



Whitewashing Criminal Justice in Canada: Preventing Research through Data Suppression

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Introduction

Race and racism have long played an important role in Canadian law¹ and continue to do so. However, conducting research on race and criminal justice in Canada is difficult given the lack of readily available data that include information about race.² We show that data on the race of victims and accused persons are being suppressed by police organizations in Canada and argue that suppression of race prevents quantitative anti-racism research while not preventing the use of these data by the police for racial profiling. We also argue that when powerful institutions, such as the police, have knowledge that they keep secret or refuse to discover, it serves the interests of those institutions at the expense of the public. Fears that reporting of racial data will result in racial profiling or the stigmatization of racialized communities are not assuaged by the repression of this information. Stigmatization may still occur, and racial profiling can continue to happen, but without public knowledge. Quantitative anti-racist research requires consistent, institutionalized reporting of race data through all aspects of Canadian justice. We outline what data are available, what data are needed, and where consistency is lacking. It is argued that institutional preferences for white-washed data, with race and ethnicity removed, should be subrogated to transparency.

¹ C. Backhouse, "Racial Segregation in Canadian Legal History: Viola Desmond's Challenge, Nova Scotia, 1946," *Dalhousie Law Journal* 17, 3 (1994), 299; G. Bauriess, "Chinese Immigration, Chinese Stereotypes, and Chinese Labour," *Canadian Ethnic Studies* 19, 3 (1987), 15; S. Khan, "Influences Shaping Relations Between the East Indians and the Anglo Canadians in Canada: 1903–1947," *Journal of Ethnic Studies* 19, 1 (1991), 101; C. Knowles, "The Symbolic Empire and the History of Racial Inequality," *Ethnic and Racial Studies* 19, 4 (1996), 898; A.G. Sunahara, *The Politics of Racism* (Toronto: Lorimer, 1981); K.W. Taylor, "Racism in Canadian Immigration Policy," *Canadian Ethnic Studies* 33, 1 (1991), 1.

² S. Wortley, "A Northern Taboo: Research on Race, Crime, and Criminal Justice in Canada," *Canadian Journal of Criminology* 41 (1999), 261; C. Mosher, "Minorities and Misdemeanours: The Treatment of Black Public Order Offenders in Ontario's Criminal Justice System—1892–1930," *Canadian Journal of Criminology* 38 (1996); R. Kong and K. Beattie, *Collecting Data on Aboriginal People in the Criminal Justice System: Methods and Challenges* (Ottawa: Canadian Centre for Justice Statistics, 2005).

Background

Although historical research illustrates the prominent place that race has played in Canada throughout its history, more recent studies have begun to illustrate the role of race in modern policing. In particular, recent studies show that Blacks are over-represented in local police stops in Canada³ as they are in the United States⁴ and the United Kingdom.⁵ Aboriginals are over-represented in Canadian prisons, in some jurisdictions astonishingly so,⁶ as well as in other justice statistics.⁷ Race also plays a role in Canadian bail/remand decisions and decisions of accused to plead guilty.⁸ The issue of over-representation is so well established that sentencing provisions direct judges to pay particular attention to the circumstances of Aboriginal offenders.⁹

There are two main explanations for why racial minorities are over-represented in criminal justice statistics. First, these minorities are often located in positions of social disadvantage, putting them at greater risk of involvement in crime as both victims and perpetrators. Second, this over-representation can be explained, at least in part, by differential treatment by the police and other aspects of criminal justice, that is, systemic discrimination by race. One recent study has attempted to test these two theories by controlling for both neighbourhood characteristics and race, finding that the social characteristics of neighbourhoods were not able to completely explain the effect of race.¹⁰ There are documented individual cases of racial profiling where police have targeted individuals for increased supervision because of their race.¹¹

³ W.J. Closs and P.F. McKenna, "Profiling a problem in Canadian police leadership: the Kingston Police data collection project," *Canadian Public Administration* 49, 2 (2006), 143; M. Gittens, D. Cole, T. Williams, S. Sri-Skanda, and M. Tam, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Queen's Printer, 1995); D.M. Tanovich, *The Colour of Justice: Policing Race in Canada* (Toronto: Irwin Law, 2006).

⁴ R.J. Lundman and R.L. Kaufman, "Driving While Black: Effects of Race, Ethnicity, and Gender on Citizen Self-reports of Traffic Stops and Police Actions," *Criminology* 41, 1 (2003), 195.

⁵ B. Bowling and C. Phillips, *Racism, Crime and Justice* (London: Pearson Education, 2002).

⁶ S. Perreault, "The Incarceration of Aboriginal People in Adult Correctional Services," *Juristat* 29, 3 (2009), 1; N.L. Quann and S. Trevethan, *Police-Reported Aboriginal Crime in Saskatchewan* (Ottawa: Canadian Centre for Justice Statistics, 2000), catalogue no. 85F0031-XIE); S. Trevethan, M. Kowalski, A. Finn and G. Carriere, "Female Inmates, Aboriginal Inmates, and Inmates Serving Life Sentences: A One Day Snapshot [October 5, 1996]," *Juristat* 19, 5 (1999), 1.

⁷ P. Millar, "Punishing Our Way Out of Poverty: The Incarceration of Debtors in Alberta, Canada," *Canadian Journal of Law and Society* 25, 2 (2010), 149.

⁸ G. Kellough and S. Wortley, "Remand for Plea: Bail Decisions and Plea Bargaining as Commensurate Decisions," *British Journal of Criminology* 42 (2002), 186.

⁹ *R. v. Gladue* [1999] 1 S.C.R. 688; *Criminal Code* (R.S., 1985, c. C-46) §718.2.

¹⁰ R.T. Fitzgerald and P.J. Carrington "The Neighbourhood Context of Urban Aboriginal Crime," *Canadian Journal of Criminology and Criminal Justice* 50, 5 (2008), 523.

¹¹ In the matter involving a complaint under the Human Rights Act by Kirk Johnson against the Halifax Regional Police Service and/or Constable Michael Sanford, Human Rights Commission of Nova Scotia (2003); *Nassiah v. Peel* (Regional Municipality) Services Board 14, Human Rights Tribunal of Ontario 2007; *Phipps v. Toronto Police Services Board* 877, Human Rights Tribunal of Ontario 2009.

Moreover, surveys indicate that people perceive injustice, that is, unequal treatment by race, by the police and the justice system.¹²

The existence of racial minority over-representation in the justice system, public perception of racial profiling, and individual cases of racial profiling demonstrate the need for further research into the systematic treatment of race by criminal justice in Canada. However, the task cannot be accomplished without adequate data.¹³ In order to identify and ultimately reduce racism, we must embed tools for collecting appropriate and consistent data by race into our institutions. In 2002, the Auditor General of Canada lamented the lack of adequate data in the justice system, particularly on Aboriginals, women, and children.¹⁴ Although some progress has been made, data on race, as we intend to show, have been declining in recent years. If we are serious about reducing racism and making our law responsive to behaviour instead of personal characteristics, we must systematically collect data on race.¹⁵

Data Indicating the Race of Victims and Accused Persons in Canada

Statistics on victimization in Canada have two main sources, official crime statistics and victim surveys. The latter include several cycles of Statistics Canada's General Social Survey (GSS) devoted to general victimization, the Canadian data in the International Crime Victims Survey (ICVS) and a Statistics Canada survey on Violence Against Women (VAWS).¹⁶ The VAWS contains no information on victim race or ethnicity; many of its measures were incorporated into subsequent cycles of the GSS, beginning in 1999.¹⁷ The ICVS was conducted in Canada in 1989, 1992 and every four years since, and includes information on the victim's social location, such as age, gender, and indicators of social class, but no information on race or ethnicity.¹⁸ Statistics Canada conducts a survey of victimization every five years as part of its GSS programme. The GSS is a repeated cross-sectional survey representative of Canadians over the age of 16 years living

¹² S. Wortley, "Justice for All? Race and Perceptions of Bias in the Ontario Criminal Justice System—A Toronto Survey," *Canadian Journal of Criminology* 38 (1996), 439; K. MacQueen, "Everybody Loves Us," *Maclean's* (November 21, 2007).

¹³ We are not alone in calling for these data and their disclosure. See, e.g., Wortley, "A Northern Taboo"; Mosher, "Minorities and Misdemeanours"; Kong and Beattie, *Collecting Data on Aboriginal People in the Criminal Justice System*.

¹⁴ Auditor General of Canada, *Report of the Auditor General of Canada to the House of Commons*, Chapter 4: The Criminal Justice System: Significant Challenges (April 2004).

¹⁵ The socially constructed nature of the concept of race makes it subject to ontological challenges. Yet it is clear that it has important social and criminal justice consequences. In terms of crime, race has been shown to be socially predictive and biologically non-determinative. In other words, it matters in criminal justice, but it should not.

¹⁶ There is also a precursor to these surveys that, although not national, surveyed seven of Canada's largest cities: The Canadian Urban Victimization Survey conducted by the federal department of the Solicitor General in 1982.

¹⁷ Statistics Canada, *General Social Survey Cycle 13: Victimization (1999)—Public Use Microdata File Documentation and User's Guide* (Ottawa: Statistics Canada, 2000), catalogue no. 12 M0013GPE.

¹⁸ J.N. Van Kesteren, *Integrated Database from the International Crime Victims Survey (ICVS) 1989–2005, codebook and data* (Tilburg: INTERVICT, 2007).

in one of the ten provinces, excluding inmates of institutions.¹⁹ GSS questions on the ethnic background of its respondents have evolved since the first survey was conducted in 1988 when only sub-categories of White, such as “English,” “Irish,” or “German”, were part of the question. By the time of the most recent survey, collected in 2009, these categories were consistent with the census,²⁰ with a separate category for Aboriginal, further broken down into the sub-categories of “First Nations,” “Métis,” and “Inuk.” Moreover, the racial identity of the respondent’s spouse or partner was also requested. The first year that the categories of Aboriginal and Black were incorporated was 1999, making this the first year for practical longitudinal analysis of victimization by race or ethnicity. However, these variables are not available in the public-use versions²¹ of the data that are routinely available for university researchers. The public-use versions record only “visible minority”²² status, derived from the questions in the original survey. Further, this variable is of little use for research into the effects of race on justice outcomes as it confounds the concept of race with that of visible minority, thus combining categories that are over-represented with others that are under-represented, obscuring problems involving race.

These detailed data can be accessed through Statistics Canada’s Research Data Centre (RDC) programme at a limited number of locations by researchers affiliated with an accredited institution. Research requires approval of a research proposal by a review committee appointed by Statistics Canada.²³ Once approved, the researcher must pass a security check, sign an oath of secrecy, and agree to become a deemed employee of Statistics Canada. All research must be physically completed within one of the secure RDCs and the results must be vetted by a Statistics Canada analyst to ensure confidentiality before release of the data for publication in an academic forum.

To summarize, there are two ongoing surveys of general population victimization in Canada, but variables measuring race in a meaningful way have only been available through Statistics Canada’s GSS since 1999. Hence, Canadian researchers can, at present, conduct longitudinal analyses for ten-year time frames; however, the types of longitudinal analyses that can be conducted are limited because each survey is a cross-section, that is, the questions are not asked of the same people each time. Moreover, these data are only

¹⁹ M. Bécard and I. Marchand. *General Social Survey Cycle 20: Family Transitions (2006)—Public Use Microdata File Documentation and User’s Guide* (Ottawa: Statistics Canada, 2008), catalogue no. 12M0020G.

²⁰ Although the categories for response are the same (e.g., White, Chinese, South Asian, Black, and so on), the GSS words the question differently from the census.

²¹ Called Public Use Micro-Files (PUMFs) by Statistics Canada.

²² The Canadian Employment Equity Act defines “visible minorities” as “persons, other than Aboriginal persons, who are non-Caucasian in race or non-white in colour.” Under this definition, regulations specify that the following groups are included in the visible minority population: Chinese, South Asians, Blacks, Arabs, West Asians, Filipinos, Southeast Asians, Latin Americans, Japanese, Koreans, and other visible minority groups, such as Pacific Islanders. T. Chui, K. Tran, and H. Maheux, *Canada’s Ethnocultural Mosaic: The 2006 Census* (Ottawa: Statistics Canada, 2008), catalogue no. 97-562-X.

²³ Statistics Canada, *Application Process and Guidelines*, <http://www.statcan.gc.ca/rdc-cdr/process-eng.htm> (accessed July 21, 2010).

available under strictly controlled conditions, to a limited number of qualified researchers, and only at specific locations. Nevertheless, this research is possible for a variety of crimes, as long as the researcher is properly qualified and affiliated and the research design can overcome the cross-sectional nature of the data.²⁴

The second type of data that are found in the criminological literature are generated from police records and can contain data on both victims and accused persons. Canada has three country-wide census surveys of crime, made possible in part because the *Criminal Code* is federal legislation. The first of these is the Uniform Crime Reporting (UCR) Survey, which has been responded to by all police services in Canada since 1962, with the exception of a few Aboriginal police detachments. The UCR Survey records summary data on all persons charged, by crime, youth status, and gender.²⁵ The unit of analysis is the offence; race is not recorded. The second form of police survey data is the Uniform Crime Reporting Incident-based Survey (UCR-2). This survey has been collected since 1988 and records detailed information for the charges, victims, and persons charged²⁶ for each incident (i.e., the unit of analysis). Data are collected on the social characteristics of victims, including the apparent age, sex, Aboriginal indicator, victim–accused relationship, and birth date. Other than the Aboriginal indicator, no information on race is recorded except as the motivation for hate crimes. Coverage for the UCR-2 has been steadily increasing: the survey covered 90% of Canada’s population in 2006 and, as of 2009, includes police jurisdictions for 99% of Canada’s population.²⁷ Although overall reporting of crime has increased, the reporting of race has recently decreased, according to data obtained pursuant to a freedom of information request (see Figure 1). As of 2009, almost 20% of Canadian police services refuse, as an official policy, to report Aboriginal status for either victims or accused persons. Furthermore, most police services now fail to report²⁸ race—even the simple category of Aboriginal—so often that this value is missing for more than 80% of cases. There may be many reasons why police do not collect or report data on race. For example, they may claim it is not a relevant legal consideration. More skeptically, they may not wish to

²⁴ Statistics Canada also periodically publishes studies derived from these surveys. See, e.g., K. AuCoin and D. Beauchamp, “Impacts and Consequences of Victimization, GSS 2004,” *Juristat* 27, 1 (2007); M. Gannon and K. Mihorean, “Criminal Victimization in Canada, 2004,” *Juristat* 25, 7 (2005), 1; M. Gannon and A. Taylor-Butts, *Canadians’ Use of Crime Prevention Measures* (Ottawa: Canadian Centre for Justice Statistics, 2006), catalogue no. 85F0033MIE, no. 12.

²⁵ Canadian Centre for Justice Statistics Policing Services Program, *Uniform Crime Reporting Incident-Based Survey Reporting Manual* (Ottawa: Canadian Centre for Justice Statistics, 2008).

²⁶ A person could be a suspect as well as the person charged: Statistics Canada uses the term “Charged/Suspect—Chargeable” or CSC.

²⁷ Statistics Canada, *Summary of Changes Over Time—Uniform Crime Reporting Survey (UCR)* (Ottawa: Statistics Canada, 2010).

²⁸ Race data may or may not be collected: the data we show indicate whether it is reported to the Centre for Justice Statistics (CJS): police departments in Canada provide all data to CJS voluntarily.

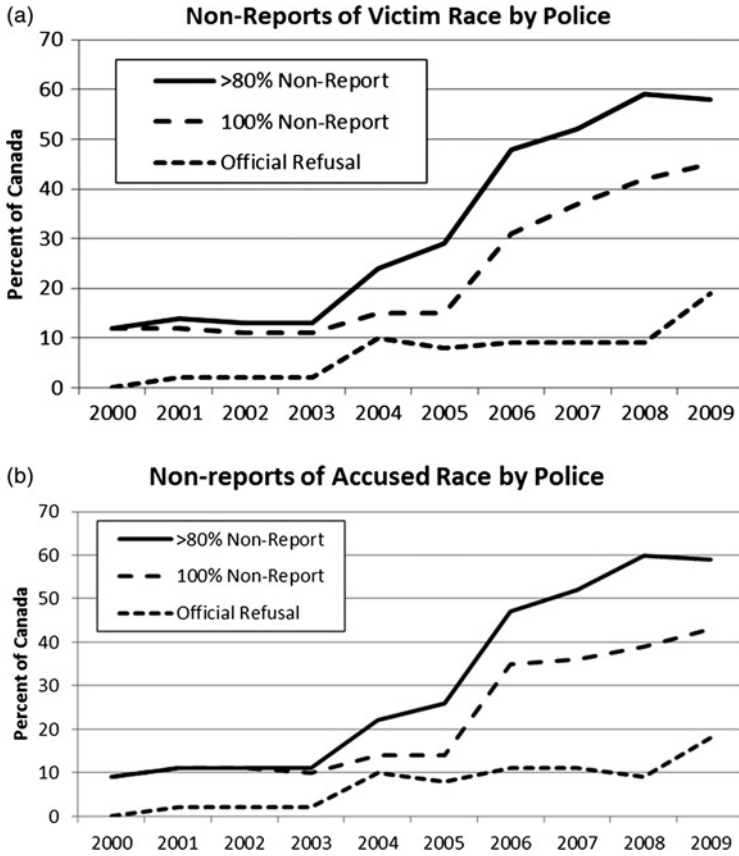


Figure 1 (a) Non-reporting of victim race by police, by the percent of Canada served.
 (b) Non-reporting of accused race by police, by the percent of Canada served

report because they do not see it to be in their interests as it may show that policing outcomes are unduly affected by race.²⁹

The decrease in reporting from 2000 to 2009 is only partly explained by the increase in the number of police services reporting data. In other words, there has been a trend towards increased refusal of police to report data on race. This trend of data suppression was led earlier in the decade by Edmonton and Toronto, but now includes major services such as the Royal Canadian Mounted Police (RCMP) and the Ontario Provincial Police (OPP). Many Aboriginal detachments also do not report race.

A third survey of police-reported crime in Canada is the homicide survey. The homicide survey has been collected on murder since 1961; other homicides (manslaughter and infanticide) were added in 1974. However, the types

²⁹ See A. Owusu-Bempah and P. Millar, "Research Note: Revisiting the Collection of 'Justice Statistics by Race' in Canada," *Canadian Journal of Law and Society* 25, 1 (2010): 97–104.

of data collected expanded dramatically in 1991, with incremental changes since 1997.³⁰ The unit of analysis, like the UCR-2, is the incident; each incident may involve one or more victim and accused. Access to the homicide data for researchers outside of government has recently been cancelled.³¹ The social characteristics recorded for the victim and accused include gender, birth date, age, marital status, detailed Aboriginal origin (North American Indian, Métis, Inuit), employment status, occupation, and victim relationship with closest chargeable suspect. No race is recorded other than Aboriginal origin. Although Aboriginal is an important racial category—arguably the most important in Canada—there are several other categories of interest to researchers and the public.³² For example, in some jurisdictions, such as Toronto or Halifax, other categories such as Black may be of greater interest. Furthermore, because the categories available in the GSS are more detailed and because these surveys are conducted by the same government agency, it would seem a logical step to make them consistent with one another. In this way, researchers studying crime victimization (or perpetration) and how it proceeds through the justice system could better understand the processes at play when people engage the police to deal with crime. Moreover, researchers would have a better tool to monitor the degree to which the police deal with racial and ethnic minority groups in an equitable manner. The degree to which police services refuse, as a matter of policy, to record the racial characteristics of the people they deal with should be a concern to racialized communities and the general public—we should know what is being hidden on our behalf.

Arguments against the collection of race-relevant data include the questionable accuracy of criminal justice data, the difficulties associated with trying to document race, as well as the possibility that the data will be used to further marginalize racialized groups. The collection of race data by the police can be used to justify increased surveillance of areas containing a particular racial group, exposing them to higher risk of arrest unrelated to their criminal behaviour. In this way, the over-representation of minorities is exacerbated instead of ameliorated. Attempts to shield minorities from this perceived danger have been called alarmist and paternalistic.³³ It is also naïve; police may collect these data formally or informally, whether or not they are released to the public. Moreover, proxies such as neighbourhoods can be used to increase police activity based not only on criminal activity

³⁰ Statistics Canada, *Homicide Survey*, online: <http://www.statcan.gc.ca/cgi-bin/imdb/p2SV.pl?Function=getSurvey&SDDS=3315&lang=en&db=imdb&adm=8&dis=2#a2>, accessed July 27, 2010.

³¹ Statistics Canada cites budgetary reasons.

³² Aboriginal origin is an important category because they form a large minority and are highly over-represented in the Canadian Criminal Justice system. At least one wrongful conviction in Canada has been partially attributed to racism against Aboriginals. See Nova Scotia, *The Report of the Royal Commission on the Donald Marshall, Jr., Prosecution. Vol.1 Commissioner's Report—Findings and Recommendations* (Halifax: The Province of Nova Scotia, 1989): 148.

³³ Thomas Gabor, "The Suppression of Crime Statistics on Race and Ethnicity: The price of Political Correctness," *Canadian Journal of Criminology* 36, 2 (1994), 153.

but also racial composition.³⁴ The issue of capturing valid information can be dealt with simply by asking the question in the same way as the census; the issue is the capacity to compare population victimization with that reported by the police.

To summarize, data on race in the Canadian justice system are reported by the police services of only a tiny minority of Canadians, and the data that are available capture only one racial category: Aboriginal. Population data on victimization are available for race, and the categories are now consistent with the census. Race data are not systematically available for any stage of the prosecution process, although there are plans to introduce an Aboriginal indicator into data collected from Canadian Criminal courts.³⁵ Corrections data for both adults and youth include an Aboriginal indicator that is reported by most jurisdictions.³⁶ Public Safety Canada also produces a “one-day snapshot” that indicates the self-identified race of all offenders under the supervision of the Correctional Service of Canada (CSC).³⁷ Because many provinces already collect detailed racial categories for prisoners, it would seem to be a simple addition for Statistics Canada to collect correctional data. Although the one-day snapshot provides an overall picture of the race of offenders under federal supervision at one specific point during the year, it is limited with regard to details about sentence length, regional variations, and so on—information that would be useful for uncovering bias. As highlighted above, the systematic collection of data indicating the race of those who come into contact with our justice system continues to be absent from the myriad data collected by Statistics Canada.

Conclusion

This article has reviewed the state of racial data in the Canadian criminal justice system, revealing that many police services actively suppress racial data when reporting crime, and this tendency appears to be increasing. Moreover, the racial data currently collected in crime statistics lack the categories collected for other purposes such as employment equity, the Census, and the General Social Survey of crime victimization. The categories used in all of these data collections are not always consistent, making comparisons difficult. Some provinces keep correctional data on more racial categories than “Aboriginal,” so it may be a fairly simple incremental step to systematically report these data nationally. For accurate analysis of crime in its social context, consistent variables that measure relevant constructs are needed. Canada’s data on race in criminal justice are not consistent and the construct of “visible minority,” when not broken down into its constituent parts, is problematic. The construct of visible minority obscures racial

³⁴ Albert J. Meehan and Michael C. Ponder, “Race and Place: The Ecology of Racial Profiling African American Motorists,” *Justice Quarterly* 19, 3 (2002), 399.

³⁵ Kong and Beattie, *Collecting Data on Aboriginal People in the Criminal Justice System*.

³⁶ *Ibid.*

³⁷ Public Safety Canada, *Corrections and Conditional Release Statistical Overview: 2008* (Ottawa: Public Works and Government Services Canada, 2009).

differences by averaging groups that are over-represented with those that are under-represented. The Public Use Micro-Files (PUMFs) for the GSS, produced by Statistics Canada, could be amended to contain these data.

It may not be a coincidence that where accountability and measurement are mandatory, reductions in racial disparity have been noted. The removal of access to homicide data by non-governmental researchers and the squeezing of access to information under Canada's freedom of information laws³⁸ represent a disturbing trend. Furthermore, the suppression—whitewashing—of racial data by a powerful public institution like the police, more than contradicting democratic values, may be hiding inequalities that, in the end, harm police effectiveness and deteriorate community relationships. Worse, it could presage further deterioration in these inequalities, degrading an already challenging situation. Policing effectiveness, which depends on the alignment of arrests to behaviour and effective community relationships, is not served well by this approach.

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³⁸ Steven Chase, "Can Access to Information Be Fixed?" *Globe & Mail* [Toronto] (January 15, 2011), A4.

