant section of the MPC in 2009 (see ALI 2009). The explanation of this lengthy procedure by ALI includes background

material on the controversies surrounding the 1962 inclusion of the capital punishment section in the first place. Many felt it had no place in a model code, but the Institute eventually decided to take no stand on the matter of whether a state should have a capital punishment statute, only that, if it did, it should conform to certain principles. In 2009, the Institute withdrew all support for any capital punishment statute whatsoever. This decision was made after a lengthy report was commissioned and presented to the Institute by Carol and Jordan Steiker, authors of an authoritative text on the death penalty (see Steiker and Steiker 2016). They noted concerns about the death penalty being over-broad; that the "individualized determination" of any death sentence was in fundamental tension with the statutory identification of which crimes merit a possible death sentence; racial bias; cost; innocence; and other factors.

The American Bar Association has also adopted resolutions calling for a moratorium on the use of the death penalty until solutions to racial bias in its application are adopted (1997); ending the death penalty for offenders under the age of 21 (2018); prohibiting discrimination in capital jury selection (2023); requiring unanimous juries (2015); and in various other ways (see ABA n.d.). In sum, ample evidence was available to the states in 1972, in 1976, and increasingly so in the decades since the re-enactment of many capital punishment laws that these had not been implemented in the past with fairness and that any discretion the legislature might feel compelled to add to the law (by providing for "catch-all" or vague aggravating or eligibility factors such as felony murder or "especially heinous" crimes) would likely be implemented in a manner that would perpetuate racial differences. This evidence, and conclusions and resolutions consistent with them, were not coming only from advocacy groups or racial justice social movements; they were coming from the same traditional elements of the most prestigious bodies of the law: the American Bar Association and the American Law Institute, bodies to which the states turned

when it was more convenient. As these groups moved, based on the evidence, to oppose capital punishment, in large part because of racial inequities, the state ignored these decisions.

Statistical Evidence of Bias, the Racial Justice Act, and its Repeal

Issues of racial bias in the death penalty were extensively litigated nationally in the years since *Furman* with the US Supreme Court settling the matter in its 1987 *McCleskey v. Kemp* decision indicating that no matter how strong the statistical evidence may be, a claimant must prove the intent to discriminate by a particular judicial actor in their particular case (see Steiker and Steiker 2016 or Baumgartner et al. 2018 for a discussion of this monumental decision). While *McCleskey* was the end of the road for an effort to have the death penalty declared unconstitutional under the equal protection clause of the US Constitution, it opened the way for other forms of litigation and legislative action. The Court said that a legislature could declare that evidence showing disparities in the application of the death penalty could be enough to render that death sentence invalid, but this would be a decision for the legislature, not the Court.

North Carolina took up this challenge with the passage of the Racial Justice Act in 2009. Similar legislation was introduced in 2001 by Rep. Ronnie Sutton and in 2007 by Reps. Larry Womble and Earline Parmon; these never progressed to a floor vote, however. Durham Sen. Floyd McKissick then joined Reps. Womble and Parmon in introducing the legislation again in 2009 into a more receptive environment and with much more organized support, including the lobbying efforts of Bo Jones, Jonathan Hoffman, Ed Chapman, and Darryl Hunt, four Black men exonerated from death row or from life sentences who travelled to the General Assembly to persuade lawmakers of the need for the law (see O'Brien and Grosso 2011 for a detailed explanation of the remarkable set of factors that led to the passage of the law). (We should also note for the reader that Reps. Sutton, Womble, Parmon, and Sen. McKissick are all African-

American.) The law was very simple, only a few pages in length. It allowed a condemned individual to document, using statistical evidence from previous cases in their county, judicial district, or the entire state, any one of three types of disparities: a) that jurors were excluded from service through peremptory strikes at different rates based on race; b) that offenders of different races faced different likelihoods of a capital conviction; or c) that offenders whose victims were of different races faced different likelihoods of a capital conviction. If successful, a death sentence would be reduced to life without the possibility of parole.

The bill was highly controversial but was passed in a party-line vote (all Democrats in favor, all Republicans opposed) and was signed into law by Governor Beverly Purdue (see Kotch and Mosteller 2010). The law gave a strict 12-month deadline for appeals to be filed for those previously convicted, and the litigation started apace. Four cases made it to court, and all were successful, focusing on questions of racial disparities in juror exclusion.

Republicans gained the majority of both chambers in the NC General Assembly in the 2010 elections, and the new legislature rescinded all key provisions of the 2009 RJA. Senate Bill 416, Session Law 2012-136, "An Act to Amend Death Penalty Procedures," was vetoed by Democratic Governor Beverly Perdue, but was enacted on July 2, 2012 over her veto. This law eliminated the key innovation of the RJA, the need to show only disparate impact, not intent. It moved the state back to the status-quo ante, which required proof of the intent to discriminate against the defendant in this case, made various restrictions in the types of evidence that could be presented, and declared: "Statistical evidence alone is insufficient to establish that race was a significant factor…" (Section 3c). Subsequent legislation aimed further to reinforce the state's death-penalty system, including the 2015 "Restoring Proper Justice Act" which allows for

emergency medical technicians (EMTs) and other "medical professionals" to administer lethal injections and eliminates the requirement that a physician be present for such an event.

While the various legal and judicial wranglings about the death penalty since 2009 have many motivations, race is and has been central to the debate. On the one hand, Democrats argued and passed legislation in 2009 explicitly about race as the central topic of the legislation. There is no need to infer legislative intent here; it is clearly to prohibit a practice, no matter how conceived, that results in a racially disparate outcome. As O'Brien and Grosso (2011) described, Black legislators introduced the legislation; the Black Caucus argued forcefully for its passage; the state NAACP was a central lobbying organization arguing for it; four Black men who were exonerated lobbied personally for it. Further, the plain letter of the law was explicit in its reference to race. Finally, the motivation of the law was clearly to take up the US Supreme Court's invitation that the solution to *McCleskey* was for legislative action to invalidate death sentences if evidence shows that they are applied in a racially disparate manner.

The decision to eliminate a racially motivated protection granted in a previous session of the legislature is striking. Certainly, there was a partisan difference, as the original law was passed on party lines, and the rescission of it was as well, requiring the over-ride of the out-party Governor's veto. Certainly, the death penalty has a long history in North Carolina as elsewhere in the US. But here the legislature is acting not without regards to race, but rather explicitly to remove an existing legal right, that to demonstrate that jurors were disproportionately excluded from capital jury service on the basis of race, or that a death sentence was disproportionately applied based on the race of the offender or the victim. Further, the new legislation came on the heals of litigation under the existing law that was successful, clearly documenting the need for,

not the superfluity of, the 2009 law. The 2009 Racial Justice Act was clearly racially motivated, as was its 2012 repeal.

The 1994 Structured Sentencing Act

The 1980s saw serious problems in North Carolina's prison system, with overcrowding leading to early release of thousands of prisoners and a general feeling that those convicted of crimes were not "doing the time." Of course, building more prisons was an option, and one actively discussed. But the costs of building enough prisons to meet the needs of a growing population were deemed excessive. Rather, those convicted of crimes were released before their sentences were complete, as the state stood on the verge of a federal take-over. According to Lorrin Freeman (as of 2025, the elected district attorney from Wake County, but at the time a research analysist for the NC Sentencing and Policy Advisory Commission; see Freeman 2014), these conditions set the stage for the creation of Sentencing and Policy Advisory Commission in July 1990. Its work led to the development of the Structured Sentencing Act that remains largely intact today. It is instructive then to review the history of the Commission and the context in which it developed the new sentencing system.

Freeman (2014) makes clear that budgetary constraints were paramount in the thinking of the members of the Commission. They wanted to develop a "truth in sentencing" system that would not require the state to build more prisons than was politically or financially acceptable. This meant, generally, reducing prison sentences for lower-level crimes, particularly property crimes, increasing them for more serious crimes of violence as well as certain property crimes, and making greater use of alternative punishments such as community supervision, restitution, fines, and supervised treatment programs. The key element was to eliminate early release for reasons of prison over-crowding, to mandate that judges sentence individuals to relatively similar

terms for like offenses, and to target more serious offenses with longer prison terms. The system in place up to that time mandated early release of prisoners when over-crowding reached certain levels. Some judges, seeing that individuals were not serving their full sentences due to decisions by the Parole Commission to release them early because of budgetary constraints, responded by issuing longer sentences for the same crimes. Others did not. The members of the Sentencing Commission wanted to eliminate parole, restrict the discretion of judges so that a conviction could reliably be associated with an expected punishment (within a certain range), and to do all this within the constraints of a prison system that could not expand to meet what they considered to be its needed capacity (see Freeman 2014, 1-6).

Members of the Commission, which was chaired by Thomas W. Ross (at the time, a Superior Court Judge, later President of Davidson College and of the UNC System), included three judges, two legislators, a county commissioner, representatives from the Parole Commission, the office of the Attorney General, Department of Corrections, Department of Public Safety, a Police Chief, a County Sheriff, three private citizens appointed by the Governor, the Lt. Governor, and the Chair of the Commission, representatives from the Bar Association, the Business Community, the Alternative Sentencing Association, the Academy of Trial Lawyers, and the Victim Assistance Network. In sum, stakeholders from the criminal legal system were amply represented. Perhaps the sole member of the commission who might have been expected to take a critical view of the punishment system was that appointed by the Academy of Trial Lawyers; there were no members from constituencies directly affected by the sentencing policies under consideration.

One remarkable feature of Freeman's 30-page report about the history, context, and deliberations of the Commission is that it has no mention of any of the following words "race",

"racial", "White", "Black", or "African-American". Its few references to disparities refer to different sentences for those convicted of the same crime. The closest it seems to come to discussing race is to note that "[p]roperty offenses traditionally had been punished severely in the South. The classification criteria developed by the subcommittee changed this by ranking offenses against people as more serious than property offenses" (Freeman 2014, 9).

Second, as we will see, while the Freeman summary of their work is highly favorable, drug laws were a major sticking point to the stated goal of reducing punishments for minor and property crimes and increasing those for serious crimes of violence. In the end, drug laws were also treated quite harshly, reflecting perhaps the "tenor of the times" of the mid-1990s (see Freeman 2014, 17). So, while the Commission's stated goal was to enhance punishments for crimes of violence against individuals and to reduce punishments for "minor" and property crimes, drug crimes retained their highly punitive character. We have previously discussed the racial consequences of these drug laws. The Sentencing Commission made few revisions to any of these policies even as they undertook a complete revision of the entire punishment grid in other areas.

Prior Points

A key element in the structured sentencing act was to assign each crime to a Class, and have punishments associated with each Class. At the same time, offenders with no, few, or many prior points would be punished differently. We showed in Table 2-9 that the minimum punishment specified under the SSA for each Class of crime is heavily affected by the number of "prior points" any offender may have. Most individuals facing sentencing have no prior points (in our database, xxx percent have none). But for those with the maximum number of prior points (e.g., serious prior convictions, no matter how long in the past), punishments can typically be doubled.

For example, a person with no prior points convicted of a Class H felony would face six months of punishment, but this could be community supervision; if they had many prior points, the minimum is 1 year, 4 months of active prison time (see Table 2-9); similarly for Class D, the punishment moves from just under 5 years of active prison time to 8 years 7 months; a Class B1 offender moves from 18.5 years to over 32 years if they have many prior points. In general, punishments are steeply accelerated.

According to Freeman, members of the Commission wanted to have punishments fit both the crime and the criminal, particularly their "level of culpability in light of his past criminal behavior" (Freeman 2014, 11). Not learning the lesson from a previous conviction, particularly for the same crime, was a clear indication that enhanced punishment was needed.

The Sentencing Commission makes no mention of the "continuum of surveillance" that we have documented in previous chapters. It also makes no allowance for addictive behaviors driving much of the drug-related crime that the state was experiencing. The significant use of prior points in the punishment grid guaranteed, however, that those with greater levels of previous contact, and those involved in drug-related behaviors because of their addictions, would face much harsher penalties, even for the same crime.

"Habitual Felons" and Life without Parole

North Carolina had a version of "Three Strikes" under the Fair Sentencing Act, the sentencing system in place before the 1994 Structured Sentencing Reform. Under this law, judges could impose an additional Class C felony on an individual at the time of their third felony conviction. The additional Class C felony would itself carry the punishment associated with such a crime, though it was not itself associated with any particular crime, only the status of having three convictions. The Commission proposed that no more than one of these three felonies could be a

Class H or I felony, and that the additional felony to be added would be Class D (therefore with a lower punishment), but these provisions were rescinded by the General Assembly in a 1994 Special Crime Session, immediately following consideration of the recommendations of the Commission in the regular session of the 1993 General Assembly (see Freeman 2014, 20). In the end, the punishment was set to that of a felony Class four classes higher than the principal felony of conviction, with a maximum of Class C (see NC GS 14-7.1 to 14-7.6). A Class C conviction comes with a minimum sentence of 5 years, 7 months (see Table 2-9).

The state also established a "two-strikes" law during the 1994 Special Crime Session: "Violent habitual felon" status can be obtained after the second conviction for a violent felony (generally, crimes of violence, but also including burglary, armed robbery, and sale of drugs near a school or to a person under age 16). Such a conviction led to an automatic sentence of life without the possibility of parole, unless the person was already sentenced to death (see NC General Assembly 1994, 155). The law was amended to define a violent felony any conviction of Class A through E (see NC GS 14-7.7 to 14-7.12). Class E felonies include numerous drug offenses, prostitution-related crimes, as well as such crimes as trafficking stolen identities. (Note that a jury must find the offender guilty of being a violent habitual felon; NC GS 14-7.11; this is similar for habitual felons; NC GS 14-7.5).

The SSA provided that Class A murder would be punishable by death or by life in prison with review and possible parole after a period of 25 years. During the 1994 Special Crime Session, the provision calling for review and possible parole was eliminated, making the punishment for a Class A felony (e.g., first-degree murder) life without the possibility of parole (Freeman 2014, 21). This also applied to Class B1 felonies for those with the highest number of prior points (group V or VI) if they were adjudicated to be in the "aggravated range." (Table 2-9

showed the maximum to be 32 years, 2 months, but this is the "presumptive range" applicable to the majority of those convicted.)

In our database, we identify 15,621 individuals charged with habitual felon status, of which 5,456 were convicted. Of those charged, 63 percent were Black males; of those convicted, 56 percent. We found 114 individuals with violent habitual felon charges, of whom 84 percent were Black males. Nine individuals were convicted of being violent habitual felons, of whom five were Black males and four were White males.

North Carolina, of course, was not the only state to enact life-without-parole punishments in the 1990s, and it is not alone in failing to eliminate them. But since these laws were enacted some 30 years ago, the number of elderly prisoners in the state's prisons has only recently begun to skyrocket, as the number serving extremely long sentences has increased. For example, in 1975 there were just 175 individuals in the NC state prison system serving terms of 50 years or longer; by 2020, this number had reached almost 4,000, with the inflection point coming in the mid-1990s; over 60 percent of those incarcerated in 2020 for 50+ year terms were Black (see Baumgartner and Johnson 2020).

An explosion in elderly prisoners is well underway because the average person who goes to prison for murder is around 26 years old. In the old system, a Superior Court Judge would review their status and consider parole after a 25-year period, when they might be in their early fifties, with no guarantee that they might be released on first review. Eventually, though, most individuals so sentenced would be released when a judge or the parole commission determined that they no longer posed the threat to the community that they did as a younger man (see Baumgartner et al. 2021). As the state's elderly prison population balloons, medical costs to the Department of Corrections will as well. And all this will be to continue to implement a policy

over-reaction from the 1990s whose budgetary and human impact was designed not to hit for some 30 or 40 years down the road.

It seems unlikely that the racial disparities in these outcomes would have been a surprise to the members of the legislature who proposed and supported these punishment enhancements during the 1994 special session on crime. If they did come as a surprise, thirty years have passed; the relevant data are in the possession of the state and are routinely analyzed, and no action has been taken. The racial disparities in these policies are stark. But it may be the budgetary consequences that eventually lead the state to act to rein them in and return to some kind of review of the relative costs and benefits of retaining septuagenarians in prison for crimes they committed in their youth.

"Felon" Disenfranchisement

The work of the Commission did reduce punishments for lower-level felonies. In fact, minimum punishments for those without any prior points for Class G, H, and I felonies (over 80 percent of all felony convictions; see Table 2-10) were reduced to intermediate or community punishments. These new punishments pushed the boundary of what should be considered a "felony." Typically, a felony is defined as a crime for which the punishment is at least one year in state prison (see Dingemans 2025.). Under the new law, no Class H or I felony convictions would carry such a punishment, and Class G punishments would be one year of either active or intermediate punishment; only active punishments meet the traditional definition of a felony.

These were important reforms, clearly thought through by an experienced Commission with professional staff and connections all throughout the political and criminal legal system. It is interesting that no word seems to have been mentioned about the definition of a felony or of the idea of eliminating the penalties associated with the status of convicted felon. These include

voting rights, housing, and so on. If the state determined that these low-level crimes were not worthy of a year in state prison, and it did so after years of study, why did it not reclassify these crimes no longer to be felonies, since they no longer met the traditional definition of such a crime?[25] Here, our assessment must consider that no one was at the table who would likely have been affected by the change, so no one brought it up: A negligent oversight.

Conclusion

In this chapter, we have presented a range of scenarios where the legislature was faced with a problem and then forced to make a decision: should they act to change course of the observed disparate outcome or do they continue and allow the pattern to continue. As we have shown throughout this chapter, the legislature has on multiple occasions been presented with evidence of unequal distribution of punishments across decades. In every one of these scenarios, they could have made a decision to change that course. In one of some cases (crimes related to use and possession of opioids), they did change course. Quickly. In others, notably where the harm fell disproportionately on Black people, their inaction serves as an endorsement to the continuation of the observed disparate impact of the law. This, we argue, is akin to legislative intent.

[25] For example, in North Carolina's definition of the three crimes that would qualify a person for "habitual felon" status, if the crime is in another jurisdiction it must involve punishment of one year in prison to be deemed a qualifying felony; see NC GS 14-7.1(b)(3)-b: "The offense may be punishable by imprisonment for more than a year in state prison."

12

The Anti-Black Origins of the North Carolina Traffic Code

Introduction

As we have demonstrated in previous chapters, traffic- and vehicle-related offenses are the leading reason why people are arrested. Nationwide, approximately 20 million traffic stops occur each year, making traffic enforcement the most common form of interaction between individuals and the police. North Carolina is no outlier in this regard; according to the NC AOC database approximately 1 to 1.7 million traffic stops occur each year in the state, which has a population of approximately 11 million. Across all demographic groups, traffic and vehicle charges rank among the most frequently used criminal codes and are one of the leading reasons for someone to be arrested by the police.

At face value, the traffic code is purportedly designed to make the roads safer. The idea is that patrolling and surveilling the roads will allow law enforcement to apprehend drivers who engage in dangerous behaviors, such as speeding or driving with a faulty vehicle, and discourage other drivers from engaging in future "criminal" behavior on the roads. In practice, it is an area of the criminal code that produces striking rates of racial disparities. Despite Black people making up roughly 22 percent of the North Carolina population, they account for 35 percent of vehicle and road charges. On the other hand, White people are under-represented at 50 percent of traffic charges but approximately 60 percent of the population.

In this chapter, we investigate the context surrounding the origins of the traffic laws that create these disparate outcomes in North Carolina, and in doing so highlight the racialized context surrounding the genesis of these laws. We also discuss how the breadth of the traffic code and the vagueness of some of its elements. These render virtually all drivers "law breakers"

and therefore grant law enforcement vast discretion in deciding whom to pull over. In previous chapters we have sought to understand what was in the minds of legislators at the time of the passage of various sections of the criminal code. In this chapter we demonstrate the racist origins of the traffic code by using a tenor-of-the-times argument. Specifically, we present analysis of historical documents that contextualize the passage of traffic laws in the late 1930s and show that if one were to live during the time that the traffic code was passed, it would have been very clear that the laws passed were intended to target Black drivers. The evidence we will present here should certainly dispel any myth that the extensive traffic code we currently see was designed with the only motivating factor of keeping the roads safe. Race mattered then as it continues to matter today.

Racial Disparities in Traffic Law Enforcement

Most recent social science research on traffic policing focuses on the racial disparities of encounters with the traffic law enforcement, sentencing disparities stemming from traffic law enforcement, and the electoral consequences of those encounters. Studies have shown that Black people are disproportionately targeted. Black and Latine men are less likely to report that the police had a legitimate reason for pulling them over compared to other demographic groups (Lundman and Kaufman 2006). To ensure that our data confirms these trends, we begin by presenting summary statistics on who is arrested under existing traffic and vehicle offenses. At time of writing, 427 crime codes are associated with driving or vehicles in North Carolina. In Table 12-1, we combine all these charges and break them down by race-sex groups and present the frequency of charges. The first column shows the race-sex group, the second column shows the number of traffic or vehicle charges, followed by the percent of driving charges attributable to that group and the percent of the population. The final column shows the ratio of driving

charges to the population rounded to the nearest decimal place. If the ratio is "1" then there is about an equal number of people charged compared to their demographic group, if the number if below "1" then there is an under representation, if the ratio is above "1" then there is an overrepresentation. We present the data in descending order of the disproportionality ratio.

Table 12-1. Traffic and Vehicle Charges, by Race-Sex Groups.

Race-Sex Group	Driving Charges	% of Driving Charges	% of Population	Disparity Ratio
Black men	1,803,039	22.6	10.0	2.3
Latine men	644,502	8.1	4.9	1.7
Black women	1,074,034	13.5	11.4	1.2
White men	2,467,973	31.0	30.8	1.0
Native men	42,901	0.5	0.6	0.8
Native women	28,222	0.4	0.6	0.7
White women	1,417,113	17.8	32.2	0.6
Latine women	225,721	2.8	4.5	0.6
Asian men	36,649	0.5	1.4	0.4
Asian women	17,353	0.2	1.5	0.1
Total	*7,961,250*	*100.0*	*97.9*	

Unsurprisingly, Black men have the highest population to percent charged ratio, with driving charges 2.3 times their population share. Latine men and Black women are also overrepresented, with ratios of 1.7 and 1.2, respectively. White men are charged with driving offenses almost in exact proportion of their population share, and all other race-sex groups are underrepresented in driving charges. There is, of course, no surprise that Black and Latine men are over-represented among those with traffic charges, but Table 12-1 is useful to document the degree of this disparity. In the remaining sections of this Chapter, we ask: Is this a fluke, a mistake, a bug, or a surprise, or in fact is it the outcome that the system of laws put into place in the 1930s and still on the books today was designed to create?

History of Traffic Law Enforcement

The history traffic law enforcement in the United States is long, complex, and varied. To understand the genesis of traffic law enforcement, one must also take into context the expansion of roads and the highway system, the evolution of automobiles and car ownership, and the changing nature of policing that came with the introduction of the automobile. The advent of cars and roads brought about a massive shift in the way of life for all people. It created a booming car manufacturing industry, increased jobs across all sectors aimed at cars and the roads, migration of people from rural areas to cities and from cities to suburbs. Leisure began to be catered to the driver, including drive-in movie theatres, drive through fast food, and motels catering to travellers. For many it brought great liberation—Black people, who had previously been subjected to humiliating travel on public transportation were now free to move around the country free of Jim Crow segregation. It also introduced more laws and government regulations. In considering these combined histories, the racialization of traffic law enforcement becomes startlingly clear.

The Good Roads Movement: Chain Gangs and Building North Carolina Roads

It is no understatement to say that the roads across the United States prior to the 20th century were rough, uncomfortable, and sometimes dangerous. Roads constructed during previous periods were built only for horses and wagons. When the nature of travel began to change, and motorized wheels rather than horse hooves were becoming a dominant form of travel, states recognized the need to update their roads. Early road reconstruction was entirely down to the responsibility of the state and North Carolina was one of the first states to significantly invest in road infrastructure. The Good Roads Campaign to improve North Carolinas roads began in 1899 in Asheville, ultimately leading to the state earning its name as the "Good Roads State." Early

efforts in the North Carolina movement was to improve the state of bridges and local road projects.

The first intervention from the federal government was in 1893 with the creation of the Office of Road Inquiry within the U.S. Department of Agriculture. The Agricultural Appropriation Act authorized the Secretary of Agriculture to make inquiries into the systems of public roads throughout the country and to investigate and disseminate the best methods of road management. However, it wasn't until 1916 when Congress created the Federal-Aid Highway Program that the federal government seriously intervened in road construction. The Program matched state finds dollar for dollar for larger road projects. It was at this point that North Carolina began to ramp up its road building capacity.

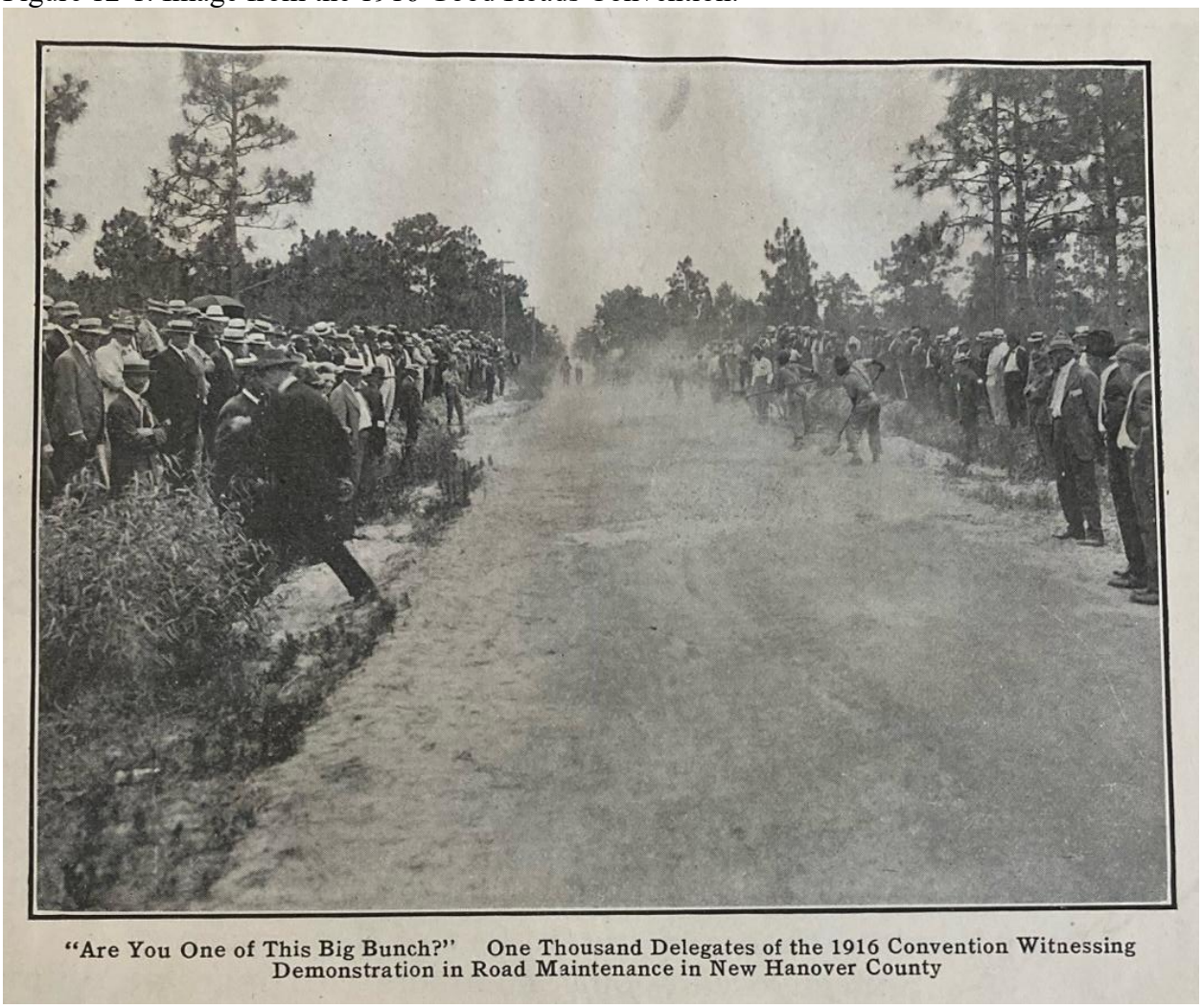
Essential in the construction of the roads was a large, and affordable, workforce. In this case, the state opted to utilize its growing prison population. This strategy was made apparent in a report presented to the Good Roads Convention from August 7th – 9th, 1918:

> During this period twenty-six counties reported 746 convicts used on the roads. It is estimated that these averaged 200 days in the year, making 149,000 days of labor which, valued at $1.50 a day amounts to $223,800. Estimating the value of the convict labor for the whole state on the basis of the 1914 figures, we find that we used about 2,000 convicts, whose labor, valued at $1.25 a day, amounted to $460,250 for each year (North Carolina Good Roads Association 1918, 33)

At the same conference, in a session discussing the usefulness of convict labor, a speaker addressed … "If we honestly believe that the prisoner is not susceptible of moral improvement and consider the jail sentence necessary solely from the point of removing him as a menace to society, then every convict should have a life sentence" (North Carolina Good Roads Association 1918, 42). The speaker then goes on to highlight that a "large part of the race … is not physically fit for military duty" and then concludes that placing those unfit for military duty in "somewhat primitive conditions … in both the prison and prison camp" (North Carolina Good Roads

Association 1918, 43), should be the best course of action. Figure 12-1 shows an image from the 1916 Good Roads Convention with an accompanying caption, “one thousand delegates of the 1916 convention witnessing demonstration in road maintenance in New Hanover County”. The image shows a line of Black men with tools toiling at the earth. Standing on either side of the road observing this work are White men in suits.

Figure 12-1. Image from the 1916 Good Roads Convention.



Source: University of North Carolina Wilson Library Special Collections.

The use of chain gangs in the construction of the roads was so promising that during the 1920s and 1930s, North Carolina reorganized its road-building and policing agencies to respond to the growing need for roads and to ensure safety on them. But it did more than that. It merged

its prison system with its highway system, providing a new source of labor to build the roads: chain gangs. We will explain how this happened, and with what effect, later in this Chapter. But let us start with a notable story relating to how these chain gangs worked and what it was like to serve on one of them.

The chain gang, which was in operation from the early 1900s to the 1970s in North Carolina, was often described in horrific terms. Bayard Rustin, a prominent civil rights activist, was sentenced to a month on the chain gang for violating Jim Crow segregation laws on public transportation in Chapel Hill, NC in April 1947 during the Journey of Reconciliation. (This was a group of civil rights activists who travelled throughout certain Southern states to test whether the states were complying with a recent US Supreme Court decision mandating an end to segregation on inter-state buses; they were not, and Rustin was arrested, convicted, and sentenced to serve on a chain gang.) During his sentence, one of the gangs' tasks was to dig ditches for draining along Highway 501, a road travelled on each day by one of the authors of this book. Rustin, in an effort to inform the public on the conditions of the chain gang, published a 44-page report of the day-to-day details of the chain gang and stories of those he met during his sentence, giving an unfiltered look into life under the punishment. He recounts the arbitrary rules imposed on the "chain-gangers", the monotony and inadequacy of the food, the repeat sentences men would get for vagrancy. Rustin notes that it was common for one group of men to be instructed to dig holes and another group of men were instructed to fill the holes. Always under the watchful eye of the guards (.e.g, being "under the gun"), Rustin recalls several verses and poems sung by men on the chain gang, which simultaneously provided creative relief and commentary on their confinement:

> 'Twas on a Tuesday I was 'rested
> 'Twas on a Wednesday I was tried

‘Twas on a Thursday gave me long time sentence
‘Twas on a Friday, lain me down and cried.
Took me to the station
Put me on Eastbound train
Carry me to Roxboro
Tied me with a ball and chain.
Had me charged with murder
But I ain’t to be blamed
Got me charged with forgery
Can’t even write my name. (Rustin 1947, p. 19)

In an effort to provide fuller picture of those sentenced to the chain gang, Rustin interviewed 44 men and gathered data on their years of education (average 5.9 years of schooling), occupation (70.5 percent “unskilled laborers”), recidivism (average 4.2 sentences), age grouping (54.5 percent were between 18 and 30, which remains the most commonly incarcerated age group), and length of sentence (22 months). Most of the crimes that led these men to the chain gang were larceny (42 percent), assault and battery (25 percent), and drunkenness (14 percent). Just one had a charge of manslaughter and two, sexual offense.

Rustin reported that of all of the unfathomable conditions that he experienced on the chain gang, the most degrading condition was the widespread feeling among the men that, “I am not a person; I am a thing to be used” (Rustin 1947). These words echo a deep and enduring sentiment within the prison system, but with regards to the building of roads in particular: that the development of automobile infrastructure, beginning with the roads, was dependent on the criminalization and incarceration of Black bodies. It is noteworthy that while convict-leasing systems have been widely noted (as when individuals were convicted of a crime then leased out to private employers often to work in mines or other dangerous positions; see Blackmon 2008), these chain-gangs were operated by the state itself. And we still drive on the roads that were originally built by these legions of men convicted of vagrancy and other petty crimes.

The Rise of Automobile Ownership

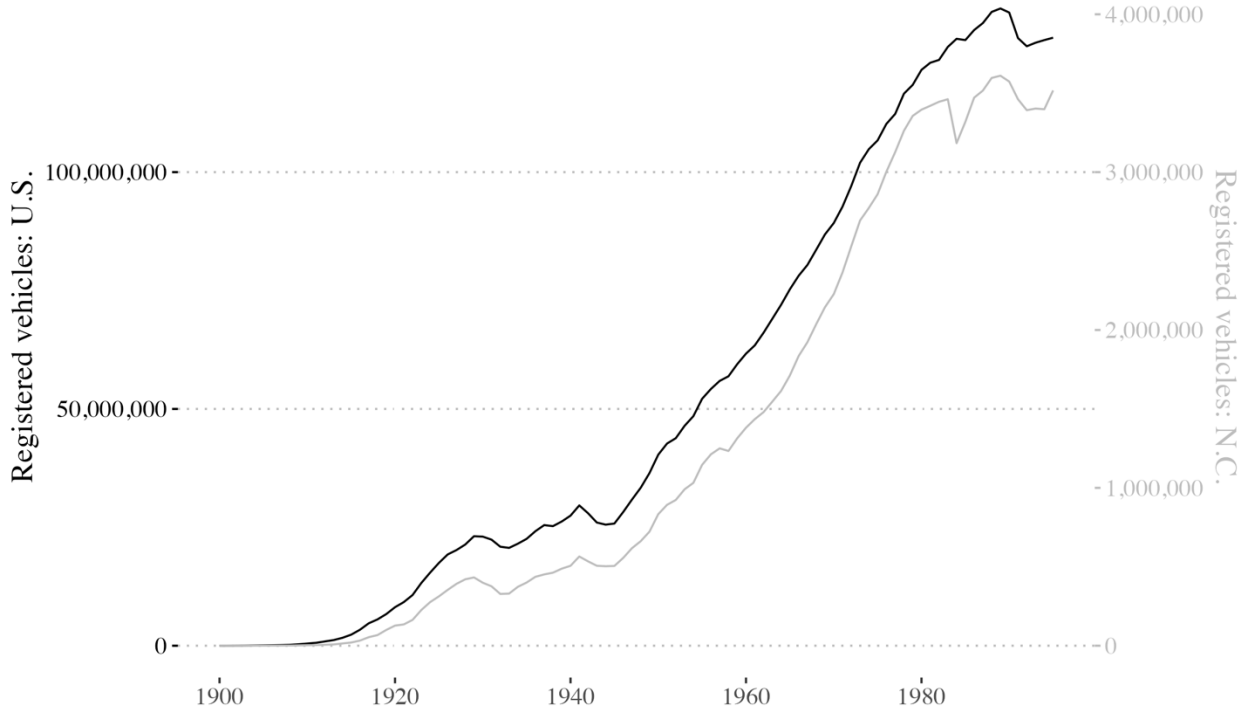
It is difficult to state how transformative the advent of the automobile was on all aspects of society. Although American elites had cars transported from Europe at the end of the 19th century, it wasn't until the early 20th century that the automobile became widely accessible to the American public. The first car that received wide attention from the American public was the 1901 Mercedes and proved to be the gold standard of passenger automobiles and within the next few years. Over the other European and American car manufacturers had rushed to produce copies of it (Hugill 1982). However, most American roads were designed for horses and their loads whereas European cars were designed for use on smooth-surfaced roads, which the United States did not acquire until the 1920s when chain gang labor could be used for road construction.

American automobile manufacturers focused their attention on designing a vehicle that would be available to the average person, and not just the elite class. The solution was to use high quality materials as well as high volume production to lower the cost of production per vehicle. Henry Ford, who once described the Ku Klux Klan as "a true patriotic body, concerned with nothing but future development if the country in which it was born and the preservation of the supremacy of the true American brand of his own land" (NYTimes 1924), designed the 1909 Model T and the moving-belt assembly line that would be able to meet the public's growing demand for high quality and low cost automobiles. In 1912, the Model T was set for adoption of the vehicle by the urban middle class and farmers in more rural areas (Hugill 1982). By 1913 the Ford Motor Company had almost 7,000 dealers throughout the country, and it is this point where we see a massive expansion in the number of cars on the road. By 1926 a new Model T could be purchased for $290, which is equivalent in purchasing power to just over $5,200 in 2025.

The availability of low-cost cars, improved conditions of the road, and increased freedoms the automobile gave to drivers lead to a proliferation of registered vehicles across the

United States. Using data provided from the United States Federal Highway Administration, we track the number of registered vehicles across the United States and within North Carolina from 1900 to 1995, these data are provided in Figure 12-2. The left y-axis shows the number of registered cars across the United States and corresponds with the solid black line. The right y-axis shows the number of registered cars in North Carolina and corresponds with the grey line.

Figure 12-2. Number of Registered Cars, 1900-1995.



Source: US Federal Highway Administration.

North Carolina shows a similar trend in car ownership as the United States as a whole. Prior to 1915, there were virtually no cars on the road, then there was a steady increase until the mid-1920s, rising again with a slight plateau until the mid-1940s and a steady increase until the mid-1980s. During the first expansion of automobile ownership—from the 1910s to the 1920s—cars were becoming an integral part of life yet laws governing the roads were lenient (Flink 1972).

The Automobile and Black Life

While the car was transformative to Americans in general, its impact on Black Americans was perhaps even greater. Perhaps no group of people experienced as significant a change in life with access to a vehicle as Black Americans.

Public Transportation under Jim Crow

With segregated public transportation as the main source of travel, Black people were subject to extreme humility and often violence when forced to travel on public transportation under the Jim Crow system. William Pickens, a prominent Black educator and scholar, describes his experience travelling on a segregated train on the 24-hour long journey from El Paso to San Antonio, Texas, in 1923. The only train available with a Jim Crow compartment from El Paso to San Antonio was on the night train. Though it can barely be called its own compartment, as it was a section of the smoking cart. Food was not available to Black passengers, and if one did not have their own food, they may be able to eat in the dining cart before "the whites got hungry" (Pickens 1923). Indeed, Pickens account of travel on Jim Crow paints a striking description of the degrading nature of travel for Black people during this time:

> The Jim Crow car is not an institution merely to "separate the races"; it is a contrivance to humiliate and harass the colored people and to torture them with a finesse unequaled by the cruelest genius of the heathen world. The cruder genius broke the bodies of individuals occasionally, but Jim Crow tortures the bodies and souls of tens of thousands hourly … so thoroughly is it understood that Jim Crowism is not designed merely to "separate," but also to humiliate, colored passengers that the thing is always in the consciousness of the railroad employees, even those who operate in and out of the Jim Crow territory, and they begin to "work on you" as soon as you buy a ticket that leads even to the limbo of this hell (Pickens 1923).

Not only was travelling in Jim Crow cars highly demeaning, but the overcrowded nature also rendered travel very dangerous. In August 1929 in Henryetta, Oklahoma, a train travelling between St. Louis and San Francisco was ran into an open switch, and 12 passengers in the overcrowded Jim Crow car "overturned beside the locomotive, the boiler of which exploded and

pressed steam over the passengers literally cooking them alive" (12 Die, Caught Like Rats, in J.-C. Car 1929).

Collective Transportation

Public transportation became so unbearable under Jim Crow law for Black people that even though personal car ownership was not viable in the first couple of decades of the 20th century, due to the cost of automobiles and the practical difficulties in maintaining a vehicle when most White-owned mechanics would not accept Black customers, Black communities would have communal transportation for the purpose of escaping Jim Crow buses. Earlier examples of these efforts are of communities raising money to buy cars to transport Black passengers. In Nashville, Tennessee, $20,000 was raised to establish an automobile company for Black people, but at last minute the White-owned power company refused to furnish power (DuBois 1937).

A column written by W.E.B. DuBois appearing in the *New Pittsburg Courier*, highlights the various efforts of co-operation in Black communities, including a "colored railroad" in Wilmington, North Carolina and a street railway company in Jacksonville, Florida (DuBois 1937). In 1905 Black people in Nashville, Tennessee, organized The Union Transportation company, which consisted of five cars each with capacity for fifteen passengers for the purpose of "transporting negro passengers", who had become "greatly dissatisfied" with segregated public transportation in the city (Negroes Start Auto Line to Escape "Jim Crow" Cars 1905). In May 1925, The Pocahontas Transportation Company, a Black owned bus line based in McDowell and Mercer counties in West Virginia, filed with the State Road Commission for operation (Telegraph 1925).

In April 1926, a group of Black men in Winston-Salem gathered to try to figure out a systematic solution to providing safe transportation for Black residents who did not want to ride

the City's segregated buses or did not have access to public transport as the city's street railway system did not serve the "colored districts" (Afro-American 1930). Prior to this meeting, Black individuals had operated individual buses on a more informal basis. In July 1926, The Safe Bus Company began operation. The Safe Bus Company acquired over 50 jitney buses that had been under the management of a different company (Wiseman 1926). Within 10 months the Safe Bus Company had spent $115,000 on refurbishing buses, establishing a machine shop, and opening a filling station (Wiseman 1927). In its first year of operation, the Safe Bus Company hired around 100 Black men and was known as "the biggest negro organization of its kind in the world" (Wiseman 1927). In 1927, 15 new buses were added to the fleet and new routes were offered throughout the city (Wiseman, News of Colored People: Safe Bus Company 1927). The Safe Bus Company was in operation until 1972, when it was incorporated into the public transportation system.

There is no estimate of the number of collectively owned transportation companies devoted to Black communities, but these examples show the lengths to which Black people would go to avoid segregated public transportation all together. It is no surprise, then, that when car ownership became a viable option, Black people moved as quickly as they could to acquire the luxury.

Black Car Ownership

Vehicles are an enduring symbol in African American culture. Take any moment in African American history or facet of African American life and the automobile is likely to be featured in a prominent way. The underground railroad was a network of secret routes that enslaved Africans used to find their way to freedom. Negro spirituals are filled with imagery of vehicles transporting them out of bondage: "going home chariot in the morning", "sweet chariot", and

“the gospel train is coming, I hear it just at hand” were more than just songs to pass the time, they were instructions to help lead the enslaved to freedom. Black plays and film are rife with stories centering the automobile—"A Raisin in the Sun” by Lorraine Hansberry, “Jitney” by August Wilson, and “Queen and Slim” directed by Melina Matsoukas. Music of every genre include references to automobiles—Robert Johnson’s “Crossroads”, Chuck Berry’s “No Particular Place to Go”, and more recently Tracy Chapman’s “Fast Car”, and Outkast’s “Benz or Beamer”. These portrayals explore various intersections between Black life and the freedoms, and dangers, that the automobile brings. We can even identify the automobile in autobiographical accounts of Black life. In her memoir, bell hooks recounts her experience driving with two White friends in her home state of Kentucky during Jim Crow:

> the smell of the car seduces me. Its leather seats, the real wood on the dashboard, the shiny metal so clear it’s like glass—like a mirror it dares us to move past race to take the road and find ourselves—find the secret places within where there is no such thing as race. On those country roads, the sun heating the backs of our necks, we find a world where there is no black and white—where we can love one another if we want to, a world where there is nothing to fear. For now it is the car I love not Ann, not the white girl who has everything including pain (hooks 1997)

Under Jim Crow segregation, car ownership was viewed as more than an escape from oppressive systems. It provided an ability to travel free from the humiliation of public transport, to more easily escape the South and move northward, and to own property—something which up until this point had been essentially impossible for Black people to acquire. However, given the high price of car ownership, it would take some time before car ownership would become widespread in the Black community. In fact, Black people travelling by car for leisure or business was so uncommon that when it did happen, it was worthy of mentioning in newspapers. In 1909, William Tecumseh Vernon, Register of the United States Treasury, was travelling from Washington D.C. to Oklahoma and opted to charter a car “in order to avoid the humiliation of the Jim Crow car law in Oklahoma” (Vernon Will Have Car of His Own in Oklahoma 1909). In

1911, the *Times Union* of New York reported that Booker T. Washington chartered a car to drive the 75 miles from Austin to Temple, Texas (Union 1911).

One of the most well-known Black drivers in the first decade of the 20th century was also the first Black world heavyweight boxer, Jack Johnson aka "The Galveston Giant". Described by Historian Mia Bay, Johnson was "[o]ne of the few Black men of his era to own even one car" (Bay 2021), his love of cars and driving invited outrage by the White population. Yet continued harassment by the police, including being arrested for driving too slowly in New York City, and being excluded from American Automobile Association (AAA) because of his race and that he was too ignorant to be behind the wheel of a vehicle (Bay 2021) never stopped him from driving, purchasing more powerful cars, and racing them. Historian Kathleen Franz documents imagery associated with the Black driver during early years of Black car ownership, and shows that, "during the 1920s and the 1930s, white travel writers clung to the image of Black people as reckless drivers and poor mechanics. News coverage of Jack Johnson represented one of the earliest examples, but representations of Black drivers as unskilled appeared in a range of cultural sources from fiction to travel narratives" (Franz 2004).

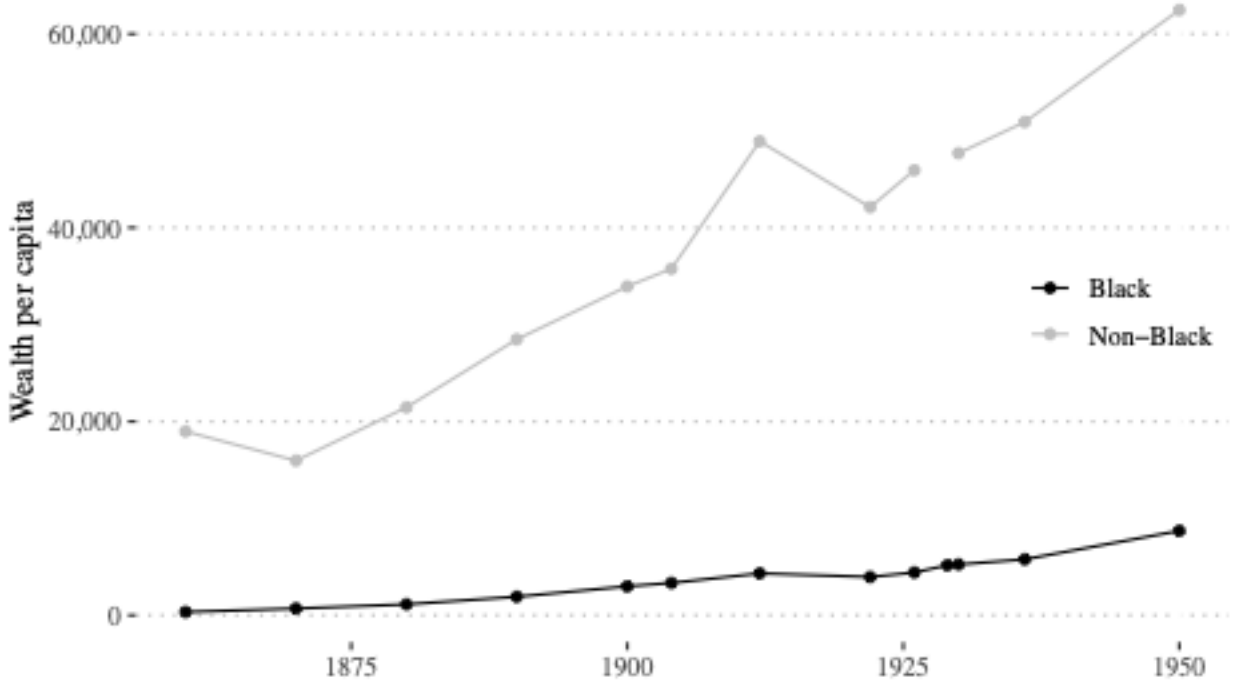
An article appearing in the *Philadelphia Tribune* on September 16, 1937 describes the four-time Olympic gold medalist, Jesse Owens, travelling to New York "long enough to get an automobile driver's license and hussle right out of town" (Philadelphia Tribune 1937). The article goes on to note that "No, Jesse wasn't living in New York now, he just wanted to get a license so he could drive without being molested" (Philadelphia Tribune 1937).

There are no data sources that track car ownership by race over time, so it is difficult to be able to pinpoint exactly when there was a rise in Black car ownership. There is, however, anecdotal evidence and various sources that we can use to give snapshots of Black car ownership

at specific moments. In 1919, the State of North Carolina required the creation of a directory of automobile owners from across the state, and in 1920 a supplement was released (Office of Secretary of State 1919, Office of Secretary of State 1920). The two documents, which totaled just over 1,700 pages and 125,000 registered vehicle owners (just shy of the 127,405 registered vehicles reported by the U.S. Federal Highway Administration), 1,300 registered motorcycle owners, 1,162 registered car dealers, and 13,200 registered truck owners. The document also lists the license plate number, the name of the person that the car is registered to, and the type of car for every registered vehicle in the state. There is also a notation of whether the vehicle owner is "colored" (5) or "Col." (56). We only retain those instances where "Col." Is in brackets following a name and omit any case where "Col." is at the beginning of a name, as this likely indicates that they are a Colonel of the military. According to the registry, there were only 61 non-White drivers at the time of publication. There is no way to know if the notations are complete, and there certainly could be some Black or other non-White drivers not indicated as such in the document. Even if this is a conservative estimate, the number of non-White drivers was extremely low at the time the register was released.

Various reasons explain the low levels of Black car ownership in the beginning of the 20th century. The most obvious is that the average Black person could not afford a vehicle and the associated costs of maintaining one. Figure 12-3 shows Black and White wealth per capita from 1860 to 1950. The black line indicates the Black wealth per capita, and the grey line indicates the White wealth per capita, all in 2019 dollars.

Figure 12-3. Black and White Wealth per Capita.



Note: Constant 2019 dollars.

In 1860, Black wealth was at $338 per capita compared to non-Black wealth at $18,974. After the abolition of slavery, Black wealth rose to $698 and by 1926 had reached $4,414 per capita, which is around the same amount as a new Ford Model T at the time ($4,078 in 2019 dollars). This implies that if a Black person wanted to purchase a car in the 1920s, they would have to sell all their worldly possessions to be able to afford one. Therefore, it is reasonable to assume that car ownership among Black people in the United States remained very low throughout the 1920s.

In addition to the high relatively costs of purchasing a car, there were also a myriad of practical issues with owning a car as a Black person in the early 1900s. Chief among these difficulties was the rampant discrimination in the auto insurance industry. Racial discrimination in housing insurance has been well documented (Rothstein 2018), yet racist policies of auto insurance has only gained scholarly attention in recent years (J. Wriggins 2022). Though auto

insurance was mostly optional before the mid-1900s, the benefits of having an auto insurance policy were clear. Given the relatively new technology and the undesirable conditions of the roads, car repairs were frequent and expensive. The first auto insurance mandate was passed in Massachusetts in 1927 and required all drivers to obtain compulsory liability insurance (J. B. Wriggins 2012). Yet, as documented in a 1930 article appearing in various newspapers, "at least one automobile insurance company will not issue a policy to a negro automobile owner" (Charlotte News 1930). It would be some time for North Carolina to mandate car insurance with the passage of the Vehicle Financial Responsibility Act of 1957, yet these restrictions show practical difficulties in Black people being able to own cars.

By the late 1930s it appears that Black car ownership began to increase, as demonstrated by several newspaper reports and resources targeted to Black drivers. In 1936, a newspaper reported that there were "more than 1,500 Negro car owners and about as many Colored chauffeurs and Truck drivers actively employed" (Amateur Salesmen Make Good 1936). In 1937 newspapers report that "several million Negro motor car owners" across the United States (Goodrich Leading the Parade 1937). In 1938, an article in the *Ashville Citizens-Times* highlights a study conducted by the Bureau of Agricultural Economics describing car ownership in certain states. Family car ownership ranged from 14.6 percent among "[N]egro sharecroppers in Mississippi to 70.7 per cent among [W]hite farm owners in North Carolina and South Carolina" (Survey Shows Cars and Radios Numerous in Rural Areas 1938). Breaking car ownership down for sharecroppers by race the same article notes that, "[i]n the Carolinas, 707 out of 1,000 families of white farm owners. 448 out of every 1,000 families of white sharecroppers and 355 out of every 1,000 families of negro sharecroppers own automobiles. The proportion is given as 425 out of 1,000 for negro farm owners" (Survey Shows Cars and Radios Numerous in Rural

Areas 1938). While data are spotty, it seems that by the end of the 1930s, Black people in the Carolinas had car ownership at a rate of more than half the rate of White car ownership among farm owners and sharecroppers.

Of course, the rise in Black car ownership did not mean that Black people could completely escape racism and discrimination. Travelling on the road remained a dangerous endeavor. Sundown towns, which were all White municipalities that threatened violence to Black people who did not leave the town by sunset, were still widespread. In North Carolina it has been estimated that there were at least 16 sundown towns across the state (Loewen and Berrey 2025). To ease road travel, several travel guides for Black drivers emerged beginning in the 1930s. Most known among them is *The Negro Motorist Greenbook*, published in 1936 by Victor H. Green, an African American mailman from Harlem in New York City. The *Green Book* served as a guide for the growing number of African Americans who had access to an automobile and were traveling throughout the United States. Providing information of institutions and establishments that were available to Black drivers eased the burden and allowed Black drivers to plan out routes that were safe. At its height, Victor Green printed around 15,000 issues a year. The success of the *Green Book* and similar publications also signaled that there were enough Black drivers to warrant such a publication.

The Passage of North Carolina's Traffic Code

Up until the mid-1930s, most of North Carolina's traffic laws were largely outlined by local governments. Before motorized vehicles were used, this did not pose much of a problem as people tended to travel within the counties where they resided and therefore did not need to know the road laws in places on the other side of the state. However, with the widespread adoption of the automobile, the combination of people increasingly likely to travel outside of

their home communities and the increase in populations that had previously not been able to own cars prompted a call for a uniform traffic code across the state. In North Carolina, one of the main lobbying bodies pushing for the expansion of the traffic code was the Carolina Motor Club. In examining administrative documents from the Carolina Motor Club archives, housed at the University of North Carolina at Charlotte, we are able to get a better sense of not only the extent of their influence on legislation related to the traffic code, but also the motivations and viewpoints of those who were creating them.

The Carolina Motor Club: Legislative Lobbying and Legal Protections for White Drivers

The Carolina Motor Club (CMC), the North and South Carolina branch of the American Automobile Association (AAA), was founded in 1922 by Coleman W. Roberts with the goal to provide "[a] business organization devoting its entire resources to bettering the conditions for motorists in the Carolinas. A members' club not carried on for profit" (Roberts 1960). There were five original officers of the CMC and by the end of the first year, they had made significant strides in improving resources available to drivers. These efforts included installing "road information fixtures with maps giving detour and road construction data" in lobbies of leading hotels, branch managers across towns, official CMC garages were contracted, legal counsel appointed, road maps were distributed, and a bail bond fund was established for members to access (Roberts 1960). With the increasing number of cars on the road, the CMC became an indispensable resource to drivers. There was, however, one important caveat—memberships were restricted based on a race and were not available to Black drivers. In a 1931 manual to representatives and branch members of the CMC, salespeople were instructed that "[n]ew memberships may only be sold to white people between 16 and 75 years of age" (Carolina Motor Club 1931).

Legislative Activity

In addition to the services provided to members, it also acted as one of the main lobbying bodies for legislation related to vehicles and the roads. Since its inception, one of the organization's main goals was to influence the state legislature in its passage of traffic code laws. The Carolina Motorist, a periodical sent to all CMC members, highlighted in its November-December 1922 issue that the Carolina Motor Club Legislative Program was a body that was responsive not only to the desires of those in leadership positions, but essentially a lobbying body that represented the whims of CMC members—"white people between 16 and 75 years of age" (Carolina Motor Club 1931). The 1922 edition of the Motorist highlighted fourteen issues that members had already presented as priorities to the CMC legislative program, including; adopting a uniform traffic law, the licensing of all drivers and the requirement of all drivers to pass a mental and physical examination, and legislation requiring liability insurance for all drivers (which was not available to non-White drivers at the time) (Carolina Motorist 1922). The same article provided a section for comments from members with any additional recommendations for the CMCs legislative work. In a December 1924 issue of the Motorist notes that "the fact that a great many North Carolinians become members of the organization because of its legislative and legal activity is without dispute" (Carolina Motorist 1924)

The CMC administrative files also list the committee members for the five committees: auto insurance, highway safety, license law, uniform motor vehicle law, and taxation. The committee lists also provide the occupation and county of residence for the members. Of the 44 individuals serving on various committees, ten were elected officials, eight were attorneys, seven were publishers, three were professors, one was the chief of police of Winston-Salem, and the remaining were a mixture of businessmen from across the state. The majority of those involved

in influencing the creation of a state-wide traffic code were not representative of the average resident of the state, they hailed from the upper echelons

In a report highlighting the history of the CMC, founder Coleman Roberts noted that "among the legislative objectives of the club in 1922 were uniform traffic laws; motor vehicle title law…; licensing of all motor vehicle drivers; limiting the jurisdiction of justices of the peace, constables, and magistrates; liability insurance" (p. 4). Just one year later, the CMCs efforts were successful with the NC legislature passing of Chapter 236 of the Public Laws of 1923, which introduced a title system to track vehicle ownership and help in the recovery of stolen vehicles.

Over the next few years, a central focus of the CMC was to "turn the eyes of the public and the law makers with favor toward: establishing a state highway patrol, crack down on the fee system and mail order justice, driver's license, other legislation to benefit the motorist, and promotion of tourism in the Carolinas" (p. 8). In 1927 the CMC reports that "much of the Club's legislative program was passed by the 1927 N. C. General Assembly" (p.11). Suffice it to say, the CMC became a pivotal player in setting the legislative agenda for the traffic code since its inception. A central paradox in the workings of the Club was its simultaneous advocacy for traffic laws as well as the protections that they offered to White drivers within the state to circumvent punishments related to the violations of the very laws they advocated.

Legal Protections for White Drivers

Beyond their role in the legislative process, the Carolina Motor Club also provided legal protections for their members. As outlined in a membership newsletter from the Carolina Motor Club Secretary, T. E. Pickard Jr., in the 1940s, "it came to our attention that many of our members were being unjustly convicted on traffic charges simply because they had no lawyer to

defend them. So, we put in a clause providing legal aid" (Pickard 1940). This aid came in several forms, including free legal aid to White drivers who faced traffic charges and a bail bond, provided through the national AAA that was made available to members beginning in the 1930s. The collaboration between the CMC and local law enforcement allowed for clear understanding of these protections offered, as outlined in a letter sent on January 15, 1940 from President Roberts, "[a]ttached is a folder published by the National Surety Corporation … describing the Bail Bond service they render members of the American Automobile Association through affiliated clubs. Members of the Carolina Motor Club have been provided with the bond protection for many years but we do not believe the service is fully understood by arresting officers, police officials, magistrates or judges and it is our hope that this folder … will clarify the matter… Will you not kindly send us the names of police officials, magistrates and trial court judges in your city so that we may send them a folder?" (Floyd 1940).

While these efforts were a large part of the activities of the Club, many of the legal services were found to be in violation of a state statute that prohibited the practice of law by a corporation, person, or association except licensed attorneys, by the Supreme Court of North Carolina in *State ex rel. Seawell v. Carolina Motor Club 1936* (Bulleit 1938). That is, the NC courts objected not to the benefits, but to the idea that a Club, not an attorney, would provide legal representation. The Club had to change focus toward indirect assistance to its members as through insurance.

Racist Imagery and Reporting

Throughout CMCs publications are appeals to their membership base of the dangerousness of other drivers on the road, and the need to curtail their behavior. These appears were commonly coupled with racial and sexist tropes. The continual reference to those who are "not mentally fit"

to drive reflects the racial science and eugenicist ideals that were widespread at the time. A December 1924 article in the Motorists equates CMC membership with intelligence: "[i]ntelligence as one of the sales points in connection with membership in the Carolina Motor Club has occurred to us before" (Carolina Motorist 1924) and then later suggests that "a few of the questions incorporated in the test of a motorist's driving ability might properly be: Where were you born? Why? If you turned to the right for three hundred yards, how far would you be from the other end? When? Why is two and two four? If it were something else, what would it be? What is wrong with this sentence: 'The driver of the approaching automobile dimmed courteously?'" (Carolina Motorist 1924). The frequent mention of "feeble-minded", "illiterate", and "unintelligent" drivers were racist dog-whistles then as they are today (Albert 2001).

While it is not possible to ascertain whether CMC as an organization was moved to make legislative or legal decisions rooted entirely in racialized motivations, coverage in the Motorist reveals that, at best, the organization held some explicitly racist and sexist opinions. Appearing throughout the periodical were series of cartoons, opinion pieces, and letters from members that portray a belief that some people were just unfit to drive on the roads. Some examples include an article titled, "Women Drivers---I Don't Understand 'Em?*!?*o?", in which the author notes, "[a]nd the queer things women do when you put a steering wheel into their hands! It simply knocks the socks off psychology… A woman will climb confidently into a car and start gaily off, knowing no more about the car than a Chinaman does of a Vitaphone" (Croy 1927). The article was paired with various cartoon illustrations of women drivers crashing their vehicles into pedestrians.

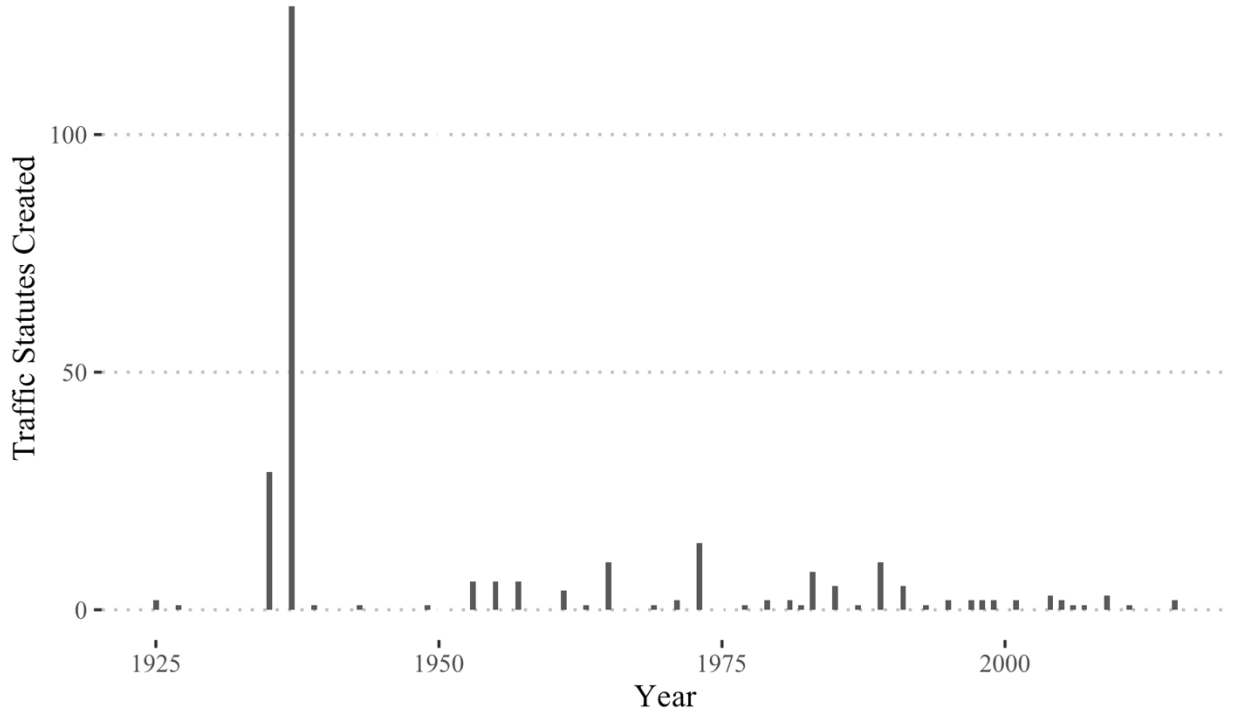
Another article is littered with cartoon illustrations of racist minstrel caricatures carrying a palanquin on their shoulders with a "AAA" emblem on the front of the platform, cartoons

depicting Egyptians adorned in KKK robes holding a sword up to an Emperor with dark skin with the caption “We’re the K.K.K. meaning Kurers of Kookoo Kings, and if you’ve got anything to say before your doom you better open your trap and say it. You’ve been making our highways unsafe for we Egyptines for months” (Shumway 1926). These images, though comical on the surface, signal a more insidious underbelly of the views of the people who had a direct hand in crafting the traffic code: that any group other than White men were unintelligent and not trusted to be behind the wheel of a car.

Laws to Regulate Cars and Roads

The bulk of the present-day North Carolina traffic code dates to the 1937 Motor Vehicle Act. This was the first major codification of the “rules of the road,” and the vast majority of the provisions laid out in it remain on the books today. In fact, when we look at the dates of passage of all the laws associated with arrests for traffic violations in our database, we can see clearly the current impact of the 1937 Act. Figure 12-4 shows the number of elements of the current traffic code (e.g., the number of distinct Chapters and Sections in the NC Code, or subsections, as reflected in offense codes appearing in our database with at least one arrest in the 2013–2019 time period) by the year in which the statute was enacted. A total of 278 traffic-related statutes appear.

Figure 12-4. Year of Passage of NC Traffic Laws.



Note: The figure shows the number of Chapters and Sections of the NC Code leading to at least one arrest in our database, by the year in which that Section was enacted.

States around the country were all confronted with the need to regulate the new system of roads and cars, and developments in North Carolina were by no means unusual. Table 12-2 shows the years that each state passed their first driver license and driver examination laws. The earliest state to pass a driver license law was Massachusetts in 1903, though they would not pass a driver license examination law until 1920. The last state to enact a driver license law was South Dakota in 1954. There was a great deal of legislative attention to these matters in the 1920s and 1930s, consistent with North Carolina's 1935 enactments.

Table 12-2. Year of Passage of Driver License and License Examination Laws.

State	Driver License Law	Driver License Examination Law
Massachusetts	1903	1920
Missouri	1903	1952
New Hampshire	1905	1912
Vermont	1905	1926
New Jersey	1906	1913

Connecticut	1907	1914
Rhode Island	1908	1908
Delaware	1909	1924
Pennsylvania	1909	1924
Maryland	1910	1910
California	1913	1927
Hawaii	1915	1921
West Virginia	1917	1931
Michigan	1919	1931
Oregon	1920	1931
Washington	1921	1937
New York	1924	1924
D.C.	1925	1925
Arizona	1927	1951
New Mexico	1927	1927
Indiana	1929	1929
Nebraska	1929	1937
Wisconsin	1929	1956
South Carolina	1930	1933
Colorado	1931	1936
Iowa	1931	1932
Kansas	1931	1949
Virginia	1932	1933
Minnesota	1933	1948
Utah	1933	1936
Kentucky	1934	1939
Alabama	1935	1939
Arkansas	1935	1937
Idaho	1935	1951
Montana	1935	1947
North Carolina	1935	1935
North Dakota	1935	1947
Ohio	1936	1936
Texas	1936	1937
Georgia	1937	1939
Maine	1937	1937
Oklahoma	1937	1938
Tennessee	1937	1938
Mississippi	1938	1946
Florida	1939	1941
Illinois	1939	1953
Alaska	1941	1956
Nevada	1941	1941
Louisiana	1946	1947
Wyoming	1947	1947
South Dakota	1954	1959

Source: Federal Highway Administration.

Legal advocacy groups across the United States were enmeshed in battles over the design of driver's licenses and driver's license examinations from the beginning. The Chicago branch of the NAACP lodged a protest with the Secretary of State Edward J. Hughes in late January 1939 to demand an elimination of the word "race" from applications for driver's licenses (Chicago Defender 1939). At the time, the NAACP believed that requiring this information could be the basis for refusal to issue a license (for a discussion on the anti-Black origins of identification documents, see (Adair 2019)). This fear was substantiated with reports from across the country of Black people being harassed by law enforcement when trying to obtain a driver's license. In 1932 in Georgia, a Black man reported "in addition to being insulted, discriminated against and humiliated Saturday morning at the capitol, he was brutally beaten and slugged away by two burley men and armed State Patrolmen, while he was there for the purpose of obtaining his drivers license" (Atlanta Daily World 1945).

It wasn't until 1948 that North Carolina mandated new drivers to complete a driver's license examination. The examination consisted of a practical test, an eye test, a written exam on road rules, and a road sign test (Hodges 1948). Literacy, as was highlighted in the Carolina Motorist almost two decades earlier, became an important hurdle to being able to legally drive a car in the state, which posed a problem when, according to one state license examiner reported that, "more than one third of the Negro applicants she handle[d] [were] illiterate" (Hodges 1948).

New Organizational Structures

The new legal landscape associated with driving, and the massive transformations associated with building roads led to numerous changes in state agency activities. Table 12-3 summarizes important changes in the legal context surrounding roads in the state, drawing from the annotated

legal code with a revealing title: Road, Prison and Motor Vehicle Laws of North Carolina, Annotated, Revised Through Acts of 1937 (see NC State Highway and Public Works Commission 1938). Roads, prisons, and motor vehicle regulation were put under the same umbrella. If a reader has ever wondered why prisoners stamp license plates (a job that can never be done outside of prison, and which therefore does not train an individual for employment than can be done after incarceration), the answer is that all prisoners were assigned to work on mobile road-building crews (chain gangs). Those who could not (either because they were physically unable or were considered too much of a security risk) were confined at Raleigh's Central Prison (still in use today), where, among other duties, they operated the license plate factory. Understanding that the prison system was actually a unit of the highway department helps make sense of what otherwise appears to be a puzzle.

Table 12-3. Summary of Administrative Changes Relating to Roads, Prisons, and Cars.

Year	Legislative Action	Description / Comments
1921	Creation of State Highway System	Combines former county and local roads
1929	Creation of State Highway Patrol	A captain and up to 36 patrolmen
1931	Creation of State Highway Commission	Creates state prison camps and transfers all prisoners in the state prison system or in county jails for more than 60 days to the camps. "All able-bodied prisoners committed or assigned to the district prison camps shall be employed in the maintenance and construction of roads in the public road system…" (p. 33).
1933	Creation of the State Highway and Public Works Commission	"It is hereby declared to be the public policy of this state to build and maintain a state system of dependable highways and to maintain and improve the public roads in the several counties at the state's expense; and to that end to make the most economical use of the prison labor of this state in the construction, improvement and maintenance of said highways and roads." p. 43)
1935	Uniform Driver's License Act	
1937	Motor Vehicle Act	Basis of the current vehicle and traffic code.

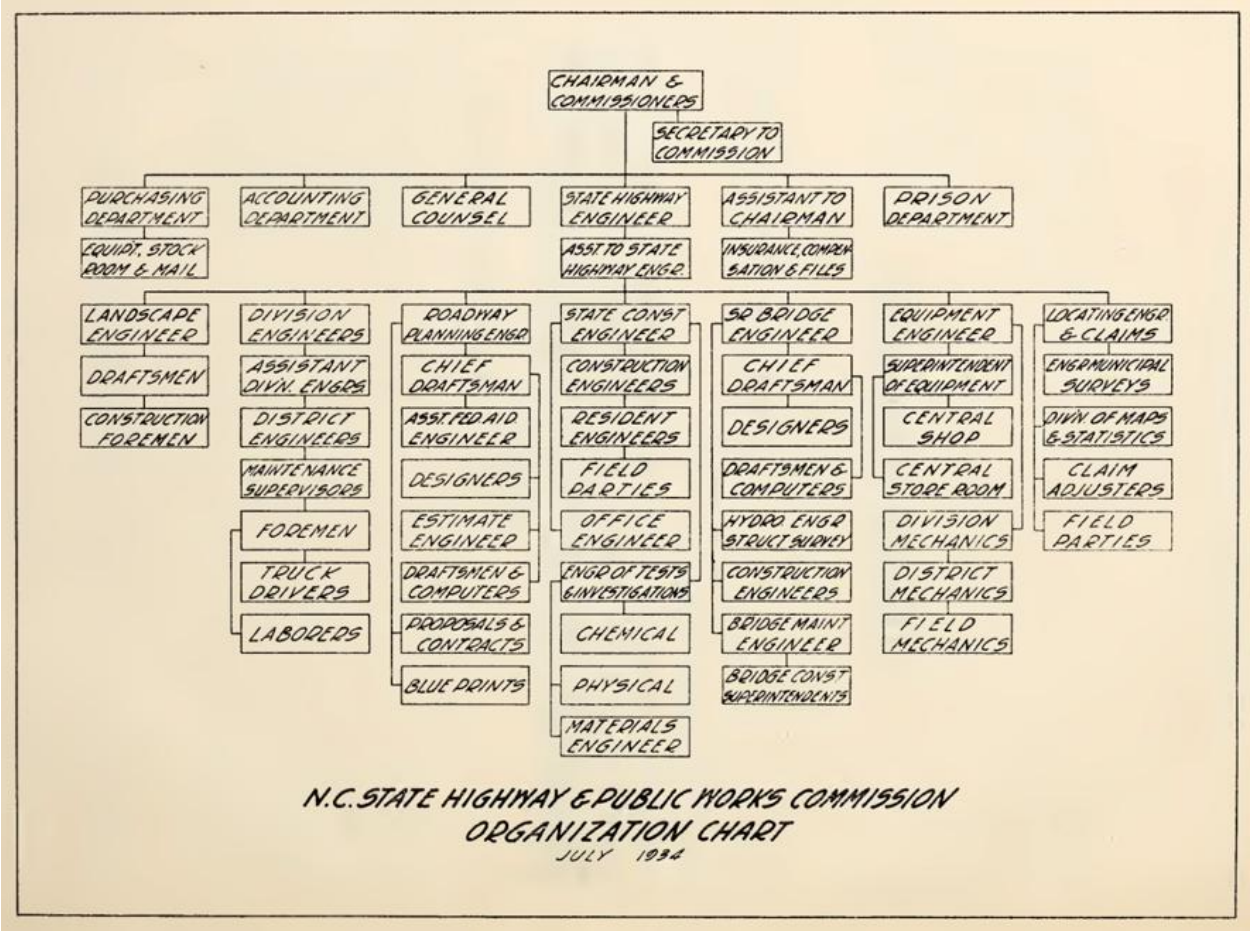
Source: NC State Highway and Public Works Commission 1938

As in many Southern states, and as we discussed at the beginning of this chapter, prison chain gangs literally built North Carolina's roads. In the period just before the large expansion of the traffic code, in fact, the state transferred control of the state's prisons to the Highway Department. In 1931, the NC General Assembly transferred all prisoners sentenced to county jails for terms of 60 days or longer to the state highway commission. The 1931 order gave the commission control over roughly 5,000 people and a similar 1933 order expanded this to nearly 8,000 prisoners. In 1933 the North Carolina General Assembly passed Senate Bill 96, Chapter 172 which consolidated the state prison department and the state highway commission. Section 3 of the Bill read:

> [I]t shall be the duty of the superintendent of the state's prison and the director of the present state prison department, and of the chairman and commissioners of the present state highway commission, to turn over and deliver the state highway and public works commission, created by this act, immediately upon its organization, all their respective books, accounts, records and property of every kind and description; and to facilitate the transfer of said books, records, accounts, and property state highway and public works commission is authorized and empowered to adopt and enforce such rules and regulations as it may deem necessary. (North Carolina General Assembly 1933, 179-180)

Figure 12-5 shows the resulting organizational chart for the NC State Highway and Public Works Commission as of 1934. The Chairman and the Commissioners directly oversee the office of the State Highway Engineer as well as the Prison Department. Whereas the State Highway Engineer oversaw dozens of separate departments and was in charge of designing and building the roads, the director of the Prison Department also reported directly to the Chairman of the Commission.

Figure 12-5. Organizational Chart of the NC State Highway and Public Works Commission, 1934.



Source: North Carolina State Archives.

With public officials focused on building an ever-expanding road and highway system, and largely reliant on Black prison labor (chain gangs) to do so, the idea of controlling Black drivers and ensuring their continued following of the social norms and practices of the Jim Crow South would have been a clear expectation. In the 1920s, the Black population was around 32 percent of the total population, yet they constituted around 80 percent of the incarcerated population (Ireland 1991).

Indeed, as law enforcement on the roads expanded (as we document immediately below), the use of the traffic code as a tool for more expansive law enforcement generally became standard practice. Of course, today's police practices nationwide are deeply imbued with the

notion that the traffic code provides a police officer with the opportunity to detain any person at all (since anyone driving a car is violating some element of the traffic code). These short interactions can be used for informal investigations at the discretion of the officer (see Harris 1997 or Seo 2019 for a sampling of a large literature). But the erosion of the 4th Amendment was not an unforeseeable consequence of the development of the car and the laws regulating it; indeed it was clearly foreseen and sought after. The seeds of these developments were planted and nurtured by political leaders at the time, in advance of the passage of the 1937 Motor Vehicle Act.

Michael Berger (2001, 314) includes a section on domestic law enforcement in his review of the historical and cultural impact of cars. Cars were associated with crime from the beginning, he writes: "The motor car's potential for widening the sphere of crime and delinquency was recognized early, both in fact and in fiction. Clyde Barrow's famous letter to Henry Ford, in which the bank robber thanks the manufacturer for producing one of the most dependable getaway cars, was simply a confirmation of a well-known situation" (Berger 2001, 314). Among the crimes associated with cars in the first four decades of the 20th century were: cars' value to criminals themselves for such crimes as bank robbery; their role in loosening sexual mores generally and in prostitution in particular (e.g., violations of the 1910 Mann Act prohibiting crossing a state line for immoral purposes); the distribution of alcohol during Prohibition; and then finally car theft itself. "One of the early challenges for state and local officials was adopting and adapting the motor car as a tool for law enforcement. There never was much question that the transition from horse to automobile would occur in this area of government. Once the motorized criminal appeared on the scene, the advent of the police car was inevitable (315)."

As Sarah Seo (2019) also reminds us, the expansion of the automobile coincided with Prohibition, and the illicit transport of alcohol was an item of concern for law enforcement generally. In the state where Nascar was first formed, the links between fast cars and illegal activities were clearly established (see Klein 2017). Whereas law enforcement may have seen the need to enforce the laws concerning moonshine and prohibition during their highway safety activities (prohibition ended nationwide in 1933, but it was phased out more slowly in North Carolina with a 1937 act creating the current Alcoholic Beverage Control system), it stands to reason that they would also have been concerned with maintaining the Jim Crow racial order as well.

Figure 12-6 reproduces a letter sent by Prof. Albert Coates, Director of the UNC Institute of Government (now School of Government), referring to meetings between law enforcement and judicial officials throughout the state focused on efforts to coordinate the more efficient use of the highway patrol and traffic safety function as a means to conduct law enforcement more generally. For clarity to the reader, we transcribe the entirety of the article below:

> Judge Wilson Warlick
> Newton, N.C.
>
> Dear Judge:
>
> Last fall 800 city police, county sheriffs, state patrolmen and federal agents met together in eight district meetings in different sections of the state to inaugurate a program of accident prevention and motor vehicle law enforcement as the first step in a larger program of crime prevention and criminal law enforcement.
>
> At these meetings they unanimously voted to request the Judges and Solicitors of the Superior Courts to meet with the law enforcement officers in each county where they hold a term of court during the coming year to discuss local problems of crime prevention and criminal law enforcement.
>
> They respectfully suggest that during the months of January and February these meetings be devoted to the problems involved in motor vehicle enforcement, using “Guides to Highway Safety” as the basis of discussion. A copy of this guidebook has been sent to

you and copies have been placed in the hands of every law enforcing officer who will attend the meetings.

I hope you will write me at once so that I may notify the officers in the various counties that they can count on your co-operation. The prestige and leadership of Superior Court Judges and Solicitors can do more than any other group in focusing public attention on this problem.

With high personal regards, I am,
Sincerely yours,
Albert Coates, Director
The Institute of Government

At the end of the letter, a handwritten note from Judge Warlick indicates his complete agreement with the request of Coates: "Dear Mr. Coates, – You can count on my doing all you ask and can so order the parties. I shall see that these meetings are held. Cordially yours, J. Warlick"

Figure 12-6. Letter from Albert Coates to Judicial Officials about Coordination of Highway Safety and Law Enforcement, January 2, 1936.

THE INSTITUTE OF GOVERNMENT
CHAPEL HILL, N. C.

January 2, 1936

Judge Wilson Warlick
Newton, N. C.

Dear Judge:

Last fall 800 city police, county sheriffs, state patrolmen and federal agents met together in eight district meetings in different sectionsof the state to inaugurate a program of accident prevention and motor vehicle law enforcement as the first step in a larger program of crime prevention and criminal law enforcement.

At these meetings they unanimously voted to request the Judges and Solicitors of the Superior Courts to meet with the law enforcement officers in each county where they hold a term of court during the coming year to discuss local problems of crime prevention and criminal law enforcement.

They respectfully suggest that during the months of January and February these meetings be devoted to the problems involved in motor vehicle law enforcement, using "Guides to Highway Safety" as the basis of discussion. A copy of this Guidebook has been sent to you and copies have been placed in the hands of every law enforcing officer who will attend the meetings.

I hope you will write me at once so that I may notify the officers in the various counties that they can count on your co-operation. The prestige and leadership of Superior Court Judges and Solicitors can do more than any other group in focusing public attention on this problem.

With high personal regards, I am,

Sincerely yours,

Albert Coates

Albert Coates, Director
The Institute of Government

Ac/n

Dear Mr. Coates, – You can count on my doing all you ask & can [illegible] the Judges. I have [illegible] these meetings are [illegible].
Cordially yours,
W. Warlick

Prof. Coates refers in his 1936 letter to planned meetings among judges, solicitors (prosecutors), and law enforcement officials in each of the counties and to the perceived need of cooperation with judicial actors in order better to use the highway code to address "local problems of crime prevention and criminal law enforcement". His letter was met with a hand-written note from the judge assuring him of his "doing all you ask" on the matter. In 1937, the state legislature enacted massive changes to the vehicle and traffic codes, establishing the basis of our current traffic laws. It seems highly likely that the views of the sheriffs, highway patrol officers, and judges referred to by Prof. Coates, and the series of meetings they were engaged in during the months preceding the 1937 legislative enactment formed the basis for the understanding of the problem of crime and highway safety that motivated the legislature in their massive new law.

The Fabrication of the Dangerous Black Driver

In previous chapters we have explored the idea of legislative intent through examining documents produced by the legislature themselves. In this chapter thus far, we have detailed the context under which North Carolina created its traffic code and the entangled history of the establishment of the roads, cars, and the racialized laws governing them. We now move on to present evidence from newspaper coverage at the time of passage that gives some insight of the prevailing public sentiment as reflected in newspapers in the years leading up to the creation and enactment of the North Carolina traffic code.

Tracking Media Coverage

There are various ways in which we consume the news: social media, the internet, printed news, television news, and film and television entertainment shows all inform us of the world around us. The way in which issues are framed heavily informs us on the policy preferences that we

adopt (Kellstedt 2000, Jones and Baumgartner 2005, Druckman 2001). There is a robust literature documenting the relationship between media framing and criminal legal system outcomes. Within the context of the death penalty, previous research has shown that media frames, particularly those that focus on innocence and flaws within the system, can decrease support of the punishment (Boydstun, et al. 2008). Historian Khalil Muhammad (2010) reveals that Black crime statistics and the role of social science in framing crime in mathematical terms heavily shaped the public's perception of Black people and criminals. Other researchers have shown the increasing prevalence of media stories linking immigrant groups and criminal behavior (Harris and Gruenewald 2020). A crucial element in all these studies is the separation between fact and frame. Media frames can become cultural myths that are taken as "obviously true" when in fact they may be anything but. It is important then to understand how black drivers were understood in the media landscape of the 1920s and 1930s.

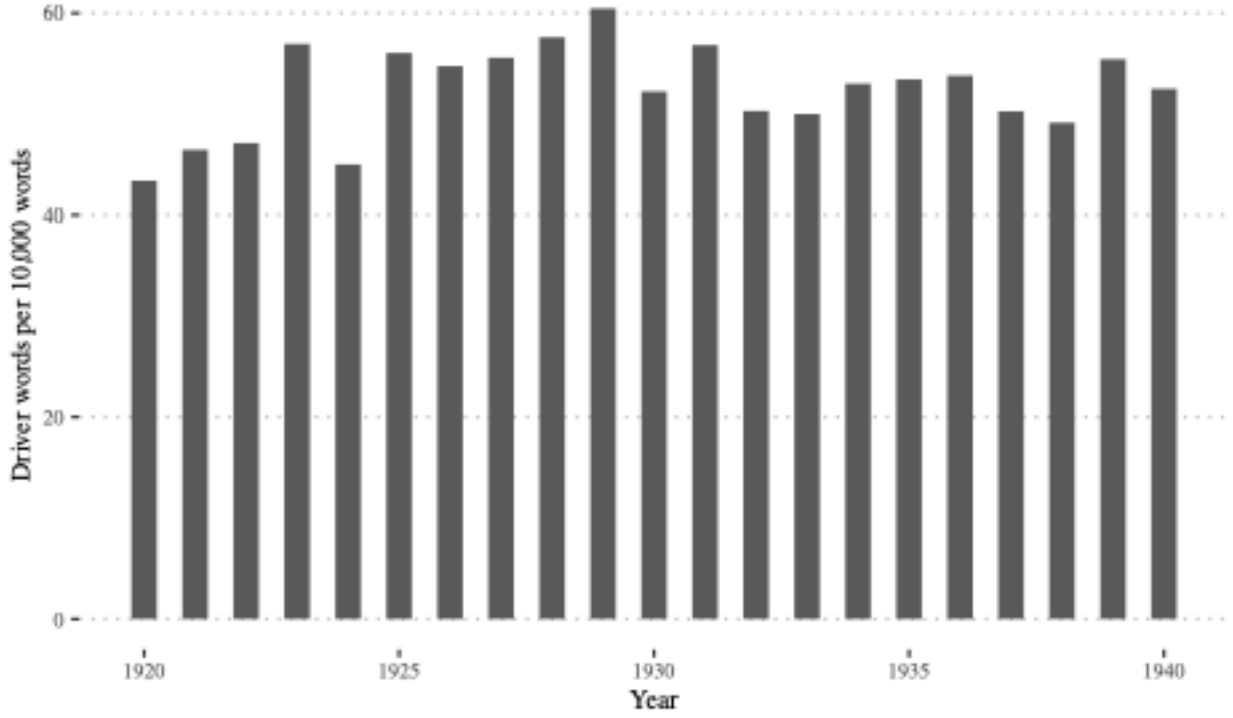
Extending these arguments to the creation of the traffic code, we examine historical newspapers to explore the framing of traffic and driving issues leading up to the creation of the traffic code. In doing so, we show that in the years leading up to the creation of the traffic code, there was a dominant frame in print media that portrayed Black drivers as dangerous and traffic law enforcement as the best solution.

To conduct this analysis, we downloaded all the digitized newspapers from North Carolina between 1920 and 1940 available from the Library of Congress' Chronicling America online repository. The images are already converted text using Optical Character Recognition (OCR), which allows us to identify key words through statistical software. The final corpus of North Carolina newspapers contained just shy of 90,000 pages and almost 253 million words. We first counted the number of words in the corpus by year. This showed a sharp decline in the

years from 1923 to 1931, with another decline beginning in 1937. While we are unable to determine exactly why there is such fluctuation, a few reasons are possible. First, during the 1920s, there was rapid market consolidation in the newspaper business, where large newspaper corporations purchased smaller local newspapers. Second, in the 1920s, newspapers began to publish photographs, so it could be possible that the number of words per issue decreased as the prevalence of pictures increased. A third, and most likely, reason could simply be that the Library of Congress could not get access to many newspapers to digitize during this period as compared to others. Nevertheless, the Library of Congress database is one of the most comprehensive repositories of historical newspapers that allows batch downloads to conduct analysis on OCR text. In the analysis below we report only rates per 10,000 total words appearing in the larger corpus in order to control for the changing number of newspapers in the database.

The first step in our analysis is to gauge how frequently drivers are mentioned in newspaper coverage. Here we want to get a better understanding of there are distinct periods of time that drivers, regardless of the race of the driver, are mentioned in historical newspapers. To do this, we search for the following keywords: auto, car, vehicle, truck, drive, or driver. Figure 12-7 presents the number of times that driver-related words are mentioned per 10,000 words published in newspapers each year.

Figure 12-7. Newspaper Coverage of Cars and Drivers, 1920–1940.



Source: Chronicling America.

Though there are slight variations in the number of driver words appearing per year, there is no discernable trend in newspaper reporting more or less on driving-related stories, with all years hovering around 50 driver words per 10,000 printed words in the corpus. Next, we add an additional set of terms to identify whether the drivers are described as being Black. To do this, we identify the subset of the stories above where a driver word is within ten words of a set of terms that signal Black race: black, negro, colored, african, afro, negroes, negros, or mulatto. We found 2,395 mentions of such themes, with a low of ten mentions in 1925 and a high of 336 in 1937. Figure 12-8 shows these trends as a percent of total driver mentions.

Figure 12-8. Black Driver Words.

Source: Chronicling America.

Unlike the stable mention of driver-related words, we can see a pattern of increased mentions of Black drivers over time, except for a brief period from 1924 to 1926 when few such stories appeared. Between the late 1920s and 1940, with slight variations by year, there is a steady increase in the percent of all drivers words that reference Black drivers specifically. While it would be worthwhile to compare this to the number of times White drivers are mentioned in the news, it was very rare for news coverage to indicate the race of a person if they were White. The natural next progression of this is to examine whether the coverage of Black drivers were written in ways that might skew or shape people's perception of Black drivers.

Racial Tropes in Newspaper Coverage

To better understand the public discussion in the years leading up to the passage of traffic and road laws, we examined newspaper coverage from 1920 to 1940 in North Carolina relying again on the Chronicling America North Carolina corpus. We began this analysis by manually reading

through a subset of newspaper articles of Black drivers and identified some of the main frames in the discussion of Black drivers.

The most dominant framing identified in this process included the "dangerous" black driver. Within this category, coverage could range from describing a car accident that involved a Black driver, as portrayed in a 1927 *Durham Morning Herald* article: "Elijah Dunn, negro driver of a West Construction company material truck … collided with a horse drawn vehicle … [and] killed James Hill aged 12, perhaps fatally injured Mrs. Julia Ann Smith and a one year old infant" (Associated Press 1927). Coverage could also go as far as calling for laws to be implemented to restrict "dangerous" Black drivers, as demonstrated in an article titled "Drivers Should Be Licensed" appearing in the *Kinston Daily News* in June 1922: "The road-hog is a constant menace to the safety of automobilists. Especially objectionable are the number of irresponsible negro drivers who seem to become obsessed with their importance when they get at the wheel and who proceed to drive without regard for the safety or rights of others" (Kinston Daily News 1928). Another subcategory of this trope is the specific danger that Black men drivers posed to White women, as shown in an article appearing in the *Washington* in 1920: "We are in receipt of complaints from some ladies who drive their cars that when they are alone both the ordinary courtesies and the rights of the road are denied then. The chief offenders are negro drivers, both chauffeurs for white people and users of their own machines" (Washington Daily News, 1920). In general, we saw articles that focused on three themes: Trucking and construction companies hiring Black drivers and the adverse economic impacts of such decisions on Whites; White fear of Black drivers violating the social norms of Jim Crow while behind the wheel, particularly with claims of tailgating White female drivers; and the poor driving skills of Black drivers: The "dangerous Black driver" trope.

In order to measure this last frame, we created another list of terms that could be used to describe a dangerous driver. These were: danger, reckless, road hog, irresponsible, threat, wreck, hazard, harm, unsafe, drinking, and drunk. We then added this list of keywords to the computerized search previously conducted to identify the subset of cases where dangerous words fall within ten words of Black-driver words. We found 236 dangerous-Black-driver mentions, or about ten percent of total Black-driver mentions (2,395). Figure 12-9 presents the number of dangerous-Black-driver mentions as a percent of all Black-driver mentions in the time period. Recall from Figure 12-8 that 1924 to 1926 showed very low numbers of Black-driver stories, so we put this period in a lighter shade of grey in Figure 12-9. (The years of 1925 and 1926 show 13 and 18 percent values for percent of Black-driver mentions, but this is based on just 1 and 2 such stories out of 8 and 11 Black-driver stories, respectively.) We add a vertical dashed line to indicate the passage of the 1937 Motor Vehicle Act.

Figure 12-9. Percent of Black-Driver Words Associated with "Dangerous" Words.

Source: Chronicling America.

Aside from the possibly anomalous rise in dangerous-Black-driver mentions in 1925 and 1926, Figure 12-9 shows that beginning in the early 1930s there was a steady rise in mentions of dangerous Black drivers, reaching a peak in 1939, where just over 20 percent, or just over one in five articles, of all mentions of Black drivers was coupled with language that would describe them as dangerous. This increase in the prevalence of racially biased media reporting, as others have suggested (Adair 2019), can increase the perception among the general public that Black drivers are inherently dangerous and must be removed from the roads.

Criminalizing Everyone: Broad Language and Broad Law Enforcement Discretion

As we noted in Chapter 9, the way in which a law is written can offer varying degrees of discretion to law enforcement in applying those laws. If a law is written in such a way that deems essentially all actions illegal, as is most clearly demonstrated in the North Carolina traffic code, then law enforcement has been given the power to arrest essentially whomever they please. In Chapter 7 we presented the example of criminal code 4454 (failure to stop at a stop sign), but huge sections of the traffic code follow this pattern. Codes 5447 (improper turn), 5454 (stop sign violation), 5456 (too fast for conditions), 5477 (fail to dim headlamps), 5496 (overtime parking), and 4573 (fail to notify DMV of address change) all represent behaviors that the vast majority of the driving population engage in, yet many of us are not going to face criminal charges for engaging in these behaviors. It is unlikely a surprise to our readers at this point that when law enforcement is granted this broad discretion, it is likely to result in significant disparities in arrest rates.

Our examination of the traffic code presents another, very important, consideration raised in Chapter 9: The privilege of who has access to the legislative bargaining table. Throughout this

chapter we have demonstrated that a handful of influential people were responsible for overseeing and influencing legislative activity around the passage of the traffic code. When the public was introduced into the fold and given an opportunity to voice their preferences for the legislative agenda, it was a privilege typically extended to White men through racially restrictive membership of the CMC. Critical in this story is that the activities of the CMC and the regular convening of law enforcement and law makers ensured that the law would be carried out in the way that the crafters of these laws desired.

Conclusion

We concluded part three of this book with the section of the criminal code that accounts for the largest share of arrests and the most common reason why someone is absorbed into the criminal legal system. In this comprehensive historical analysis, we have shown that almost everything to do with roads and traffic enforcement, from the creation of the roads themselves to the establishment of the traffic code, is enmeshed in the incarceration of Black bodies. The car, which offered a small glimpse of respite from the violence of Jim Crow also carried with it an intense punitive response. News coverage, businessmen, law enforcement, and elected officials leaned on racist tropes of dangerous and incompetent Black drivers to encourage public support of the swift enactment of a traffic code that deems almost every driver in violation of some law. Critical to the enforcement of these broad laws was a close and intentional collaboration between those making the laws and those enforcing them to ensure that the application of the legislation would be passed in the way intended by those who crafted it.

Part IV

Conclusions

We have covered a lot of ground, evaluating the statistical patterns that arise out of our comprehensive study of every criminal charge presented to a North Carolina court over seven years. The statistical patterns are clear: Social disadvantage, deriving from a person's race, gender, age group, and place of residence, generate powerful disparities. Those at the top end of the advantage scale rarely come into contact with the criminal legal system or the police. Those at the other end are all-too familiar with its practical workings. Those most familiar with how the system works, since they have been through it many times, are rarely at the negotiating table when decisions are made to revise, enhance, or change the criminal code. Rather, these decisions are made by the legislature generally after study commissions heavy with law enforcement representatives discuss the merits of various proposals, or the need to address some pressing issue. We have gone through many examples where these policymakers, and those who advise them, reflect a set of concerns that can fairly be described as highly racialized. The criminal legal system is of course rife with racial inequities, so much so that many understand issues of crime in highly racialized manners. As this is commonly reflected in the media, it should be no surprise. Further, crime and politics go together in a way that makes it possible for policymakers, who are also partisan elected officials, to politicize or sensationalize crime. For this and other reasons, we are not surprised to have been able to uncover multiple examples of racialized understandings of the "problems" that need to be solved with new elements of the criminal code. In this final chapter, we review some of the most relevant characteristics of the system we have described, and we present an alternative version of the criminal legal system that would be free of racial motivations, of much smaller scope, more focused on personal safety and serious

crimes, and which would likely lead to much higher levels of satisfaction with how the criminal legal system operates when focused on serious crimes.

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Envisioning Equity and a Justice System that Works for All

Introduction

Alec Karakatsanis (2019) describes being corrected by a child in a Washington DC public school while explaining one's constitutional right to be free of a police officer's search in the absence of probable cause that one is engaged in criminal activity. The young boy corrected him, saying: "'No, you don't understand, these are the Jumpouts, not the police. They are allowed to do that.'" ("Jumpouts" is DC slang for groups of armed officers who jump out of their patrol cars to conduct surprise stop-and-frisk operations.) Karakatsanis continues: "[W]hen I heard these words, my heart sank. In front of me was a child in whose world being stopped and frisked was so regular, such a fact of everyday life, that he had reasonably concluded that it must be lawful. This child was growing up believing that his suspicious body could be probed at will by government employees" (2019, 145). This phenomena of having two conflicting systems of law enforcement, the way things are supposed to be and then the way the law is enforced against Black and Brown people in their lived experience, has been well documented by artists, community organizers, and social scientists for decades (see for example Weaver, Prowse, and Piston 2019; Justice and Meares 2013; Baldwin 1972).

Karakatsanis goes on to talk about inhumane and dangerous conditions in prison and the fact that lawyers and judges sentencing people, particularly for drug crimes, to that system have found an intellectual route to convincing themselves that the actual conditions in prison can be ignored. In this view, prison conditions are issues for the Department of Corrections, but not part of the criminal adjudication in which these lawyers and judges are involved. Of course, if a

legislature were to enact a punishment that included a substantial probability of rape or assault as part of the punishment, or being deprived of contact with family, such a punishment would be unconstitutional. Given that such things are routine parts of how the system actually works in every state, however, it takes an active effort not to see it, and judges, prosecutors, and defense attorneys routinely engage in that willful blindness. Or, he notes the continual "crisis" in funding indigent defense and prison legal services. The crushing case loads are routine and expected, not part of a temporary crisis that will soon be alleviated. In sum, Karakatsanis reminds us of the importance of considering the criminal legal system as it actually operates, to be proximate to it (in Bryan Stevenson's words). Looking at it as it actually functions, not as we wish it might, is the only way to evaluate it. In the previous chapters, we have attempted to paint a detailed portrait of the criminal legal system in one state at one period of time so that we can all see it as it really is, not as it might be imagined or polished up to be.

The Power of Place

A key element of what we have described is the importance of place. Geography, as much as race and class, determines one's likelihood of interaction with the police and the criminal legal system. Of course, our segregated cities make it so that geography cannot truly be separated from race and class. The concentration of poverty and marginalized individuals into small geographic areas of each of our major cities (and many smaller towns as well) allows a system in which most people avoid these areas and are generally unfamiliar with them. Within these boundaries, however, a different and much more troubling set of rules determine how the police interact with members of the public. This is justified by the fact that so many calls for service come from members of the public in these areas: "We go where we are requested to go" is a common refrain from police leaders when asked about their disproportionate attention to certain areas. If there

were just one wave of a magic wand that we were allowed in order to alleviate many of the dysfunctions that we have described in previous chapters, it would likely be to end de facto segregation in housing. Without it, the intense and aggressive policing that we observe in certain neighborhoods would largely be impossible.

Most readers of this book, and certainly most members of the state legislature and other elected officials, choose to live far from the areas of concentrated poverty, marginalization, and social pathologies that we have identified in each of the major cities of North Carolina (and which certainly exist in every state of the country). They choose not to live in these areas because these areas come with crime, noise, danger, traffic, pollution, a lack of shopping, dining, and recreational amenities that most people enjoy, and because they can afford to live outside of these areas. Because these areas are then concentrated with marginalized individuals with little political power, and often without the financial means to leave, that unfortunate share of the population must endure conditions that the rest of us generally ignore or dismiss as being a problem made by the people who live there.

We are certainly not the first to note the power of place. As we wrote at the very beginning of the book, we have been indebted to the work of Richard Rothstein (2017) who not only focused on the importance of residential segregation in American cities, but also the powerful role of government policies at the federal, state, and local levels in creating this system. Jessica Trounstine (2018) followed Rothstein with a more political focus on where segregation came from with a particular focus on zoning laws and the single-family home as a zoning pattern excluding those who can only afford to rent an apartment or a duplex.

Jessica Simes (2021) added to this conversation by noting the extreme concentration of the home addresses of individuals currently incarcerated (see also Clear 2007). She built on the

analysis stemming from the work of an incarcerated individual, Eddie Ellis. Mr. Ellis, a spokesperson for the Black Panther Party, worked with fellow New Yorkers incarcerated in the state's prisons to study the sociological backgrounds of those who were imprisoned. Among other insights, they discovered that about 75 percent of those incarcerated in the 1970s and 1980s came from just seven neighborhoods in New York City: Harlem, the Lower East Side, the South Bronx, South Jamaica, Bedford-Stuyvesant, Brownsville, and Brooklyn's East New York (see Simes 2021,43–44; see also Clines 1992).

More recently, Columbia University's Spatial Information Design Lab produced detailed analyses for Phoenix, Wichita, New Orleans, and New York City showing "million dollar blocks" in each of these areas: Highly concentrated geographic spaces accounting for astronomical rates of incarceration compared to other areas of the cities (see Spatial Information Design Lab 2007). Cooper and Lugalia-Hollon (n.d.) have done the same work for Chicago, and Lytle Hernandez and Dupuy (n.d.) have done it for Los Angeles. These works complement our own. Those areas we have identified as "high-arrest" zones of each North Carolina city certainly account for a vastly disproportionate share of arrest and convictions. These findings, others have documented, are certainly not peculiar to any single state.

We have also noted that race, age, and gender interact with place in powerful ways. Black, Latine, and Native American young men residing in these marginalized areas face the brunt of proactive policing in ways that others are unlikely ever to experience. Because these experiences are so targeted and are generally absent in White or Asian middle-class communities, those not marginalized by race may find it hard to believe that they are even real. This translates into a political and social dynamic where there is little empathy for those being over-policed and a tendency for those advantaged by the system to work hard to convince

themselves that whatever may be happening is justified by police imperatives. Fear of crime is a powerful political force, and it can lead to policies that force a small share of the population to endure policing practices that the rest of us may not be able to imagine. Some of the reason for this may be that we work actively to avoid knowledge of it.

Policing, Social Control, and Crime

Simon Balto (2019) describes the context surrounding the creation of the Chicago Police Department in 1853. Even outside the South, and without mentioning race in this description, he makes clear that the main concern was social control of a new class of working immigrant communities. Social control, not crime control, was the key element:

> City boosters, members of the business community, and elite citizens united in their concern about immigrants' habits, cultures, and politics. They viewed immigrant communities as inherently unruly, constantly drunk, and later, politically suspect. In response, they sought to impress on immigrants certain sets of morals, to restrict their leisure activities, to get them to stop drinking, and to keep them from challenging the socioeconomic status quo.
>
> To do these things, elites used their political power to push for the incorporation of a police force, which was formally founded in 1853. The timing was hardly unique: every major American city implemented a formal police force between the 1840s and the close of the 1880s. …
>
> The CPD's activities in its infancy reflected those interests. The city council "made it clear from the outset that it was creating a military-style police department to keep order in the face of the threats posed by a mobile class of wage earners, not to fight crime. It broadly defined police power, to include controlling a certain "class of

> persons"—working-class immigrants—by a variety of means, including the need to punish them for "matters not criminal" but that would, elites imagined, be damaging to the city's health. Nothing was more important in this respect, early on, than booze. The vast majority of CPD's early work lay in arresting large numbers of Irish and German immigrants for drinking (despite drinking itself not being criminalized) with only infrequent attention to more serious crimes (Balto 2019, 15–16).

Balto's deep research into the creation and history of one large police department in a Northern city is backed up by similar studies throughout the country (see for examples Mitrani 2013; Jett 2021; Vitale 2018). Brian Stults and Eric Baumer (2007) review an extensive literature in sociology and criminology that explores why some cities have larger police forces than others, and the possibility that this relates to "racial threat"—a concept developed by Hubert Blalock in the 1960s suggesting that Whites develop a hostility to Black residents in their communities to the extent that the Black population is large enough to constitute an economic or social "threat" to the White community (see Blalock 1967). (There is nothing in Blalock's work suggesting an actual threat; the concept might better be termed White racial hostility or White racial fear, since it emanates from the White community, not from any action other than numerical presence by the Black community; see Baumgartner et al. 2022.) Stults and Baumer (2007) conducted a national study of the sample of counties that were included in the General Social Survey and therefore for which public opinion data were available. Police forces ranged in size from 80 to more than 500 sworn officers per 100,000 members of the population (2007, 525), and they found that these staffing levels could best be explained by segregation, Black economic threat, and Whites' fear of crime (2007, 533). In other words, racial dynamics drive decisions that various communities make to hire more police officers.

Our analysis of North Carolina policing and surveillance is certainly consistent with these findings. First, police staffing levels differ dramatically from place to place. Second, our analysis in Chapter 4 made abundantly clear that policing is highly concentrated in certain neighborhoods and that residents of other areas of the city rarely encounter the police. While these patterns do correspond to crime, the system is self-perpetuating. The vast majority of police interactions with members of the public lead to no arrest (see Chapter 4) and the vast majority of arrests relate to non-violent behaviors (see Chapter 2). In fact, we showed that crimes of physical violence represent less than six percent of the charges and about three percent of the verdicts across the state during the time of our study (see Table 2-8). Rather than violence and serious felonies, the police routinely interact with people surrounding traffic infractions and other low-level concerns that provide the police the opportunity, but not the requirement, to detain the individual for further conversation.

So many laws are overly broad or ambiguous that the police have many opportunities to detain members of the public, should the officer choose. Most of us are unaware of this because the police do not interact with most of us, particularly those of us with high levels of advantage. But in those neighborhoods that we have identified as either "High Surveillance, High Demand" (Chapter 4) or more generally "High Arrest" (Chapter 5), residents are all-too familiar with these high-discretion interactions. It would be hard to go through a day without violating some aspect of the NC Criminal Code, or if one drives to avoid violating some aspect of the traffic or vehicle code. This has no effect on most of us, since the police are not surveilling us. But for those who live in these targeted areas, it opens the door to intensive policy power.

In the second part of our book, we have evaluated the possibility that the North Carolina General Assembly may have had race in mind when it passed many of the laws that currently

have racially disparate effects: the traffic code, laws against protesting, anti-gang laws, and so on. We find little reason to think that they would not have race in mind; race and crime go together in American thought like bread goes with butter or pork goes with barbeque. "Why would they not be thinking about race?" is a more reasonable question than "Is it possible that race was a consideration?". Sometimes all it takes is an open mind and an open heart to see the obvious. Of course race matters; why wouldn't it?

Of all the findings in this book, those in Chapter 7 regarding the low rates at which individuals are convicted of the crime for which they were arrested may be the single most surprising one. Of course, being surprised at a finding depends as much on one's expectations as it does on the fact itself; others may be more surprised at the degree of racial disparity in the system or by the fact that racialized intent often seems to influence the lawmaking process. Those things are obviously the key themes of our book. But let us return to some of the findings in Chapter 7. Ranging from capital murder to first degree rape and on down the line to speeding tickets, only a tiny fraction, less than 10 percent, of those charged with a particular crime are convicted of that crime. Half of the cases, roughly speaking, are dismissed, and large shares, generally around 40 percent, see a conviction for a lesser crime. People charged with first-degree rape are convicted of indecent liberties with a child, kidnapping, or some lesser crime (see Table 7-6 showing just 13.9 percent convicted as charged). People charged with attempted first-degree murder are convicted of assault with a deadly weapon, possession of a firearm, or armed robbery (see Table 7-7 showing just 7.5 percent convicted as charged).

We wrote in the conclusion to Chapter 7 that the system we have in place today simply moves the discretion from the parole commissions and judges to the office of the District Attorney. These offices face crushing case-loads, however, and seek to avoid expensive and

time-consuming jury trials. Plea agreements, even for speeding tickets, therefore have become the standard way of dealing with virtually all criminal charges, in North Carolina as elsewhere. But the get someone to agree to plead guilty (and therefore give up possible appeals of their sentence), one has to offer something. This generally means dropping some charges and reducing others to something with a lower punishment than would otherwise be likely. That process in turn leads to an incentive to over-charge at the beginning of the system, so that even if some charges are dismissed or reduced, others remain. This over-charging becomes part of the problem in the crushing case-loads that the courts face. In sum, it is a vicious cycle.

Imagine a victim of a crime who knows full well what happened to them. Let's say the crime was attempted murder where the offender shot the victim with a handgun, shattering their shoulder or lacerating their internal organs, but not leading to death. This crime would be understood as attempted murder, inflicting serious bodily injury. Attempted murder is a Class B2 felony, punishable by a minimum sentence for first-time offenders of 12 years in state prison. But there is a good chance that the person would be convicted only of Assault with a deadly weapon, inflicting serious injury, a Class E felony. Moving from Class B2 to Class E reduces the punishment from 12 years to 23 months in prison. Of course, it could be that the district attorney determined they could not prove the intent to kill, so had to settle with what could be proven beyond a reasonable doubt. But it is very likely that the pressure to induce a plea agreement plays a part in the fact that so many, the vast majority in fact, serious crimes are pled down to much less serious ones. From the perspective of the offender, 23 months is certainly a good option compared to 12 years. For the victim, it's a straight-out slap in the face.

Envisioning Equity

We have exposed a number of faults with the North Carolina criminal legal system. Many of the laws had racist intent; racial disparities in their application remain prominent (perhaps the most prominent) aspects of the system; so many laws are on the books, and many of them are vague or over-broad so that each of us is in technical violation of the law in our actions virtually every day (and most certainly if we are drivers); the system is so overwhelmed with cases that over 95 percent lead to a plea agreement rather than a jury trial; punishments are reduced and often involve legal conclusion that are purely fictional (recall the epidemic of broken speedometers on the highways; in fact, few people drive with such faulty equipment); and police surveillance is extremely uneven, subjecting a small minority of the most disadvantaged among us to intense scrutiny where most of us rarely have contact with the police. What would a better system look like?

First, the system would be vastly reduced, if not eventually eliminated altogether. If we eliminated the drug laws, that change alone would reduce the scope of the criminal legal system by more than half. We recognize the harm that drug addiction poses to communities but we, as a society, do understand it as a medical issue that has become a criminal legal one (in some cases). Making it a medical issue would allow treatment and would reduce the dehumanizing character of the system, as we have seen in the case of the increase in the use of synthetic opioids. It would also decriminalize tens of thousands of individuals and free them from felony records related to their previous drug addictions. Most importantly, it would address the root cause of drug addiction and allow health and medical professionals to do their work.

If we scoured the criminal code to search for laws that are vague or overly broad and replaced them with more targeted statutes that focus on the most dangerous, violent, or harmful actions, then we could all be safer. The police and prosecutors would lose tools that they cherish.

But those tools have consistently been used to the detriment of disadvantaged individuals who have been subjected to police scrutiny that the most advantaged in society would never tolerate. Pretextual traffic stops, informal conversations with the police leading to deeper and deeper questioning, all these common behaviors are based on the police officer's ability to make use of vague or overly broad statutes given them the discretion to apply the law or not.

If we reduced the scope of the criminal legal system by eliminating laws that have been shown to have racist intentions, eliminated the drug laws, and replaced vague and overly broad statutes with new ones that targeted the most dangerous and violent behaviors, people could have their day in court. Victims could expect that those who harmed them would be found guilty of the crime they actually committed, not a bargained down substitute that may be fictional, insulting, or both.

The current criminal legal system is so bloated with petty crimes that fewer than 5 percent of the felonies (not even to discuss misdemeanors or traffic violations) are crimes of physical violence. With the expansion of the criminal code has come a surveillance system that does not apply to the vast majority of us, but which is intense for those who live in the most marginalized communities across the state. The system was built on many racist assumptions, and it continues to operate in a manner that generates massive racial and class-based disparities.

Another common-sense option is to follow the calls from community organizers and scholars, who have for years been calling for the dismantling of the criminal legal system and replacing it with systems that are rooted in safety and harm reduction (Gilmore 2021; Kaba 2020; Davis 2003; Vitale 2017). Instead of criminalizing addiction, we can treat it as a health concern. Instead of arresting people for stealing food, we can make sure people have enough to eat. Instead of arresting people protesting police brutality, we take away the ability of the police

to brutalize people and get away with it. If we take this approach, we will free ourselves of attempting to "fix" a system that is so clearly designed to work as it currently functions and instead focus our efforts on building systems of safety that chips away at the extreme amount of policing and surveillance that we currently live under.

We noted earlier that many scholars and activists have identified "million dollar" neighborhoods in many American cities; these are areas where so many people have been incarcerated that the state is paying over a million dollars to incarcerate them. If we expanded this analysis to include health-care costs for those who are injured in crimes or those who suffer from chronic disease, or who lack the same regular check-ups and preventative medical care that the rest of us take for granted (or cherish), we would likely find that many of these same areas are not just million dollar blocks; they are multi-million dollar blocks. If we added the reduced productivity associated with people who lack access to good educational opportunities, transportation, or child-care systems, then the bill would go even higher. Reduction in the size and scope of the criminal legal system would have to be envisioned as part of a larger reinvestment strategy, a strategy that invests in those areas currently the most marginalized so that the people who live there would have a chance of success. Such an investment would pay ample dividends.

There are two predictable points of opposition to the argument we just made. First, this re-investment would come with some costs. Law enforcement and incarceration would be reduced in scope, for example, and those currently employed there would have to be redeployed. Second and most importantly, the benefits of this re-envisioned mode of society would initially flow to those who are currently the most marginalized. Benefits to the larger society would come only after time. They would come, but we should recognize that the re-allocation of resources

that we are discussing here, which would reduce harm and promote the general welfare in the long term, is politically fraught in the short term. We see a moral imperative to try it, however. Why do we want to maintain a system that imposes tremendous costs but fails to keep us safe? The answer to that question, as we have discussed, is that the system generally does not apply to "people like us." Rather, it applies only to the most marginalized. It's time to recognize the fundamental dehumanization that makes the system possible and react against it. While the short-term costs might be substantial, the transition difficult, and the political dynamics quite dicey, the long-term benefits would be substantial. Even if they were not, the right choice based on empathy, morality, and fairness is clear.

What is to like about the current system? One thing that many people might like quite a lot is that the system barely affects them. The vast majority of us interacts only occasionally with the courts and when we do, we can escape by paying our traffic fine and perhaps working the system to bargain down the possible punishment so that we feel like we "beat the system." Many attorneys are available (for a fee) to help us do so; they may like the system as well since it provides for their livelihoods. Another thing that many people might like about the system is that it keeps "criminals" and "those people" under surveillance by the police. The police have the tools, in the form of a massive and overly broad criminal code, to surveil, interrogate, and detain whomever they want, generally speaking. The charges might not stick, but the police can detain people for various reasons, and they routinely do. Because we expect that the police are doing this for good reasons, that those targeted by the police are most likely guilty of something, and because it does not happen to most of us, the system can seem attractive. That is certainly how it is portrayed by law enforcement personnel, political leaders, and in the media.

In this book we hope to have pulled back some of the veil. The system has racist roots and it targets and surveils people who are the most disadvantaged. Much of this targeting relates to housing segregation, which has diverse and complicated antecedents that go well beyond the criminal legal system. But when we look at the role of government policies in developing housing segregation, and the long-lasting consequences of it, we can see that it goes hand in hand with the racialized intentions of many elements of the criminal code.

Nothing in this book should be taken as a justification for behavior that harms other people. But if we had a criminal legal system that truly focused on crime—especially violent crime—rather than also being concerned with social control of the most disadvantaged, and if we devoted resources to helping those who are the most marginalized gain an economic, social, and political foothold in the system, then we would all be safer. We would be better off if we could redirect spending from prisons and jails toward the economic rebirth of disadvantaged communities. And we would live in a state that refused to permit racially discriminatory laws to remain on the books.

As we have shown throughout this book, law enforcement is inextricably tied to many other systems. Areas that experience the most intense forms of surveillance and policing are typically areas that have higher rates of poverty, have poor quality public housing, have underfunded public schools, lack access to greenspace, and likely have increased rates of chronic disease. This is not a flaw of the system but is an indicator of systemic racism across institutions. One reason for this observation is that the very people who oversaw the development a highly punitive law enforcement system were also in charge of building out all other social systems. The Governors that we have mentioned throughout this book, including Governors Dan K. Moore and William B. Umstead, did not restrict their racist policies to the law enforcement

system. They oversaw building out school, health, welfare, housing, transportation, and other state systems. Legislators, who are too many to note here, who were involved in the creation of the criminal legal system were also on committees other than those dedicated to the system we have interrogated. Other actors, such as those affiliated with the University of North Carolina at Chapel Hill (particularly the Institute of Government, now the School of Government), had their hands in a host of other research agendas that supported the passage of racist policies. We all live under interconnected systems that cannot be separated from one another. While we have focused our attention on this book to the criminal legal system, there is no reason that we shouldn't call into question the racist origins of other systems of governance.

We will end by returning to the report written by Bayard Rustin on his experiences on the North Carolina chain gang. He observes that it would be a grave waste of energy to focus our criticisms of the penal system on any single actor. Instead, he notes that "[i]nstitutions are the outer reflection of society's inner attitudes and basic assumptions" (Rustin 1947, p. 2). We concur. The system we currently live under is not the fault of a single actor, or of a horrible mistake made somewhere along the line. It is the reflection of decades of coordinated efforts by people who were tucked away in privileged and unsurveilled corners of the state to enact policies that would likely never impact themselves or those who looked like them.

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