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A theoretical and empirical critique of racial innocence in sentencing

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Abstract

Despite large-scale racial inequalities across multiple social domains, racial innocence highlights the complacency of the law and social science research in denying racial power through race neutral assumptions. We explore three theoretical and methodological mechanisms maintaining racial innocence within quantitative social science: treating unequal structural conditions and organizational practices as *impartial*, *isolating* samples to reflect limited stages, and focusing on *individual* levels of analysis. Given that mass incarceration is one of the most visible modern-day exemplars of racial subordination in the United States, we use the example of incarceration sentencing to highlight these mechanisms. Using case processing data from Miami-Dade County between 2012 and 2015 ($N = 86,340$), we first examine racial inequality in incarceration sentencing when treating unequal case characteristics impartially across racial groups relative to when we allow case characteristics to be unequal across racial groups. Second, we examine racial inequality when isolating limited samples with narrow decision points relative to when we draw from samples across multiple stages. Finally, we examine racial inequality with individual-level frameworks relative to a neighborhood level frameworks. In this case, racial inequalities in incarceration sentencing with a racially consciousness approach are twice as large than with a racially innocent one.

Keywords: sentencing; race neutrality; racial innocence; systemic racism; punishment; antidiscrimination law; empirical critical race theory; quantitative research; Quantcrit

Introduction

Large-scale racial inequalities in the United States, including in wealth (Hamilton and Darity 2010), housing, and employment (Pager and Shepherd 2008), have long presented a challenge to the assumed objectivity and neutrality of both the law and social science (McNamara 2006; Moran 2010). Naomi Murakawa and Katherine Beckett (2010)

term this race neutral approach to the law and social science as the presumption of “racial innocence.” Racial innocence is “the practice of securing blamelessness for the death-dealing realities of racial capitalism” (Murakawa 2019: 473). Similar to how critical race scholars problematize doctrines of neutral procedures and formal equality (Carbado 2022; Delgado and Stefancic 2023; Forman 2010; Powell 2024), racial innocence highlights the complacency of the law and social science research in denying racial power through race neutral assumptions and explanations (Van Cleve and Mayes 2015; Crenshaw *et al.* 2019; Murakawa 2019; Murakawa and Beckett 2010).

An area illustrative of racial innocence in social science is the study of sentencing, the predominant process driving mass incarceration. Mass incarceration represents one of the most visible modern-day exemplars of racial subordination in the United States (Alexander 2012; Capers 2014). Black people are incarcerated in state prisons at a rate approximately five times as high as White¹ people (Carson 2020), and this inequality is greater than other social measures, including unemployment, infant mortality, and wealth (Western 2006). Despite these statistics, scholars often only find small or no racial inequalities in quantitative sentencing studies (Baumer 2013; Hagan 1973; Mitchell 2005; Spohn 2000). While some may attribute incarceration simply as a reflection of racial inequality in arrest and policing outcomes, which have been well documented in the literature (Beckett *et al.* 2006; Fagan and Davies 2000; Kim and Kiesel 2018; Mitchell and Caudy; Ojmarrh and Caudy 2015; Warren *et al.* 2006), there may be other explanations that result in empirically minimizing racial inequality in sentencing. Even beyond these empirical findings, racial inequalities are often not attributed to a racist system (Van Cleve and Mayes 2015), despite other scholarship, including qualitative scholarship, suggesting that racism is practiced by court actors in everyday functions (Barak 2023; Clair 2020; Dunlea 2022; Van Cleve 2016).

Drawing from empirical critical race theory (eCRT) and sociolegal and sociological studies on race neutrality and methods, this paper explores how racial innocence is maintained in quantitative social science studies. We investigate three potential mechanisms of racial innocence in the case of sentencing by drawing from data on adults arrested for felonies in Miami-Dade County between 2012 and 2015 (N = 86,340). We first examine how treating unequal structural conditions *impartially* minimizes racial inequality. In sentencing studies, this is achieved by including legal and case characteristics assumed to be similarly situated across racial groups (Stewart 2008b; Stewart and Sewell 2011; Zuberi 2001). Secondly, we examine how *isolating* racism occurring in a “single moment” inherently minimizes systemic racial inequalities occurring through multiple stages (Murakawa 2019). Sentencing studies often draw from conviction-only samples to examine racial inequality in isolated sentencing decisions (Baumer 2013), disregarding racial inequalities in prior decisions, such as charging or plea bargaining. Finally, we examine how *individual* frameworks and units of analysis might minimize racial inequality, because racism occurs not just at an individual level but also at an organizational and structural level (Bonilla-Silva 1997; Carbado and Roithmayr 2014; Haney López 2000; Ray 2019; Siegel 2020). While sentencing research traditionally adopts individual-level frameworks (Ulmer 2012), macro analyses, such as neighborhood models, draw attention to structural factors and mass incarceration in communities.

Building on the argument that “racial innocence” erases racism in the law and social science (Crenshaw *et al.* 2019; Murakawa and Beckett 2010), we argue that theoretically and methodologically approaching empirical (and especially quantitative) social

science as impartial, occurring in isolated stages, and at the individual level represent three mechanisms enabling this erasure. We explore how empirical studies of race and punishment can disrupt some of these assumptions and better reflect the realities of racism through a race conscious approach. In the tradition of eCRT (Barnes 2016; Obasogie 2013), we build on sociolegal scholarship on race, as well as the sociology of race (Bonilla-Silva 2015; Christian et al. 2021) and methods (Zuberi and Bonilla-Silva 2008) to unpack how racism is maintained within social science research. A race conscious approach can help researchers highlight how racial power operates rather than erasing it (Murakawa and Beckett 2010). We begin by discussing how sociolegal scholars have located racial innocence within antidiscrimination frameworks as well as eCRT, and then turn to the more specific case of sentencing.

Racial innocence and eCRT

The rise of race neutral or “colorblind”² ideologies emerged in the post-civil rights context in the United States while racism shifted to less overt manifestations (Bonilla-Silva 2006). This ideology positions racism as a problem of the past and takes an (ostensibly) race neutral stance by presuming equal treatment. Individuals therefore claim that they were not racist as they do not “see race” (Bonilla-Silva 2006) or, in some iterations, that particular identities protect people from being racist (Hernández 2022).³ Simultaneously, courts have since generally embraced race neutrality as an approach to equal protection and antidiscrimination law (James 2020; Lawrence 2008), with the “post-racial deception” that racism would be overcome by disregarding race (Gotanda 1991; Powell 2022, 2024). During this shift, legal definitions of racism narrowed such that the burden of proof for demonstrating discrimination became ill-equipped to handle the reality of how racism operates more broadly (Haney López 2012; Lawrence 1987; Murakawa and Beckett 2010). In this way, the legal system’s race neutral stance has disregarded the impacts of racism (Capers 2014), enabling racially unequal outcomes to persist (Carbado 2022; Crenshaw et al. 2019).

Both racial *intent* and *causation* are two distinguishing features of racial innocence in both antidiscrimination law and social science (Murakawa and Beckett 2010). Standards of intent are distinct from disparate impact, where disparate impact alone is not enough to demonstrate discrimination (Lawrence 1987; Obasogie 2013; Pager and Shepherd 2008). As Lawrence (1987: 319) notes, proving a racially discriminatory purpose places a “very heavy, and often impossible, burden of persuasion on the wrong side of the dispute [to which] governmental officials will always be able to argue that racially neutral considerations prompted their actions.” For example, Barreto et al. (2019) find that Black and Latinx voters are disproportionately disenfranchised by recent voter identification laws. They point to practices like those in Texas, where hunting and gun permits (disproportionately held by White people) are acceptable forms of identification, but social service cards (disproportionately held by Black people) are not. Despite an initial successful legal challenge and a minor revision to the legislation, the law was ultimately not found to have discriminatory intent (Malewitz 2017; *Veasey vs. Abbott* 2021). Because intent suggests that there is a “specific and identifiable person(s)” culpable (Murakawa and Beckett 2010: 696), this standard becomes nearly impossible when examining broader policies.

The second element that Murakawa and Beckett (2010: 697) note is causation, where antidiscrimination law generally requires the “disaggregation of decision-making

points in order to identify ‘biased’ actions occurring in a single moment.” Causation requires a nearly impossible “but-for” standard, where the outcome “would have occurred in the absence of the alleged conduct” (Bavli 2021: 485; Eyer 2021). In the employment context, for example, identifying biased actions leading to someone being hired “but for” their race is nearly impossible because employment decisions, including hiring, firing, and promotion, are often complex (Bavli 2021). This may explain why fewer than one in five employment discrimination complaints filed in the United States are settled in favor of the complainant (US Equal Employment Opportunity Commission, *n.d.*) and even fewer intersectional claims are successful (Best *et al.* 2011). Causation, therefore, requires not only isolating the biased action from other potentially related decisions, but also presumes that the other decisions are race neutral unless demonstrated otherwise.

Similar to narrowing legal standards of racial discrimination, sociolegal scholars also highlight social science examples that embrace race neutral frameworks (Van Cleve and Mayes 2015; Murakawa 2019; Murakawa and Beckett 2010). For example, algorithmic risk tools represent the “datafication” of law (Rothschild-Elyassi 2022) that classify and predict behavior across many areas, including employment, healthcare, housing, and the criminal legal system (Benjamin 2019; Van Cleve and Mayes 2015; Eubanks 2018; Thacher 2008). These tools are framed as race neutral because the data used to develop the algorithms formally disregard race and are often calibrated equally across racial groups (Eaglin 2019; Koepke and Robinson 2018; Ugwu-dike 2020). While programmers may not be intentionally discriminating in designing risk tools (Benjamin 2019), these tools are encoded with racial hierarchies predicated on White middle-class standards (Benjamin 2019; Gwen 2017; Hannah-Moffat 2005). Risk tools also ignore structural sources of discrimination (Ugwu-dike 2020) or redefine unequal racialized structural conditions as individualized risks (Tim and Myers 2016). Additionally, they rely on racially unequal inputs, such as prior arrests, that are also a function of biased organizational practices (Harcourt 2007). As a result, such tools exemplify racial innocence as they perpetuate racial inequalities under a façade of objectivity (Benjamin 2019).

Other social science research, like social psychology, locates the root causes of discrimination and racial disparities in implicit biases (Carbado and Roithmayr 2014; Eberhardt 2020; Lawrence 2008). In this formulation, biased decision-making is not necessarily a function of individual “bad apples” (Petersen 2019), but rather that stereotypic race-related beliefs, such as Black men as “criminal,” operate through individual people (Capers 2009; Eberhardt 2020; Kang *et al.* 2011; Lawrence 2008; Richardson and Goff 2012; Russell-Brown 2018). Operating subconsciously in all humans, and without malicious intent (Hetey and Eberhardt 2018), implicit biases influence the decision-making of criminal legal system actors (Capers 2009; Kang *et al.* 2011; Richardson and Goff 2012). Implicit biases, for example, can manifest in predatory policing practices that question the existence of people of color in White spaces (Capers 2009), and influence how public defenders triage their work (Richardson and Goff 2012). While implicit bias is one mechanism that maintains racial inequalities within the criminal legal system and elsewhere, scholars caution that focusing on implicit biases as the only explanatory framework might be limiting (Kang *et al.* 2011; Russell-Brown 2018). First, it may isolate racial discrimination as only an individual phenomenon instead of also existing as a structural form of bias (James 2020; Kang

et al. 2011). Second, implicit bias can create a “rhetoric of blamelessness” (Petersen 2019: 496) that absolves responsibility for discriminatory behavior resulting from bias (James 2020; Lawrence 2008; Russell-Brown 2018).

Work applying critical race theory frameworks in the social sciences pushes back against frameworks of racial innocence (Crenshaw et al. 2019; Murakawa 2019; Murakawa and Beckett 2010).⁴ Here, eCRT fills a historical gap between critical race theory and empirical methods in sociolegal scholarship (Barnes 2016; Christian et al. 2021; Obasogie 2013; Paul-Emile 2014). Both eCRT and similar critical quantitative approaches⁵ have pointed out issues underlying different assumptions made in empirical research (Castillo and Babb 2023; Garcia et al. 2018). Racism is reinforced through the law (Carbado 2022; Gómez 2004, 2012), occurs at multiple intersecting levels (Delgado and Stefancic 2023), and is persistent over time despite changing mechanisms (Bell 1992). CRT therefore compels empirical research to conceptualize race and racism “as part of a process” (Gómez 2012: 234) that is dynamic rather than fixed (Burton et al. 2010; Castillo and Babb 2023; Stewart 2008a) and challenges assumptions of objectivity (Carbado and Roithmayr 2014; Zuberi and Bonilla-Silva 2008).

The case of racial inequality in sentencing research

Although there is large-scale racial inequality in incarceration statistics, quantitative studies often find relatively small, or sometimes no racial disparities in sentencing outcomes (Baumer 2013; Hagan 1973; Mitchell 2005; Spohn 2000; Ulmer 2012). This includes the probability of an incarceration sentence and incarceration sentence length. In an early review of sentencing studies, Spohn (2000) concludes that only about half of the state court studies considered found Black–White racial inequalities in the probability of being sentenced to prison, and a quarter of the studies found Black and White racial disparities in sentence length. Interestingly, these quantitative findings persist despite qualitative research’s demonstrating the scoping range of racial inequalities within federal and state court processes (Lynch 2016; Van Cleve 2016).

This finding also contrasts with the large body of literature finding racial inequalities across multiple policing outcomes, including stops (Fagan and Davies 2000; Warren et al. 2006) and arrests (Beckett et al. 2006; Kim and Kiesel 2018; Neil and Legewie 2024; Ojmarrh and Caudy 2015). Notably, researchers find that racial inequalities in sentencing occur as a function of arrest (Johnson and Larroulet 2019; Kim and Kiesel 2018), and draw from race neutral cultural scripts when making decisions to justify racial disparities in courtroom decision-making (Dunlea 2022). Other researchers find that court actors adjust to correct for over-policing (Meyers 2022). In other words, the possibility exists that racial inequality in incarceration may be simply a function of policing.

In addition to policing, however, these relatively small disparities in sentencing might also be attributed to both the empirical strategies and theoretical frameworks applied by quantitative scholars, which we argue represents a racially innocent approach. Baumer (2013: 234) suggests that there is a “typical” methodological approach in sentencing, where researchers estimate the probability of incarceration (and/or incarceration length) through regression-based models on a sample of convicted people, observing Black–White racial disparities after controlling for a host of factors, such as prior record and offense seriousness. Researchers often divide variables predicting sentencing into “legal” and “extra-legal” factors. Legal factors are

“tacitly understood to be race-neutral” and thus any racial inequalities stemming from these factors are “warranted” (Petersen 2019: 498). Racial inequality in sentencing is detected by including race as an “extra-legal” variable, where it is “the sole result of race...after all legally mandated sentencing factors are taken into account” (Bushway and Morrison Piehl 2001: 734).

In the past decade, empirical sentencing and court scholarship has expanded in some ways departing from the typical approach. Researchers have documented other outcomes such as pretrial detention (Schlesinger 2013), charging (Johnson and Larroulet 2019; Kutateladze 2018), and plea bargaining (Berdejó 2018; Johnson and Richardson 2019). Research has also expanded to consider other racial and ethnic groups, such as Latinx (Demuth and Steffensmeier 2004; Ulmer *et al.* 2016) and Asian (Franklin and Fearn 2015; Jawjeong 2023) populations. Additionally, researchers have called for more sophisticated and dynamic ways of capturing when and how racial disparities occur (Spohn 2000; Zatz 2000). Despite these developments, many underlying assumptions around legal factors, samples, and units of analysis in quantitative work have not changed.

While some quantitative sentencing scholarship examines contextual factors (Auerhahn *et al.* 2017; Donnelly 2021; Johnson 2006; Ulmer and Johnson 2004; Wooldredge 2007), this literature still overwhelmingly privileges individual factors and frameworks. Drawing from complementary theories focused on social psychological theories of decision-making (Engen 2009), sometimes in an organizational context (Ulmer 2012), these formulations suggest that attributions result in court actors treating Black defendants more punitively than White defendants. Because the information available to court actors when making decisions is limited, they rely on racial stereotypes to inform their assessments about future risk (Albonetti 1991). This perspective was further developed in the focal concerns framework, which suggests that court actors assess blameworthiness, protection of the community, and practical constraints in determining punishment decisions (Steffensmeier *et al.* 1998; also see Lynch 2019). Because courtroom actors establish informal norms in courtroom workgroups (James *et al.* 1992; Jeffery and Kramer 1996), shared practices, including disparate decisions based on stereotypes, develop from the ground up (Ulmer 2019).

Although these theoretical frameworks focus on stereotypes as the mechanism of racial inequality, recent scholarship has taken Zatz’s (2000) early suggestion to investigate mechanisms of racial inequalities in court processes as they unfold in subtle ways. Scholars have applied the cumulative disadvantage framework to case processing (Kurlychek and Johnson 2019; Kutateladze *et al.* 2014; Stolzenberg, D’Alessio; Lisa *et al.* 2013; Sutton 2013). Studies find that racial inequalities in sentencing occur in indirect ways, such as through bond (John *et al.* 2015), pretrial detention (Schlesinger 2007; Spohn 2009), prior records (Brennan 2006; Omori and Petersen 2020), charging (Brennan 2006; Lynch 2016; Rehavi and Sonja 2014), or limited representation (Barak 2023; Clair 2020). Inequalities at multiple decision points can cumulate into larger-scale racial inequalities in prosecution and sentencing outcomes (Kutateladze *et al.* 2014; Stolzenberg, D’Alessio; Lisa *et al.* 2013; Sutton 2013).

Although this work suggests that racism operates indirectly and through multiple stages, theorizing the institutional mechanisms of racial inequality is still relatively underdeveloped in quantitative sentencing literature. In contrast, researchers drawing from ethnographic and interview data highlight that racism is often reproduced

Table 1. Three mechanisms of racial innocence and racial conscious alternatives

Mechanism	Racial innocence		Racial consciousness	
	Description	Methodological approach	Description	Methodological approach
Impartial	Treating case characteristics as racially neutral	Estimating predicted incarceration with the same mean case characteristics across all racial groups	Treating case characteristics as unequal across racialized groups	Estimating predicted incarceration with different mean case characteristics by racial group
Isolated	Isolating samples to capture narrow decision-points	Drawing from a sample of convicted people	Drawing from broader samples	Drawing from a sample of arrested people; accounting for conviction through selection models
Individual	Focusing on individual frameworks and units of analysis	Estimating model with individual cases as the unit of analysis	Including meso- and macro-level frameworks and units of analysis	Estimating model with tracts as the unit of analysis

through ostensibly race neutral practices within the criminal legal system (Barak 2023; Clair 2020; Dunlea 2022; Kohler-Hausmann 2018; Lynch 2016; Van Cleve 2016). For example, Clair (2020) finds that racially and economically disadvantaged defendants are often punished for advocating for their legal rights, whereas their privileged counterparts evade similar forms of punishment by deferring authority to their attorneys. Being able to capture organizational practices and how they manifest in data is critical for quantitative research as well (Lynch 2011; Omori and Petersen 2020; Petersen 2019).

Moving from impartial, isolated, and individual mechanisms of racial innocence to racial consciousness

Integrating quantitative sentencing research with an eCRT framework, we examine how different analytical approaches “tend to either reify or undermine hierarchical group rankings” (Christian et al. 2021: 1021). We focus on three mechanisms that enable racial innocence in social science: treating unequal structural conditions impartially, isolating sample choices to reflect narrow stages, and focusing on individual levels of analysis. We also consider how shifting these presumptions enables researchers to move towards a more race conscious approach within the social sciences (Capers 2014; Crenshaw et al. 2019; Murakawa 2019; Murakawa and Beckett 2010). Table 1 summarizes our three racial innocence mechanisms and how we propose shifting to a race conscious approach. Of course, these mechanisms are not the only ways racial innocence might manifest, nor are these racially conscious alternatives the only solution. Instead, we propose these mechanisms to demonstrate ways that quantitative scholars can embrace race conscious theoretical and methodological frameworks.

First, Murakawa and Beckett’s (2010) point around causation in antidiscrimination law is mirrored in how social scientists conceptualize variables as *impartial* in social science and the consequent explanations for observed racial inequalities (Carbado and

Roithmayr 2014; Van Cleve and Mayes 2015; Stewart 2008a). Social scientists often take a racially innocent approach by presuming that underlying social processes across racial groups are equal. We test this methodologically by first estimating predicted incarceration in our models where “legal” variables are racially impartial (or neutral) by using the same average across the entire sample for each variable, and then re-estimate predicted incarceration where we allow these variables to have different averages across racial groups. In doing so, we explore a race conscious alternative where legal factors might be racially stratified. In the sentencing context, legal factors such as charging severity may reflect unequal prosecutorial practices (Lynch 2011; Lynch and Omori 2018; Petersen 2019). Legal factors can also reflect laws “on the books” that produce racially unequal outcomes because they disproportionately impact Black people, such as the use of criminal history in sentencing guidelines (Omori and Petersen 2020).⁶

Second, the issue of cause suggests that *isolating* biased actions in a single moment is difficult, if not impossible, given how racism operates. If racism occurs in a “thousand cuts” (Lee and Hicken 2016), narrowly focusing on one decision point in empirical analyses may reveal very small racial inequalities. Within the criminal legal system, bond, charging, or even sentencing decisions made by the courtroom workgroup may have small racial inequalities alone, but create much larger inequalities when taken together across a system (Kurlychek and Johnson 2019; Sutton 2013). To examine this empirically, we compare incarceration sentencing based on more expansive (arrest) to more limited (convicted) samples to consider how inequality might be captured in different underlying populations through various stages of the criminal legal system process.⁷ We also estimate selection models for incarceration (Bushway, Johnson, and Slocum 2007), which account for conviction to reflect how racial inequality operates as a process across multiple stages rather than as a single moment of bias.

Finally, drawing from ideas of intent, focusing solely on *individual* person “levels of analysis” makes both the law and social science ill-equipped to handle racism within broader systems (Bagenstos 2006; Carbado and Roithmayr 2014; Haney López 2000; Lynch 2011; Pager and Shepherd 2008; Siegel 2020). CRT scholars caution against drawing only from individual level models of racism while disregarding its organizational and structural dimensions (Carbado and Roithmayr 2014; James 2020; Kang *et al.* 2011; Siegel 2020). As Carbado (2022) argues, Fourth Amendment law and racial segregation renders Black people vulnerable to systemic police surveillance, contact, and violence, which necessitates a macro and structural approach to understanding police violence. We explore how macro neighborhood level analyses can open a more race conscious approach to examining racism in sentencing. Building on research investigating the spatial concentration of mass incarceration (Pattillo *et al.* 2004; Roberts 2004; Sampson and Loeffler 2010; Simes 2018; Simes *et al.* 2023), we examine predicted incarceration rates at the neighborhood level. Doing so enables us to capture structural processes contributing to racialized mass incarceration in neighborhoods, rather than at the individual level.

Methods

Data and sample

We draw from a unique dataset of all adult felony arrests in Miami-Dade County between 2012 and 2015 (N = 86,340).⁸ The data were collected from administrative

files from the Clerk of the Court's office by the American Civil Liberties Union (ACLU) of Florida and its Greater Miami Chapter and the study's first author. The data captures relevant information from arrest through disposition – arrest, bond, charging, and sentencing – which we then linked together, allowing us to examine how racial inequalities occur within the criminal legal system process. We focus on people who are arrested for felonies because we are interested in racial inequality in incarceration, which is a relatively rare outcome for people who are arrested for less serious crimes (Kohler-Hausmann 2018). Limiting our sample to felonies also better aligns our data with prior sentencing studies which primarily focus on felony cases (Baumer 2013).

To better explore how local practices operate within the criminal legal system in Miami-Dade County, the first author observed court proceedings and had informal conversations with court actors who worked within the system, including current and former prosecutors, public defenders, judges, and police as well as people and families impacted by the criminal legal system, reform advocates, and a civilian oversight panel. These experiences, in addition to our collaboration with the ACLU, a non-profit dedicated to supporting human rights, shape how we approach this research. Embracing critical race theory's acknowledgment that research is never value-neutral (Christian et al. 2021; Zuberi and Bonilla-Silva 2008), we recognize that our identities influence our work. As scholars of color, for example, we are highly attuned to how racialized criminalization can operate under a façade of race neutrality. In this regard, this project underscores our interest in understanding how quantitative methods can challenge current systems of racial (and other types of) domination.⁹ Even though Miami-Dade County is a unique setting for this study, it still has a White-dominated racial structure. Miami draws a large number of immigrants from Latin America and the Caribbean, especially from Cuba (Portes and Stepick 1994). The county is nearly 60% White Hispanic¹⁰ as identified by the Census (Census 2017), and White Cubans in particular hold substantial political and economic power in comparison to Afro-Latino and other Black people (Hernández 2002). At the time of the study, for example, the county's Mayor (United States Congressman Carlos Gimenez, n.d.), State Attorney (Office of Miami-Dade State Attorney 2023), and head public defender (Law Offices of the Public Defender 2023) all identified as (White) Cuban-American. This is important because anti-Black racism is pervasive in not just the United States, but also Cuba and other Caribbean and Latin American countries that, in turn, have influenced the United States' racial order (Bonilla-Silva 2004; Hernández 2022). In other words, White Latinos benefit from their Whiteness and by participating in anti-Blackness (Hernández 2002).

Miami is also one of the most racially segregated cities in the United States (Logan and Stults 2011). This is attributable to government decisions and private investment, including the development of Interstate 95 in the 1960s that cut through the once-thriving Black economic center of Overtown (Dluhy et al. 2002), and economic investment in neighboring White communities from people in Latin America in the 1980s and 1990s. As a result, White people, both Hispanic and non-Hispanic, live in relatively more affluent – though different – neighborhoods (Petersen et al. 2018). In comparison, Black Hispanic and non-Hispanic people disproportionately live in more impoverished and largely overlapping neighborhoods characterized by overpolicing and police violence (Brennan and Weston 2015; Feldman 2011; Petersen et al. 2018). While Black Hispanic people in Miami comprise about 2% of the County population,

they are even more overrepresented in Miami's criminal legal system relative to Black non-Hispanic people (Petersen *et al.* 2018).

Describing this setting is integral as we are conducting research in a context where racial inequalities in incarceration have already been established (Petersen *et al.* 2018) and underscores our understanding of the ethno-racial structures and local practices by criminal legal system organizations. These findings have helped us think through our modeling assumptions, variables, and sample choices, such as how criminal records might be racialized due to overpolicing in Black neighborhoods and police stops of Black men; how examining cases from arrest rather than conviction is important because the State Attorney's Office screens and declines to prosecute cases upfront; and how investigating neighborhood-level racial inequalities in incarceration might be important due to racial segregation in Miami-Dade County.

Variables

As reflected in Table 2, we include dependent and independent variables consistent with those considered in typical sentencing studies. Our main dependent variable of interest is whether or not a person is sentenced to incarceration (Baumer 2013; Ulmer 2012). We choose an incarceration sentence due to its direct linkage to understanding mass incarceration and because it is the most common outcome examined in quantitative sentencing scholarship (Baumer 2013). In this instance, a case is coded as "1" if a person is sentenced to a term of incarceration (prison or jail), or a "0" if a non-carceral sentence was imposed, which is most often probation, a fine, time served, or some combination of these. We also have a dummy variable representing conviction¹¹ (1 = convicted, 0 = not convicted) because those not convicted cannot be sentenced.

Our main independent variable of interest is Black or White racial group (1 = Black and 0 = White), based on data from the arrest form. People are racialized as Black or White in this context likely through a "negotiated settlement" process (Goodman 2008) between the arresting officer and the person arrested, structured by the arrest form itself. The arrest form contains a series of checkboxes for race, including "Black" and "White," and officers fill out the checkboxes based on their perceptions and interactions with the person arrested.¹² Because of the demographics of Miami-Dade County, the population of people who do not identify as White or Black people is small (less than 1.0%), and so are excluded from this analysis.¹³

Given Miami's demographics, we also include a separate dummy variable capturing Hispanic ethnicity (1 = Hispanic, 0 = non-Hispanic). Because the original data and arrest forms do not include ethnicity information, we use the Hispanic surname list (Word *et al.* 2008) to include the probability that a person is Hispanic. This analysis assigns the probability of a person's surname being associated with Hispanic ethnicity on the Census. We use a 75% threshold, meaning that we code that a person is of Hispanic ethnicity if 75% of the people in the Census who have their surname identify as Hispanic. This method has been validated in other studies (Wei *et al.* 2006). Although an imperfect measure, we believe that including it in this context is important given the demographic population of Miami-Dade County. Because ethnicity is captured as a separate variable from race, people in the sample can be categorized as White non-Hispanic, White Hispanic, Black non-Hispanic, or Black Hispanic.¹⁴

Table 2. Descriptive statistics of variables (n = 86,340)

	Mean	Standard deviation	Minimum	Maximum
<i>Incarcerated</i>	0.278	0.448	0.000	1.000
<i>Convicted</i>	0.461	0.498	0.000	1.000
Racial group	–	–	–	–
<i>Black</i>	0.479	0.500	0.000	1.000
<i>White¹</i>	0.521	0.500	0.000	1.000
Ethnic group	–	–	–	–
<i>Hispanic/Latino</i>	0.505	0.500	0.000	1.000
<i>Non-Hispanic/Latino¹</i>	0.495	0.500	0.000	1.000
<i>Male</i>	0.822	0.383	0.000	1.000
<i>Age</i>	35.017	12.497	15.000	91.000
<i>Immigrant</i>	0.306	0.461	0.000	1.000
<i>Low income</i>	0.732	0.443	0.000	1.000
<i>Pretrial detained</i>	0.233	0.423	0.000	1.000
Most serious charge (degree)	–	–	–	–
<i>Felony 3rd deg¹</i>	0.631	0.482	0.000	1.000
<i>Felony 2nd deg</i>	0.243	0.429	0.000	1.000
<i>Felony 1st deg+</i>	0.126	0.332	0.000	1.000
Most serious charge (type)	–	–	–	–
<i>Violent¹</i>	0.242	0.429	0.000	1.000
<i>Drug</i>	0.277	0.447	0.000	1.000
<i>Property</i>	0.274	0.446	0.000	1.000
<i>Other</i>	0.207	0.405	0.000	1.000
<i>Criminal history</i>	0.117	1.026	–0.814	2.880
Year of arrest	–	–	–	–
<i>2012</i>	0.262	0.440	0.000	1.000
<i>2013</i>	0.256	0.436	0.000	1.000
<i>2014</i>	0.246	0.431	0.000	1.000
<i>2015¹</i>	0.236	0.425	0.000	1.000

(Continued)

Table 2. (Continued.)

	Mean	Standard deviation	Minimum	Maximum
Police department	–	–	–	–
<i>Miami</i> ¹	0.216	0.412	0.000	1.000
<i>Miami Beach</i>	0.078	0.268	0.000	1.000
<i>Miami-Dade</i>	0.375	0.484	0.000	1.000
<i>Other</i>	0.331	0.471	0.000	1.000

Note: ¹ = reference category.

We also include other demographic information often included in sentencing studies, such as gender, age, immigration status, and whether the person is classified as low-income. Gender and immigrant status are coded as dummy variables (1 = male and 0 = female and 1 = immigrant and 0 = non-immigrant, respectively).¹⁵ Age at arrest is captured in years. Finally, we use a proxy for low-income classification based on whether the person qualifies for public defender representation regardless of whether they are ultimately represented by public counsel. To qualify for public defender representation in Miami-Dade County, people must have an income that is 200% below the poverty guideline or less.

We also include a host of “legally relevant” factors that are generally included in sentencing research. Consistent with prior sentencing research (Demuth and Steffensmeier 2004; Xia and Mears 2010), we develop and include a measure of criminal history as a single factor score. This factor score is calculated using a series of dummy variables (1 = yes; 0 = no) for prior felony arrest, felony conviction, jail sentence, and prison sentence. These individual scores are then added up (resulting in an additive scale ranging from 0 to 4), and then standardized (alpha = 0.70). We also include the degree and type of the most serious arrest charge. The degree of the most serious arrest charge is captured by dummy variables for the following: 3rd degree (reference group), 2nd degree, or 1st degree or capital/life felony. Broad crime categories for the most serious arrest charge are also measured as a series of dummy variables using the following: violent (reference group), drug, property, or other. Pretrial detention is often included as an independent variable for sentencing (Ulmer 2012), and so we measure it as 0 = not detailed and 1 = detained. Arrest year is used to control variability across years, and we use 2015 as the reference category.

Although uncommon in sentencing research, we also include police departments measured as a series of dummy variables for the following major Miami-Dade police departments: Miami (reference group), Miami Beach, Miami Dade, and others. We use these police departments as exclusion restrictions in our selection models (Shawn et al. 2007), where we include police agency to predict conviction but not sentencing.

Finally, in our neighborhood models, we aggregate some of the aforementioned case characteristics to the Census tract. This includes the percent of arrested people who were immigrants, and the percent who met our low-income threshold. We also include an average criminal history and the average case severity. We include the percent of cases that were drug, property, and others, using percent violent crime as our reference category. Additionally, we include the police department as a series of dummy

Table 3. Descriptive statistics of census tract variables (n = 3,382)

	Mean	Standard deviation	Minimum	Maximum
<i>Number incarcerated</i>	3.150	7.980	0.000	192.000
<i>White population</i>	808.239	831.951	1.000	4642.000
<i>Black population</i>	1014.976	1476.334	1.000	6752.000
<i>Percent Latino</i>	0.534	0.342	0.000	1.000
<i>Percent immigrant</i>	0.325	0.250	0.000	1.000
<i>Percent low income</i>	0.719	0.214	0.000	1.000
<i>Crime severity average at arrest</i>	4.493	0.329	4.000	6.000
<i>Most serious charge (type)</i>	–	–	–	–
<i>Percent violent crime¹</i>	0.250	0.199	0.000	1.000
<i>Percent drug crime</i>	0.257	0.217	0.000	1.000
<i>Percent property crime</i>	0.280	0.225	0.000	1.000
<i>Percent other crime</i>	0.213	0.192	0.000	1.000
<i>Criminal history average</i>	0.052	0.466	–0.814	2.880
<i>Year of arrest</i>	–	–	–	–
2012	0.251	0.434	0.000	1.000
2013	0.252	0.434	0.000	1.000
2014	0.248	0.432	0.000	1.000
2015	0.249	0.432	0.000	1.000
<i>Concentrated disadvantage</i>	0.113	0.719	–2.506	5.603
<i>Residential instability</i>	–0.352	1.037	–4.502	1.543
<i>Percent ages 15–24</i>	13.571	6.987	1.381	98.195
<i>Police department</i>	–	–	–	–
<i>Miami PD¹</i>	0.192	0.394	0.000	1.000
<i>Miami Beach PD</i>	0.061	0.239	0.000	1.000
<i>Miami Dade PD</i>	0.414	0.493	0.000	1.000
<i>Other PD</i>	0.333	0.471	0.000	1.000
<i>Homicide rate</i>	0.119	0.346	0.000	5.607

Note: ¹ = reference category. We include summary statistics for Black (n = 1,593) and White (n = 1,789) tracts.

variables and year as controls. We aggregate each measure by Black/White racial group based on the arrest location. Descriptive statistics for all neighborhood variables are included in [Table 3](#).

In the neighborhood models, we additionally include some structural variables that are often used in neighborhoods and crime research.¹⁶ We calculated the measures at the Census tract level to approximate neighborhoods. Economic disadvantage is a principal components factor analysis comprised of the percent below the poverty line (factor loading = 0.84), median home value, median household income, single parent households, and percent on public assistance (Sampson et al. 1997). We consider residential instability, measured as the percentage of homeowners and the percentage of people who did not move in the past 5 years. We also control for the percentage of young people aged 15–24. As a measure of violent crime, we also capture the average homicide rate in the tract from 2010 to 2015.

Analytical plan

To contrast racially innocent to racially conscious approaches in sentencing scholarship, we estimate a series of probit and Poisson regression models. We first estimate what Baumer (2013) terms the “typical” model in sentencing, which we argue reflects presumptions of racial innocence. This includes estimating a probit model predicting incarceration for Black and White individuals who are convicted, including a series of legal and demographic controls.¹⁷ For each scenario, we then compare the racially innocent results with alternative racially conscious results, where we make different assumptions and generate the predicted probability of incarceration for Black and White defendants. In our first scenario, we estimate the same racially innocent model, but instead of treating legal and demographic factors *impartially* by estimating the predicted probabilities of incarceration using the legal and demographic variables for the entire sample averaged together, we estimate the predicted probability of incarceration using legal and demographic factors for Black and White racial groups separately. This allows legal and demographic factors to be unequal across racial groups.

In the second scenario, we compare our results in the racially innocent sample, which is *isolated* to people who have been convicted, to a more expanded sample of people who have been arrested. Because our sample includes everyone arrested who may or may not be convicted, we estimate a model of incarceration adjusting for conviction. The selection models use maximum likelihood estimation with the *heckprobit* command in Stata 15 (StataCorp, n.d.), adapted from de Ven et al. (1981). We include police agency dummy variables as our exclusion restriction in the selection model (Shawn et al. 2007). That is, we include police agencies as predictors in our conviction models, but exclude them from sentencing. We use police agencies to approximate policy differences around evidentiary collection and testifying (Epstein et al. 2014; Roberts 2015). While these differences should impact conviction, they should not influence sentencing outcomes.

In the final scenario, we move from a racially innocent *individual*-level analyses approach and frameworks and consider how racism operates at more macro levels by aggregating our data to the Census tract level based on the arrest location. Specifically, we aggregate the number of Black and White people sentenced to incarceration in a tract in a year. Because these are counts of people, we estimate a series of Poisson models and use Black and White residential populations as the exposure terms to transform these counts into rates. In other words, we estimate a model where we are examining

the Black rate of incarceration over the Black residential population in the tract, and the White rate of incarceration over the White residential population in the tract.

Results

A racially innocent approach to sentencing

We start with the typical approach, reflecting presumptions of racial innocence in quantitative sentencing studies. This approach includes estimating the probability of incarceration for Black and White people convicted of felonies, net of other demographic and “legally relevant” variables often found in sentencing studies. Table 4, Model 1 includes an estimation for a simple probit model with just Black (relative to White) racial group without other variables. Model 2 then introduces additional demographics, including ethnicity, gender, age, and immigration status, and Model 3 also includes “legally-relevant” variables typically used in quantitative studies of sentencing, such as criminal history, severity and type of current charge, whether the person was pretrial detained, and case year. Figure 1 is based on Model 3 and reflects the result of the racially innocent approach, which is the predicted probability of incarceration for convicted Black and White people after including demographic and “legally relevant” controls.

The results reflect much of the broader literature in sentencing: we find that there are statistically significant, but relatively substantively small, racial inequalities in incarceration. Specifically, when examining a convicted-only sample, we find that there is about a three-percentage point difference in the Black–White probability of incarceration: White defendants have about a 21.1% probability of being sentenced to incarceration relative to 24.4% for Black defendants. These predicted probabilities are based on the binary variable for Black (relative to White) net of other variables that are generally considered “legally relevant” for sentencing, including the severity of the crime, crime type, and criminal history.

Impartial structural conditions: racial inequality holding “all else equal”

We first examine racial innocence through the presumption of structural conditions and legal practices that are impartially applied across racial groups in a race neutral manner. In the case of sentencing, race neutrality is reflected in typical models with the presumption that all “legally relevant” factors and other demographic characteristics are equal across racial groups (Rehavi and Sonja 2014).¹⁸ This presumption is also reflected by using the average legal and demographic characteristics for the entire sample when estimating the predicted incarceration sentences (Omori and Petersen 2020). Racial inequalities are reflected in the racial group coefficient(s) only after accounting for these average legal and demographic factors.

In contrast, we then take a racial consciousness approach by relaxing this assumption of similarly situated legal and other demographic factors across racial groups to examine changes in the probability of an incarceration sentence.¹⁹ The left panel in Figure 2 replicates the predicted incarceration based on the race neutral assumption, where we assume average (pooled) legal, case, and demographic characteristics for the entire sample regardless of race. The second panel (middle panel) in Figure 2 shows the predicted incarceration when assuming differently situated characteristics,

Table 4. “Typical” probit model of incarceration based on convicted sample (n = 39,781)

	Model 1 B/(SE)	Model 2 B/(SE)	Model 3 B/(SE)
Black (ref = White)	0.183*** (0.015)	0.201*** (0.019)	0.107*** (0.020)
Hispanic/Latino (ref = non-Hispanic/Latino)	–	0.149*** (0.019)	0.099*** (0.020)
Male	–	0.500*** (0.023)	0.308*** (0.025)
Age	–	0.002** (0.001)	–0.004*** (0.001)
Immigrant	–	–0.115*** (0.019)	–0.091*** (0.020)
Low income	–	0.314*** (0.018)	0.184*** (0.021)
Felony 2nd deg (ref = 3 rd degree)	–	–	0.254*** (0.018)
Felony 1st deg+	–	–	0.312*** (0.023)
Drug crime (ref = violent crime)	–	–	–0.437*** (0.023)
Property crime	–	–	0.209*** (0.022)
Other crime	–	–	–0.222*** (0.025)
Criminal history	–	–	0.435*** (0.008)
2012 (ref = 2015)	–	–	0.439*** (0.022)
2013	–	–	0.324*** (0.023)

(Continued)

Table 4. (Continued.)

	Model 1 B/(SE)	Model 2 B/(SE)	Model 3 B/(SE)
2014	–	–	0.231*** (0.023)
Pretrial detained	–	–	0.627*** (0.015)
Chi2	153.857	1022.762	8310.586

Notes: B = beta coefficient; SE = standard error.

*p < 0.05, ** p < 0.01, *** p < 0.001.

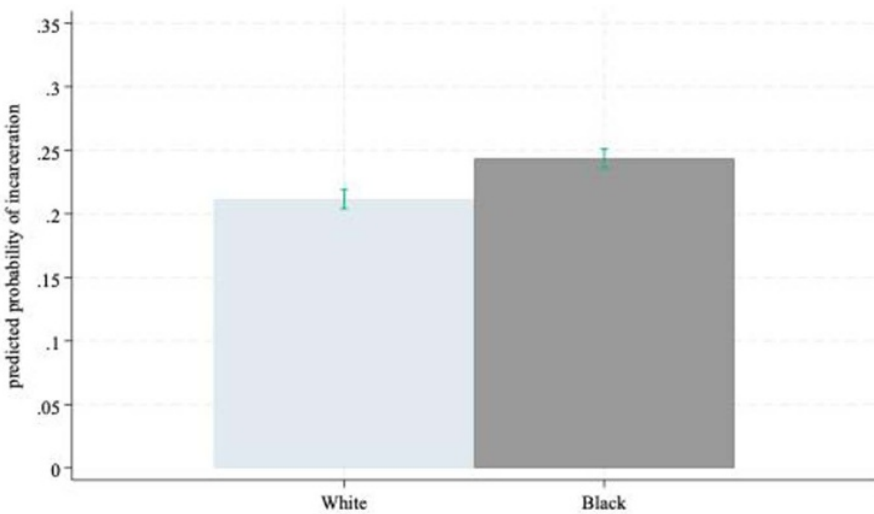


Figure 1. Predicted probability of incarceration with “typical” model.

taking a race conscious approach where we draw from characteristics averaged for each racial group rather than across the entire sample. While this assumption does not change the “typical” model itself (both figures are based on the model from Model 3 in Table 4), it depicts two different ways to calculate the predicted incarceration across racial groups.

When legal and case characteristics are assumed to be race neutral (racially innocent), estimated models minimize racial disparities relative to models when case characteristics are estimated as race-specific (racially conscious). *When we allow legal and case characteristics to be racialized instead of treating them impartially, racial inequality in incarceration doubles.* Specifically, when assuming race neutral legal factors and other demographic characteristics, Black people are about 3 percentage points more likely than White people to be sentenced to an incarceration sentence. When assuming that legal factors might be unequal between groups; however, this inequality grows to

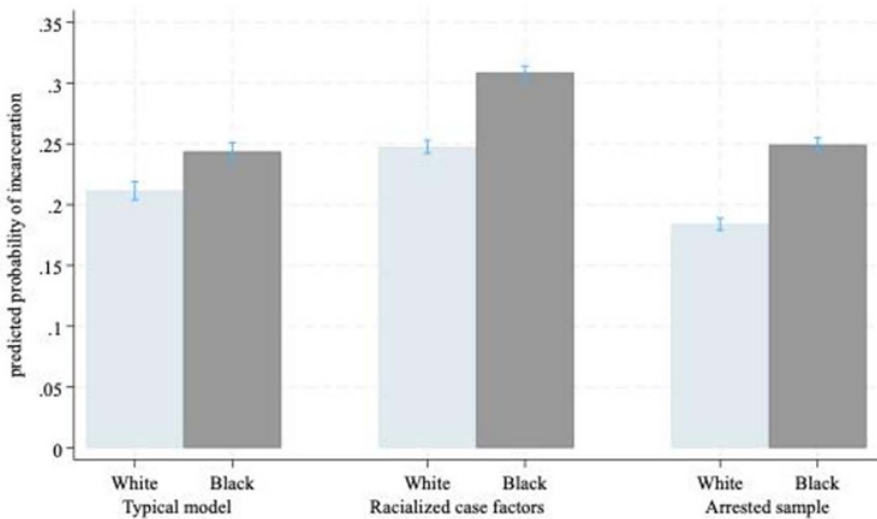


Figure 2. Comparing the probability of incarceration between the typical model, legal factors averaged by racial group, and with the arrested population.

over 6 percentage points. In other words, the assumption that Black and White people in the sample would have the same average characteristics results in overestimating the probability of White incarceration and underestimating the probability of Black incarceration.

This is because prior legal and other demographic control factors are racialized both “on the books” and in practice. For example, as one measure in the criminal history index, Black people in our sample are more likely to have prior felony arrests (64.5%) relative to White people (51.9%), but these are averaged together in race neutral models (57.9%). Criminal history is often a function of prior criminalization of communities of color through police organizational practices (Farrell and Lynn Swigert 1978; Omori and Petersen 2020) and is directly built into sentencing scores (Office of the State Courts Administrator 2016). Similarly, prior research suggests that charging practices differ across racial groups (Engen 2009). These distinct experiences across racial groups are erased, however, when estimating predicted values with race neutral legal and case characteristics averaged across the entire sample.

Isolating racism to a single moment: racial inequality in limited samples

Another way that racial innocence may inherently minimize racial inequality is by isolating racial inequality to discrete decision points with limited samples. This often occurs through drawing from conviction-only samples in examining sentencing decisions, even though sentencing is better conceptualized as an amalgamation of prior decision points by the courtroom workgroup, including charging decisions and plea bargaining negotiations (Bushway and Morrison Piehl 2001; Lynch and Omori 2018). Isolating racial inequality to sentencing decisions of only convicted people fails to capture earlier stages in the process that are unlikely to be race neutral.

A sample including those arrested (rather than just those convicted) embraces a more race conscious approach by capturing how racial inequality operates in prior stages. In particular, a broader sample can capture racial inequality in conviction, and how this inequality in conviction matters for incarceration. To compare incarceration outcomes with a convicted-only sample (Table 4), Table 5 shows results with a broader arrested sample. Models 1–3 in Table 5 show probit models with the same independent variables as in the typical model, but with the arrested sample rather than the convicted sample. Model 4 in Table 5 shows an additional model where we account for the probability of conviction by estimating a Heckman selection model. The predicted probabilities of incarceration are in the right panel of Figure 2. As aforementioned, the left panel is from the convicted sample from the typical model (based on Model 3 in Table 4), and the right panel is from the arrested sample (based on Model 4 in Table 5).

In our sample, we find that racial inequality in incarceration is smaller in samples of people who are convicted (racially innocent) relative to those who are arrested (racially conscious). *When we account for racial inequality from arrest, rather than isolating samples to convicted-only populations, racial inequality in incarceration (more than) doubles, from about 3 percentage points to about 6.5 percentage points.* As reflected in the right panel in Figure 2, when drawing from the arrested sample, the probability of Black incarceration is 24.9%, compared to the probability of White incarceration of 18.4%. As discussed above, with a convicted sample, the inequality in incarceration is about 3 percentage points. In this case, focusing solely on final sentencing outcomes while drawing from an isolated convicted-only sample minimizes racial inequalities, especially without attention to the racially unequal processes that precede sentencing.

Sentencing is an outcome of prior decisions that are often difficult to capture within the court process, such as plea bargaining, charging, or even initial case screening. In the case of our data, only about 45% of people arrested for felonies are convicted, nearly all through plea bargains. Prosecutors either decline to file or dismiss charges in most other cases, creating an early discretionary decision point.²⁰ Including a selection equation for conviction allows for not only capturing racial inequality in conviction, but also accounts for how racial inequalities in conviction emerge in incarceration. Notably, when selection is not considered (Model 3), Black–White racial inequalities in incarceration are smaller and non-significant relative to when considered (Model 4). Drawing from an already-convicted population disregards the highly racially unequal arrest, charging, and plea-bargaining practices that precede it.

Individualizing the unit of analysis: racial inequality in individuals, not institutions

Finally, we examine how racial innocence is reflected when focusing on individual units of analysis, especially because racism also operates at the organizational and structural level. Because incarceration impacts communities, not just individual people (Collins 2020; Roberts 2004), we shift the unit of analysis from the individual to the neighborhood level by examining the Black and White incarceration rate within Census tracts. Estimating models and including variables at more macro units, such as the neighborhood or organizational level, can better highlight institutional processes beyond individual-level frameworks (Lynch and Omori 2018).

Table 5. Probit model of incarceration based on arrested sample with selection (n = 86,340)

	Model 1 B/(SE)	Model 2 B/(SE)	Model 3 B/(SE)	Model 4 B/(SE)
Black (ref = White)	0.175*** (0.012)	0.150*** (0.015)	0.007 (0.017)	0.040* (0.018)
Hispanic/Latino (ref = non- Hispanic/Latino)	–	0.146*** (0.016)	0.073*** (0.017)	0.090*** (0.017)
Male	–	0.499*** (0.019)	0.245*** (0.021)	0.272*** (0.023)
Age	–	0.005*** (0.000)	–0.004*** (0.001)	–0.003*** (0.001)
Immigrant	–	–0.202*** (0.016)	–0.099*** (0.017)	–0.128*** (0.017)
Low income	–	0.408*** (0.015)	0.226*** (0.017)	0.249*** (0.018)
Felony 2nd deg (ref = 3 rd degree)	–	–	0.217*** (0.015)	0.237*** (0.018)
Felony 1st deg+	–	–	0.347*** (0.019)	0.355*** (0.021)
Drug crime (ref = violent crime)	–	–	–0.087*** (0.019)	–0.112*** (0.034)
Property crime	–	–	0.268*** (0.018)	0.273*** (0.019)
Other crime	–	–	0.065** (0.021)	0.035 (0.030)
Pretrial detained	–	–	0.829*** (0.013)	0.825*** (0.014)
Criminal history	–	–	0.469*** (0.007)	0.471*** (0.008)
2012 (ref = 2015)	–	–	0.462*** (0.019)	0.461*** (0.020)

(Continued)

Table 5. (Continued.)

	Model 1 B/(SE)	Model 2 B/(SE)	Model 3 B/(SE)	Model 4 B/(SE)
2013	–	–	0.331***	0.329***
	–	–	(0.019)	(0.020)
2014	–	–	0.231***	0.214***
	–	–	(0.020)	(0.021)
Conviction selection model				
Black (ref = White)	–	–	–	–0.123***
	–	–	–	(0.012)
Latino (ref = non-Latino)	–	–	–	0.020
	–	–	–	(0.012)
Male	–	–	–	0.025*
	–	–	–	(0.012)
Age	–	–	–	0.001**
	–	–	–	(0.000)
Immigrant	–	–	–	–0.121***
	–	–	–	(0.011)
Qualified for PD	–	–	–	0.242***
	–	–	–	(0.011)
Felony 2nd deg (ref = 3 rd degree)	–	–	–	0.074***
	–	–	–	(0.011)
Felony 1st deg+	–	–	–	0.238***
	–	–	–	(0.016)
Drug crime (ref = violent crime)	–	–	–	0.663***
	–	–	–	(0.014)
Property crime	–	–	–	0.217***
	–	–	–	(0.013)
Other crime	–	–	–	0.506***
	–	–	–	(0.015)
Pretrial detained	–	–	–	0.785***
	–	–	–	(0.012)

(Continued)

Table 5. (Continued.)

	Model 1 B/(SE)	Model 2 B/(SE)	Model 3 B/(SE)	Model 4 B/(SE)
Criminal history	–	–	–	0.270*** (0.005)
2012 (ref = 2015)	–	–	–	0.215*** (0.013)
2013	–	–	–	0.127*** (0.013)
2014	–	–	–	0.047*** (0.013)
Miami Beach PD (ref = Miami PD)	–	–	–	0.088*** (0.019)
Miami Dade PD	–	–	–	0.230*** (0.013)
Other police agency	–	–	–	0.146*** (0.013)
Athrho	–	–	–	1.095*** (0.206)
Chi2	209.789	2084.754	14172.820	11944.996

Notes: B = beta coefficient; SE = standard error.
 * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

Accordingly, we include structural characteristics and neighborhood-level predictors aggregated from case-level data. Table 6 shows the estimated Poisson models for the incarceration rate for White (Models 1–3) and Black (Models 4–6) groups. Although they are mapped on separate scales, Figure 3 compares the typical model showing the predicted probability of incarceration (left figure, based on Model 3 in Table 4) to the incarceration rate by race (right panel, based on Models 3 and 6 in Table 6).²¹

In our sample, racial inequalities are minimized in the individual-level models (racially innocent) relative to neighborhood-level ones (racially conscious). Specifically, we find that racial inequality in incarceration rates is more than twice as high in the neighborhood-level models compared to the individual-level models. As the right panel in Figure 3 shows, White people are incarcerated at a rate of 2.5 per White population, whereas Black people are incarcerated at a rate of 3.5 per Black population. These neighborhood rates represent larger racial inequalities relative to the individual-level models. One way to compare this result to the individual models is to calculate a ratio of Black to White incarceration by dividing the two rates.²² When taking the ratio of

Table 6. Poisson models of incarceration by racial group in tracts (n = 3,382)

	White			Black		
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
	B/(SE)	B/(SE)	B/(SE)	B/(SE)	B/(SE)	B/(SE)
Percent Hispanic/Latino	1.644*** (0.095)	1.442*** (0.100)	1.402*** (0.110)	1.874*** (0.081)	0.741*** (0.093)	0.619*** (0.098)
Percent immigrant	0.584*** (0.076)	0.722*** (0.079)	0.960*** (0.087)	-1.181*** (0.117)	-0.144 (0.116)	-0.755*** (0.127)
Percent low income	1.833*** (0.080)	1.318*** (0.087)	0.476*** (0.093)	1.010*** (0.121)	-0.292* (0.123)	-0.776*** (0.123)
Crime severity average		-0.241*** (0.052)	0.031 (0.056)		-0.033 (0.054)	0.236*** (0.057)
Percent drug crime (ref = violent)		0.353*** (0.105)	1.112*** (0.111)		0.883*** (0.109)	1.264*** (0.115)
Percent property crime		-0.134 (0.103)	0.924*** (0.108)		0.878*** (0.111)	1.236*** (0.123)
Percent other crime		0.028 (0.114)	0.971*** (0.124)		-1.025*** (0.150)	0.052 (0.157)
Criminal history average		1.005*** (0.038)	0.876*** (0.045)		1.099*** (0.036)	0.981*** (0.038)
2012 (ref = 2015)		0.554*** (0.044)	0.548*** (0.044)		0.834*** (0.041)	0.779*** (0.042)
2013		0.331*** (0.044)	0.399*** (0.044)		0.546*** (0.041)	0.586*** (0.041)
2014		0.078 (0.045)	0.151*** (0.045)		0.291*** (0.042)	0.337*** (0.043)
Concentrated disadvantage			0.572*** (0.018)			-0.273*** (0.026)

(Continued)

Table 6. (Continued.)

	White			Black		
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
	B/(SE)	B/(SE)	B/(SE)	B/(SE)	B/(SE)	B/(SE)
Residential instability			-0.272*** (0.018)			-0.610*** (0.018)
Percent ages 15–24			-0.014*** (0.002)			-0.056*** (0.004)
Miami Beach PD (ref = Miami PD)			-0.191** (0.058)			1.112*** (0.060)
Miami Dade PD			-0.390*** (0.043)			0.178*** (0.037)
Other PD			-0.305*** (0.043)			0.240*** (0.041)
Homicide rate			0.225*** (0.021)			0.250*** (0.026)
r ²						
Chi ²	1049.387	1846.032	4741.849	607.073	2507.859	5075.210

Notes: B = beta coefficient; SE = standard error. We exclude tracts with 0 population, so White n = 1789 and Black n = 1593. *p < 0.05, ** p < 0.01, *** p < 0.001.

the two probabilities in the “typical” individual models (left panel), Black people are incarcerated at a probability that is 1.15 (.244/.211 = 1.15) times greater (or 15%) than White people. By comparison, in the neighborhood models (right panel), Black people are incarcerated at a rate that is 1.40 (3.5/2.5 = 1.40) times (or 40%) greater than White people.

In addition to capturing greater racial inequality, these neighborhood models also draw attention to structural and institutional processes that have consequences for mass incarceration across neighborhoods rather than focusing on individual factors. These neighborhood-level models include both structural measures, such as economic disadvantage or violent crime, as well as organizational variables, such as police agency, which shape mass incarceration beyond individual case data. For example, these models suggest that there are practices across police departments that likely function to create racial inequalities in criminalization, as the coefficients are in different directions across White and Black incarceration sentencing rates. While legal, case, and demographic variables included in the “typical” individual sentencing model also represent structural processes such as income and poverty, their interpretations are often reduced to the individual level.

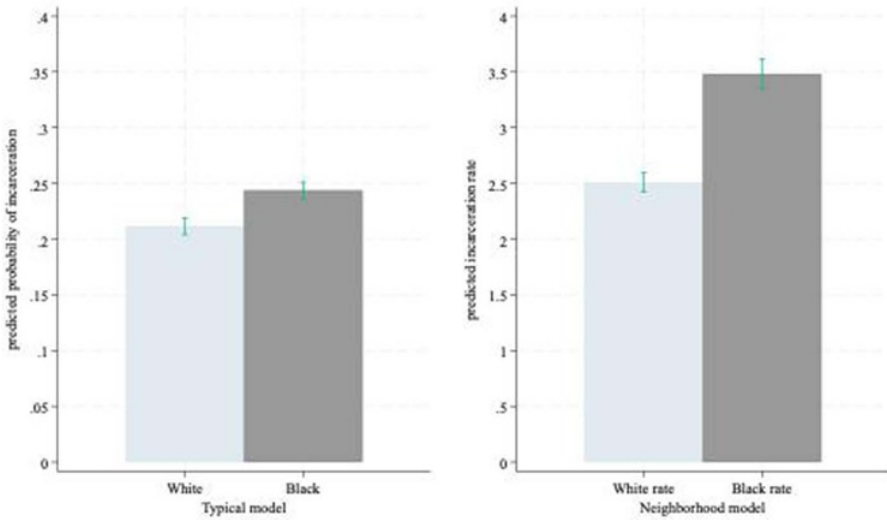


Figure 3. Comparing the probability of incarceration in the typical model with the incarceration rate at neighborhood level.

Discussion and conclusion: highlighting racial power in social science research

Traditional approaches make racial discrimination difficult to prove as some law and social science research presumes no racism and “statistical methods often used in this effort yield little insights into intentions and causation” (Murakawa 2019; Murakawa and Beckett 2010: 696). Notably, scholarship is implicated in producing an illusion of race neutrality that minimizes the impact of racial inequalities (Crenshaw et al. 2019). This is especially important for quantitative work, as quantitative methods are historically rooted in White (male) supremacy (Zuberi and Bonilla-Silva 2008). Capturing the complexities of how racism operates in empirical social science research requires unpacking both theoretical and methodological assumptions that are inextricably tied together.

We highlight how racial innocence in normative quantitative approaches to social science is maintained through three mechanisms: treating unequal structural conditions *impartially*, *isolating* samples to reflect limited stages, and focusing on *individual* levels of analysis. In our case, shifting each of these assumptions doubles the racial inequality in incarceration sentencing relative to “typical” models, samples, and assumptions. Although it can be argued that each of these results alone (even doubled) still represent relatively small racial inequalities in sentencing, these findings are perhaps unsurprising given that inequalities exist at many decision points (Van Cleve and Mayes 2015; Murakawa and Beckett 2010) and incremental stages (Kurlychek and Johnson 2019; Sutton 2013). Instead, we encourage scholars to consider these mechanisms collectively, reflecting how racism is a broader process occurring through subtle and systemic ways, as CRT scholars suggest (Bell 1991; Delgado and Stefancic 2023; Gómez 2012).

This theoretical and methodological mismatch in social science research is important to address because, as sociological scholars point out, systems of racial subordination can easily be recast as race neutral. Formally race neutral laws “on the books” create opportunities for racial inequality either through broadness or vagueness (Carbado 2022; Roberts 1998), expanded “legal capacity” through overlapping civil and criminal codes (Anjuli and Sykes 2022; also see Husak 2008), or through built-in datafication processes such as sentencing guidelines (Rothschild-Elyassi 2022). These opportunities then become racially unequal realities in practice when exercised through organizations, so racism operates in systemic ways, rather than through individual bad actors (Carbado 2022). For example, the vagueness of probable cause and broadness of qualified immunity within criminal law enable racially biased police organizational practices (Carbado 2017, 2022; Roberts 1998), and overlapping criminal codes provide opportunities for prosecutors to stack charges (Husak 2008). In this setting, multiple minor prior offenses, such as driving with a suspended license or petty theft, can be enhanced to felony charges by prosecutors (Petersen *et al.* 2018), and sentencing guidelines factor in criminal history into felony sentences (Omori and Petersen 2020). In this way, formally race-neutral policies contribute to racialized mass criminalization (Schlesinger 2011). Law and society scholars therefore need to shift presumptions of race neutrality to race conscious ones by examining how opportunities created through the law, in combination with practices on the ground, reinforce racial hierarchies in local settings.

There are also methodological and conceptual implications for empirical scholarship informed by eCRT that provide directions for future research. For research on racism, scholars might think about moving beyond capturing race as a static variable (Christian *et al.* 2021; Zuberi 2000).²³ Similarly, using White as the default group for comparison (Castillo and Babb 2023) without considering racial hierarchies reinforces the idea of Whiteness as the invisible norm (Lipsitz 2006). Regression-based analyses also often control for “kitchen sink” variables to reduce the race coefficient and then interpret the residual “race effect,” failing to consider how inequality is an interactive process (Reskin 2012; Stewart 2008b). Other approaches, such as interactions or decomposition models (Kitagawa 1955; Omori and Petersen 2020; Thaxton 2018), allow for understanding how much racial inequality is explained through other independent variables and pushes against causal ideas of discrimination. Similarly, sample selection could also be reconceptualized as a process of racial inequality, not just an issue of estimation. As demonstrated, we find that case screening represents a key “selection” point, and while we lack the data, arrest is almost certainly another. To the degree that arrest or court records are generated through racially unequal arrest or case screening processes, analyses using these records will underestimate racial inequality (Knox *et al.* 2020). Finally, histories of racial segregation and criminalization of Black communities suggest considering how these processes occur at the neighborhood (Simes 2018) and organizational levels (Ray 2019). Conceptualizing and modeling racism as a process challenges ideas of locating intent in an individual person or thinking about discrimination in a single moment.

Subverting racial innocence can also inform how researchers can better explain and interpret results. It makes little sense to start from the null hypothesis of no racism in a racialized social structure (Murakawa and Beckett 2010; Reskin 2012).²⁴

Similarly, researchers often attribute “race effects” rather than racism when discussing racial inequalities in results (Bonilla-Silva and Baiocchi 2001). The use of race, rather than racism, conveys a passive or neutral system and attributes racial disparities to the racially marginalized groups themselves (Van Cleve and Mayes 2015). In a similar example, researchers might consider if there are ways that they are misattributing these measures to support false myths of racial progress (Bonilla-Silva and Baiocchi 2001). In the case of sentencing and punishment research, criminal history measures or sentencing scoresheets might also be investigated with a similar critical eye on their role in perpetuating racial inequalities in sentencing while masking their effects.

Perhaps most importantly, many of these features have long been practiced by scholars using qualitative methods (Barak 2023; Clair 2020; Dunlea 2022; Kohler-Hausmann 2018; Lynch 2016; Van Cleve 2016), and future work should draw from and further build on qualitative projects, story-telling, and other historically excluded forms of knowledge. Qualitative work continues to illuminate the pathways and shared ideologies maintaining racism, which are generally not captured in quantitative data. For example, Van Cleve (2016) highlights how court actors practice racialized labeling of people going through the court system as “monsters” and “mopes.” The dehumanization embedded in routine court processes allows prosecutors to process cases efficiently and maintain the ideology that they are moral warriors despite upholding racial inequalities. In addition to expanding forms of valid knowledge to include qualitative methods, the use of counter-storytelling (Williams 1991) could be adopted by quantitative scholars to highlight particular cases, points, or to create new measures to challenge dominant notions (Sablan 2019), or as a counterreading of quantitative results (Petersen 2019). While we focus on race/racism, research should also consider how these forms of scientific knowledge reflect gendered power structures (Milam and Nye 2015; Oakley 1998).

Regardless of the frameworks and methods that challenge the presumption of racial innocence, sociolegal and social science work (especially quantitative work) can and should be race conscious. While we apply this idea to sentencing, a race conscious approach could be integrated in studies at every juncture within the criminal legal system to better identify how race neutrality minimizes racial inequalities, such as police stops, arrests, prosecutorial screening, charging, and plea negotiations, and mass supervision and release. We hope that this paper will add to the eCRT literature that closes the “schism between critical race scholarship and the social sciences” (Obasogie 2013: 183). ECRT-informed approaches can help push scholars to unpack both theoretical frameworks and methodological choices. This piece applies this framework in one area – sentencing – to explore both how racial innocence operates in practice and how researchers can re-think strategies to take a more race conscious one.

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Notes

1. We capitalize both Black and White in our paper to signal that both are constructed and part of a racialized social system. This is an effort to make both racial groups visible (instead of natural, or in the case of Whiteness, invisible).
2. Although these terms are often used interchangeably, we use the term “race neutral” as disability studies scholars have highlighted the ableism within the term “colorblind” (Annamma *et al.* 2017).
3. Tanya Katerí Hernández (2022) uses “racial innocence” in a slightly different context, where she examines anti-Blackness in Latino communities. She argues that Latino racial innocence is based on the idea that the racially mixed aspect of Latino cultures operates as a “Latino Teflon shield” and some may believe that they are “immunize[d]...from being racist” (Hernández 2022: 103; 1). While this use is distinct from our use, we too critique the shifting manifestations of racial innocence that is rooted in anti-Black practices and ideologies.
4. Racial innocence is similar to racial ignorance, where racial ignorance argues that White “knowledge evasion” of racism serves to reinforce White domination (Mueller 2018, 2020).
5. This paper primarily draws from sociology and sociolegal scholarship, but there is also growing applications of “QuantCrit” in education research (Castillo and Babb 2023; Garcia *et al.* 2018; Sablan 2019), as well as calls for critical race theory and structural racism approaches in other disciplines, including public health (Bailey *et al.* 2021; Ford and Airhihenbuwa 2010) and geography (Gilmore 2002).
6. We also include other demographic independent variables that likely have unequal consequences across racial groups. This includes factors such as immigration status, which is impacted by immigration laws and policies (Barak 2023), or income, which matters for representation (Clair 2020) and the ability to pay bond (Schlesinger 2009).
7. Another approach could be to examine multiple outcomes simultaneously to capture cumulative disadvantage in racially unequal practices that occur beforehand, which some scholars have done to great effect (Kutateladze *et al.* 2014; Sutton 2013). We have opted to retain the same incarceration outcome for comparison purposes in this paper.
8. The study is part of approved IRB project 2091209 at the University of Missouri-St. Louis.
9. While we focus on race here, we also acknowledge that scientific authority is also highly gendered (Milam and Nye 2015), especially in the embrace of quantitative methods as “science” and rejection of qualitative, humanist, and other forms of knowledge as gendered constructions (Oakley 1998). CRT specifically draws from storytelling and counter-storytelling as a way of knowledge-making that challenges predominant narratives and ignored realities (Williams 1991).
10. Since people in Miami generally refer to themselves as Hispanic rather than Latino/a/x, we also adopt this language.
11. We also include adjudication withheld as a conviction, as people under adjudication withheld are still sentenced, including to terms of incarceration (Petersen *et al.* 2018).
12. While race is often assessed primarily as a visual perception based on skin tone and facial features by the officer, there are likely additional cues in how people are racialized as Black or White, including behavioral interactions, location of arrest, language, or name. Our own data support this. Although outside the scope of the study, we also have a randomly linked dataset of arrested people’s booking photos and had research assistants rate these photos without any other information, including their assessment of the racial group. Out of the sample, 93% of White people and 97% of Black people were rated of the same racial group based on the booking photos as their race marked on the official records, suggesting that while race may largely be a visual assessment, there are likely additional ways of understanding race (Obasogie 2010).
13. We recognize that excluding people from our sample perpetuates forms of erasure. Future work might consider how quantitative projects can better account for smaller racialized groups and identities through practices such as storytelling (Sablan 2019).
14. We choose to focus on Black–White differences in our results, both to keep in line with prior sentencing studies, and because our sentencing results between White non-Hispanic and White Hispanic groups, and between Black non-Hispanic and Black Hispanic groups are fairly similar. If we were to combine White and Black Hispanics into one group, however, or to include all Hispanics as White, this would also likely underestimate racial disparities in sentencing. As Hernández (2022) suggests, there has been less work

examining anti-Black bias among Latinos, and future work might focus on how outcomes are distinct between White and Black Hispanics (Omori and Petersen 2020).

15. Similar to defining racial groups based on the arrest form, gender is marked as a binary, which erases people who identify outside of this binary. This is one way in which institutions reinforce racial and gender categories (Goodman 2008).

16. Many of these neighborhood measures are drawn from urban ecology perspectives (Simes et al. 2023), and were predicated on obscuring racial hierarchies (Steinberg 2007). Robert Park and the Chicago School are credited with foundational ideas in urban ecology perspectives (Steinberg 2007) but, as Morris (2015) argues, some of these ideas existed first in a much more progressive format in Du Bois' scholarship and activism. Future work might consider how these factors represent racialized structural inequalities due to legacies of slavery and racist housing and wealth policies, and how this might change the measurement or interpretation of these variables.

17. We also cluster our standard errors by person since people can have multiple cases.

18. Other studies examining federal sentencing and other places with structured sentencing suggest that racial inequalities are likely underestimated because processes like charge bargaining, charging, and fact-finding likely occur before sentencing (Piehl and Bushway 2007; Rehavi and Sonja 2014). The inclusion of the presumptive sentence, which often happens in federal sentencing studies, effectively "controls" for any racial inequalities that occur during these highly discretionary decisions prior to sentencing (Rehavi and Sonja 2014).

19. In this case, we are only relaxing the assumption that the means of particular variables (representing structural conditions or legal factors) might differ across racial groups. Other research using decomposition models examines how the slopes, or the relationships between the independent and dependent variables, might be unequal across groups (Kitagawa 1955).

20. In our sample, less than 3% of felony cases went to trial.

21. We also estimated models with the total residential population as the denominator. Although the racial inequality in incarceration is smaller than the models by racial group, it is still larger than the individual level models.

22. A risk ratio of 1 would mean that the two rates are the same.

23. There are also debates about whether intersectionality can even be captured through quantitative work (Bowleg 2008; Garcia et al. 2018).

24. Broader discussions in statistics urge moving away from hypothesis testing frameworks altogether (Wasserstein and Lazar 2016). Moving away from hypothesis testing can shift thinking from whether there is racism or not to understanding what the relationship is between racialized groups and other outcomes, and with what precision this relationship is measured in the population.

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