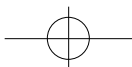
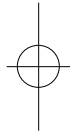
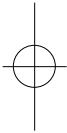


Petit Apartheid in the U.S. Criminal Justice System



**Petit Apartheid in the U.S.
Criminal Justice System**

The Dark Figure of Racism

Dragan Milovanovic
Northeastern Illinois University

Katheryn K. Russell
University of Maryland

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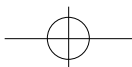
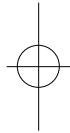
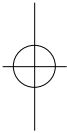
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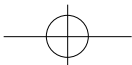
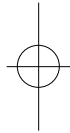
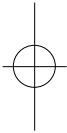
Preface

This book arose from numerous conversations that we had over the last few years concerning Daniel Georges-Abeyie's notion of petit apartheid. These conversations took place at the annual meetings of the American Society of Criminology. We were convinced that the idea needed further development and that we should do a co-edited book on the subject. We were intrigued with the notion that macro-level forms of racism exist along with informal, more invisible forms. These micro-level aggressions remain a "dark figure," but surely contribute, be it in a cumulative form, to the continued assaults made on African Americans. The term "dark figure" is typically used to refer to crime that is not included in official justice statistics. We use the term to refer to racially-motivated processes within the justice system that, heretofore, have escaped official recordkeeping, thus analysis. And all too often these "microaggressions" discriminate and place at risk African Americans before the law. We also realized that the micro level plays itself out at the macro, and the macro at the micro, a cycle which sustains hierarchy and harms of reductions and repression. We were determined to do further investigations. Subsequently, we organized two panels on the subject at the 1999 American Society of Criminology meetings. These aroused much discussion. (On our own campuses we had occasions to organize discussions which were well attended, lively and illuminating.) We then asked the paper presenters to contribute to our book on the same subject. The end result was this book.

All the contributors were excited about what the book could potentially do for social change. It was our hope that this book, by making visible these various forms of petit apartheid, would encourage critical scholars to do further research in the area. We certainly hope that new methodologies and creative energies will be brought to bear in this important area.

Dragan Milovanovic
Northeastern Illinois University

Katheryn K. Russell
University of Maryland



Foreword

Petit Apartheid in Criminal Justice: “The More ‘Things’ Change, the More ‘Things’ Remain the Same”

Daniel E. Georges-Abeyie

How frequently has one heard the phrase “The more ‘things’ change, the more ‘things’ remain the same.” Perhaps too frequently, perhaps too often? Ten years ago, I had the honor to write a series of essays that were published in Brian D. MacLean and Dragan Milovanovic’s *Racism, Empiricism and Criminal Justice* (1990). In that book I coined the concept of “petit apartheid in criminal justice.” This was done in response to a disturbing challenge to reason and historical fact offered in Professor William Wilbanks’ book, *The Myth of a Racist Criminal Justice System* (1987). Wilbanks’ book was perceived to be the rebirth of the Michael J. Hindelang’s thesis—one that rationalized what he and other conservative criminologists correctly believed to be the disproportionality of Uniform Crime Report’s “Part-One Index” crimes by so-called “Blacks,” while it incorrectly alleged the lenient criminal justice “system” treatment of Blacks being prosecuted. Wilbank’s conclusion was based upon society’s (including the criminal justice system’s) devaluation of the inherent worth of “Black” lives—a devaluation that criminologists fail to discuss in detail. In fact, this devaluation necessitates an in-depth analysis of the offender-victim dynamic—one which is sensitive to the complexity of Black ethnicity and the spatial morphology of offending.

I stated ten years ago that a reasonable analysis of so-called “Black” crime needs the following: (1) a spatial context in which so-called Black rates of offending are identified throughout the spatial morphology of the non-ghetto, ghetto, and slum-ghetto; (2) an ethnically-sophisticated context in which differential rates of offending are noted by, and within, the Negroid ethnic context such as Afro-Hispanic (e.g., Puerto Rican, Dominican, Cuban, Panamanian), Afro-Caribbean Anglophone (e.g., Jamaican, Trinidadian), Afro-Caribbean-Transitional (e.g., Virgin Island, Belizean, Gullah),

and African-American (by region and urban/rural context as well as by maroon/non-maroon context); and (3) a “petit apartheid”/“grand apartheid” contextual analysis—one sensitive to “second-hand” criminality as a response to the weight of negative social factors and discretionary decision-making by both criminal justice agents and criminal justice agencies. These discretionary actions are often transformed or transmuted into discrimination. Thus, they produce the distortion of official rates of offending by Blacks and other minorities (over reporting) as well as by majority race offenders (under reporting), due to non-system handling of apparently criminally offensive behavior.

In the McLean and Milovanovic book, *Racism, Empiricism and Criminal Justice*, I referred to the “informal,” de facto mores and norms, i.e., culturally biased beliefs and actions that permeate the American criminal justice “system” and result in discretion being transmuted into discrimination as “petit apartheid” realities. I knew then, as I know now, that social distance between alleged offenders, suspects, detainees, and defendants, and the law enforcement establishment, officers of the court, and correctional/jail/detention staff and correctional/jail/detention administrators—all dramatically impact on the decision-making process. I have witnessed with certitude:

[T]he everyday slights, insults, rough or brutal treatment and unnecessary stops, questions, and searches of blacks; the lack of civility faced by black suspects/arrestees[/detainees]: the quality, clarity, and objectivity of the judges’ instructions to the jury when a black arrestee is on trial; the acceptance of lesser standards of evidence in cases that result in the conviction of black arrestees[/defendants], as well as numerous other punitively discretionary acts by law enforcement and correctional[jail/detention] officers as well as jurists (Georges-Abeyie, 1990:12).

To the previously cited occurrences of “petit apartheid” in criminal justice—in which Blacks are treated more harshly when Blacks are defendants involved in the alleged victimization of Whites—I now, ten years later, add the bizarre convoluted forms of criminal justice processing (i.e., lenient sentencing, the *nolle prosequi*, remands to state mental health facilities, and jury nullification in cases that involve White defendants and Black victims). I denounce these abominable practices and reiterate the necessity of observing and analyzing these practices if one is to understand the transmuted reality of “petit apartheid in criminal justice.”

I observe with horror how “The more things change, the more things remain the same.” Consider some examples: (1) In 1984, Bernhard Goetz shot four alleged would-be robbers on a subway in New York City and received almost no punishment for his violent acts; (2) In 1991, following the

police beating of Rodney King in Los Angeles, the L.A. District Attorney Ira Reiner called the behavior of the officers who watched, “irresponsible and offensive, but not criminal.” The officers charged in the King beating were found “not guilty,” (e.g., jury nullification); (3) See also the “change of venue” permitted in the Amadou Diallo case; (4) Note the lenient sentence assigned officers in the Abner Louima case. These late 1990s cases may have signaled an even more virulent manifestation of “petit apartheid in criminal justice,” and; (5) We have seen the muted rationalization of excessive use of force when Philadelphia Police Commissioner John F. Timoney addressed the police (Arizona Republic 2000) following the police beating and kicking of a car jacking suspect. Timoney stated that he would not “rush to judgment” on the propriety of the police action based upon a news helicopter videotape of the incident.

As a son of a Gullah/Geechee mother and a Caribbean father of Virgin Island/Panamanian/Puerto Rican/Cuban heritage I watched with horror and fascination the bifurcated demon of apartheid on two continents. “Petit apartheid in criminal justice” was rationalized again and again. I became involved with the African National Congress of South Africa as a youth before it was popular or politically correct. I wrote articles under a pseudonym for its political organ — *Sechaba* — and was branded a communist, a terrorist, and a rebel, labels I bore and brandished with pride. I also joined and supported several left-of-center political parties in the U.S. that condemned what I called “grand apartheid” in the Republic of South Africa and Black Codes/Jim Crow in the U.S. I knew by heart the bloody birth and progression of “grand apartheid” and its subsequent slow miserable death abroad in my adopted home. I knew of its birth in 1948 (also the year of my birth), when the National Party came to power. And then I applauded its death.

The demise resulted in: (1) the relaxation of occupational restrictions and segregation in employment in the late 1970s and 1980s; (2) the repeal of the 1948 law that forbade interracial marriage/miscegenation; (3) the repeal of the pass laws in 1985; (4) the creation of the Constitution of 1983 that gave Coloureds and Asians, but not Blacks, limited representation in the formerly all-White national parliament; (5) the June 1991 repeal of the Group Areas Act of 1966 and the Land Acts of 1913 and 1936; (6) the 1991 repeal of the Population Registration Act of 1950; (7) the 1994 reincorporation of the homelands (the Black Bantustans) into the Republic of South Africa under an interim post-apartheid constitution adopted in 1993; and (8) the 1994 election in which 12 of the 19 major parties pictured nonwhite candidates on the national ballot. In the latter election, the African National Congress and its South African allies, including the South African Communist Party, established parliamentary power “parliamentarily.”

I knew in 1991, as I knew in 1994, as I do today, that *de jure* racism transmutes into *de facto* racism and that criminal justice practices and procedures once enshrined via *de jure* oppression, transformed into discrimination under the guise of discretion. That is, “grand apartheid” would transmute into “petit apartheid”—oppressive laws into mores and customs. The U.S. experienced a similar metamorphosis. Thus, why would, or should the experience of oppressed Blacks in the Republic of South Africa be different than that of Blacks in the U.S.?

The conventional sociological theories of “structural-functionalism” and “cognitive dissonance” bestowed a lesson upon me: the knowledge that structural manifestations (i.e., behaviors) remain long after the original reason for their origin, and that if one should desire to permanently change a belief—cognition—one needs to change behavior first. I learned that one has to get persons to choose the desired behaviors because of perceived benefits. Only then can the desired behavior be rationalized and result in cognition change.

The reason for “grand apartheid” in the U.S. (e.g., slavery, Black Codes, and Jim Crow Law) or in the Republic of South Africa, and the reason for “petit apartheid,” is one and the same. It benefits and advantages some people. This “advantage” is enacted into law, issued via court findings and/or executive decrees (e.g., executive order). The reality of “petit apartheid in criminal justice” remains the reality of advantage, and thus, the subordination of some by others. The reality of “petit apartheid” is not always the overt conscious act of a subjugating agent who knowingly brutalizes the subjugated, although it too often is. The core reality of “petit apartheid” remains advantage, and thus, disadvantage.

The key to understanding “petit apartheid” in criminal justice is to understand the reality of actual outcome, not to fixate on alleged intent. Petit apartheid continues to manifest itself in both subtle and overt ways. It can, and has appeared in the vertical promotion of White officers and in the horizontal promotion (e.g., special assignment without promotion or remuneration) of Black officers and other minority officers. It can, and has been manifested in the police use of excessive force by both minority and majority race officers against Black and other minority race/ethnicity suspects and detainees. It is also manifest by the fact that majority race officers believe that they can engage in overtly illegal and brutal behavior—such as the horrific, violent sodomizing and beating of a Black suspect/arrestee in confines of a police precinct house in New York City, as was the case with Abner Louima.

Petit apartheid can, and has been manifested in jury nullification, in cases that involve police officers who have brutalized Blacks and other low status racial/ethnic minorities. Jury nullification has classically been the action of civilians ignoring evidence and the determination of guilt based

upon the legal concept of “beyond a reasonable doubt” in order to convict Black and other minority race/ethnic defendants accused of the victimization of Whites or other high status individuals, while returning a finding of not guilty when the defendant is White and the victim Negroid (e.g., the Amadou Diallo case).

It can, and has been manifested in racial/ethnic profiling of suspects that has, and continues to result in selective stops and searches along the border, at airports, at customs stations, and at traffic stops, or by “neighborhood watch” interventions or by beat patrol by uniformed and plain cloth officers. For example, a June 29, 2000 announcement by the U.S. Custom Services is instructive. It announced an intent to change its racial and ethnic profiling policy that resulted in the disproportionate (without merit) stop, frisk, and strip searches of Black females.

It can, and has been manifested in the selectively more punitive enforcement of departmental rules and regulations when allegedly violated by Black and other minority race/ethnicity officers or agents of the court. Examples of this are detailed in my edited book, *The Criminal Justice System and Blacks* (Part 2)(1984).

I have frequently wondered when it would again be my turn to suffer the indignities of “petit apartheid in criminal justice.” I have wondered as I breathed within “my suit” of dark brown skin, when I would be stopped, frisked, and questioned, and possibly interned in an INS facility as I pled my “Americanism,” my “nationality,” my belonging here in “America,” especially given my “foreign” sounding name, “Daniel E. Georges-Abeyie.” I know that “grand apartheid” died in the U.S. with the issuance of executive orders (e.g., Executive Order 91, which officially desegregated the U.S. military) and the enactment of the Thirteenth, Fourteenth, and Fifteenth Amendments, as well as with U.S. Supreme Court decisions leading up to *McCleskey v. Kemp* (481 U.S. 279, 1987).

In brief, I am pleased that Drs. Dragan Milovanovic and Katheryn K. Russell have chosen to edit this new volume on petit apartheid in criminal justice. It is a volume much needed on a topic bizarrely ignored as social scientists have chosen to focus on overt racism in criminal justice: “grand apartheid,” indeed, an increasingly rare anachronism. However, official acts of discrimination and multivariate analysis are data and research techniques well-suited to today’s “publish or perish” world of academe. “Grand apartheid” may be quickly observed and the data easily manipulated for multivariate analysis not necessarily grounded in the knowledge of the culture of the “victim.”

The analysis of “petit apartheid,” however, is best served by grounded theory, participant observation studies, and open-ended interview guides, although multivariate analysis can document differentials in sentences and some punitive actions by justice agencies when the race and the ethnicity

of subjects are allegedly “known.” Thus, there certainly is a place for multivariate analysis and the study of overt racism and to a lesser extent the study of new manifestations of “grand apartheid” draped under the guise of objective testing criteria and enhanced sentencing guidelines and salient factor scores.

Nonetheless, the interpretation of the law during jury instructions, the inflection of the voice, the body language of a police officer or of an officer of the court, the raising of an eyebrow, and the penetrating gaze or scow of a judge will never be captured by multivariate analysis—yet, they are as real as any gun or knife that wounds or kills. Non-verbal and verbal exchanges and cues by criminal justice agents, noted in my own writings (1981; 1984; 1989; 1990; 1992) and in the writings of others, such as Russell (1998) and Davis (1989), need to be studied and explained. The findings in the Rodney King, Amadou Diallo, Bernard Goetz, and Abner Louima cases are not mysteries to the authors of this volume. Each sensitively portrays the various guises of “petit apartheid” in criminal justice.

I have read the writings of the authors in this volume. Each in her/his own way illuminates the more covert, hidden forms of discrimination. It is my hope that this volume will result in a serious examination of the spatial dimension of so-called “Black” crime in its “petit apartheid” forms.

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