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By ROBERT STAPLES

## White Racism, Black Crime, and American Justice: An Application of the Colonial Model To Explain Crime and Race

IN THE PAST HUNDRED YEARS criminologists have shown great interest in the relationship between race and crime. Various theories have been put forth to explain the association between racial membership and criminal activity. These theories have ranged from Lombroso's<sup>1</sup> discredited assertion that certain groups possess inherent criminal tendencies to the more widely accepted theory that certain racial groups are more commonly exposed to conditions of poverty which lead them to commit crimes more often.<sup>2</sup> The purpose of this paper is to examine the relationship of race and crime in a new theoretical framework which will permit a systematic analysis of racial crime within the political-economic context of American society. One function of this model will be to delineate the nature of the solution required to reduce the magnitude of crime among certain racial groups.

The approach here used to explain race and crime is the colonial model. This framework has been formulated and used in the writings of Fanon, Blauner, Carmichael and Hamilton, Memmi, and others.<sup>3</sup> It is particularly attributed to Fanon, whose analysis of colonial relationships in Africa has been transferred to the American pattern of racial dominance and subjugation. While there are many criminologists who will summarily dismiss this model as lacking any relevance for understanding the relationship between race and crime, it merits a hearing since many blacks, especially those presently incarcerated, give it considerable credence. In fact, it is their self-definition as political prisoners that has motivated the many prison protests that have occurred in recent years.

Basically, the colonial analogy views the black community as an underdeveloped colony whose economics and politics are controlled by leaders of the racially dominant group. Using this framework, it is useful to view race as a political and cultural identity rather than to apply any genetic definitions. Race is a political identity because it defines the way in which an individual is to be treated by the political state and the conditions of one's oppression. It is cultural in the sense that white cultural values always have ascendancy over black cultural values, thus what is "good" or "bad," "criminal" or "legitimate" behavior is always defined in terms favorable to the ruling class. The result is that crime by blacks

<sup>1</sup> Gina Lombroso, "Ferrero," in *Criminal Man According to the Classifications of Cesare Lombroso* (New York, 1911).

<sup>2</sup> C. F. Marvin Wolfgang and Bernard Cohen, *Crime and Race: Conceptions and Misconceptions* (New York, 1970).

<sup>3</sup> Frantz Fanon, *The Wretched of the Earth* (New York, 1966); Robert Blauner, "Internal Colonialism and Ghetto Revolt," *Social Problems* XVI (Spring, 1969), 393-408; Stokely Carmichael and Charles Hamilton, *Black Power* (New York, 1967); Albert Memmi, *The Colonizer and the Colonized*, (Boston, 1967).

in America is structured by their relationship to the colonial structure, which is based on racial inequality and perpetuated by the political state.

Obviously, there are some imperfections in the colonial analogy as a unitary heuristic model to explain race and crime. More theoretical and empirical research is necessary before the structural forms characteristic of classical colonialism may be mechanically applied to the complexities of crime in America. Yet, the essential features of colonialism are manifest in American society. Blacks have been, and remain, a group subjected to economic exploitation and political control; and they lack the ability to express their cultural values without incurring serious consequences. While other colonial factors such as the geographical relationship of the colonial masters to the colonized, the population ratio, and the duration of colonization may be missing, they do not profoundly affect the form or substance of black and white relations in America: white superordination and black subordination.

In using this model I am not dissuaded by the complications of class often interjected into the issue of crime and race. Domestic colonialism is as much cultural as economic. While members of the white working class are more victimized by their class location than other whites, they are not subjected to the dehumanized status of blacks of all social classes. The racist fabric of white America denies blacks a basic humanity and thus permits the violation of their right to equal justice under the law. In America the right to injustice is an inalienable right; but for blacks it is still a privilege to be granted at the caprice and goodwill of whites, who control the machinery of the legal system and the agents of social control.

#### LAW AND ORDER

One of the key elements in securing the citizenry's obedience to a nation's laws is the belief of the citizens that the laws are fair. A prevalent view of the law among blacks is summed up in Lester's statement that "the American Black man has never known law and order except as an instrument of oppression. The law has been written by white men, for the protection of white men and their property, to be enforced by white men against Blacks in particular and poor folks in general."<sup>4</sup> Historically, a good case can be made for the argument that the function of law was to establish and regulate the colonial relationship of blacks and whites in the United States. Initially, the colonial system was established by laws which legitimated the subordination of the black population.

The legalization of the colonial order is best represented in the Constitution itself. While the Constitution is regarded as the bulwark of human equality and freedom, it denied the right to vote to Afro-Americans and made the political franchise an exclusive right of white property owners. In fact, blacks were defined as a source of organic

<sup>4</sup> Julius Lester, *Look Out, Whitey: Black Power's Gon' Get Your Mama* (New York, 1968), p. 23.

property for white slave holders in the notorious 3/5 clause. This clause allowed the slaveowner to claim 3/5 constituency for each slave that he possessed. Since non-citizens are beyond the pale of legal equality, the Dred Scott decision affirmed that slaves were not citizens and could not bring suit in the courts. As the ultimate blow to the aspirations of blacks, in 1896 the Supreme Court upheld racial segregation in its "separate but equal" decision in the Plessy v. Ferguson case.<sup>5</sup>

In a contemporary sense, blacks are not protected by American law because they have no power to enforce those laws. They have no law of their own and no defense against the laws of the colonizers. Thus, the power to define what constitutes a crime is in the hands of the dominant caste and is another mechanism of racial subordination. How crime is defined reflects the relationship of the colonized to the colonizers. The ruling caste defines those acts as crimes which fit its needs and purposes and characterizes as criminals individuals who commit certain kinds of illegal acts, while other such acts are exempted from prosecution and escape public disapprobation because they are not perceived as criminal or a threat to society.

As a result of the colonial administration's power to define the nature of criminality, the white collar crimes<sup>6</sup> which involve millions of dollars go unpunished or lightly punished, while the crimes of the colonized involving nickels and dimes result in long jail sentences. The main executor of the colonial regime can wage a war that takes thousands of lives in direct violation of the Constitution, while the colonized are sent to the gas chambers for non-fatal crimes such as rape. It is no coincidence that the two criminal acts for which politicians wanted to preserve the death penalty were kidnapping and airline hijacking, the former a crime committed mainly against the wealthy while the latter is a political act against the state.

#### INTERNAL MILITARY AGENTS

In any colonial situation, there must be agents to enforce the status quo. A classical colonial world is dichotomized into two parts of society, and the policeman acts as the go-between. Fanon describes it in Colonial Africa:

In the colonies it is the policeman and the soldier who are the official instituted go-betweens, the spokesman of the settler and his rule of oppression . . . By their immediate presence and their frequent and direct action, they maintain contact with the native and advise him by means of rifle-butts and napalm not to budge. It is obvious here that the agents of government speak the language of pure force. The intermediary does not lighten the oppression, nor seek to hide the domination; he shows them up and puts them into practice with the clear conscience of an upholder of the peace, yet he is the bringer of violence into the home and into the mind of the native.<sup>7</sup>

<sup>5</sup> Cf. Mary Berry, *Black Resistance—White Law: A History of Constitutional Racism in America* (New York, 1971).

<sup>6</sup> Edwin H. Sutherland, *White Collar Crime* (New York, 1949).

<sup>7</sup> Fanon, *op. cit.*, p. 31.

One could hardly find a more perfect analogy on the role of the policeman than in the findings of the United States Commission on Civil Rights in the 1960's. Police brutality was discovered to be a fact of daily existence for Afro-Americans and a primary source of abuse by whites against any challenge by blacks to the status quo. In essence:

Police misconduct often serves as the ultimate weapon for keeping the Negro in his place, for it is quite clear that when all else fails, policemen in some communities can be trusted to prevent the Negro from entering a "desegregated" school or housing project, a voting booth, or even a court of law. They may do it merely by turning their backs on private lawlessness, or by more direct involvement. Trumped up charges, dragnet roundups, illegal arrests, the "third degree" and brutal beatings are all part of the pattern of "white supremacy."<sup>8</sup>

In order to enforce this type of colonial rule, policemen must have certain traits. First and foremost, they must be members of the dominant racial group. Almost every major urban area has a police force that is predominantly white, although the cities themselves may contain mostly blacks. The highest ratio of black policemen to the black population is found in Philadelphia, where 29 percent of the city's population is black and 20 percent of the police force is black. The lowest is probably New Orleans, with the black population composing 41 percent of the total population and 4 percent of the police force.<sup>9</sup>

It is not only that the police force is composed mostly of members of the colonizers' group, but they also represent the more authoritarian and racist members of that sector. One survey disclosed that the majority of white police officers hold antiblack attitudes. In predominantly black precincts, over 75 percent of the white police expressed highly prejudiced feelings towards blacks, and only 1 percent showed sympathy toward the plight of blacks.<sup>10</sup> A series of public hearings on police brutality in Chicago revealed that candidates for the police department who do poorly on the psychological tests or who demonstrate personality problems while undergoing training in the police academy are assigned to "stress areas" in Chicago's black and brown ghettos.<sup>11</sup> The predominantly black city of Oakland, California was recruiting its police officers among men recently returned from military service in Vietnam.

Considering the characteristics of policemen assigned to the black colony, it is no surprise to find that for the years 1920-1932, of 479 blacks killed by white persons in the South, 54 percent were slain by white police officers.<sup>12</sup> In more recent periods cities outside the South provide interesting statistics. Seventy-five percent of the civilians killed by Chi-

<sup>8</sup> Wallace Mendelson, *Discrimination* (Englewood Cliffs, 1962), pp. 143-44.

<sup>9</sup> *Report of the National Advisory Commission on Civil Disorders* (New York, 1968), p. 321.

<sup>10</sup> Albert J. Reiss, Jr., "Police Brutality—Answers to Key Questions", *Transaction*, V (July-August, 1968), 10-19.

<sup>11</sup> Testimony of Dr. Evrum Mendelsohn of the Elmhurst Psychological Center before Congressman Ralph Metcalfe's Public Hearing on Police Brutality in Chicago, September 1, 1972.

<sup>12</sup> Gunnar Myrdal, *An American Dilemma* (New York, 1944).



cago police in 1971 were black.<sup>13</sup> The state of California reports that blacks, who make up 7 percent of its population, were 48 percent of the persons killed by policemen in 1971.<sup>14</sup>

Even less surprising are the studies which show blacks believe that policemen are disrespectful, that police brutality exists in their areas, and that blacks are treated worse than whites by the police.<sup>15</sup> Besides the abuse suffered at the hands of white police officers, two basic types of complaint are the basis for these beliefs. One is that the police in black communities are more tolerant of illegal activities such as drug addiction, prostitution, and street violence than they would be in white communities. The other is that the police see as much less urgent the calls for help and complaints from black areas than from white areas.<sup>16</sup>

Such complaints about the police force are due to ignorance of their functional role in colonial society. The police are not placed in black communities to protect the indigenous inhabitants, but to protect the property of the colonizers who live outside those communities and to restrain any black person from breaking out of the colonial wards in the event of violence. No amount of "proper" behavior on the part of the police, therefore, nullifies the fundamental colonial machinery which imposes law and order according to the definitions of the colonizers. The law itself constitutes the basis for colonial rule; and the ideology of white supremacy shapes the police force, the courts, and the prisons as instruments of continued colonial subjugation.

### CRIME BY BLACKS

The colonial character of American society tends to structure the racial pattern of crime. In the urban areas, where most blacks live, the majority of serious property crimes such as burglary, larceny (over \$50), and auto thefts are committed by whites. More blacks than whites are arrested for serious crimes of violence such as murder, rape, and aggravated assaults. These crimes of violence by blacks are most often committed against other blacks.<sup>17</sup> The homicide rate for blacks is about ten times the rate for whites. Indeed, homicide is the second leading cause of death among black males aged 15-25, the third leading cause between 25-44.<sup>18</sup> In interracial crimes of violence, whites attack and assault blacks more often than blacks attack and assault whites.<sup>19</sup>

The above statistics follow the typical pattern in the colonial world. The violence with which the supremacy of the values of whites is affirmed and the aggressiveness which has infused the victory of these

<sup>13</sup> Testimony of a team of law students from Northwestern University at the Metcalfe hearing, August 30, 1972.

<sup>14</sup> Report by Evelle Younger, Attorney General of the State of California, cited in *The Los Angeles Sentinel*, August 10, 1972, p. A2.

<sup>15</sup> Report of the National Advisory Commission on Civil Disorders, *op. cit.*, p. 302.

<sup>16</sup> *Ibid.*, p. 268.

<sup>17</sup> United States Department of Justice, Federal Bureau of Investigation, "Crime in the United States," *Uniform Crime Reports*, 1969.

<sup>18</sup> Lee N. Robins, "Negro Homicide Victims—Who Will They Be?" *Transaction*, V (June, 1963), p. 16.

<sup>19</sup> Marvin Wolfgang, *Patterns in Criminal Homicide* (Philadelphia, 1958).

values into the ways of life and thought of the colonized mean that their challenge to the colonial world will be to claim that same violence as a means of breaking into the colonizers' forbidden quarters. According to Fanon, colonized men will initially express against their own people this aggressiveness which they have internalized. This is the period when the colonized terrorize and beat each other, while the colonizers or policemen have the right to assault the natives with impunity. This is a pattern of avoidance that allows the colonized to negate their powerlessness, to pretend that colonialism does not exist. Ultimately, this behavior leads to armed resistance against colonialism.<sup>20</sup>

The cultural values of white supremacy place little premium on the lives of blacks in the United States. A native's death is of little importance to the continuation of colonial rule, except that it may deprive a particular colonizer of the labor of a skilled worker. Hence, while blacks are generally given longer prison terms than whites for the same crime, they get shorter sentences for murder.<sup>21</sup> According to Bullock,

These judicial responses possibly represent indulgent and non-indulgent patterns that characterize local attitudes concerning property and intra-racial morals. Since the victims of most of the Negroes committed for . . . [murder] were also Negroes, local norms tolerate a less rigorous enforcement of the law; the disorder is mainly located within the Negro society. Local norms are less tolerant (in Black crimes against white property), for the motivation to protect white property and to protect "white" society against disorder is stronger than the motivation to protect "Negro" society.<sup>22</sup>

### THE COLONIAL MACHINERY

Colonial practices are not confined to the police. Rather, the political state, which is also dominated by whites, controls the dispensation of justice from police apprehension to prison; and these all serve the interests of the colonizers. In the courts, most judges in the state, federal, circuit, superior and supreme courts are appointed by the political state, and not elected. No black person in the United States has the power to appoint a judge to the bench. Consequently, there are almost no black judges in the South, and few in the North and West.<sup>23</sup> Moreover, any blacks appointed to the bench are likely to possess the values of the colonizers.

A trial by jury guarantees no more equal justice to the accused black offenders. Blacks are still systematically excluded from juries in some parts of the South, and are often underrepresented on juries in which they are allowed to serve. Sometimes they are excluded by more subtle and indirect means such as preemptory challenges by the prosecution,

<sup>20</sup> Fanon, *op. cit.*, p. 43.

<sup>21</sup> Wolfgang, *Crime and Race*, *op. cit.*, p. 82.

<sup>22</sup> Henry A. Bullock, "Significance of the Racial Factor in the Length of Prison Sentences," *The Journal of Criminal Law, Criminology and Police Science*, VII (November, 1961), 411-17.

<sup>23</sup> United States Commission on Civil Rights Report, 1963, p. 124.

requirements of voter registration, property ownership, or literacy tests.<sup>24</sup> Despite the American creed of equal justice before the law, few black offenders before the courts will receive a neutral hearing before a jury of normal white Americans. As Fanon states, in a racist society the normal person is racist.<sup>25</sup>

Blacks are further victimized by the lack of adequate legal representation. Since colonial administrations allow few natives to attain professional skills and become members of the native bourgeoisie, there is a scarcity of black lawyers to represent black alleged offenders before the courts. Another feature of colonialism is the creation of dependency in the natives upon the members of the ruling group to achieve ordinary rights of citizenship. Thus, black defendants often choose white lawyers over black ones because they feel they can neutralize the impact of racism in decisions rendered by a white judge and jury. Many black defendants, of course, cannot afford an attorney and must accept a court-appointed lawyer. In federal larceny cases, 52 percent of the blacks did not have their own lawyers, as compared to 25 percent of the whites.<sup>26</sup>

Another disadvantage faced by black defendants is the illegitimacy of their cultural values. There are several examples of words and phrases used by blacks which have a totally different meaning in the white community. These cultural differences are particularly crucial in certain types of crimes such as assault and battery and public obscenity. But the colonial order insists that the natives' society is lacking in values, and that differences in cultural symbols, i.e., language, are not recognized in a court of law. There are other linguistic barriers in the courtroom that affect black defendants. Often, they may not comprehend the legal jargon of the attorneys and give answers based on their mistaken interpretation of the language used in the courtroom.<sup>27</sup>

Given all these factors, black defendants are often shortchanged in the decisions of the courts and the length of their prison sentences. Most of the available data reveal that blacks usually receive longer prison terms than whites for the same criminal offenses. They are particularly discriminated against when one considers their chances of receiving probation or a suspended sentence. In larceny cases, for example, 74 percent of guilty blacks were imprisoned in state larceny cases compared to only 49 percent of guilty whites. The racial gap in larceny cases is greater than in assault convictions because larcenies by blacks are more often committed against whites, while assaults occur more frequently against other blacks. Hence, racial disparities in prison sentencing are not only related to the skin color of the alleged offender, but to that of his victim, too.<sup>28</sup>

<sup>24</sup> United States Commission on Civil Rights Report, *Justice* (Washington, D.C., 1961), p. 92.

<sup>25</sup> Frantz Fanon, "Racism and Culture," in *Toward the African Revolution* (New York, 1967).

<sup>26</sup> Stuart Nagel, *The Legal Process From a Behavioral Perspective* (Homewood, Illinois, 1969).

<sup>27</sup> Daniel H. Swett, *Cross Cultural Communications in the Courtroom: Applied Linguistics in a Murder Trial*, a paper presented at the Conference on Racism and the Law (San Francisco, December, 1967), pp. 2-5.

<sup>28</sup> Nagel, *op. cit.*



It is in the area of capital punishment that the racial, and thus colonial, factors stand out. The statistics on capital punishment in the United States reveal most glaringly the double standard of justice that exists there: One for the wealthy and another for blacks and poor people. Even the former Warden of Sing Sing prison once remarked, "Only the poor, the friendless, and the foreign born are sentenced to death and executed."<sup>29</sup> But it is particularly the colonial wards of America, i.e., blacks, who have received the heaviest brunt of this dual standard of American justice.

For blacks in America, capital punishment is only a transfer of the functions of lynch mobs to the state authority. Under the auspices of the political state, blacks have been executed for less serious crimes and crimes less often receiving the death penalty, particularly rape, than whites. They were of a younger age than whites at the time of execution and were more often executed without appeals, regardless of their offense or age at execution. Of the 3,827 men and 32 women executed since 1930, 53 percent were black. The proportion of blacks on death row in 1972 was 52 percent. It is in the South that discrimination in capital punishment is most evident. Practically all executions for rape took place in the South. In that region, 90 percent of those executed for rape were black.<sup>30</sup>

Again, the colonial pattern emerges. The two things the colonizers fear most are the stealing of their possessions and the rape of their women, and they punish with special fury the crime of sexual violation of upper caste women. About 85 percent of the black rape offenders executed had white victims,<sup>31</sup> although the overwhelming majority of the black males' rape victims are black women.

### POLITICAL PRISONERS

The combination of the colonial administration of justice and the oppression of blacks has resulted in the internment of a disproportionate number of blacks in the nation's prisons. The number of blacks in prison is three times their representation in the society at large.<sup>32</sup> There are actually more blacks in prison than in college. Yet, as Angela Davis has observed:

Along with the army and the police, prisons are the most essential instruments of state power. The prospect of long prison terms is meant to preserve order; it is supposed to serve as a threat to anyone who dares disturb existing social relations, whether by failing to observe the sacred rules of property, or by consciously challenging the right of an unjust system of racism and domination to function smoothly.<sup>33</sup>

<sup>29</sup> Cited in Hugo Bedau, *The Death Penalty in America* (New York, 1967), p. 411.

<sup>30</sup> William J. Bowers, *Racial Discrimination in Capital Punishment: Characteristics of the Condemned* (Lexington, Massachusetts, 1972).

<sup>31</sup> *Ibid.*

<sup>32</sup> National Prisoner Statistics, 1971.

<sup>33</sup> Angela Davis, "The Soledad Brothers," *The Black Scholar*, II (April-May 1971), 2-3.

In recent years the number of prison protests by black prisoners have risen. Part of the reason is the prisoners' self-definition as political prisoners. Two basic types of political prisoners may be defined. One kind is the person arrested under the guise of criminal charges, but only because of the state's wish to remove the political activist as a threat to the prevailing racial conditions. Examples of this type are Angela Davis, Bobby Seale, and H. Rap Brown. The second type is more numerous and consists of those blacks who are arbitrarily arrested and then "railroaded" through the courts, where they face white politically appointed judges, all-white juries, without a lawyer, or with an appointed lawyer who suggests a guilty plea in exchange for a reduced sentence.

Since most crimes by blacks have black victims, not all black prisoners are *ipso facto* political prisoners. The incarceration of these blacks stems from the subjugated condition of black people in the United States. As Chrisman asserts, "a Black prisoner's crime may or may not have been a political action against the state, but the state's action against him is always political."<sup>34</sup> The basis for this judgment is that black criminals are not tried and judged by the black community itself, but that their crimes are defined and they are convicted and sentenced by the machinery of the ruling colonial order, whose interests are served by the systematic subjugation of all black people. As long as crime by blacks occurs within the context of racial subjugation and exploitation, blacks will continue to believe that their criminal acts will not be objectively and fairly treated, but rather that the treatment will be affected by the racial inequality which constitutes the essence of American colonialism.

In this paper the colonial model has been applied to explain the relationship between crime and race. While the fit between theory and empirical data is not perfect, it does point the way to reducing some of the racial inequities in American criminal justice. Among the remedies suggested by this model is community control of the police. Community control would respond to the charge that the police in black neighborhoods constitute an occupation army in their midst. Policemen would be chosen by the people in the community and required to live in their precinct. In this way, blacks would have greater assurance that the police are there to protect their interests rather than the property of whites who live outside the community.<sup>35</sup>

Another remedy to be considered is a trial by jury of one's peers. This means a jury whose experiences, needs, and interests are similar to those of the defendant. When this is not feasible, proportional representation of blacks on juries, in the legal staff, and on the bench might be considered. While these suggestions will not radically affect the socioeconomic conditions that generate crime, they will at least reduce the impact of domestic racism on the administration of justice to the black population.

<sup>34</sup> Robert Chrisman, "Black Prisoners, White Law," *The Black Scholar*, II (April-May 1971), 45-46.

<sup>35</sup> Cf. Arthur Waskow, "Community Control of the Police," *Transaction*, VI (December 1969), 4-5.