A Socio-Legal Conflict Theory of Preceptions of Criminal Injustice

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A Socio-Legal Conflict Theory of Perceptions of Criminal Injustice

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The perception of criminal injustice is common among disadvantaged American racial and ethnic minority groups. This perception of injustice is especially common among highly educated and socially and economically successful African-Americans. It is also well established that encounters between citizens and the police play an important part in such perceptions of racial injustice. Yet, there is much about these perceptions that remains unknown. The fact that perceptions of injustice can be more acute among more, rather than less, advantaged minority group members is a conundrum that poses important explanatory and policy challenges. We believe that a socio-legal conflict theory of crime and punishment can help to address this puzzle.

We first elaborate a socio-legal conflict theory by discussing the age structure and comparative racial and ethnic gradients of perceptions of criminal injustice. We then examine the nature of the police contacts that influence the development of these perceptions and the strategies that many minority citizens often learn in adolescence in responding to their contacts with the police. Finally, we speculate about the broader developmental, comparative, and societal implications of minority perceptions of criminal injustice fpr racial and ethnic relations in America more generally. Our goal is to outline the foundations for a socio-legal conflict theory that can inform research and policy within, as well as beyond, the field of crime and punishment.

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I. FOUNDATIONS OF A SOCIO-LEGAL CONFLICT THEORY

Conflict theory historically has stressed the roles of group threat, hierarchical subordination, and economic powerlessness in explaining crime and how it is controlled in America.[1] While economic forces dominated early and influential formulations of conflict theory,[2] subsequent specifications and elaborations of the theory have emphasized the salience of race, above and beyond that of class or status, in grounding social relationships.[3] Much of the early empirical work assessing conflict theory revolved around the degree to which official decisionmaking about the punishment of crime was racially motivated and biased.[4]

Despite an ensuing debate about the role of outright prejudice as a specific source of racial disparity in crime and punishment in America,[5] there is no doubt today about disproportionality by race in rates of arrest, imprisonment, and capital punishment.[6] For example, African-Americans today make up more

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[1] See, for example, Austin Turk, *Criminality and Legal Order* 53–78 (Rand McNally 1969). See also Richard Quinney, *The Social Reality of Crime* 9–11 (Little, Brown 1970).

[2] See William Chambliss and Robert Seidman, *Law, Order and Power* 473–83 (Addison-Wesley 1971).

[3] Samuel Walker, Cassia Spohn, and Miriam DeLone, *The Color of Justice: Race, Ethnicity and Crime in America* 76–77, 194–95, 245 (Wadsworth 2000) (explaining that conflict theory hypothesizes that African-Americans who commit crimes against whites will receive harsher sentences than whites would for the same crime, but that African-Americans who commit crimes against African-Americans will not receive a harsher sentence than whites would because the crime does not threaten the dominant social group); Michael Mitchell and Jim Sidanius, *Social Hierarchy and the Death Penalty: A Social Dominance Perspective*, 16 Pol Psych 591, 609–10 (1995) (examining death penalty usage based on several social factors and hypothesizing that subordinate groups, including subordinate racial groups, are more likely to be put to death); Darnell F. Hawkins, *Beyond Anomalies: Rethinking the Conflict Perspective on Race and Criminal Punishment*, 65 Soc Forces 719, 719–45 (1987) (analyzing the effect of race on punishment and arguing that "forces within the political economy, in addition to effects of race of the victim, crime type and other considerations, must be included in a revised conflict perspective designed to explain racial differences in criminal punishment"); Allen E. Liska, Mitchell B. Chamlin, and Mark D. Reed, *Testing the Economic Production and Conflict Models of Crime Control*, 64 Soc Forces 119, 119–38 (1985) (arguing that a "high percentage of nonwhites and low level of segregation increase the perceived threat of crime, which increases pressure on police to control crime, which in turn increases the certainty of arrest for both whites and nonwhites").

[4] See, for example, Charles R. Tittle, *The Theoretical Bases for Inequality in Formal Social Control*, in G.S. Bridges and M. Myers, eds, *Inequality, Crime and Social Control* 32–44 (Westview 1994).

[5] For a general discussion, see William Wilbanks, *The Myth of a Racist Criminal Justice System* (Brooks/Cole 1987). See also William J. Chambliss, *Power, Politics, and Crime* 63–79 (Westview 1999); Coramae Richey Mann, *Unequal Justice: A Question of Color* 25–26 (Indiana 1993).

[6] See Marc Mauer, *Race to Incarcerate* 118–41 (New Press 1999); Michael Tonry, *Malign Neglect: Race, Crime and Punishment in America* 49–80 (Oxford 1995); Alfred Blumstein, *On the Racial Disproportionality of United States' Prison Populations*, 73 J

than half of the over two million Americans imprisoned in the United States.[7] African-Americans regard this disproportionate imprisonment as unjustifiable,[8] and some social scientists have argued that this disproportionality represents a new form of ghettoization, if not enslavement[9].

Despite the massive numbers of African-American youth who come into conflict with the criminal law and perceive it as unjust, we know relatively little about how this conflict is socially structured or how a sense of injustice may extend to other ethnic groups and governmental sectors. There is growing concern that perceived injustice itself causes criminal behavior.[10] This concern adds urgency to the need to develop a better understanding of the micro- and macro-level mechanisms that lead to racial and ethnic differences in perceptions of criminal injustice.

Crim L & Criminol 1259, 1259–70 (1982). For a general discussion, see Randall Kennedy, *Race, Crime, and the Law* (Pantheon 1997).

[7] Bruce Western and Katherine Beckett, *How Unregulated is the U.S. Labor Market? The Penal System as a Labor Market Institution*, 104 Am J Soc 1030, 1035 (1999).

[8] Lawrence Bobo and Devon Johnson, *A Taste for Punishment: Black and White Americans' Views on the Death Penalty and the War on Drugs*, 1 Du Bois Rev 151, 151–80 (2004); Richard R.W. Brooks and Haekyung Jeon-Slaughter, *Race, Income, and Perceptions of the U S Court System*, 19 Behav Sci & L 249, 249–64 (2001); Richard R.W. Brooks, *Fear and Fairness in the City: Criminal Enforcement and Perceptions of Fairness in Minority Communities*, 73 S Cal L Rev 1219, 1223–24 (2000); Scot Wortley, John Hagan and Ross Macmillan, *Just Des(s)erts? The Racial Polarization of Perceptions of Criminal Justice*, 31 L & Socy Rev 637, 646–49 (1997). For a study on African-Americans' heightened perception of criminal injustice, see John Hagan and Celesta Albonetti, *Race, Class, and the Perception of Criminal Injustice in America*, 88 Am J Soc 329, 329–55 (1982). For a finding that the African-American middle-class neighborhood holds a unique perception of police-citizen relations to minorities, see Ronald Weitzer, *Racialized Policing: Residents' Perceptions in Three Neighborhoods*, 34 L & Socy Rev 129, 129–55 (2000).

[9] See, for example, Loic Wacquant, *The New 'Peculiar Institution': On the Prison as a Surrogate Ghetto*, Theoret Criminol 377, 382–85 (2000).

[10] Kathryn Russell, *The Color of Crime: Racial Hoaxes, White Fear, Black Protectionism, Police Harassment, and Other Macro-aggressions* 9 (NYU 1998) (noting that African-Americans may commit crimes at a rate disproportionate to the population in reaction to a politically repressive and oppressive criminal justice system); Gary LaFree, *Losing Legitimacy: Street Crime and the Decline of Social Institutions in America* 61–63 (Westview 1998) (discussing labeling theory, which "would suggest that street crime rates should be highest when discrimination against the least powerful members of society is greatest"); Mann, *Unequal Justice* at 77 (cited in note 5) (stating that models of public choice assume that "people are concerned primarily with the personal favorability of the outcomes they receive from legal and political authorities, and that they shape their behavior based on expectations about the rewards and punishments those authorities provide"); Tom Tyler, *Why People Obey the Law* 27–30, 165–69 (Yale 1990) (detailing the empirical data available to support the assertion that the legitimacy of legal authority enhances compliance).

A.   Race, Economic Disadvantage, and Perceived Injustice

There is reason to believe that the processes involved in perceptions of injustice have broad and generic features that encompass a wide range of American institutions. For example, African-Americans perceive inequality and discrimination in areas as diverse as education, employment, health care, and housing.[11] While the majority of whites may believe that African-American economic inequality is the result of motivational weaknesses, most African-Americans believe that inequality is the result of white racism and other structural barriers.[12]

These beliefs about racial inequality are deeply and historically corrosive forces in American society. Orlando Patterson succinctly makes this point when he observes that "[c]enturies of public dishonor and ritualized humiliation by Euro-Americans were . . . certain to engender deep distrust."[13] Yet we will see that Patterson also argues that the American racial divide is even more complicated than this. We will argue, consequently, that a socio-legal conflict theory must encompass this complexity to meet our explanatory and policy needs.

There is growing and compelling evidence that race is considerably more important than social class in explaining variation in urban American arrest rates.[14] This evidence supports the importance recently attached to race in a renewed socio-legal conflict theory of crime. Still, there are suggestions that micro- and macro-level economic disadvantages can be further root causes of perceived criminal injustice. For example, using a national sample, Hagan and Albonetti find that unemployed mem-

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[11] For a discussion of the frustrations and negativity middle class African-Americans feel towards persistent discrimination, see Joe R. Feagin and Melvin P. Sikes, *Living with Racism: The Black Middle-Class Experience* (Beacon 1994). See also Howard Schuman, et al, *Racial Attitudes in America: Trends and Interpretations* 252–64 (Harvard 1997); Jennifer L. Hochschild, *Facing Up to the American Dream: Race, Class, and the Soul of the Nation* 57–59 (Princeton 1995). For a general discussion on African-American self-perception and political behavior, see Michael C. Dawson, *Behind the Mule: Race and Class in African-American Politics* (Princeton 1994).

[12] For a general discussion on the progression of white racial attitudes despite the persistence of structural barriers to racial equality, see Lawrence Bobo, James R. Kluegel, and Ryan A. Smith, *Laissez-Faire Racism: The Crystallization of a Kinder, Gentler, Antiblack Ideology*, in Steven A. Tuch and Jack K. Martin, eds, *Racial Attitudes in the 1990s: Continuity and Change* 15–42 (Praeger 1997).

[13] Orlando Patterson, *The Ordeal of Integration: Progress and Resentment in America's 'Racial' Crisis* 15 (Basic 1997).

[14] See Liska, Chamlin, and Reed, 64 Soc Forces at 119–38 (cited in note 3) (arguing that a "high percentage of nonwhites and low level of segregation increase the perceived threat of crime, which increases pressure on police to control crime, which in turn increases the certainty of arrest for both whites and nonwhites").

bers of the "surplus population," as well as African-Americans, perceive higher levels of criminal injustice than do Americans of higher class position.[15] In an innovative study with measures at the individual and neighborhood level, Sampson and Bartusch find the following: individual level socio-economic status is positively linked to satisfaction with the police; concentrated neighborhood disadvantage increases dissatisfaction with the police; and the latter concentration of poverty further accounts for racial differences at the individual level in dissatisfaction with the police.[16]

Sampson and his collaborators' unique contributions to the research literature on perceived injustice are especially noteworthy. First, in moving beyond the individual level to contextualize issues of racial disparity, Sampson and Bartusch suggest that we further conceptualize differences in racial orientations in terms of perceived macro-level "cognitive landscapes" of neighborhood and community.[17] Second, Sampson and Lauritsen observe that it is potentially misleading to think of these socially organized differences in cognitive orientations as neatly divided in binary, Black/White terms.[18] They emphasize that "[r]ecent immigration from Mexico and Cuba in particular is reshaping the landscape of many American cities. Hence, the future picture of criminal justice processing may be closely tied to the experiences of race or ethnic groups that have heretofore been neglected by mainstream criminological research."[19]

Meanwhile, Collins and Cose each provide compelling accounts of feelings of discontent and distrust among middle-class African-American professionals in the workplace and beyond.[20] Affluent and better-educated African-Americans view disadvantaged African-Americans as much worse off than poor whites.[21]

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[15] Hagan and Albonetti, 88 Am J Soc at 346–50 (cited in note 8).

[16] Robert J. Sampson and Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 L & Socy Rev 777, 786–93, 799–800 (1998).

[17] Id at 781. For a study on social cohesion among neighbors and its implication for violence, see Robert J. Sampson, Stephen W. Raudenbush, and Felton Earls, *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 Sci 918, 918–24 (1997).

[18] Robert J. Sampson and Janet L. Lauritsen, *Racial and Ethnic Disparities in Crime and Criminal Justice in the United States*, 21 Crime & Just 311, 364 (1997).

[19] Id.

[20] See Sharon M. Collins, *Black Corporate Executives: The Making and Breaking of a Black Middle Class* 137–54 (Temple 1997); Ellis Cose, *The Rage of a Privileged Class* 73–92 (Harper 1993).

[21] For a comparative study of affluent and poor African-American perspective about

Middle-class African-Americans also tend to be the group most impatient with the progress on civil rights in America.[22] Brooks and Jeon-Slaughter observe that this pattern is further reflected in the wide-spread suspicions that economically and educationally advantaged African-Americans have about the American legal system.[23]

Studies of perceived criminal injustice that separate respondents by race often yield evidence that is in marked contrast to the research cited above. Some studies indicate that income reduces perceived injustice among African-Americans, while other studies report that class position increases this sense of injustice among African-Americans.[24] Still other research finds no income effects at all, regardless of race.[25] The possibility that better, rather than less, well-off African-Americans perceive greater injustice is an *apparent* exception to the conflict theory prediction that economic *disadvantage* should heighten perceptions of injustice. The variation in the above findings suggests that something more than simple, absolute economic deprivation is involved in racial perceptions of criminal injustice. We will argue that this involves variation in frames of reference and comparison, which a more nuanced socio-legal conflict theory can elucidate.

American society see Hochschild, *Facing Up to the American Dream* at 72–88 (cited in note 11).

[22] Schuman, et al, *Racial Attitudes in America* at 256–57 (cited in note 11).

[23] Brooks and Jeon-Slaughter, 19 Behav Sci & L 249 at 12–13 (cited in note 8). See also Charles W. Peek, George D. Lowe and Jon P. Alston, *Race and Attitudes Toward Local Police: Another Look*, 11 J Black Stud 361, 361–74 (1981). For a discussion on a possible role class plays with respect to African-American attitudes toward criminal justice systems, see Ronald Weitzer and Steven A. Tuch, *Race, Class, and Perceptions of Discrimination by Police* 45 Crime & Delinquency 494, 494–507 (1999).

[24] See Brooks, 73 S Cal L Rev at 1240–62 (cited in note 8) (analyzing the unexpected outrage about discrimination among more advantaged African-Americans); Wortley, Hagan, and Macmillan, 31 L & Socy Rev at 665–66 (cited in note 8) (finding that well-educated African-Americans "who had been stopped by the police were especially likely to perceive criminal injustice").

[25] See Hagan and Albonetti, 88 Am J Soc at 352 (cited in note 8) (finding that African-Americans were more likely to perceive discrimination regardless of class, education, income, and age); Martha L. Henderson and Francis T. Cullen, *The Impact of Race on Perceptions of Criminal Justice*, 25 J Crim Just 447, 447–62 (1997) (extending the Hagan and Albonetti study); Weitzer and Tuch, 45 Crime & Delinquency at 502–04 (cited in note 23) (noting that the findings on class effects are inconclusive); Brooks and Jeon-Slaughter, 19 Behav Sci & L at 249–64 (cited in note 8) (detailing the correlation between race, income, and confidence in the courts); Steven A. Tuch and Ronald Weitzer, *The Polls—Trends: Racial Differences in Attitudes Toward the Police*, 61 Pub Op Q 642, 642–63 (1997) (making no mention of income with regard to race perceptions of police brutality).

B. Developmental and Comparative Processes in Socio-Legal
    Conflict Theory

Leading conflict theorists of crime such, as Chambliss and
Seidman, have traditionally framed their foundational hypothe-
ses in class terms.[26] More recently, however, Chambliss has em-
phasized that "the intensive surveillance of black neighborhoods,
the corresponding looseness of surveillance of white neighbor-
hoods, and differences in punishments for white and black of-
fenders reinforce the belief that the system is not only inherently
racist but is designed to oppress . . . black people."[27] Bobo and
Johnson's survey of the literature similarly finds that "a number
of scholars see in changing U.S. criminal justice policy a deliber-
ate, if loosely coordinated, effort to re-assert control and domi-
nance over African Americans."[28]

Although there is continuing debate in life course research
about when or even whether such politically sensitive beliefs
ever fully crystallize, there nonetheless is agreement that adoles-
cence is a critical formative period for such development.[29] Bobo
and Johnson emphasize that "political and social values are de-
veloped early in life and are rather stable."[30] They go on to con-
clude that "views on the criminal justice system are rather rigid
and resistant to change."[31] Early and middle adolescence is the
time when minority youth are likely to first regularly encounter
the police.[32] During this period, youth begin to range further
away from home for longer periods of time.[33] They are also un-

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[26] See, for example, Chambliss and Seidman, *Law, Order and Power* at 475 (cited in
note 2).

[27] Chambliss, *Power, Politics, and Crime* at 75 (cited in note 5).

[28] Bobo and Johnson, 1 Du Bois Rev at 152 (cited in note 8).

[29] See Constance A. Flanagan and Lonnie R. Sherrod, *Youth Political Development:
An Introduction*, 54 J Soc Issues 447, 448–49 (1998) (noting the argument that "adult
personalities are shaped in part by the way people grapple with and resolve social issues"
during adolescence and young adulthood); Richard G. Niemi and Mary A. Hepburn, *The
Rebirth of Political Socialization*, 24 Perspectives on Pol Sci 7, 9–11 (1995) (explaining
that there is general agreement that people undergo major development of political views
during adolescence).

[30] Bobo and Johnson, 1 Du Bois Rev at 155 (cited in note 8).

[31] Id.

[32] See Terrance J. Taylor, et al, *Coppin' An Attitude: Attitudinal Differences Among
Juveniles Toward Police*, 29 J Crim Just 295, 303 (2001) ("Juveniles comprise a signifi-
cant portion of victims, offenders, and witnesses with whom the police come into contact.
Additionally, the increased presence of police officers in the school system . . . provides
additional practical considerations for policymakers."). For more information on the proc-
esses of the interaction between juveniles and police, see also Irving Piliavin and Scott
Briar, *Police Encounters with Juveniles*, 70 Am J Soc 206 (1964).

[33] Mercer L. Sullivan, *Getting Paid* 105 (Cornell 1989).

dergoing changes in their physical and social development, through which they begin to be perceived as threatening by other members of the community.[34] A socio-legal conflict theory of perceptions of criminal injustice therefore needs to focus first—if not foremost—on these formative teenage years.

Adolescence is also a period of life when individuals become more conscious of how others perceive them—a developmental period in which youth begin to form "reflected appraisals" of themselves vis-à-vis others.[35] For disadvantaged minority youth, these reflected appraisals have an important comparative dimension that involves a growing awareness of the abstract consequences of racial hierarchy and subordination.[36] Even more importantly for our purposes, adolescence is often a period for minority youth of a more specific and connected awareness of a police presence in their social lives.[37]

Davis observes that when a deprived person contrasts him or herself with a non-deprived person, the resulting attitude can be called "relative subordination."[38] The concept of relative subordination implies reference groups, a concept Runciman believes derives from the truism that "people's attitudes, aspirations and grievances largely depend on the frame of reference within which they are conceived."[39] Race is, of course, a sensitive point of reference in American society, and a reference point that can become acute for minority youth during early to middle adolescence.

Portes and Rumbaut have recently highlighted the racial framing of this issue. They note that "[i]n America, race is a paramount criterion of social acceptance that can overwhelm the influence of class background, religion, or language."[40] They add

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[34] Elijah Anderson, *Code of the Street: Decency, Violence, and the Moral Life of the Inner City* 91–93 (Norton 1999).

[35] See Ross L. Matsueda, *Reflected Appraisals, Parental Labeling, and Delinquency: Specifying a Symbolic Interactionist Theory*, 97 Am J Soc 1577, 1582 (1992). For a discussion of the influence of race, age, and family structure on delinquency, see Ross L. Matsueda and Karen Heimer, *Race, Family Structure, and Delinquency: A Test of Differential Association and Social Control Theories*, 52 Am Soc Rev 826, 826–40 (1987).

[36] See Karen Heimer and Ross L. Matsueda, *Role-Taking, Role Commitment, and Delinquency: A Theory of Differential Social Control*, 59 Am Soc Rev 365, 372 (1994).

[37] For a related idea, see id.

[38] James A. Davis, *A Formal Interpretation of the Theory of Relative Deprivation*, 22 Sociometry 280, 291 (1959).

[39] W. G. Runciman, *Relative Deprivation and Social Justice: A Study of Attitudes to Social Inequality in Twentieth-Century England* 9 (California 1966). See also Robert K. Merton and Alice Rossi, *Contributions to the Theory of Reference Group Behavior*, in Robert K. Merton *Social Theory and Social Structure* 227–50 (Free Press 1957).

[40] Alejandro Portes and Ruben G. Rumbaut, *Legacies: The Story of the Immigrant*

that a "racial gradient continues to exist in U.S. culture so that
the darker a person's skin is, the greater is the social distance
from dominant groups and the more difficult it is to make his or
her personal qualifications count."[41] We argue, similarly, that
skin tone is a visible marker that can create inequality—a social
fact that gives meaning to the concept of *visible* minority group
status.

For conflict theorists of race and crime, visible social dissimi-
larity and distance are especially likely to be associated with
powerlessness and threat.[42] African-Americans are seen by
dominant groups as less powerful and more threatening to
whites than Latino-Americans, who nonetheless form a growing
comparative presence and point of reference in contemporary
American society.[43] This sense of differential threat may further
derive from the longer history involving slavery of African-
Americans in the United States, as contrasted with the more re-
cent and increasing presence of Latinos in many American cities.

The implication for a comparative conflict theory of crime is
that Latino-Americans occupy a disadvantaged middle ground.
Latinos are subject to a less comprehensive and less intensive
focus of criminalization efforts than are African-Americans, but
they are still much more at risk than whites. Socio-legal conflict
theory therefore predicts that there is a racial gradient in adoles-
cent perceptions of criminal injustice, with more visible and
therefore vulnerable African-American youth perceiving a
greater sense of criminal injustice than Latino-American youth,
but with Latino youth still more likely to perceive criminal injus-
tice than white youth. Although there is little research on Latino
perceptions of the criminal justice system, the few surveys that
have considered views of Latinos yield some evidence that this is
the case.[44] The implication is that a socio-legal conflict theory of
perceptions of criminal injustice will increasingly require sepa-
rate as well as combined attention to Latino and African-
American adolescent experiences.

Police attention to African-American youth is frequent and
increasingly examined in empirical studies,[45] while relatively

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Second Generation 47 (California 2001).

[41] Id.

[42] Hawkins, 65 Soc Forces at 734–36 (cited in note 3).

[43] See Portes and Rumbaut, *Legacies* at 47 (cited in note 40).

[44] See Brooks and Jeon-Slaughter, 19 Behav Sci & L at 250 n 2 (cited in note 8).

[45] See, for example, Alford A. Young, Jr., *The Minds of Marginalized Black Men: Making Sense of Mobility, Opportunity, and Future Life Chances* 95 (Princeton 2004).

little is known about how Latino youth respond to their experiences with the police. There is an implicit assumption here that because police contact with less visible Latino youth may be less common, it is also less important and consequential. Yet this is likely a myopic view. A study sampling Latino-Americans of various ages reports that "in general . . . attitudes toward the police are good until [the respondent] has experience with the police,"[46] but "as contact with the police increases . . . expectations for the police decrease."[47]

As the presence of Latino-Americans grows in US cities, this group will become more visible. Socio-legal conflict theory implies that the resulting encounters will become more problematic. Differences as well as similarities in Latino and African-American experiences with the police will likely need to be taken into account in making comparisons of perceptions of criminal injustice between these groups. Taking such differences into account may, ironically, prove to be a key to uncovering more fundamental commonalities between groups. We pursue this point further below.

C. Further Elaborating the Comparative Dimension in Socio-Legal Conflict Theory

Neighborhood, school, and workplace experiences provide additional contexts of racial and ethnic subordination. These are public settings where hierarchical relationships are enacted, and these contexts further influence comparative perceptions of criminal injustice. The contexts in which these macro-level comparisons occur can be crucial.[48] Brooks, for example, uses a contextualized comparative perspective to explain the unexpected outrage about discrimination that we have noted among more advantaged African-Americans.[49]

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[46] See David L. Carter, *Hispanic Perception of Police Performance: An Empirical Assessment*, 13 J Crim Just 487, 494 (1985).

[47] Id at 498. For another study on Latino perception of policing, see Wesley G. Skogan, et al, *Community Policing and "the New Immigrants": Latinos in Chicago* 18–22 (Natl Inst of Just 2002).

[48] See, for example, Ruth D. Peterson and John Hagan, *Changing Conceptions of Race: Towards an Account of Anomalous Findings of Sentencing Research*, 49 Am Soc Rev 56, 67–69 (1984) (studying the effect of changes over time in attitudes toward drugs and race on sentencing); John Hagan and Ilene N. Bernstein, *Conflict in Context: The Sanctioning of Draft Resisters, 1963–76*, 27 Soc Probs 109, 110–11 (1979) (stating research that holds the context in which criminal sanctioning occurs constant, results in a static analysis).

[49] See Brooks, 73 S Cal L Rev at 1240–62 (cited in note 8).

Brooks observes that in contrast to advantaged African-Americans, "low-income African Americans may be more inclined to restrict their frame of reference to their immediate community when evaluating their outcomes."[50] The concentrated separateness of the African-American ghetto experience may actually make the experience of police harassment so familiar that it becomes an "experience of the expected" and produces less outrage than would otherwise be predicted.[51] Massey and Denton describe the physical separation of the great majority of the African-American poor as the "forgotten factor" in American race relations.[52]

Self-categorization theorists see actors as locating themselves along a range from individual to group membership.[53] Brooks similarly suggests that "successful blacks develop multiple reference groups, which allow them to compare more easily their outcomes to whites and other racial groups," so that "despite achieving good individual outcomes, they continue to feel deprived as long as blacks as a whole fare poorly."[54] Brooks argues that being aware of the possibility of improved outcomes may lead one to perceive familiar and even expected experiences (for example, of police contact) as more outrageous.[55]

In a parallel way, when less advantaged groups gain exposure to more advantaged groups in a surrounding neighborhood, at work, or in school, they may evince feelings of deprivation.[56] Orlando Patterson's analysis in *The Ordeal of Integration* highlights the importance of this kind of comparative frame of reference in understanding African-American perceptions.[57] Emphasizing the historical effects of racial separation, Patterson notes that "when Afro-Americans were segregated—physically, occupationally, and culturally— . . . there was little opportunity for conflict."[58]

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[50] Id at 1255.

[51] See id at 1255–56 (discussing perceptions of outcomes and relative deprivation in general).

[52] For Massey and Denton's discussion of the significance, and yet neglect, of the theory that segregation plays a large role in creating an underclass see Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* 115–85 (Harvard 1993).

[53] Kerry Kawakami and Kenneth L. Dion, *The Impact of Salient Self-Identities on Relative Deprivation and Action Intentions*, 23 European J Psych 525, 526–27 (1993).

[54] Brooks, 73 S Cal L Rev at 1256 (cited in note 8).

[55] Id at 1253–61.

[56] Id at 1256–57.

[57] See Patterson, *The Ordeal of Integration* at 54–55 (cited in note 13).

[58] Id at 51.

When integration begins to break down barriers, however, the absence of conflict no longer prevails. Patterson thus explains that the consequences of separation become more apparent for those who were kept apart, and the frustrations of these experiences are more freely perceived and expressed.[59] "Put briefly," Patterson writes, "as the relations between the previously segregated groups change, becoming objectively better for Afro-Americans, they will be experienced by Afro-Americans as getting much worse even as they are genuinely seen by Euro-Americans to be improving."[60] It is, therefore, not the experience of discrimination that is changing so much as the context in which it is perceived.[61] Patterson refers to this contemporary condition as "the objective paradox of integration" and calls its hostile consequences "the outrage of liberation."[62]

Parallel work suggests that Patterson's qualitative insights can be explored and assessed in quantitative terms.[63] The implications of a connected comparative conflict perspective may be more measurably quantitative than previously recognized in criminal justice research. Runciman suggests this when he observes that in a pure comparative model of perceived social and economic outcomes, "there will be definable points where the frequency of relative deprivation and thereby the likelihood of dissatisfaction . . . will reach their maximum and minimum."[64] He further notes that Merton and Rossi expect the racially poignant relationship between occupational opportunity and satisfaction to be curvilinear, quoting their statement that "this requires the sociologist to work out toward the conditions under which the observed linear relationship fails to obtain."[65]

Brooks places the general linear relationship between opportunity and grievance within the quantifiable context of residential and occupational segregation.[66] He suggests that middle-

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[59] Id at 54.

[60] Id at 54.

[61] Patterson, *The Ordeal of Integration* at 54 (cited in note 13) (noting that when relations between segregated groups change, their perceptions of the situation will be different but both will be correct).

[62] Id at 51, 64.

[63] Marcia Kirkpatrick Johnson, Robert Crosnoe, and Glen Elder, *Students' Attachment and Academic Engagement: The Role of Race and Ethnicity*, 74 Soc Educ 318, 320 (2001) (discussing qualitative measurement, such as test scores, of students' embedment in school community).

[64] Runciman, *Relative Deprivation and Social Justice* at 19 (cited in note 39).

[65] Id at 20, citing Merton and Rossi, *Contributions* at 236 n 7.

[66] Brooks, 73 S Cal L Rev at 1257 (cited in note 8).

class African-Americans moving more widely in the mainstream of American life may be caught off guard when their status does not protect them from police harassment, while their peers living and working in measurably more homogeneous racial environments may be conditioned to expect less.[67] The latter conditioning can result in the "experience of the expected" we noted earlier.[68]

Alternatively, Brooks suggests, "African-Americans in integrated (or mostly white) residential or workplace settings may have more occasions to observe racial bias."[69] He further notes that this may "place middle-class and upper-class blacks in a constant state of alert with respect to differential treatment."[70] This observation is consistent with Patterson's observation that when Afro- and Euro-Americans "meet more and more, the possibility for conflict is bound to increase."[71]

Schools also comprise an appropriate comparative developmental context in which adolescents initially form observations and resulting perceptions both as part of the educational process and on their own. "The subversive potentialities of knowledge," Runciman writes, "derive from its capacity to act as an independent influence on reference groups and thereby create relative deprivations where they did not exist before."[72] Runciman cites Ernest Bevin's remark from the early twentieth century that, "better close the schools than create aspirations and then deny them."[73] Of course, the schools were not closed, and instead were integrated to limited degrees. The implication is that the experience of integration with whites may be a key macro-level mechanism that unexpectedly drives perceived injustice. Yet we have already observed that there may be more to this hypothesis than a simple linear, black and white formulation implies.

In reviewing the writings of African-Americans on race relations, Brooks notes that "scholars speculate that better-off blacks are more concerned about the status of blacks compared to other groups as opposed to maintaining a strictly black reference group."[74] This pluralization of reference groups invites an exten-

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[67] Id.

[68] Id at 1255–56.

[69] Id at 1256.

[70] Brooks, 73 S Cal L Rev at 1256–57 (cited in note 8).

[71] Patterson, *The Ordeal of Integration* at 51 (cited in note 13).

[72] Runciman, *Relative Deprivation and Social Justice* at 25 (cited in note 39).

[73] Id.

[74] Brooks, 73 S Cal L Rev at 1256 (cited in note 8).

sion of the concept of a macro-level racial gradient into our socio-legal conflict theory. Specifically, it implies that the racial gradient of racial/ethnic effects on perceived adolescent criminal injustice results in African-American youth being comparatively more affected than Latino youth by the proportion of white youth in their schools.

The point, of course, is that both African-American and Latino-American students engage in comparisons of their treatment with that of white students. Again, it will be important in assessing this hypothesis to take differences in responses to police contacts into account. Still, the implication of this hypothesis is that, especially for African-American youth, it may be the novelty of the reduction in separateness and isolation that is as salient as the familiar problem of police harassment.

In framing our model, we must also take into account Merton and Rossi's prediction that there is likely a curvilinear limit to the perceived injustices we are examining.[75] This prediction bears an interesting connection to the idea that there are tipping points in processes of residential integration and segregation.[76] While the notion of tipping points usually is used pessimistically to predict the boundary of unsuccessful minority representation in previously non-minority communities,[77] a more optimistic hope is that the impact of integration on perceived injustice eventually can reach a point where inclusion with the majority group begins to become more benign for perceptions of injustice.

We cannot estimate in advance what this specific tipping point might be, and there is the further concern that the public schools' general failure to prevent white flight, and to be meaningfully integrated, place an upper bound on the possibilities of reaching such a tipping point. Nonetheless, if such a tipping point can be established, it would have obvious policy relevance. It would suggest that there is a point at which the ordeal of integration that Patterson describes begins to become more benign. Patterson's commitment to the ideal of integration implies his belief that such a tipping or turning point exists.[78]

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[75] Runciman, *Relative Deprivation and Social Justice* at 19 (cited in note 39).

[76] See, for example, Thomas C. Schelling, *Dynamic Models of Segregation*, 1 J Math Sociol 143, 181–86 (1971).

[77] See, for example, id.

[78] Patterson, *The Ordeal of Integration* at 52 (cited in note 13).

D. The Chicago Public Schools Study

It may be useful to illustrate some of what we have been suggesting in the context of the Chicago public schools, where we recently have been conducting research. School segregation has been increasing in the US since the 1980s.[79] Chicago continues to be one of the nation's most segregated cities.[80] The proportion of white students in Chicago public schools has decreased from 19 percent in 1980 to 10 percent in 2000.[81] During this same period the proportion of African-American students also has decreased from just over sixty percent to about fifty percent. In contrast, because of immigration and a higher birth rate, the proportion of Latino-American students is now more than one third.[82]

The conflicts accompanying changes in educational and residential segregation in Chicago are played out through the lives of young people and prominently feature encounters with the law, often in ways that link the schools with the police and justice system. Nearly every Chicago public school has one or more police officers stationed in and patrolling its hallways.[83] In 1992 the Chicago City Council passed a "gang loitering" law, which permitted police to arrest anyone they suspected of being a gang member for congregating with no apparent legal purpose.[84] The crackdown resulted in more than 42,000 arrests before a string of court decisions ruled the law unconstitutional.[85] The sheer volume of these arrests attests to the familiarity of the "experience of the expected" noted above.[86]

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[79] Erica Frankenberg, Chungmei Lee, and Gary Orfield, *A Multiracial Society with Segregated Schools: Are We Losing the Dream?* 4–5 (Harvard Civil Rights Project 2003), available at <http://www.civilrightsproject.harvard.edu/research/reseg03/AreWeLosingthe Dream.pdf> (last visited May 5, 2005); Erica Frankenberg and Chungmei Lee, *Race in American Public Schools: Rapidly Resegregating School Districts* 4 (Harv Civ Rts Project 2002), available at <http://www.civilrightsproject.harvard.edu/research/deseg/Race_in_ American_Public_Schools1.pdf> (last visited May 1, 2005).

[80] Gary Orfield and Chungmei Lee, Brown *at 50: King's Dream or* Plessy's *Nightmare?* 6 (Harv Civ Rts Project 2004), available at <http://www.civilrightsproject.harvard .edu/research/reseg04/brown50.pdf> (last visited May 5, 2005).

[81] Frankenberg, Lee and Orfield, *A Multiracial Society with Segregated Schools* at 57 (cited in note 79).

[82] Id at 57, 54.

[83] Paul Hirschfield, *Preparing for Prison?: The Impact of Legal Sanctions on Educational Performance* *49 (2003) (unpublished PhD dissertation, Department of Sociology, Northwestern University, on file with author).

[84] *City of Chicago v Morales*, 527 US 41, 45–47 (1999).

[85] Id at 49.

[86] See Brooks, 73 S Cal L Rev at 1240–62 (cited in note 8).

In 1997, Chicago further enacted a "reciprocal records agreement" which requires the city police department to release to each school's administrators on a daily basis the names of youth arrested off-campus.[87] These arrests can be used to justify school suspension and expulsion decisions, thus suggesting an interconnection beginning in adolescence of the child's school and justice system experiences.

By the 1960s, Gerald Suttles was writing about the racially and ethnically segmented neighborhoods of Chicago and the resulting conflicts between groups of youth as well as with the police.[88] One notorious practice in white neighborhoods involved the police picking up African-American youth who they suspected, but could not charge, with crimes.[89] The police dropped these youth off in locations where they knew they were likely to be beaten by local residents. A quarter century later this practice again came to light when the Chicago Police Board fired two officers who left two African-American youth in a former Back of the Yards white neighborhood, where they were assaulted by a gang of white youth.[90] Such incidents persist as familiar topics of discussion in Chicago public schools.[91] Citizen conflict with the police is an enduring feature of Chicago city politics.[92]

Data we have analyzed from a Chicago Consortium sample of ninth and tenth grade students parallels and adds insight to the above account.[93] The sample contains 18,251 students.[94] African-American students make up nearly half of the sample, Latino/Hispanic youth form more than a third, white adolescents

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[87] Michael Martinez, *Chicago Schools, Police Target Violent Juveniles; Records of Arrests, Offenses to Be Shared*, Chicago Tribune Metro 1 (Jan 8, 1998).

[88] Gerald D. Suttles, *The Social Order of the Slum: Ethnicity and Territory in the Inner City* 202–04 (Chicago 1968).

[89] Jim Casey and Scott Fornek, *Police Fire Two Officers Over Incident With Teens*, Chicago Sun-Times 5 (March 21, 1992).

[90] Id.

[91] See John Hagan, Paul Hirschfield, and Carla Shedd, *First and Last Words: Apprehending the Social and Legal Facts of an Urban High School Shooting*, 31 Sociol Methods & Research 218, 242–43 (2002).

[92] See, for example, Robert A. Slayton, *Back of the Yards: The Making of a Local Democracy* 29 (Chicago 1986).

[93] See Consortium on Chicago School Research, *Public Use Data Set: User's Manual* (2001), available at <http://www.consortium-chicago.org/surveys/pdfs/2001%20User%27s %20Manual.pdf> (last visited May 5, 2005). See also John Hagan, Carla Shedd, and Monique Payne, *Race, Ethnicity and Perceptions of Criminal Injustice: Toward a Comparative Conflict Theory of Similarity and Difference* (July 22, 2004) (unpublished paper presented at Symposium on Inequality, Crime and Justice: Challenges and Prospects, Ohio State University, Columbus, Ohio).

[94] Hagan, Shedd, and Payne, *Race, Ethnicity and Perceptions of Criminal Injustice* at 17 (cited in note 93).

just over ten percent, with Asian-American and Native American students forming the remaining parts of the sample.[95]

The Consortium survey included five measures of perceived criminal injustice in a four-point Likert scale[96] ranging from "strongly disagree" to "strongly agree" responses to the following statements: "people from my racial group are more likely to be unfairly stopped and questioned by the police"; "police treat young people worse than old people"; "police treat rich people better than poor people"; "police treat people from my racial group worse than people from other racial groups"; and "police treat males worse than females."[97] With strong agreement assigned the highest value and the scale scores ranging from 5 to 20, ninth and tenth grade Chicago youth scored an average of 14.16 on this scale.[98] More specifically, the results confirmed the predicted racial/ethnic gradient of scores ranging from African-American youth at 14.94, through Latino youth at 14.20, to white youth at 12.74 and Asian youth at 12.58.[99]

We have found further evidence in the Chicago schools that there is a substantial increase between ninth and tenth grades in African- and Latino-American perceptions of criminal injustice.[100] Both before and especially after this shift, African-American youth perceive more criminal injustice than Latino-American youth.[101] As expected, both groups of youth react very negatively to their contacts with the police during this period.[102]

However, while African-American youth are in relative terms exposed more frequently to police contacts, we have found evidence that Latino youth are actually more sensitive to police contacts when they are subjected to them. We believe that Latino youth, who are less familiar with police harassment than African-American youth, may fear that their contacts with the police place them in a similar risk status as Black youth.[103] In this im-

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[95] Id at 17–18.

[96] Compare this data and the theory used to analyze it with those scholars previously employed: Brooks, 73 S Cal L Rev at 1219–73 (cited in note 8); Hagan and Albonetti, 88 Am J Soc at 329–55 (cited in note 8); Wortley, Hagan, and Macmillan, 31 L & Socy Rev at 651–63 (cited in note 8) (elaborating on the Hagan and Albonetti study).

[97] Hagan, Shedd, and Payne, *Race, Ethnicity and Perceptions of Criminal Injustice* at 18 (cited in note 93).

[98] Id at 18.

[99] Id at 19.

[100] Id at 28–29.

[101] Hagan, Shedd, and Payne, *Race, Ethnicity and Perceptions of Criminal Injustice* at 29 (cited in note 93).

[102] Id at 29.

[103] Tatcho Mindiola, Jr., Yolanda Flores Niemann, and Nestor Rodriguez, *Black-*

portant sense, we have found in Chicago that there is commonal-ity as well as difference in African-American and Latino experi-ences of criminal injustice.[104] Regardless of the level of police con-tacts, both groups are more likely to perceive more criminal in-justice than white youth.[105]

The comparative perceptions of Latino and African-American youth are further shaped by the frames of reference that result from their daily experiences in school. As we have noted earlier, segregated residential and educational settings restrict the perceptions of ghettoized African-American and La-tino youth.[106] Meanwhile, more integrated institutional experi-ences increase contacts and comparisons across groups, height-ening their relative sensitivity and placing them on heightened alert for differential treatment.[107]

Our findings and a socio-legal conflict theory indicate that as this comparative frame of reference expands to include an awareness of the relative and group specific risks of exposure to mistreatment, minority youth who feel uniquely targeted by the police and courts become increasingly sensitive to the perception of injustice. In such contexts, the familiar "experience of the ex-pected" is newly perceived as outrageous.[108] This is the empirical confirmation of the pattern Patterson calls the "outrage of libera-tion."[109] We found this pattern in Chicago among both Latino and African-American youth who become more sensitive to percep-tions of injustice as they are exposed to increasing contact with white students in their public school experiences.[110] We note that this pattern parallels, and is likely a foundation for, the more skeptical attitudes toward criminal justice among more advan-taged and more highly educated African-American adults. There

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Brown Relations and Stereotypes 8 (U Texas 2002) (noting that the Texas Ku Klux Klan had a former deputy sheriff as its head and that it targeted both African-Americans and Hispanic-Americans). See also David L. Carter, *Hispanic Perception of Police Perform-ance: An Empirical Assessment,* 13 J Crim Just 487, 498 (1985) (finding that Latino Americans had lower satisfaction with police after contact).

[104] Hagan, Shedd, and Payne, *Race, Ethnicity and Perceptions of Criminal Injustice* at 32 (cited in note 93).

[105] Id at 36.

[106] See Patterson, *The Ordeal of Integration* at 51 (cited in note 13); Brooks, 73 S Cal L Rev at 1257 (cited in note 8).

[107] Brooks, 73 S Cal L Rev 1256–57 (cited in note 8).

[108] Hagan, Shedd, and Payne, *Race, Ethnicity and Perceptions of Criminal Injustice* at 35–37 (cited in note 93).

[109] See Patterson, *The Ordeal of Integration* at 64–65 (cited in note 13).

[110] Hagan, Shedd, and Payne, *Race, Ethnicity and Perceptions of Criminal Injustice* at 37 (cited in note 93).

may also be a further part of this story of socio-legal conflict that begins in adolescence and involves the minor nature of the contacts with police that often engender strong feelings of injustice among minority youth.

II. POLICE CONTACTS AND THE DEVELOPMENT OF PERCEPTIONS OF CRIMINAL INJUSTICE

Thus far we have discussed variation in the perceptions of criminal injustice between and among minority and majority group youth without giving much attention to the seriousness and frequency of the contacts these youth have with the police. There are indications that the minor nature but high frequency of these contacts heavily impact the perceptions of minority youth about police. To develop this point, it is important to first get a sense of youth encounters with the police in Chicago.

A.   Low Visibility Policing of Visibly Minority Youth

The Chicago Consortium research reveals that adolescent contact with the police—ranging from the low visibility experience of being "told off" and to "move on" through the official and therefore more visible contact of being arrested—is quite substantial.[111] At the lower visibility level, 45 percent of white students, 49 percent of African-American students, and 43 percent of Latino students were "told off" or told to "move on" by police.[112] At the officially more visible and severe level of sanctioning, the percentage of African-American arrests was greater than for other racial groups: 12 percent of white youth and 14 percent of Latino youth were arrested at least once, while 19 percent of African-American youth were arrested at least once.[113] These differences are notable in themselves, but even more notable are the ways in which youth in Chicago and elsewhere respond to police contacts.

Friedman and Hott's Chicago study of police contacts reported that young African-American and Latino men believe they are singled out and unjustifiably harassed by police in police interrogations.[114] They found that 71 percent of students reported the police had stopped them, while 62 percent of the African-

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[111] Id at 21.

[112] Carla Shedd and John Hagan, *Defiance and Compliance: A Critical Assessment of Race, Crime, and Perceptions of Criminal Injustice* 20 (NYU forthcoming).

[113] Id at 20–21.

[114] Walker, Spohn, and DeLone, *The Color of Justice* at 87 (cited in note 3).

American students who were stopped felt the police had been disrespectful.[115]

A similar survey of Cincinnati residents found that "nearly half (46.6 percent) of all African-Americans said they had been personally 'hassled' by the police, compared with only 9.6 percent of whites.[116] "Hassled" was defined as being "stopped or watched closely by a police officer, even when you had done nothing wrong."[117] Furthermore, police harassment of suspects produced a vicarious effect that differed by race: 66 percent of African-Americans reported feeling vicariously hassled, compared to only 12.5 percent of white respondents.[118]

This collection of studies makes a point which Brockett has provocatively summarized. She asserts: "[t]he idea of being considered a suspect is incarcerating. It is a form of punishment. This punishment, when acted upon by police, places African-Americans in a state of conceptual incarceration."[119] The implication for a socio-legal conflict theory of perceived injustice is that even low visibility police contacts that involve verbal exchanges have highly negative impacts on the perceptions of minority youth who feel, as a result, highly visible and vulnerable to the police.

This point became particularly apparent when we analyzed the Chicago Consortium school data. We had expected to find that perceptions of criminal injustice would rise as the visibility and severity of the police contacts increased.[120] Instead we found that low visibility contacts were perceived as most unjust, and the perception of injustice declined rather than increased with official visibility and severity.[121]

The gradient of unstandardized regression coefficients that summarized the relationship between the type of police contact and the perception of criminal injustice in our Chicago data ranged from 1.0 for being told off or told to move on, 0.8 for being

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[115] Id.

[116] Sandra Lee Browning, et al, *Race and Getting Hassled by the Police: A Research Note*, 17 Police Studies 1, 6 (1994).

[117] Id at 4.

[118] Id at 6.

[119] Ramona Brockett, *Conceptual Incarceration: A Thirteenth-Amendment Look at African Americans and Policing*, in Michael W. Markowitz and Delores D. Jones-Brown, eds, *The System in Black and White: Exploring the Connections Between Race, Crime, and Justice* 116–17 (Praeger 2000). For an analysis of racial stigma, see Glenn C. Loury *The Anatomy of Racial Inequality* 57–107 (Harvard 2002).

[120] Shedd and Hagan, *Defiance and Compliance* at 24–25 (cited in note 112).

[121] Id at 25.

stopped, 0.7 for being searched, to 0.2 for being arrested.[122] The point for a socio-legal conflict theory is that there is an inverse, rather than direct, relationship between the visibility and sever-ity of the sanction and the level of perceived injustice. As we note next, this relationship is very likely part of the reason that mi-nority youth in more integrated school settings, as well as more educationally and economically successful minority adults, per-ceive higher levels of criminal injustice. In spite of being advan-taged in other ways, they continue to be highly susceptible to these low visibility police contacts.

B.   Code-Switching and Police Contacts

Elijah Anderson's writings further delineate and demystify the attitudes and behavior of minority youth in response to the police and criminal justice system, and in so doing they add a further dimension to a socio-legal conflict theory of perceived in-justice.[123] Anderson distinguishes two urban minority attitude sets that he calls 'decent' and 'street' orientations.[124] It is impor-tant to note that he does not see these categories as fixed and emphasizes that individuals can oscillate between them.[125] Anderson refers to this oscillation as 'code-switching'; its impor-tant functions and dysfunctions are discussed further below.

Anderson asserts that an inner-city urban environment has produced a "code of the street," which amounts to a set of infor-mal rules governing interpersonal public behavior, including vio-lence.[126] According to Anderson: "At the heart of the code is a set of . . . informal rules of behavior organized around a desperate search for respect."[127] Anderson amplifies this statement by con-tending that "respect is fought for and held and challenged as much as honor was in the age of chivalry. Respect becomes criti-cal for staying out of harm's way."[128]

In particular, Anderson views his "code of the street" as a cultural adaptation to a profound lack of faith in the police and the judicial system.[129] As Sykes and Clark note in an earlier and

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[122]   Hagan, Shedd, and Payne, *Race, Ethnicity and Perceptions of Criminal Injustice* at 25, Figure 2 (cited in note 93).

[123]   See, generally, Anderson, *Code of the Street* (cited in note 34).

[124]   Id at 35–65.

[125]   Id at 35.

[126]   See id at 9–11.

[127]   Anderson, *Code of the Street* at 9 (cited in note 34).

[128]   Id at 66. For his discussion on the 'campaign for respect', see id at 66–106.

[129]   Id at 10.

related work, the police present a special problem for minority youth by insisting on a deference and respect that, in effect, demands their observance of an asymmetric status norm in which the police are inclined to return less respect than they receive from these youth.[130] All young people may have this problem in their encounters with the police, but minority youth have the further problem of perceiving these encounters in terms that devalue their racial status as well as their youth.[131]

Anderson adds to this analysis the concept of 'code-switching.' This is a practice that by necessity is common among minority youth, as well as some minority adults, who must shift between inner-city street contacts, and contacts with the larger world that includes police, teachers, employers and other agents of conventional authority.[132] He writes:

> There is also a great deal of "code-switching": a person may behave according to either set of rules, depending on the situation. Decent people, especially young people, often put a premium on the ability to code-switch. They share many of the middle-class values of the wider white society but know that the open display of such values carries little weight on the street: it doesn't provide the emblems that say, "I can take care of myself". . . Those strongly associated with the street, who have less exposure to the wider society, may have difficulty code-switching; imbued with the code of the street, they either don't know the rules for decent behavior or may see little value in displaying such knowledge.[133]

A person may exhibit both "decent" and "street" orientations when the circumstance dictates. For instance, when a person wants other neighborhood residents to make an evaluative judgment that confers a status upon him, he may exhibit both orientations.[134]

Vrij and Winkel have explored the subject of skin color in relation to police attitudes and actions toward citzens.[135] They draw

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[130] Richard E. Sykes and John P. Clark, *A Theory of Deference Exchange in Police-Civilian Encounters*, 81 Am J Soc 584, 596–99, 589–90 (1975).

[131] Id at 589–90.

[132] Anderson, *Code of the Street* at 36 (cited in note 34).

[133] Id.

[134] Id at 35–36.

[135] See Aldert Vrij and Frans Willem Winkel, *Crosscultural Police-Citizen Interactions: The Influence of Race, Beliefs, and Nonverbal Communications on Impression*

four distinct conclusions from their analysis. First, they conclude that police often make initial negative assessments based on skin color.[136] Second, they note that although skin color plays a role that promotes the negative assessment of citizens, once the interaction is underway, police often adopt a more respectful attitude in interactions with African-Americans.[137] They infer from this that the police often at least implicitly take the history of racism and its problematic consequences into account in assuming a less aggressive posture.[138] Third, they acknowledge that the initial negative assessments of African-American suspects are often due to the nonverbal "street" demeanor displayed to police.[139] Fourth, they suggest that campaigns designed to encourage police not to perceive skin color negatively generally do not work because of everyday experiences that, in the minds of officers, justify correlating skin color with criminality.[140]

Vrij and Winkel thus conclude that skin color is not necessarily an entirely one-sided factor in negative responses by police to African-American citizens.[141] In an additional analysis, they present evidence that when black citizens exhibit nonverbal "white" behaviors, police tend to treat them with more respect.[142] Brockett suggests that "this observation may be an indicator of the class differential that causes nonverbal behavior to be interpreted differently based on race."[143] She argues from this analysis that exhibiting respectful behavior by police, a kind of reverse code-switching, often can result in reciprocity of respect between citizen and police.[144]

Nonetheless, Walker, Spohn, and DeLone report that African-Americans have much less favorable attitudes toward the

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Formation, 22 J Appld Soc Psych 1546, 1546–59 (1992).

[136] Id at 1556 ("It appears as if skin color does influence selection in a negative way."). See also Brockett, *Conceptual Incarceration* at 119 (cited in note 119).

[137] Vrij and Winkel, 22 J Appld Soc Psych at 1555. (cited in note 135) ("It appears as if skin color does influence selection in a negative way . . . but . . . does not affect the communication phase negatively."). See also Brockett, *Conceptual Incarceration* at 119 (cited in note 141).

[138] Vrij and Winkel, 22 J Appld Soc Psych at 1555 (cited in note 135). See also Brockett, *Conceptual Incarceration* at 119 (cited in note 119).

[139] Vrij and Winkel, 22 J Appld Soc Psych at 1556 (cited in note 135). See also Brockett, *Conceptual Incarceration* at 120 (cited in note 119).

[140] Vrij and Winkel, 22 J Appld Soc Psych at 1555–56 (cited in note 135). See also Brockett, *Conceptual Incarceration* at 120 (cited in note 119).

[141] Vrij and Winkel, 22 J Appld Soc Psych at 1556 (cited in note 135).

[142] Id.

[143] Brockett, *Conceptual Incarceration* at 120 (cited in note 119).

[144] Id at 118–19.

police than do any other group,[145] and they report higher levels of use of force against them by the police.[146] They further cite research indicating that many African-American parents make special efforts "to teach their children to be very respectful when confronted by a police officer, out of fear that their children (and particularly their sons) might be beaten or shot if they displayed any disrespect."[147] We suggest that this is a parent-induced form of code-switching that is designed to protect African-American youth.[148]

In essence, code-switching is a device to change one's "public identity" (i.e. race, presumed class, etc.) to elicit a more favorable outcome in an otherwise threatening situation.[149] There is a class as well as race component to the use of code-switching among peers who we have noted are sometimes referred to as "acting white," and this device may play a key role when the situation involves the police.[150] Anderson has observed that social out-group members may often relish their conflicts with police, while employed or otherwise advantaged members of the same groups will more often seek to avoid conflict with police because they have much more to lose.[151] Thus code-switching in encounters with the police may occur more often among "middle-class" minorities, or among those with expanded frameworks of comparative experience.[152] There is considerable evidence for the patterns Anderson predicts, and therefore for adding code-switching as a final dimension of our larger socio-legal conflict framework.

As we note further below, code-switching requires a competency from minority youth that is neither a part of any formal educational curriculum nor demanded of majority group youth. The need to code-switch is instead a burden that is simply added to others assumed by otherwise already disadvantaged youth. It should not be surprising if this informal socio-legal obligation increases the cynicism of minority youth and exacerbates their perceptions of criminal injustice. Understanding this aspect of police contacts with minority youth is another avenue that can

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[145] Walker, Spohn, and DeLone, *The Color of Justice* at 90–91 (cited in note 3).

[146] Id at 99.

[147] Walker, Spohn, and DeLone, *The Color of Justice* at 100 (cited in note 3).

[148] Shedd and Hagan, *Defiance and Compliance* at 30 (cited in note 113).

[149] Id.

[150] Id.

[151] Elijah Anderson, *A Place on the Corner* 72 (Chicago 1978).

[152] Shedd and Hagan, *Defiance and Compliance* at 29–30 (cited in note 113).

be usefully developed by a conflict theory of perceived criminal injustice.

III. COGNITIVE LANDSCAPES OF CRIMINAL INJUSTICE

Sampson and Bartusch suggest the metaphor of "cognitive landscapes" to describe the demographic and ecological structuring of troubled American settings where "crime and deviance are more or less expected and institutions of criminal justice are mistrusted."[153] Some of the contours of these contemporary American landscapes are becoming clear as the surveys reviewed in this paper attend to the multiple groupings and age-graded settings in which citizens and law enforcement officials come into contact. We have chosen to focus on young persons in secondary schools because perceptions of justice and political institutions are formed at relatively young ages and remain persistent through adulthood. Our Chicago research reveals that perceptions of criminal justice become more negative in middle adolescence among Latino and African-American youth, while this is not apparent among white youth of the same ages in our sample.[154]

Mental maps of distrust have both generic and differentiated features, including on the one hand African-American skepticism of a range of governmental institutions in addition to agencies of criminal justice, and on the other hand distinctive Latino- and African-American perceptions of the justice system. These mental maps vary along dimensions that a socio-legal conflict theory can help to identify and explain. The group specific dimensions of a socio-legal conflict perspective require a comparative understanding of the hierarchical positions of subordinate and dominate groups in American society.

In American cities where Latino and African-Americans live, work, and attend school in varying degrees of proximity to one another as well as with whites, there is an implicit racial gradient of relative subordination that corresponds to the variable skin tones and racial visibility of minority groups. A socio-legal conflict theory acknowledges that in the aggregate, African-American youth are most visible and therefore at heightened comparative risk of justice system sanctioning relative to Latino Americans, who in turn are at greater risk than whites. These differential risks probably lead African-American youth to collec-

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[153] Sampson and Bartusch, 32 L & Socy Rev at 800 (cited in note 16).

[154] Hagan, Shedd, and Payne, *Race, Ethnicity and Perceptions of Criminal Injustice* at 35 (cited in note 93).

tively perceive more criminal injustice than Latino youth. Latino youth nonetheless react strongly to police contacts, and in turn, when stopped by the police, may perceive more criminal injustice than their white or African-American counterparts.

Our socio-legal conflict theory also emphasizes the comparative impact among visible minority group adolescents of exposure to white youth at school. Our Chicago Consortium survey results indicate that as Latino- and African-American youth encounter white youth in increasing numbers in school, they also become more skeptical about their criminal justice encounters. Richard Brooks anticipates this finding about perceptions of criminal injustice.[155] Orlando Patterson discusses it as well, more generally explaining it as an effect of inter-group contact, which he describes as an initial phase of the ordeal of integration and a preliminary source of resulting outrage that accompanies liberation from some of the constraints of segregation.[156]

Since this latter outrage is found to intensify in early to middle adolescence, in the period when these youth begin to confront the police in increasingly charged public encounters, there is reason to believe that this response to the criminal justice system is a precursor of a wider skepticism among visible minorities about a range of governmental institutions responsible for employment, housing, health care, voting, and other aspects of adolescent and adult life. Our point is that criminal justice contacts and perceptions formed in early to middle adolescence are of wider developmental significance in later phases of the adolescent and adult life course.

The phenomenon of code-switching may be a crucial part of this comparative developmental process that merits further study. Code-switching is uniquely required of visible minority youth who often must anticipate and manage low visibility unofficial police contacts, as well as official and higher visibility contacts and conflicts with the justice system, both of which can occur while upwardly mobile minority youth are coincidentally achieving improved positions of advantage and distinction in school. These youth are required to manage dual identities that straddle the demands of school, work and everyday living in minority and majority group settings. It seems likely that there are notable social-psychological costs to managing the demands of these dual identities, with one cost being a skepticism that gen-

[155] See Brooks, 73 S Cal L Rev at 1256–57 (cited in note 8).
[156] See Patterson, *The Ordeal of Integration* at 64–65 (cited in note 13).

eralizes from the police and the criminal justice system to other authority based governmental institutions.

CONCLUSION

In sum, we have argued that the structure of a socio-legal conflict theory of perceptions of criminal injustice will need to take into account a multiplicity of visible minority groups and police contacts in the developmental context of early and middle adolescence. Socio-legal conflict theory also will need to consider the comparative meanings, especially of injustice, that these encounters assume among visible minority youth who experience a widening range of contacts with white youth, and who consequently often become outraged by feelings of unjustifiable subordination. Finally, we have argued that a socio-legal conflict theory needs to explore how code-switching may be especially frustrating to these youth who must manage dual identities in successfully moving between the inner-city and mobility contexts that extend well beyond the borders of their segregated communities. A broader socio-legal benefit of developing a conflict theory of perceptions of criminal injustice along the lines we have outlined may be the insights this theory can provide into a wider range of later adolescent and adult perceptions extending well beyond the justice system.