

Race Matters

By Stephen Sterrett

2017 Paxton Award Winner



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Steve Sterrett is a consultant on urban affairs, currently working in the Weinland Park neighborhood of Columbus, Ohio.

He retired from The Ohio State University in 2010 after 31 years of service, first as an editor and director in the news and information office and later as community relations director of Campus Partners, the university's non-profit neighborhood redevelopment corporation. He can be contacted at (614) 262-4586 and sterrett.1@osu.edu.

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The shooting death of Michael Brown in Ferguson, Missouri, in mid-2014 provoked protests across the country and led to careful scrutiny of Brown's death and of many subsequent police-involved shootings. Despite the protests, the evidence in the Michael Brown shooting may not have justified indicting the police officer. But the shooting clearly demonstrated the gulf between police officers and many citizens, particularly in poor, black neighborhoods. The concern is real.

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Since police shootings continue to be in the headlines, we all have to face the issue of race in the context of law enforcement and the criminal justice system. As a white person, I maintain racial hostility is not the major barrier to equal opportunity and racial reconciliation. Yes, we do have horrible examples of racial hatred, such as the killing of nine African-Americans in a Charleston, S.C., church in June 2015. But these incidents are nearly universally condemned. The major barriers are more subtle and more pervasive than outright hostility, and the criminal justice system, unfortunately, plays a significant role.

Before dealing with the criminal justice system, however, I first must explain the concepts of white privilege, implicit bias, and disparate impact, and provide some history of the War on Drugs. In so doing, I'm not taking us back to the days of slavery or the dismantling of the Jim Crow laws. These are issues that affect our lives today.

The term "white privilege" originated in the 1960s and refers to the benefits white people receive that usually are not extended to people of color. We white individuals did not ask for these privileges, and often we do not even recognize that we have them. For example, we white folks are less likely to be followed in a retail store by an employee who suspects us of shoplifting. Or we are less likely to be stopped by a police officer while driving our car. With white skin often comes a presumption of innocence; with a black skin, a presumption of guilt. In subtle ways, white privilege also permits us to think of our Western culture as the norm and our experiences as universal. Think of flesh-colored bandages that only come in a soft pink color.

I am not asking my fellow white persons to feel guilty. I am asking that we acknowledge the privileges that come with having a white skin—or being perceived as white—and that we think about those benefits as we discuss race.

The second concept is implicit bias, which is receiving increasing attention through research in brain science and the social sciences. The Kirwan

Institute for the Study of Race and Ethnicity at Ohio State University is a national leader in tracking research into implicit bias. According to the institute, “Implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual’s awareness or intentional control” (Kirwan Institute 62).

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Brain science confirms that we all have implicit biases. Not all of these biases necessarily have a bad effect. In fact, implicit biases work with our unconscious brain activity to permit us to function without making conscious decisions regarding every action of our body. The Kirwan Institute notes, however, that our subconscious, implicit biases “cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance.” These biases begin at an early age and likely develop over the course of our life, influenced by our own experiences, by what we hear from others, by the media, and by our culture’s values (Kirwan Institute 62). Biases based on

negative associations about the characteristics of other people can, without our knowing it, influence the way we interact with them.

In his book *Blink*, Malcolm Gladwell recounts that, for generations, symphony orchestras were the preserve of male musicians. The conductors and music directors were convinced women “didn’t have the strength, the attitude, or the resilience for certain kinds of pieces. Their lips were different. Their lungs were less powerful. Their hands were smaller” (249). But apart from perceived gender differences, music experts were convinced they could watch and listen to an audition and objectively judge the musical performance. For these experts, the result was the men nearly always seemed to sound better than the women.

Orchestras changed in the mid-1970s with the institution of blind auditions, in which the musician performed behind a screen so the performance was judged solely on the sound. Gladwell notes: “In the past 30 years, since screens became commonplace, the number of women in the top U.S. orchestras has increased fivefold” (249).

I doubt that, prior to the blind auditions, every conductor and music director consciously discriminated against women musicians, but implicit bias influenced their decisions. The Kirwan Institute reminds us: because these biases reside outside of our conscious awareness, “they do not necessarily align with our declared beliefs” (63).

Even though implicit bias is outside our conscious awareness, we have ways of identifying and measuring it. One groundbreaking tool is the Implicit Association Test (IAT) developed in 1998. Variations of this test assess implicit biases related to race, skin color, gender, weight, sexuality, and

religion. Harvard University, in cooperation with a number of other universities, has placed versions of the IAT online. You can take one of these tests in about ten minutes at <https://implicit.harvard.edu/implicit/takeatest.html>.

Among all the persons who take the test related to race, some 70 percent have at least a slight automatic preference for European American. About 17 percent are neutral, and about 13 percent have at least a slight automatic preference for African American. Reflecting the influence of the dominant European American culture, a majority even of African Americans have at least a slight automatic preference for European American.¹

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What does this mean? This means we have unconscious associations about people that can influence even what we believe to be our rational decision-making. We should acknowledge the problem, give more careful thought to decisions in which race may play a part, and develop strategies to mitigate the influence of those biases. The Kirwan Institute and other implicit bias researchers have suggestions for such strategies.

Now let me turn to another significant concept: disparate impact. An important American legal theory, “disparate impact” considers practices in employment, housing, transportation, and other areas to be discriminatory and illegal if they have a disproportionate adverse effect on persons in a protected class, such as African Americans or women (Wikipedia).

If you are an African American, you probably aren't surprised the city council would find some excuse to deny bus service to everyone in order to avoid serving people of color.

One example of disparate impact comes from Beavercreek, Ohio, a growing suburb of Dayton, just over the Montgomery County line in Greene County. In early 2010, the Greater Dayton Regional Transit Authority proposed to extend bus service 1.5 miles across the county line to the popular Fairfield Commons Mall on the edge of Beavercreek. Bus riders would have access to employment, shopping, and medical and educational offices.² The bus route was to serve not only residents of Beavercreek, employees of Wright-Patterson Air Force Base, and students and employees of Wright State University, but also residents of West Dayton, where poverty and unemployment rates were high. Montgomery County residents pay a tax to support the transit authority, but the bus route would come at no charge to Beavercreek.

Working with Beavercreek's Public Service Division, the transit authority modified its proposal, reducing the number of bus stops and satisfying the city code's design requirements for the stops. Beavercreek City Council held its first hearing on the proposal in February 2011. Although no citizens spoke against the proposal, some council members expressed reservations about safety and reported negative citizen feedback. Over the next five weeks, two more hearings were held. Council members asked the transit authority to meet nineteen additional design standards, some well beyond the city's code, such as video surveillance cameras with real-time feed to the local police station.

The transit authority agreed to meet some standards, but declared others were simply too costly. Opposition among Beavercreek residents began to grow with concerns about litter and safety. The city council eventually voted unanimously against the bus route extension. If you are an African American, you probably aren't surprised the city council would find some excuse to deny bus service to everyone in order to avoid serving people of color.

A Dayton community organization partnered with a civil rights law firm to file a complaint with the Federal Highway Safety Administration. The complaint alleged Beavercreek's action violated the 1964 Civil Rights Act and federal transportation regulations by discriminating on the basis of race. The complaint argued the denial of the bus stops would have a disparate impact on Dayton's people of color.

Following an investigation, the Federal Highway Safety Administration in June 2013 issued a finding that Beavercreek's action did have a disparate impact on African-American transit users. If the city refused to reconsider its decision, then millions of dollars in federal funding to the city

were in jeopardy. In October 2013, the city council reluctantly reconsidered and voted 5 to 2 to approve the bus stops. Transit service began in January 2014.

As a legal theory, disparate impact is a critical tool for understanding and challenging policies and actions that superficially appear to treat everyone the same, but in practice limit opportunities for those with little wealth or political power.

White privilege, implicit bias, and disparate impact illuminate the challenges of racial reconciliation today. They also are important to understanding how law enforcement and the criminal justice system have in some instances eroded our efforts at reconciliation.

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In 2010, Michelle Alexander, a former law professor at Ohio State, published *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. This significant book offers an important analysis of today's racial dynamics in America and the role of the criminal justice system in creating and enforcing a new racial caste system.

Professor Alexander writes, “Rather than rely on race, we use our criminal justice system to label people of color as ‘criminals’ and then engage in all the practices that we supposedly left behind” (2). She continues, “Once a person is labeled a felon, he or she is ushered into a parallel universe in

which discrimination, stigma and exclusion are perfectly legal” (92). Over the past six years, her analysis has begun to filter through popular culture. One obvious example is the critically acclaimed cable television series, “Orange Is the New Black,” which focuses on a women’s prison.

Alexander argues Jim Crow laws and the current criminal justice system are similar racial caste systems—forms of social control—that work to deny equality of opportunity to African Americans. She does not imagine that a vast conspiracy by white America imposed a new caste system after the phasing out of Jim Crow. Instead, she suggests that electoral politics, structural racism, and sheer inattention led to this new form of social control, given the absence of any concerted effort by society to deal with the impact of 300 years of oppression.

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According to Alexander, calls for “law and order” by Alabama Governor George Wallace in the mid-1960s mark the beginning of the criminal justice system’s taking on the functions of Jim Crow. For Wallace, “law and order” was a code phrase for opposition to civil rights. Richard Nixon in his 1968 presidential campaign astutely adopted “law and order” rhetoric as part of his successful Southern Strategy to pry

Southern whites away from the New Deal coalition. The rhetoric was colorblind, but it contained implicit appeals to race.

The next major step in the criminal justice system’s evolution as a successor to Jim Crow was President Reagan’s declaration of a War on Drugs in 1982. Alexander notes that this war was declared even though drug crime rates were falling. She points out that in the subsequent thirty years, the U.S. prison population exploded from about 300,000 to more than 2 million (6). “Violent crime is not responsible for the prison boom,” she writes (99). Drug convictions account for the majority of the increase. The United States has the highest incarceration rate in the world. The U.S. imprisons a larger percentage of its black population than South Africa at the height of apartheid (Alexander 6). People of all colors use and sell illegal drugs at similar rates, but prisons are overflowing with black and brown offenders (Alexander 7).

In a colorblind criminal justice system, Alexander argues, one grants law enforcement extraordinary discretion “regarding who to stop, search, [and] arrest, thus ensuring that conscious and unconscious racial beliefs and stereotypes will be given free reign” (100). Ohio State offers an example of this discretion. In June 2015, *The Columbus Dispatch* reported on its review of six years of campus crime statistics. The front page headline was: “Drugs: Discipline, not arrests, the norm at OSU”. The first paragraph of the story read: “Ohio State University police rarely make drug arrests in residential halls even when they catch students red-handed” (Lim 1). Does anyone doubt there is illegal drug use among the students at one of America’s largest campuses? Is discipline, rather than arrest, the best approach? You can answer those questions for yourself, but I assert white America would not tolerate SWAT teams breaking down

dormitory doors, arresting young adults for using illegal drugs for recreation or self-medication, and locking them up for five, ten or twenty years.

One of the most disturbing ideas in Alexander’s book is her account of how the criminal justice system interacts with the changing American economy of the last thirty years. She writes that the criminal justice system “does not seek primarily to benefit unfairly from black labor [as slavery and Jim Crow did], but instead views African Americans as largely irrelevant and unnecessary to the newly structured economy—an economy that is no longer driven by unskilled labor” (207).

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In sweeping terms, we declare that large numbers of African Americans, particularly young men, have chosen to become criminals. We arrest and imprison them. Upon release, we deny them job opportunities because of their criminal record. We ignore their plight because we maintain this is the path they have chosen. And now we are ready to discard them because we really don’t need them anyway.

Is this our vision of America? Probably not. But I suspect it is the vision of many African Americans in places like Ferguson, Missouri, and among young people in the Black Lives Matter movement.

How do we change this situation?

First, white Americans must admit we have a problem. Alexander writes, “The widespread and mistaken belief that racial animus is necessary for the creation and maintenance of racialized systems of social control is the most important reason that we, as a nation, have remained in deep denial. [...] Racism manifests itself not only in individual attitudes and stereotypes, but also in the basic structure of society” (178-79). In addition to structural racism, we have the ideal of a colorblind society that obstructs our vision of the disparate impact of our laws, policies and practices. Let’s recall that many Jim Crow laws, such as the literacy test, were “colorblind.” It was in the implementation of those laws that the racial intent was laid bare. Alexander maintains, “Seeing race is not the problem. Refusing to care for the people we see is the problem” (231).

The second action we must take is to end the War on Drugs and the mass incarceration of people of color that has followed. The militarized enforcement approach to the War on Drugs has failed, torn the fabric of our own society, and done enormous harm to the people of other countries, such as Mexico and Colombia. I don’t advocate a “hands-off” approach to the improper use of drugs. Substance abuse, like gambling and smoking addictions, can lead to enormous harm. But the impact of aggressive law enforcement should not cause greater harm than the use of the drugs does. We need a dialogue on drugs with our African American brothers and sisters and the rest of America—a dialogue that pays attention to disparate impacts and promotes humane policies.

The third action we must take is to develop parallel dialogues on economics, education, health care, and politics. In Alexander’s words, we need to find ways to “meaningfully address the racial divisions and resentments

that gave rise to mass incarceration [...] and [we must] cultivate an ethic of genuine care, compassion, and concern for every human being—of every class, race, and nationality—within our borders, including poor whites, who are often pitted against poor people of color” (245). Dialogue is necessary because our task is more complex than the legal dismantling of Jim Crow. While we must confront explicit racial bias, we also must consider the effects of structural racism, the psychology of implicit bias, and the sometimes hidden disparate impacts of our policies. In our dialogues, we need to listen to each other and apply Alexander’s call for care, compassion, and concern.

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I now return to the matter of police officers and the use of deadly force. I acknowledge there are a few men and women whose attitudes and actions must preclude them from serving as police officers. I believe, however, that the vast majority of officers have a difficult job and do it well. They can do a better and more effective job with training and greater understanding of issues of race and implicit bias.

We cannot significantly improve the relationship between police and many African Americans, however, until we end the War on Drugs and mass incarceration. We also must change our expectations of the police. We, as a society, have placed police officers on the front line of a “War on Drugs” that in reality has been an assault on poor, largely African-American communities. Police officers bear the brunt of the battle, although behind the scenes and providing tactical support and encouragement is the whole prison-industrial complex of courts and penitentiaries.

More training of police officers and use of body cameras will not solve the problem. We must accept responsibility for the problem. The question is: Will we do that?

Notes

1 Interview with Kirwan Institute staff member Robin Wright by the author on September 10, 2015.

2 Information about the situation in Beavercreek is drawn from “Transit-based Opportunity – Lessons from Dayton,” *Poverty & Race*, March/April 2014, accessed online through the Kirwan Institute website.

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