Confusing Cause and Effect

Lawrence Rosenthal
CONFUSING CAUSE AND EFFECT

Lawrence Rosenthal
CONFUSING CAUSE AND EFFECT

Like Paul Butler, I did a stint in a United States Attorney’s Office in a majority-minority city, in my case, Chicago. At that time, my primary exposure to the typical African-American residents of the high-crime neighborhoods of Chicago was by watching them in the jury box. Like Butler, I learned that African-American jurors – or at least some of them – were frequently skeptical of cases against African-American defendants.

But unlike Butler, after I left that job I remained in law enforcement, working in a far more politically accountable branch of government – Chicago’s City Hall. There, I dealt on a regular basis with African-American residents of Chicago’s high-crime neighborhoods. I quickly learned that the residents of these communities were enormously dissatisfied with the criminal justice system. Yet, in some fifteen years in municipal government, not a single resident of one of these neighborhoods ever suggested that the Chicago Police Department stop enforcing the drug laws in their neighborhood. I did hear such proposals repeatedly, from ACLU lawyers, white liberals, and especially from law professors, but never once from anyone who lived in these high-crime neighborhoods. What they complained about, especially during the period discussed in Butler’s article, was the failure of the criminal justice system to keep them safe.

In fact, the spike in violent crime in the late 1980s and early 1990s hit young African-American males particularly hard. From 1984 to 1993, the homicide victimization rate per hundred thousand for whites aged eighteen to twenty-four rose from 11.9 to 17.1, while the homicide rates for African-American males in the same age range rose from 67.9 to 183.4.1 Something of a consensus exists among criminologists as to the cause of this spike – the introduction of crack cocaine into urban markets.2 Crack was unusually profitable, and street gangs engaged in violent competition to dominate this market. One respected study of a drug-dealing African-American gang found that over a four-year period, gang members had a 25% mortality rate.3 I have always remembered what an African-American police officer who grew up in one of the most violent areas of Chicago told me about programs to improve education and job training programs: “You have to remember, when I was seventeen, I didn’t expect to live to be twenty-one.”

Butler will have no truck with jury nullification in cases involving violent crime, and properly so, but he ignores the difficulties in prosecuting drug and gang-related violent crime. In communities terrorized by gangs, witnesses to violent crimes remain silent. Urban drug crime is

1 James Alan Fox, d U.S. Homicide, in THE CRIME DROP IN AMERICA 288, 300 tbl. 9.3 (Alfred Blumstein & Joel Wallman eds. 2d ed. 2006).
prosecuted with vigor because it has turned out to be a good proxy for the type of violent crime that destroys all too many inner-city communities, and it can be prosecuted without placing civilian witnesses in harm’s way.

So why are so many inner-city residents angry at the criminal justice system? The studies reach a uniform conclusion – satisfaction with local law enforcement is not a function of race, but of perceived local rates of crime and disorder. When the police seem helpless to stop the gangs and drug dealers, community residents naturally think the worst – the police must be inept or corrupt, and even racist, because they surely would not tolerate this state of affairs in white neighborhoods.

Rates of inner-city violent crime have declined considerably since the mid-1990s. Consider, for example, New York City. At the 1991 peak of the New York’s crime wave, the homicide victimization rate in New York was 58 per 100,000 population for African-Americans, 44 for Hispanics, and 8 for whites. By 1998, the African-American homicide victimization rate had declined to 17 per 100,000 population, the Hispanic rate to 8, and the white rate was at 4. A good deal of evidence suggests that New York City’s aggressive stop-and-frisk policy is responsible for a substantial proportion of the decline, although space precludes anything close to a full consideration of that issue. More important for present purposes, we have no reason to believe that a regime of jury nullification could have achieved the same result; if anything, it would have only promoted violent gang and drug competition, as the cost/benefit ratio associated with gang membership and drug dealing concomitantly declined.

Butler’s primary concern is with the morality of the criminal justice. I have no doubt that high rates of crime in impoverished African-American neighborhoods are a part of racism’s legacy. Still, I think it more important to save African-American lives than encourage symbolic protests of that legacy. A regime of race-based jury nullification achieves only the latter.

---

6 Id.