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Factors that influence perception of seriousness of crime : The application of race, type of offence and dispositional empathy to an Australian context

Giselle Larkins
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Factors that Influence Perception of Seriousness of Crime: The Application of Race,
Type of Offence and Dispositional Empathy to an Australian Context

Giselle Larkins

A Report Submitted in Partial Fulfilment of the Requirements for the Award of Bachelor
of Arts Honours, Faculty of Computing, Health and Science,

Edith Cowan University

October, 2008

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Factors that Influence Perception of Seriousness of Crime: The Application of Race,
Type of Offence and Dispositional Empathy to an Australian Context

Giselle Larkins

A Report Submitted in Partial Fulfilment of the Requirements for the Award of
Bachelor of Arts Honours, Faculty of Computing, Health and Science,

Edith Cowan University

August, 2008

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Abstract

The perception of seriousness of crime may be altered by numerous extra-legal factors within the criminal justice system. It is of significant importance to understand the ways in which various factors contribute to the differential treatment of defendants. Prejudicial attitudes towards Indigenous people pervade all areas of Australian society, including the criminal justice system (Paradies, 2005). For instance, although Indigenous people form approximately 2.4% of the general Australian population, they contribute to 24% of the total prison population (ABS, 2007; Paradies). Despite this, few studies have actively sought to better understand the factors that may contribute to varied perceptions of crimes committed by either Caucasian or Indigenous Australians. The aim of this review was to thus consider the effect of race of the defendant and type of crime committed upon offence perception. Furthermore, the psychological variable of dispositional empathy was reviewed in its application to the judgement of crime. The review found that there was a dire lack of research evident concerning the effect of factors upon the perceptions of crimes committed by Caucasian and Indigenous Australians. The studies conducted upon the effect of race in Australia have been inconclusive and contradictory. Furthermore, the effect of type of crime has not been actively explored within Australian studies, with only certain crimes, such as interpersonal and property offences, being applied to research. Finally, research into the effect of dispositional empathy on perceptions of crime is virtually non-existent. The area of perceptions of seriousness of crime thus requires significantly more research within an Australian context. It can be hoped that, from such research, the disadvantage of Indigenous Australians and also Caucasian Australians, within the justice system can be finally overcome.

Giselle Larkins

Associate Professor Denise Charman

25th August, 2008

Factors that Influence Perception of Seriousness of Crime: The Application of Race, Type of Offence and Dispositional Empathy to an Australian Context

Numerous extra-legal factors can affect perceptions of the seriousness of crime, and consequently the differential sentencing of defendants (Jones, 1997). For instance, both crime type and race of the defendant have been demonstrated to alter crime perceptions consistently (e.g. Benson & Walker, 1988; Bushway & Piehl, 2001). In the present Australian justice system, Indigenous Australians are the most over-represented and disadvantaged group (Pedersen & Walker, 1997). That is, despite forming approximately 2.4% of the general population, they constitute 24% of inmates currently serving a sentence within an Australian prison (ABS, 2007; Paradies, 2005). Despite this worrying statistic, minimal research has considered the factors that may alter perceptions of crimes committed by Indigenous Australian and Caucasian Australian offenders.

A wealth of studies within the literature have documented a significant effect of race upon sentencing and perception of crime seriousness (Sampson & Lauritsen, 1997). This has been found to be especially so when the type of crime committed is congruent with the racial stereotype of the offender (Gordon, 1990). However, such studies have not been conducted within an Australian context, but focus rather upon the justice system of the U.S.A. (e.g. Johnson, 2003; Mustard, 2001; Spohn & Holleran, 2000).

Furthermore, minimal research has studied the effect of psychological variables, such as dispositional empathy, upon perceptions of crime within the Australian justice system (e.g. Feather & McKee, 2008). Dispositional empathy occurs when similar individuals can empathise more readily with one another, and may account for a great

deal of variance in sentencing and crime perception concerning racial minority defendants (Olsen-Fulero & Fulero, 1997). Research on the effect of dispositional empathy within the justice system has been conducted in other jurisdictions, for instance the American justice system (e.g. Archer, Foushee, Davis & Aderman, 1979; Kerr, Hymes, Anderson & Weathers, 1995). However, there is a dire lack of research regarding dispositional empathy and its application to the Australian justice system. Thus, it is largely unknown whether the findings of studies upon factors that influence perceptions of crime, can be generalised from other jurisdictions to that of Australia.

This literature review will thus consider research on the effects of race, crime type and dispositional empathy upon perceptions of crime seriousness. It will firstly critique the methodological limitations associated with measuring the construct of crime seriousness. Then, it will examine the literature regarding differential crime perception and sentencing for minority group defendants. In particular, this review will consider the effect of 'racially congruent', or stereotypically associated, offences upon perceptions of crime seriousness. Thus, the crimes of assault and fraud will be differentiated, and the distinct ways which they are perceived when committed by offenders of differing races discussed. Lastly, the role of the psychological variable of dispositional empathy will be considered. Thus, the aim of this review is to enhance understanding of factors that influence perceptions regarding the seriousness of crime and subsequently the differential sentencing of racial minority group members. Furthermore, it aims to identify areas of crime perception that require further research, especially in regard to crimes committed by Caucasian and Indigenous Australian offenders.

Seriousness of Crime

Defining Crime 'Seriousness'

Perception of seriousness of crime has been an important consideration within the literature primarily since the publication of Sellin and Wolfgang's (1964) *The Measurement of Delinquency*, which offered a means to systematically evaluate perceptions of crime (Cohen, 1988; Herzog & Rattner, 2003; Parton, Hansel, & Stratton, 1991). Most studies to the present time have found that the notion of crime seriousness is a complex variable that cannot be encapsulated by a single definition (Stylianou, 2003; Warr, 1989). For instance, it can be taken as meaning harmfulness, wrongfulness, damage inflicted or punishment required (O'Connell & Whelan, 1996; Warr). Although there is disagreement as to a singular definition of seriousness, most studies have found a large degree of consistency of individual participant ratings regarding the seriousness of particular crimes (e.g., Herzog & Rattner; Levi & Jones, 1985; O'Connell & Whelan; Rossi, Waite, Bose, & Berk, 1974; Warr).

Measuring Crime Seriousness

Frequently, individual perception of crime seriousness is captured by utilising a survey method (Field, Beven, & Pedersen, 2008; Rosenmerkel, 2001). The results of such surveys are important to the functioning of the criminal justice system (CJS) as they can inform policy making and estimates of crime frequency (Herzog & Rattner; Levi & Jones, 1985; Parton et al., 1991, Warr, 1989). In surveys, participants are presented with a vignette describing the offence and then asked to answer questions regarding the severity of the crime and the sentence that should be imposed (Field et al.; Parton et al.). The higher the ratings given on each scale, the more severe the crime is considered by participants (Levi & Jones). Alternative methods of measuring crime

seriousness have been proposed, such as the monetary value method, whereby the harm of crime is measured by the total cost of its damage (Cohen, 1988). Such an alternative does not specifically measure public opinion concerning perceptions of crime seriousness, however, it is a more accurate figure for policy making and statistical assessment of crime severity (Cohen; O'Connell & Whelan, 1996). Such alternatives were proposed in light of the methodological problems that may arise with vignette-style crime seriousness surveys (Cohen; O'Connell & Whelan).

Methodological Issues

The measurement of perceptions of seriousness of crime has numerous validity issues (O'Connell & Whelan, 1996). As previously discussed, the term 'crime seriousness' can have differing meanings to individuals (O'Connell & Whelan; Rosenmerkel, 2001; Warr, 1989). This is especially so when minimal details regarding the offence are presented, as it means that each participant must construct their own interpretation of the crime (Rosenmerkel). Furthermore, crime perceptions are often quantified utilising a likert scale, which can make comparison of ratings between participants difficult (O'Connell & Whelan). Another issue with the measurement of crime seriousness is that the results of crime seriousness surveys are often generalised to the wider population, which can be problematic if the sample measured is not a representative one (Levi & Jones, 1985).

Finally, the literature on crime seriousness to date, has demonstrated consistency but not absolute agreement (Herzog & Rattner). The rankings of seriousness of crimes respective to each other are consistently similar across participants. For instance, violent crimes are almost always ranked as the most serious crimes by participants (Cohen-Raz, Bozna & Glickson, 1997; Herzog & Rattner; Levi & Jones; Rossi et al., 1979).

However, specific ratings of the seriousness of each crime are vastly different according to each individual and associated demographic variables (Eisenberg & Lennon, 1983; Herzog & Rattner; O'Connell & Whelan). For instance, property offences are often rated as more or less serious according to socioeconomic status, gender, and other factors concerning the participant (Eisenberg & Lennon; Hoffman, 1977; Levi & Jones). Thus, it is of immense importance to better understand the numerous factors that can influence perceptions of seriousness of crime within the CJS (Herzog & Rattner, 2003).

Factors that Influence Perception of Seriousness of Crime

It has been well documented within the literature that numerous extra-legal factors, or variables beyond legal control, may have a significant impact on sentencing and the perception of crime at all levels of the CJS (Bodenhausen, 1988; Jones, 1997; McCarthy & Lindquist, 1984; Parton et al., 1991). Perception of crime and sentencing are highly interrelated constructs as they directly impact one another (Davis, Severy, Kraus & Whitaker, 1993). For instance, more severe sentencing will eventuate if crimes are perceived to be more serious (Davis et al.). Thus, this review considers both sentencing and perception of crime in an attempt to understand the factors that may contribute to differential consideration of crimes committed.

Factors that can influence the sentencing of defendants are numerous, for instance: gender (e.g. Bickle & Peterson, 1991; Blumstein & Cohen, 1980; Daly & Tonry, 1997; Engen, Gainey, Crutchfield & Weis, 2003; Frazier, Bock & Henretta, 1983; Haghghi & Lopez, 1998; Miller, Rossi & Simpson, 1986), race or ethnic origin (e.g. Bickle & Peterson; Bodenhausen, 1988; Bodenhausen & Lichtenstein, 1987; Blumstein & Cohen; Cohen-Raz et al., 1997; Daly & Tonry; Devine, 1989; Duncan,

1976; Engen et al.; Herzog, 2008; Hurwitz & Peffley, 1997; Jones; Miller et al.; Myers, 1987), type of crime committed (e.g. Friedman & Rosenbaum, 1988; Rosenmerkel, 2001), age (e.g. Myers; Spohn & Holleran, 2000; Steffensmeier, Ulmer & Kramer, 1998) and socioeconomic status (e.g. D'Alessio & Stolzenberg, 1993; Mazzella & Feingold, 1994; Myers). It is not within the scope of this review to evaluate all variables that may influence the perception of crime. Thus, only the effect of race and type of crime on the perception of seriousness of crime and sentencing will be reviewed, before the psychological variable of dispositional empathy is considered.

Race and Ethnic Origin

The Concept of Race and Racism

Race is defined as the physical characteristics of individuals that distinguish their ethnic origins (Sampson & Lauritsen, 1997). Racism is considered to occur when individuals are treated or considered differently based on such physical characteristics (Britt, 2000; Howard, 1975; Sweeney & Haney, 1992). Numerous studies have documented the existence of racism in society to the present day (e.g. Dunn, Forrest, Burnley & McDonald, 2004; Dunn, Gandhi, Burnley & Forrest, 2003; Dunn & McDonald, 2001; Feather & McKee, 2008; Mellor, 2003; Pedersen, Griffiths, Contos, Bishop & Walker, 2000; Sweeney & Haney).

However, the overt racism of the past has evolved to a more subtle and socially appropriate presence of bias towards racial minority groups, now known as 'new racism' (Mellor, 2003; Sniderman, Piazza, Tetlock, & Kendrick, 1991; Sommers & Ellsworth, 2000). The main basis of new racism is negative and derogatory stereotypes towards racial minority groups that are indirectly expressed (Dunn et al., 2004). Thus, racism in the CJS at present is encouraged through the formation and application of

racial stereotypes that associate minority groups with being violent, hostile, criminal, and unintelligent (Devine, 1989; Herzog, 2003; Sampson & Lauritsen, 1997). The topic of how racial discrimination affects perception of seriousness of crime and sentencing of defendants within the CJS has been considered for almost half a century within the literature, with the results still remaining largely inconsistent and contradictory (Britt, 2000; McCarthy & Lindquist, 1984; Sommers, 2007).

The Sentencing of Racial Minority Defendants

Four main waves of research have occurred since the 1960s in an attempt to clarify whether race alters the perception of crime and subsequent sentencing within the justice system (Zatz, 1989). Furthermore, numerous meta-analyses have been conducted on the effect of race within the CJS, only to render inconclusive results (e.g. Hagan, 1974; Kleck, 1985; Mazzella & Feingold, 1994; Mitchell, 2005; Mitchell & MacKenzie, 2004; Sweeney & Haney, 1992; Pratt, 1998). Such meta-analyses are also often incomparable due to the differing selection criteria utilised (Sommers, 2007). However, from such research, three main perspectives regarding the treatment of racial minority members within the CJS have emerged (Pratt, 1998). These are the differential involvement perspective, the interactionist perspective and the direct-impact perspective, and will be outlined in the following sections, as well as their associated findings regarding race in the CJS.

The Differential Involvement Perspective of Sentencing

The differential involvement perspective holds that minority groups are sentenced more severely and are over-represented within the CJS as they are involved in more crimes (Pratt, 1998). Furthermore, this view postulates that the crimes committed by minority groups are consistently more severe and thus warrant harsher sentencing

and punishment (Pratt; Kleck, 1985; Wilbanks, 1987). This perspective suggests that racism is not present within the CJS, and that offenders are sentenced according to legally relevant factors only. This viewpoint has been mainly supported by the second wave of research, which was conducted in the 1970s and 80s, and found no effect of race upon sentencing when confounding variables were controlled for (e.g. Blumstein, 1982; Bridges, Crutchfield, & Simpson, 1987; Bullock, 1961; Dane & Wrightsman, 1982; Daudistel, Hosch, Holmes & Graves, 1999; Engen & Gainey, 2000; Hagan, 1974; Hindelang, 1978; Kempf & Austin, 1986; Kleck, 1981; Kleck, 1985; Langan, 1985; Lotz & Hewitt, 1977; McGuire & Bermant, 1977; Nickerson, Mayo & Smith, 1986; Welch, Spohn & Gruhl, 1985; Wilbanks, 1987; Wolfgang & Reidel, 1973).

For instance, Hagan (1974) found Black defendants were involved in more frequent and more serious offending and that race was not significantly correlated with capital punishment. Kleck (1981) supported this by finding White offenders to be equally likely to be sentenced to death for an offence as Black offenders. Although Black defendants were more likely to be sentenced to death when their offence involved a White victim, Kleck found that such sentences were mainly influenced by legal factors such as the severity of the offence. Kleck (1985) also reported that Black individuals in the U.S.A were engaged in the commission of more offences than their White counterparts. However, studies regarding the application of the death penalty generally have small sample sizes as it is an exceptional form of punishment (Hagan). This limitation may affect the generalisability of such results to the wider justice system. In addition, more recent studies conducted on the application of the death sentence to differing races within the American justice system have found that racial minorities are in fact more likely to be sentenced to death than their majority group

counterparts, especially when a White person has been victimised (Radelet & Pierce, 1991). Thus, the differential involvement perspective has had mixed support within the literature (Pratt, 1998).

The Interactionist Perspective of Sentencing

A second theoretical perspective, the interactionist perspective, considers the concurrent impact of other variables on sentencing of defendants of differing races (Pratt, 1998). The interactionist perspective states that there is an effect of race on sentencing decisions, but only when mediating variables (such as prior offences committed) are taken into account (Pratt). That is, race interacts with other factors to contribute to discrimination in the CJS (Pratt; Thompson & Zingraff, 1981). Within the research, the interactionist perspective is mainly supported with studies from the third wave of sentencing research which found that race indirectly affected differential sentencing of defendants (e.g. Blumstein, 1982; Bridges & Crutchfield, 1988; Bullock, 1961; Dane & Wrightsman, 1982; Daudistel et al., 1999; Engen & Gainey, 2000; Hagan, 1974; Hindelang, 1978; Kempf & Austin, 1986; Kleck, 1981; Kleck, 1985; Langan, 1985; Lizotte, 1978; Lotz & Hewitt, 1977; McGuire & Bermant, 1977; Nickerson et al., 1986; Skolnick & Shaw, 1997; Welch et al., 1985; Wilbanks, 1987; Wolfgang & Reidel, 1973). The third wave was conducted around the same time as the second wave, however, many of the studies were contradictory in their findings (Sampson & Lauritsen, 1997). The fourth wave of research conducted within the sentencing literature also contributes to the interactionist viewpoint (Zatz, 1989). It is considered to extend from the 1980s to the present time, and has largely focused on factors such as judicial discretion and how it can disadvantage minority group members (Albonetti, 1991; Johnson, 2003; Mustard, 2001; Sampson & Lauritsen; Zatz).

For instance, some of the variables found to indirectly alter the sentences given to defendants of varying races include: societal context and urban living (Peterson & Hagan, 1984; Miethe & Moore, 1986), attractiveness of the defendant (Bagby, Parker, Rector, & Kalemba, 1994), juror motivation to attend to detail (Sargent & Bradfield, 2004), salience of race (Sommers & Ellsworth, 2000), body language (Everett & Nienstedt, 1999) and numerous others. Hence, a multitude of extra-legal variables can contribute to the effect of race in sentencing decisions, as purported by the interactionist perspective (Pratt, 1998).

The Direct-Impact Perspective of Sentencing

The last perspective, the direct-impact perspective, is heavily influenced by social criminological theories such as Marxian theory and purports that racial discrimination is frequent within the CJS (Pratt, 1998). It is stipulated by the direct-impact perspective that inequality results between races due to extreme power differentials present within the structure of society. That is, the hierarchical structure of society encourages the segregation of dominant majority groups and minority groups (Kemmelmeir, 2005; Pratt, 1998; Sampson & Lauritsen, 1997). Such segregation is achieved primarily through persecution and discrimination of minority groups, both at an individual and institutional level (Kemmelmeir). An example of institutional discrimination would be the harsher sentencing of racial minorities within the CJS (Kemmelmeir).

The unequal sentencing of minority and majority group defendants has long been recorded within the literature for both criminal and even civil offences (Bushway & Piehl, 2001; Holmes et al., 1996; Wuensch, Campbell, Kesler & Moore, 2002). Indeed, the first wave of racial sentencing research provides the most support for this

perspective (e.g. Bernard, 1979; Crawford, Chiricos & Kleck, 1998; Chiricos & Waldo, 1975; Dane & Wrightsman, 1982; Green, 1964; Johnson, 1957; Johnson, Whitestone, Jackson & Gatto, 1995; Levin, 1977; Mazella & Feingold, 1994; Sweeney & Haney, 1992; Uhlman & Walker, 1980; Unnever, Frazier & Henretta, 1980; Ugwuegbu, 1979; Zatz, 1985). However, the first wave of research had numerous methodological flaws in study design (Sampson & Lauritsen, 1997). Furthermore, other studies have documented the favourable effect of a reduced sentence for minority groups within the CJS, or a bias towards majority group defendants (also known as the 'black sheep effect') (Feather & Souter, 2002; Shaw & Skolnick, 1995). Yet more recent studies, with stronger study designs, have supported the notion that crimes by minority groups are perceived to be more serious, and are sentenced more harshly accordingly (e.g. Johnson, 2003; Mustard, 2001; Spohn & Holleran, 2000).

Minority group defendants have been demonstrated to receive more severe sentences, with less chance of obtaining a downward departure from the recommended sentence, than their majority group counterparts (Johnson, 2003; Mustard, 2001; Spohn & Holleran, 2000). Judicial discretion is also less likely to be applied to minority group defendants by judges, who are usually representative of majority group members (Albonetti, 1991). Racial discrimination whilst sentencing can also be noted in the perception of seriousness of crime by individuals. For instance, mock jurors and participants are more likely to return a guilty verdict and sentence more severely for offenders who are associated with a racial minority group (see e.g. Bodenhausen, 1988; Bodenhausen and Lichtenstein, 1987; Duncan, 1976; Hurwitz & Peffley, 1997; Rector, Bagby & Nicholson, 1993). Studies have also found that judges are more likely to consider minority defendants at risk to reoffend and rely on such stereotypes to

minimise time and resource expenditure (Albonetti, 1991; Albonetti, 1997). Numerous studies within the literature have purported that negative stereotypes regarding minority defendants are consistently utilised within the CJS (Johnson; Spohn & Holleran).

Racial stereotyping and the direct-impact perspective on sentencing.

Stereotypes are frequently employed within the CJS as they enable rapid classification, time management and simplification of complex situations (Bridges & Steen, 1998; Herzog, 2003; Farrell & Holmes, 1991). A stereotype is defined as an automatic cognitive process containing expectations and knowledge regarding people or situations (Peffley, Hurwitz & Sniderman, 1997). Stereotypes may alter all levels of information processing, without the knowledge of the individual, and are resistant to change once internalised (Farrell & Holmes; Hurwitz & Peffley, 1997). They are utilised in order to make attributions about behaviours or outcomes (Fishman, Rattner, & Weimann, 1987).

Attributions can be external, which is where behaviour is attributed to environmental factors (Bridges & Steen, 1998; Gordon, 1990). Or they can be internal, where personal characteristics of the individual such as disposition or personality are considered to be the basis for the behaviour (Bridges & Steen, Gordon). In general, individuals attribute less blame to offenders who are seen as being motivated to commit crime due to external factors (Bridges & Steen; Duncan, 1976). Consistently, majority group offenders are recognised as committing criminal actions due to external pressures, whereas their racial minority counterparts are considered to offend due to internal forces (Bridges & Steen; Pettigrew, 1979). Such attributions are particularly activated when the defendant is representative of a racial minority group and has committed a stereotypically associated crime (Devine, 1989; Herzog, 2008; Jones,

1997; Jones & Kaplan, 2003; Sampson & Lauritsen, 1997).

Race-Crime Congruency and Sentencing

The more severe sanctioning of racial minorities is exacerbated when the crime committed by the offender is stereotypically congruent (Jones & Kaplan, 2003; Peffley et al., 1997). Certain crimes within the CJS are stereotypically attributed to particular racial groups more than others (Fishman, Rattner, & Weimann, 1987). For instance, within the American CJS, the crime of assault is more commonly considered to be an offence committed by African Americans rather than Caucasian Americans (Hurwitz & Peffley, 1997). It has been found that when a crime is consistent with the racial identity of the offender, the sentence imposed for the offence will be more severe than when the crime is incongruent with the race of the offender (see e.g. Gordon, 1990; Jones & Kaplan).

For instance, a study by Gordon (1990) presented the crimes of embezzlement or burglary as being committed by a Black or White offender to participants (n = 96). Embezzlement is a white collar crime, which is stereotypically considered to be a crime of majority group members, rather than minority group members (Hurwitz & Peffley, 1997). Conversely, the crime of burglary is typically associated with minority group offenders (Hurwitz & Peffley). The study found that when crimes were racially congruent (i.e. burglary committed by a Black offender; or embezzlement committed by a White offender), participants explained the crimes in terms of internal attributions about the offender, such as personality (Gordon). When a crime is considered to originate from internal attributions, the offender is perceived as having more control over his or her situation, and is thus seen as being more blameworthy for the offence (Jones & Kaplan, 2003). Hence, when a crime is stereotypically consistent with a

defendant's race, the punishment granted is usually harsher (Jones & Kaplan).

Race-crime congruency studies are limited in that they consistently utilise White participants only within their study design (Jones & Kaplan, 2003). To counteract this, Gordon (1990) ensured an equal number of both Black and White participants, and found that the race-crime congruency effect extended to Black participants also. However, the crimes used within the study design were quite limited and different results may have been obtained had other crimes (such as an interpersonal offence and a white collar crime) been used instead (Gordon). This is because it has been demonstrated within the literature that the type of crime committed also alters the perception of seriousness of crime (Friedman & Rosenbaum, 1988; Rosenmerkel, 2001).

Type of Crime

Crime seriousness surveys have consistently found that interpersonal crimes are generally ranked as the most serious type of offence by participants (Rosenmerkel, 2001). An example of an interpersonal offence is the crime of assault (Smith, 1999). Such crimes are rated as most serious because they typically victimise specific individuals and thus the harm caused is more readily apparent (Friedman & Rosenbaum, 1988). Consequently, interpersonal crimes are generally granted harsher punishments by sentencing bodies, in comparison to other types of crime (Byrne, Resnick, Kilpatrick, Best, & Saunders, 1999; Rosenmerkel). For instance, white collar or corporate crimes are consistently considered to be less serious than interpersonal offences in crime seriousness surveys (Herzog, 2003; Mann, Wheeler & Sarrat, 1980; Rosenmerkel; Stylianou, 2003).

White collar crime

White collar crime (WCC) is often considered to be a 'victimless' crime as it does not specifically victimise one individual, but rather diffuses the harm across numerous individuals and organisations (Chapman & Smith, 2001; Podgor, 2007; Smith, 2001). Broadly, WCC can be considered to be any form of economic crime and thus offences committed under this title can be considerably varied (Rosenmerkel, 2001; Wheeler, Weisburd & Bode, 1982). Generally WCC has been found to be leniently treated within the justice system (Cullen, Link & Polanzi, 1982). However, the consistency of sentencing of WCCs has been found to vary according to several variables. For instance, WCCs have been demonstrated to be differentially sentenced according to societal context (Benson & Walker, 1988), volume of cases presented to the court (Hagan, Nagel & Albonetti, 1980), guilty plea and remorse shown by the defendant (Albonetti, 1998), as well as race and gender of the defendant (Albonetti, 1998). A specific type of WCC is that of fraud, which is a significantly underreported crime within Australia, and even the global community (Chapman & Smith; Cullen et al., 1982; Smith, 1999).

Fraud is conceptualised as acquiring valuable products (such as money), or evading obligations through the use of deception (Chapman & Smith, 2001; Duffield & Grabosky, 2001). Furthermore, the damages construed by fraud are able to be neutralised with ease as the victims of the offence are seen as corporate structures rather than individuals (Duffield & Grabosky; Smith). At present, certain forms of fraud (such as insurance fraud) are not even provided for in Australian legislation (Baldock, 1997).

Insurance fraud may include exaggerated or completely fraudulent financial claims from insurance companies, and has been a considerable problem within Australia

since the 1960s (Baldock). Estimates place the annual cost of insurance fraud in Australia at nine billion dollars, when the expenditure of community services (such as courts and police) are taken into account (ICA, 1996). Thus, the damages construed by WCCs such as fraud are not properly recognised, severely underreported and easily minimised (Duffield & Grabosky, 2001). Furthermore, there has been a lack of research within the Australian literature regarding perceptions of the seriousness of WCC (Stylianou, 2003). Thus, despite the significant harm caused by WCCs, interpersonal crimes such as assault have been consistently ranked as more serious by the general public (Byrne et al., 1999; Rosenmerkel, 2001).

Assault

Assault is considered to be one of the offences that form the category of 'violent crime', the intentional harming, threatening or killing of another person (Bricknell, 2008; Krug, Dahlberg, Mercy, Zwi & Lozano, 2002). The definition and punishment of assault varies according to state jurisdiction within Australia (Morgan, 2002). The Western Australian Criminal Code (1913) defines assault as the application of force or the threat of force upon an individual without their consent. Over the past decade within Australia, the recorded rate of occurrence of assault has increased by 40% (Bricknell). Numerous costs may incur to society following the event of an assault, including medical and psychological, police and court costs (Meuleners, Hendrie, & Lee, 2008). In Western Australia alone, interpersonal assaults accrue costs of nine to ten million dollars per year (Meuleners et al.).

The crime of assault, and other interpersonal crimes, are often stereotypically associated with racial minority group perpetrators (Herzog, 2003; Jones & Kaplan, 2003). Known as the race-crime congruency effect, it has been established that when a

defendant is considered to have committed a crime that is stereotypically attached to their racial identity, punishment is more frequent and severe (see e.g. Gordon, 1990; Jones & Kaplan). Racial minority groups also comprise the largest population of victims of interpersonal violence (Sampson & Lauritsen, 1997). Indigenous Australian people suffer at least double the rate of victimisation of non-Indigenous Australians (AIC, 2004). At the present time, the Aboriginal people of Australia are the most disadvantaged of all racial groups present within Australian society (Jayasuriya, 2002; Mellor, 2003; Pedersen et al., 2005).

Indigenous Australians

Indigenous Australian people within Australian society

Racism towards Indigenous Australians.

In present Australian society, the occurrence of both old and new forms of racism towards Aboriginal people has been overwhelmingly documented (see e.g. Dunn et al., 2004; Dunn & McDonald, 2004; Dunn et al., 2003; Feather & McKee, 2008; Mellor, 2003; Pedersen, Dudgeon, Watt & Griffiths, 2006; Pedersen et al., 2000; Pedersen & Walker, 1997). A study by Dunn et al. (2003) found that Indigenous Australians experienced double the rate of racism than any other marginalised group within Australia. In Pedersen et al.'s (2006) study, one third of all participants had a negative perception of Aboriginal people. Further studies have found that older males who lack tertiary education, live rurally, identify with right-wing policies, and are Australian born, with values of social prestige, and dominance are more likely to express anti-Aboriginal sentiment (Dunn et al., 2004; Dunn & McDonald; Feather & McKee).

Disadvantage experienced by Indigenous Australians.

Numerous health issues contribute to Aboriginal deprivation throughout Australia (Australian Indigenous HealthInfoNet, 2008). Indeed, Aborigines who live in remote Australia are considered to experience conditions more severe than those who live in third world poverty (Ring & Brown, 2002). Presently, 53% of Indigenous men and 41% of Indigenous women die before 50 years of age (Mayers & Couzos, 2004; Oxfam Australia, 2007). Aboriginal disadvantage is also reflected in unemployment rates, mental health problems, suicidal behaviour, drug and alcohol abuse and lack of formal education, as well as overwhelming incarceration rates and encounters with the CJS (ABS, 2008; ABS, 2006; Paradies, 2005; Pedersen et al., 2005; Pedersen et al., 2006; South Australian Health Commission, 1991).

Indigenous Australian people within the Criminal Justice System

The level of Indigenous involvement within the CJS is especially significant (Paradies, 2005). Indigenous people constitute approximately 2.4% of the current Australian population (Paradies). Yet, as of 2007, Indigenous people accounted for a total of 24% of the entire adult prison population of Australia (ABS, 2007). Thus, Aboriginal people are at least 16 times as likely to be incarcerated than their non-Indigenous counterparts (AIC, 2007). This figure is even higher for young Indigenous Australians who form approximately 51% of the juvenile detention population (AIC). Similar rates of Indigenous involvement in the CJS are also reflected in community corrections figures (AIC). Hence, Indigenous people are significantly over-represented within the CJS.

Indigenous Offenders.

The sentencing of and perceptions of crimes committed by Indigenous offenders

is impacted by numerous variables, some of which have been documented within the literature. A Western Australian study by Field, Beven, and Pedersen (2008) compared perceived offender responsibility and sentence severity for Caucasian and Indigenous Australian offenders convicted of a violent (assault) and non-violent (car theft) crime. Although race was not found to have a significant effect on either of the dependent variables, it was found to indirectly influence attributions for the commission of the offence. That is, Indigenous offenders were considered to have committed crime out of consistent, internal factors rather than environmental causes. However Caucasian offenders were more likely to be attributed to committing criminal acts due to environmental influences. Hence, factors such as the social disadvantage suffered by the Indigenous Australian population were not considered by participants in their considerations regarding the crimes. However, the participants ($n = 202$) of this study were demographically unique in that the vast majority had previously been victims of crime, which may have altered survey responses (Field et al.).

Conversely, Feather and Souter (2002) actually found that South Australian participants ($n = 181$) were more sympathetic and more lenient in their judgements when they thought a property crime had been committed by an Indigenous offender. Participants attributed Aboriginal offenders actions to external causes, and considered them less responsible and less deserving of punishment than Caucasian Australian offenders convicted of the same offence. Feather and Souter hypothesised that this may be due to the suppression of overtly racist attitudes in the style of new racism. Secondly, at the time of the study, a majority of newspapers in South Australia had published pro-Indigenous articles, which may have altered people's perceptions of the Indigenous offenders in the study (Feather & Souter).

Finally, a domestic homicide case presented to mock Caucasian Australian jurors in Queensland (n = 96) revealed that participants sentenced Aboriginal defendants to the most severe sentences, whether their victim was White or Aboriginal (ForsterLee, ForsterLee, Horowitz, & King, 2006). The most lenient sentences were granted for White defendants who were alleged to have murdered White victims. However, despite such results, participants did not deliberate like they would have done in a real jury which may have altered the sentences they gave to offenders. Furthermore, the sample size utilised was rather small (ForsterLee et al.). Interestingly, female participants were found to give the harshest sentences to offenders, regardless of race. ForsterLee et al. suggested one plausible reason for this was that women have a higher ability to empathise with individuals, and thus empathised with the victim more so than men did in the mock trial.

However, the application of empathy to the Australian CJS has not actually been considered entirely within a research design. Previous research has found that majority group members are frequently unable to empathise with minority group members (Finlay & Stephan, 2000; Hewstone, Rubin, & Willis, 2002). When empathy inducing information is presented to majority group individuals, however, discrimination and bias towards racial minority groups can be reduced (Batson, Chang, Orr, & Rowland, 2002; Batson et al., 1997; Finlay & Stephan; Pedersen, Walker & Wise, 2004; Vescio, Sechrist & Paolucci, 2003). Thus, it is conceivable that empathy could be a factor that contributes to the differential perception of seriousness of crime.

Empathy

Defining Empathy

Empathy is a multifaceted construct which has several definitions within the

literature (Bohart, Elliot, Greenberg & Watson, 2001; Caruso & Mayer, 1998; Choplan, McCain, Carbonell & Hagan, 1985; Duan & Hill, 1996; Lindsey, Carlozzi & Eells, 2001; Urist, 1978). Most definitions consider empathy more specifically as a cognitive, affective, or cognitive-affective process (Choplan et al.; Duan, Rose & Kraatz, 2002). The cognitive aspect, or intellectual empathy, defines empathy as the mental consideration of another's point of view, and the reflection of another's thoughts (Caruso & Mayer, 1998; Duan, 2000; Duan & Hill; Gladstein, 1983; Pithers, 1999). Affective empathy, or 'empathic concern', considers the experience of empathy to constitute emotional understanding and vicarious ability (Caruso & Mayer; Duan; Duan & Hill; Gladstein; Watson, Grisham, Trotter & Biderman, 1984). The third definition suggests that empathy includes both cognitive and affective processes but that they are situationally dependant (Duan et al.).

Numerous variables appear to be related to the empathic abilities of individuals (Duan et al., 2002). For instance, gender (see e.g. Eisenberg & Lennon, 1983; Hoffman, 1977), self-esteem (see e.g. Davis, 1983), cultural values (see e.g. Duan & Hill, 1996), mood (see e.g. Bower, 1983; Duan, 2000) and race of the other (Pedersen et al., 2004). However, the empathy measures used in each study are based on differing definitions of empathy and thus determine different constructs of empathy (Watson et al., 1984).

Despite this, empathy has been found in numerous studies to influence perceptions of crime (e.g. Deitz, Littman & Bentley, 1984; Krulewitz, 1982; Weir & Wrightsman, 1990). Thus, a further variable which may influence perception of crime is individual ability to empathise with the perpetrator or victim of an offence, or the crime itself. A number of subcategories have been found to exist as part of empathy (Caruso & Mayer, 1998). A predominant type that has been studied within the literature is that of

dispositional empathy (Archer, Diaz-Loving, Gollwitzer, Davis & Foushee, 1981)

Dispositional Empathy

Dispositional empathy is the notion that individuals can empathise more so with other individuals who share commonalities with them (Archer et al., 1981; Barnett, Tetreault & Masbad, 1987). This is because individuals can identify more so with similar people and hence, are able to consider their perspective with more ease (Archer et al.). Thus, more empathy will be experienced by an individual towards a similar person to themselves as the actor-observer difference is minimised (Olsen-Fulero & Fulero, 1997).

A classic study by Krebs (1975) found that participants who were led to believe that they shared strong personality commonalities with an actor receiving electric shocks, reacted more to the stranger's suffering, tried to help the stranger more, and experienced greater psychophysiological distress. Other studies have replicated the finding that when dispositional empathy is high, individuals will engage more in helping behaviours (see e.g. Archer et al., 1981; Batson et al., 2002; Batson et al., 1997; Mehrabian & Epstein, 1972).

Within the CJS, a multitude of factors can affect the assumed similarity between the perceiver and the participants of a crime (Olsen-Fulero & Fulero, 1997).

Consequently the directionality of empathy towards the victim or offender of a crime is consistently altered (see e.g. Deitz et al., 1984; Hoffman, 1984; Krulewitz, 1982; Weir & Wrightsman, 1990). When perceivers consider themselves similar to the victim, they consistently rate the victim as more believable and sentence the defendant more harshly (Barnett et al., 1987; ForsterLee et al., 2006). Conversely, when perceivers identify with the defendant, they reduce the impact of the crime and grant more lenient sentences

(Archer, Foushee, Davis & Aderman, 1979).

One study encouraged participants who viewed a criminal trial to either imagine themselves as the defendant, or focus on the evidence presented at trial only. The participants who envisioned themselves as the defendant empathised more with them, considered them less guilty, and viewed their actions as more lawful and uncontrollable than those participants who were instructed to focus on the facts of the case only (Archer et al., 1979). In another criminal trial, mock jurors (n = 66) who strongly identified as a particular religion were asked to decide upon the guilt of a defendant of the same or a differing religion. Regardless of the strength of evidence, jurors who believed that they shared religious similarity with the defendant, consistently gave a verdict of 'not guilty' (Kerr, Hymes, Anderson & Weathers, 1995). Hence, dispositional empathy has been found to impact perceptions of crime and sentencing. It may also vary continuously across situations and the people involved, especially when additional factors such as race are considered (Olsen-Fulero & Fulero, 1997).

Empathy Towards Indigenous Australians

A great deal of prejudice towards Indigenous Australians has been found to exist in Western Australia in previous studies, which is encouraged by false beliefs that persist about Indigenous people within Australian society (Dunn et al., 2004; Pedersen et al., 2000; Pedersen et al., 2004). A study by Pedersen et al. (2004) assessed prejudicial attitudes of Western Australian participants about Indigenous Australians and their culture by means of a questionnaire (*Attitudes Towards Indigenous Australians Scale*) dispensed to suburban households in Perth. This was compared to participants level of empathy, as measured by the *Interpersonal Reactivity Index (IRI)* (Davis, 1980; Davis, 1983). The study found that individuals who displayed negative

attitudes towards Aboriginal people in general, also had lower empathy scores ($r = -0.63$) according to the *IRI*. This was less prevalent when subsections of the *IRI* were assessed, for instance perspective taking ($r = -0.28$). Thus, the results indicate that negative attitudes towards Indigenous Australians were predicted by a general lack of dispositional empathy by participants for Aboriginal people (Pedersen et al.). Hence, research has identified a negative correlation between prejudice towards racial minority groups and dispositional empathy towards them (Batterham, 2001; Finlay & Stephan, 2001; Pedersen et al.).

Summary and Conclusions

The aim of this review was to examine certain extra-legal factors that can influence perceptions of the seriousness of crime and the consequent severity of sentencing. The review found that research concerning the effect of factors such as race, type of crime and psychological variables is largely inconsistent, as well as contradictory (e.g. Bodenhausen, 1988; Jones, 1997; McCarthy & Lindquist, 1984; Parton et al., 1991). Studies on the impact of race upon the perception of crimes within the CJS have been especially controversial (Sommers, 2007).

The studies on race have occurred in four differing research waves, each resulting in contradictory findings (Zatz, 1984). Three main perspectives, the differential involvement, interactionist and direct impact viewpoints have drawn support from the racial sentencing research (Pratt, 1998). However, a majority of such studies have been conducted in countries such as the U.S.A., which makes their applicability to the Australian justice system questionable.

The type of crime committed has also been demonstrated to influence the perception of the seriousness of offences. Within crime seriousness studies,

interpersonal crimes such as assault are consistently ranked as more serious crimes than white collar crimes (Rosenmerkel, 2001; Smith, 1999). However, numerous variables have been shown to alter the perceptions of certain crimes. One variable which can alter the perception of crimes such as fraud and assault is that of race. This has been demonstrated to be especially the case when crimes are perceived to be racially congruent with the offender (Gordon, 1990; Jones & Kaplan, 2003).

The differential perception of crime and subsequent sentencing of offenders may also be impacted by the psychological variable of empathic abilities of persons involved in the CJS (Deitz et al., 1984; Hoffman, 1984; Krulewitz, 1982; Weir & Wrightsman, 1990). In particular, dispositional empathy has been recently demonstrated to impact perception of Indigenous Australians in general (Pedersen et al., 2004). However, dispositional empathy has not yet been applied to perceptions of crime seriousness within the Australian justice system (Deitz et al.; Hoffman; Krulewitz; Weir & Wrightsman). Thus it is unknown whether such psychological variables may influence the perception of crimes committed by Caucasian and Indigenous Australians.

Furthermore, research conducted on the sentence severity and perception of crime committed by Aboriginal people has been minimal and inconsistent. Studies have found an indirect effect of race on perceptions of Indigenous crime (Field et al., 2008), more lenient perception of crimes committed by Indigenous offenders (Feather & Souter, 2002), and more severe perception of crimes committed by Indigenous offenders (ForsterLee et al., 2006). The reasons for such directionality are relatively elusive. Future research needs to be conducted on the various factors that may influence perceptions of crime committed by Caucasian and Indigenous offenders.

Thus, the area of perceptions of seriousness of crime could greatly benefit from

more research. This is especially the case within the Australian justice system, where there is a significant need of further information regarding the factors that may or may not cause differential sentencing of Caucasian and Indigenous Australian offenders. Future studies could focus upon factors such as race, type of crime committed and psychological constructs and their effect within the Australian CJS in order to contribute understanding and dispel inconsistencies in the present literature.

It is apparent that psychological constructs, such as dispositional empathy, especially need to be considered in their application and alteration of perceptions of crime seriousness within the Australian justice system. It is only when such factors are identified that the perception of seriousness of crime by Caucasian and Indigenous Australian offenders can be better understood. It can be hoped that through such knowledge, the disadvantage suffered by the Indigenous Australian people within the Australian justice system can be overcome.

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Perception of Seriousness of Crime and Consequent Punishment of Offenders: The Effect of Type of Crime Committed, Race of the Offender and Dispositional Empathy

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A Report Submitted in Partial Fulfilment of the Requirements for the Award of

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Edith Cowan University

October, 2008

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Abstract

Indigenous Australians suffer disadvantage at all levels of Australian society. This is especially so within the criminal justice system, in which Indigenous Australians are chronically over-represented. However, little research has assessed the extra-legal factors that may contribute to the differential perception of and consequent disparity in sentencing of crimes committed by Indigenous and Caucasian Australian offenders. This study (n = 101) examined the effect of the three variables of type of crime committed, race of the offender, and dispositional empathy upon the perception of crime seriousness and consequent punishment of offences committed by either an Indigenous or Caucasian offender. It was hypothesised that assault would be perceived as more serious and thus more harshly punished than fraud. Furthermore, that crimes committed by Indigenous offenders would be perceived as more serious and thus more harshly punished. It was considered that racial disparity in perception of crime would be especially emphasised in crimes that were stereotypically consistent with an offenders race. Lastly, it was hypothesised that participants who shared racial similarity with an offender would thus have higher dispositional empathy towards them and consequently perceive the crime as less serious and punish less severely. Consistent with previous research, the type of crime committed was found to slightly impact the perceived severity of crime. Race of the offender was not found to effect perceptions of crime seriousness or punishment, which may have been due to a watchdog effect of modern racism or low prejudice rates amongst participants. Lastly, dispositional empathy did not have an impact on perceptions of crime seriousness and punishment in the present study. However, further research upon the impact of extra-legal variables within the Australian justice system is required, so that the over-representation of racial minority groups might be better understood.

Giselle Larkins

Associate Professor Denise Charman

27th October, 2008

Perception of Seriousness of Crime and Consequent Punishment of Offenders: The Effect of Type of Crime Committed, Race of the Offender and Dispositional Empathy

Indigenous Australians are the most disadvantaged racial group present within Australian society (Jayasuriya, 2002; Mellor, 2003; Pedersen, Walker & Wise, 2005). Such disadvantage is especially reflected in rates of involvement of Indigenous Australians within the criminal justice system (ABS, 2007). Despite only accounting for 2.4% of the current Australian population; Indigenous people form approximately 24% of the entire adult prison population of Australia (ABS, 2007; Paradies, 2005). Indigenous adults are at least 16 times more likely to be incarcerated than their non-Indigenous counterparts (AIC, 2007). Furthermore, Western Australia has the highest rate of incarceration of Indigenous Australians than any other state, with over 40% of the states prison population identifying as Indigenous (ABS, 2005).

A great number of extra-legal factors can affect perceptions of the seriousness of crime and consequently the differential sentencing of offenders (Jones, 1997). A large proportion of studies have been conducted upon factors that may alter the perception of crime seriousness. However, little research has considered the perception of crimes committed by Indigenous or Caucasian offenders within the context of the Australian justice system. For instance, numerous studies within the literature have documented a significant effect of race upon sentencing and perception of crime seriousness (Sampson & Lauritsen, 1997). Other factors, such as the type of crime committed and psychological variables like dispositional empathy have also been demonstrated to effect the perceptions of seriousness of crime (Kerr, Hymes, Anderson, & Weathers, 1995; Rosenmerkel, 2001). An understanding of how such factors influence the perception of crime seriousness within an Australian context is especially necessary in

respect to the disproportionate over-representation of Indigenous Australians within the justice system

Type of Crime Committed

The type of crime committed by an offender has been found to have a strong impact on the perception of seriousness of an offence (Friedman & Rosenbaum, 1988; Rosenmerkel, 2001). Crime seriousness surveys have consistently demonstrated that interpersonal crimes, such as assault, are generally ranked as the most serious type of offence by participants (Rosenmerkel; Smith, 1999). Such crimes are rated as most serious because they typically victimise specific individuals and thus the harm caused by the crime is more readily apparent (Friedman & Rosenbaum). Consequently, interpersonal crimes are generally granted harsher punishments by sentencing bodies, in comparison to other types of crime (Byrne, Resnick, Kilpatrick, Best, & Saunders, 1999; Rosenmerkel).

Non-interpersonal crimes, such as the white collar crime (WCC) of fraud are thus in general perceived to be less severe in nature than interpersonal offences in crime seriousness studies (Herzog, 2003; Mann, Wheeler, & Sarrat, 1980; Rosenmerkel, 2001; Stylianou, 2003). WCC is often considered to be a 'victimless' crime as it does not specifically victimise one individual, but rather diffuses the harm across numerous individuals and organisations (Chapman & Smith, 2001; Podgor, 2007; Smith, 2001). Consequently, WCC has been found to be leniently treated within the justice system (Albonetti, 1998; Cullen, Link & Polanzi, 1982). However, the perception of crimes of both an interpersonal and non-interpersonal nature has been found to be altered according to the race of the offender (Fishman, Rattner, & Weimann, 1987; Hurwitz & Peffley, 1997; Jones, 1997; Peffley, Hurwitz & Sniderman, 1997).

Race-Crime Congruency

For instance, the crimes of assault, and other interpersonal offences, are often stereotypically associated with racial minority group perpetrators (Herzog, 2003; Jones & Kaplan, 2003). It has been established that when a defendant is considered to have committed a crime that is stereotypically attached to their racial identity, the crime is perceived as more serious and punishment is more frequent and severe (Gordon, 1990; Jones & Kaplan). This is also known as the race-crime congruency effect (Gordon). A study by Gordon presented the crimes of embezzlement or burglary as being committed by a Caucasian or African American offender to participants ($n = 96$). Embezzlement is a WCC, which is stereotypically considered to be a crime of majority group members, rather than minority group individuals (Hurwitz & Peffley, 1997). Conversely, the crime of burglary is typically associated with minority group offenders (Hurwitz & Peffley). The study found that when crimes were racially congruent (i.e. burglary committed by an African American offender), participants considered the offender more 'blameworthy' for the offence, considered the offence as more serious, and consequently gave a harsher punishment (Gordon).

Racial Stereotyping and New Racism

Racial stereotypes are frequently employed within the justice system in order to enable rapid classification, time management and simplification of complex situations (Bridges & Steen, 1998; Herzog, 2003; Farrell & Holmes, 1991). Thus, a stereotype is defined as an automatic cognitive process containing expectations and knowledge regarding people or situations (Peffley et al., 1997). Racial stereotypes, and the resulting discrimination that they encourage, are a main premise of 'new racism' (Dunn, Forrest, Burnley, & McDonald, 2004).

Racism is considered to occur when individuals are treated or considered differently based on characteristics that denote ethnic background (Britt, 2000; Howard, 1975; Sweeney & Haney, 1992). Numerous studies have documented the existence of racism in Australian society to the present day, especially towards Indigenous Australians (e.g. Dunn et al., 2004; Dunn, Gandhi, Burnley & Forrest, 2003; Dunn & McDonald, 2001; Feather & McKee, 2008; Mellor, 2003; Pedersen, Griffiths, Contos, Bishop & Walker, 2000; Sweeney & Haney). However, the overt racism of the past has evolved to a more subtle and socially appropriate presence of bias towards racial minority groups, now known as new or covert racism (Mellor, 2003; Sniderman, Piazza, Tetlock, & Kendrick, 1991; Sommers & Ellsworth, 2000). Such racism is highly concealed and is not generally expressed by the individual (Sommers & Ellsworth). The main basis of new racism is negative and derogatory stereotypes towards racial minority groups that are indirectly expressed (Dunn et al., 2004). Evidence for the existence of new racism has been found within the research (Sargent & Bradfield, 2004).

A study by Sargent and Bradfield (2004) looked at whether the race of a defendant altered the processing abilities of mock jurors when their motivation was high (by paying participants five dollars after they made a decision), or low (by paying participants five dollars before they made their decision). Participants were compared on either alibi strength or effectiveness of cross examination of defence witnesses. A total of 387 Caucasian participants were recruited for the two studies. Interestingly, it was found that, regardless of motivation level, participants paid significantly more attention to legally relevant information when the defendant was African American than when he was Caucasian. That is, participants acted as 'watchdogs' against appearing prejudiced or expressing racist sentiment (Sargent & Bradfield). Personal biases were

not expressed in an attempt to appear non-racist, characteristic of the manifestation of modern racism (Sommers & Ellsworth, 2000). Thus the watchdog effect is an example of the expression of new racism, and has been found in other studies within the literature (Petty, Fleming & White, 1999). Consequently, crimes by minority group defendants may be perceived and punished varyingly according to the presence of new racism (Britt, 2000).

Race of the Offender

The topic of how racial discrimination affects perception of seriousness of crime and sentencing of defendants within the CJS has been considered for almost half a century within the literature, with the results still remaining inconsistent and contradictory (Britt, 2000; McCarthy & Lindquist, 1984; Pratt, 1998; Sommers, 2007). Four main waves of research have occurred since the 1960s in an attempt to clarify whether race alters the perception of crime and subsequent sentencing of offenders within the justice system (Zatz, 1989). However, only a minimal amount of research has been conducted on the effect of race upon perceptions of seriousness of crime within an Australian context. The studies that have been conducted have not demonstrated consistent findings so far.

For instance, a Western Australian study by Field, Beven, and Pedersen (2008) compared perceived offender responsibility and sentence severity for Caucasian and Indigenous Australian offenders convicted of a violent (assault) and non-violent (car theft) crime. Race was found to indirectly influence attributions for the commission of the offence, but was not found to have a significant effect on either of the dependent variables. That is, Indigenous offenders were considered to have committed crime out of consistent, internal factors rather than environmental causes. Hence, factors such as

the social disadvantage suffered by the Indigenous Australian population were not considered by participants in their considerations regarding the crimes. However, the participants ($n = 202$) of this study were demographically unique in that the vast majority had previously been victims of crime, which may have altered survey responses (Field et al.).

Conversely, Feather and Souter (2002) actually found that South Australian participants ($n = 181$) were more sympathetic and more lenient in their judgements when they thought a property crime had been committed by an Indigenous offender. Participants attributed Aboriginal offender's actions to external causes, and considered them less responsible and less deserving of punishment than Caucasian offenders convicted of the same offence. Feather and Souter hypothesised that this may be due to the suppression of overtly racist attitudes in the style of new racism, consistent with the watchdog effect (Sargent & Bradfield, 2004; Petty et al., 1999). Secondly, at the time of the study, a majority of newspapers in South Australia had published pro-Indigenous articles, which may have altered people's perceptions, or reported perceptions, of the Indigenous offenders in the study (Feather & Souter).

Finally, a domestic homicide case presented to mock Caucasian Australian jurors ($n = 96$) in Queensland revealed that participants sentenced Indigenous defendants to the most severe sentences, whether their victim was Caucasian or Indigenous (ForsterLee, ForsterLee, Horowitz & King, 2006). The most lenient sentences were granted for Caucasian defendants who were alleged to have murdered Caucasian victims. However, a limitation of the study is that the study design did not allow for realistic jury deliberation which may have affected the validity of results through both sentencing and perception of results. Furthermore, the sample size utilised

was rather small (ForsterLee et al.). Interestingly, female participants were found to give the harshest sentences to offenders, regardless of race. ForsterLee et al. suggested one plausible reason for this was that women have higher empathic abilities, and thus empathised with the victim more so than men did in the mock trial. Empathy has been demonstrated to effect perceptions of crime seriousness within the literature (Deitz, Littman & Bentley, 1984; Krulewitz, 1982; Weir & Wrightsman, 1990).

Dispositional Empathy

Most definitions consider empathy as a cognitive, affective, or cognitive-affective process (Choplan, McCain, Carbonell, & Hagan, 1985; Duan, Rose, & Kraatz, 2002). A number of subcategories have been found to exist as part of empathy (Caruso & Mayer, 1998). A predominant type that has been studied within the literature is that of dispositional empathy (Archer et al., 1981). Dispositional empathy is the notion that individuals can empathise more so with other individuals who share commonalities with them (Archer et al.; Barnett, Tetreault, & Masbad, 1987). This is because individuals can identify more so with similar people and hence, are able to consider their perspective with more ease (Archer et al.). Thus, more empathy will be experienced by an individual towards a similar person to themselves as the actor-observer difference is minimised (Olsen-Fulero & Fulero, 1997). Prejudicial attitudes towards racial minority groups are correlated with lower dispositional empathy abilities (Pedersen, Beven, Walker & Griffiths, 2004).

A study by Pedersen et al. (2004) assessed the negative attitudes of Western Australian participants towards Indigenous Australians by means of a questionnaire dispensed to suburban households in Perth. This was compared to participant's level of empathy, as measured by the *Interpersonal Reactivity Index (IRI)* (Davis, 1980; Davis,

1983). Overall, individuals who displayed negative attitudes towards Aboriginal people in general, also had lower empathy scores according to the *IRI*. Thus, the results indicated that negative attitudes towards Indigenous Australians were predicted by a lack of empathy by participants for Aboriginal people (Pedersen et al.). Thus, research has supported the notion that there is a correlation between prejudice and dispositional empathy (Batterham, 2001; Finlay & Stephan, 2001; Pedersen et al.).

Within the CJS, a multitude of factors can affect assumed similarity between individuals and consequent displays of dispositional empathy (Olsen-Fulero & Fulero, 1997). When perceivers consider themselves similar to the victim, they consistently rate the victim as more believable and sentence the defendant more harshly (Barnett et al., 1987; ForsterLee et al., 2006). Conversely, when perceivers identify with the defendant, they reduce the impact of the crime and grant more lenient sentences (Archer, Foushee, Davis, & Aderman, 1979). One study encouraged participants who viewed a criminal trial to either imagine themselves as the defendant, or focus on the evidence presented at trial only. The participants who envisioned themselves as the defendant empathised more with them, considered them less guilty, and viewed their actions as more lawful and uncontrollable than those participants who were instructed to focus on the facts of the case only (Archer et al., 1979).

In another criminal trial, mock jurors who strongly identified as a particular religion were asked to decide upon the guilt of a defendant of the same or a differing religion (Kerr et al., 1995). Regardless of the strength of evidence, jurors who believed that they shared religious similarity with the defendant, consistently gave a verdict of 'not guilty' (Kerr et al.). This is due to the fact that the perceived similarity of religious belief incited participants to feel more empathic towards defendants (Kerr et al.). Hence,

dispositional empathy has been found to impact perceptions of crime and sentencing within the literature. Dispositional empathy may also vary continuously across situations and the people involved, especially when additional factors such as race and type of crime are considered (Olsen-Fulero & Fulero, 1997).

The Present Study

The aim of the present study was to explore the influence of variables of type of crime committed, race of the offender and dispositional empathy, upon perceptions of crime seriousness and consequent punishment of offenders within an Australian context. It is anticipated that, consistent with prior research, the interpersonal crime of assault will be perceived as more serious, and thus more harshly punished, than the non-interpersonal crime of fraud (Byrne et al., 1999, Mann, Wheeler & Sarat, 1980; Podgor, 2007). It is also hypothesised that crimes committed by Indigenous offenders will be considered more serious, and will be granted harsher punishments due to the documented strong presence of racism towards Indigenous Australians within Australian society (e.g. Dunn et al., 2004; Dunn et al., 2003; Dunn & McDonald, 2001; Feather & McKee, 2008; Herzog, 2003; Mellor, 2003; Pedersen, Dudgeon, Watt & Griffiths, 2006; Pedersen et al., 2000; Sweeney & Haney, 1992). It is also considered that, participants will perceive racially stereotypically congruent crimes (such as assault committed by an Indigenous offender, and fraud committed by a Caucasian offender) as more severe and will consequently punish them more harshly (Gordon, 1990; Jones & Kaplan, 2003).

Furthermore, it is hypothesised that dispositional empathy will influence participant's perception of seriousness of crime through identification with either the offender or the victim (Duan, Rose & Kraatz, 2002). It is predicted that when

participants share racial similarities with the offender and thus identify with them, the crime scenario will be considered to be less severe and the punishment less harsh.

Furthermore, that the reason for punishment will be less punitive and will be rehabilitative instead (e.g. Archer et al., 1979; Kerr et al., 1995). Conversely, when participants do not identify with an offender due to racial differences, it is hypothesised that they will consider the crime more serious and a harsher sentence deserved.

Furthermore, that this will be reflected in reason for punishment through more punitive and victim orientated selections (Barnett et al., 1987; ForsterLee et al., 2006).

Method

Design

This study was a quantitative 2 x 2 (offender race x type of crime) multivariate experimental design with both between-subjects and within-subjects variables. There were two levels of analysis for both of the independent variables: race of the offender (Indigenous or Caucasian) and type of crime (interpersonal or non-interpersonal crime). The three dependent variables in this study included perception of seriousness of the crime, punishment of the offender and reason for selected punishment. Variables were investigated in the experiment through the presentation of four crime vignettes, which were altered accordingly across participants. Dispositional empathy was a covariate within this study and was measured by means of the *Interpersonal Reactivity Index (IRI)* (Davis, 1980; Davis, 1983).

Participants

Participant demographic information is summarised in the table below.

Table 1

Participant Demographic Information

Number of Participants	101
Age [Mean, (SD)]	36.29 (6.22) *
Age [Minimum (maximum)]	18 (80)
Gender (% female)	45.5
Country of origin (%)	
Australian	75.2
Immigrant	23.8 **
Unknown	1
Annual Family Income (%)	
Less than \$25,000	6.9
More than \$25,000, less than \$75,000	51.5
More than \$75,000, less than \$100,000	12.9
More than \$100,000	26.7
Unknown	2
Education (%)	
Completed primary school	2
Completed high school	23.8
Completed/completing TAFE	28.7
Completed/completing university	45.5
Employment status (%)	
Unemployed	5

Casual	11.9
Part-time	10.9
Full-time	67.3
Retired	5

* One participant did not provide their age.

** Of the participants who selected an immigrant status and identified their country of origin, the majority (61%) identified that they were from the United Kingdom.

Materials

Interpersonal reactivity index.

The *IRI*, a dispositional empathy measurement scale (Davis, 1980; Davis, 1983) was given to all participants in order to measure their level of empathic ability (See Appendix B). The *IRI* consists of 28 items, each of which is scored on a likert scale from zero to four. Nine of the items are reverse scored. There are four subscales to the *IRI*, which include seven items each. They are as follows: ‘perspective taking’, ‘fantasy’, ‘empathic concern’ and ‘personal distress’. Perspective taking measures an individual’s ability to understand a situation from another’s point of view. The fantasy scale assesses imaginative abilities of individuals. Empathic concern determines levels of displayed sympathy and concern for disadvantaged individuals. Lastly, personal distress is a measure of uneasiness in strongly emotional situations (Davis, 1983).

Crime vignettes.

The crime vignettes comprised four different scenarios: Indigenous offender/assault, Indigenous offender/fraud, Caucasian offender/assault, and Caucasian offender/fraud. The vignettes were presented in pairs, and offences committed by the same ethnicity of an offender presented together. This was so that the sample size of participants would be greater for later statistical analysis (Martin, 2004). Thus, a total of two crime vignettes (see Appendix C) per participant were distributed with the

questionnaire (See Appendix D). Presentation of the crimes of assault and fraud were randomised in order to counter order effects (Martin).

Crime seriousness.

For each vignette, participants were asked to rate the seriousness of the crime on a likert scale from one (not serious) to five (very serious).

Punishment severity.

Each participant selected a punishment for the offender from seven multiple choice options. These included: 'no punishment', 'monetary fine', 'suspended sentence', 'less than a year imprisonment', 'one to two years imprisonment', 'four to five years imprisonment', 'ten years or more imprisonment'. However, these categories were later collapsed for further statistical analysis and thus became: 'no punishment', 'monetary fine', 'suspended sentence' and 'imprisonment'. Categories were collapsed in order to reduce the proportion of cells with expected frequencies less than five in later categorical analyses.

Punishment rationale.

Another multiple choice question following this enabled participants to provide a rationale for their sentencing choice, based on various offender and victim variables, as well as basic sentencing principles (Birgden, 2006). Participants were asked to select a reason associated with the offender, or a reason associated with the victim for their choice of punishment. Offender reasons included: 'punishment', 'deterrence', 'rehabilitation' and 'condemnation'. Victim reasons included: 'protection of victim', 'justice', 'protection of community' and 'deterrence of others'. For later statistical analyses, these variables were recoded into dummy variables where 'punishment' was compared to 'alternatives' for offender reason. For victim reason, 'justice' was

compared to 'alternatives'. This was done so as to enable comparison of categorical data.

Demographics.

The demographic section of the questionnaire included the variables of: age, gender, economic status, education level, employment and ethnic background (See Appendix E).

Procedure

Prior to the commencement of the study, ethics approval was gained from the Edith Cowan University Ethics Committee. One hundred and twenty participants were approached for participation within this study, however, only 109 completed questionnaires were returned to the researcher. Thus the response rate for this study was approximately 91%. Of the questionnaires, eight contained a large proportion of missing data and were excluded from the analysis.

Participants were recruited utilising the snowballing method of data collection (Liamputtong & Ezzy, 2005). Participants were approached by the researcher, co-researcher or an associate of the researchers and asked to complete a survey on the perception of crime severity. Before participants began the survey, they were informed that their participation within the study was completely voluntary and anonymous.

Participants were also informed that they could withdraw their participation at any time before submitting their questionnaire. Consent was implied through the completion of the questionnaire, consistent with the guidelines of the *National Statement on Ethical Conduct in Human Research*, s 2.3.6, (National Health and Medical Research Council, 2007). The questionnaire was given to participants in an open A4 envelope so that they might seal their completed questionnaires to ensure confidentiality.

All participants first received an information letter, which outlined the study and provided the contact numbers of psychological services should any personal distress have eventuated in response to the completion of the survey (see Appendix A). Following this, participants completed the 28 questions of the *IRI* (Appendix B). Participants then completed four vignettes (randomized in order) based on crime perception; two for the present study and two for a co-researcher.

Participants then answered questions regarding the crime outlined in the vignettes. Such questions included the severity of the offence, the punishment deserved by the offender and the reasoning for the selected punishment. Lastly, participants provided demographic information such as gender, age, education level, employment, annual income level and nationality (Appendix E). Following the completion of the questionnaire, participants sealed their responses in the provided envelope and returned them to the researcher, co-researcher or associates of the researchers. Overall, the questionnaire took approximately 15 to 20 minutes to complete.

Results

Screening the Data

Chi square analyses were conducted to compare frequencies of level of employment, education and income in the groups that received either an Indigenous or Caucasian offender for the crimes of assault and fraud. No significant associations were found, denoting that such demographic information was relatively even in all groups (see Appendix F). Chi square analyses were also conducted to include the same demographic variables compared to the order of presentation of the vignettes, but again no significant associations were found. Thus, the random ordering of vignettes utilised within this study was deemed to be effective (Martin, 2004). However, a small

percentage of cells (25 - 40%) within the chi square analyses did have an expected count less than five. Due to the smaller sample size of this study, the cells within the chi square analyses could not be further collapsed to correct this limitation. Before the data was screened, cases with missing values were deleted from the analysis.

Subscales on the Interpersonal Reactivity Index

The items on the *IRI* were computed to construct the four subscale scores. These included perspective taking, fantasy scale, empathic concern and personal distress. The reliability of the subscales was assessed utilising Cronbach's alpha, and all were found to be reliable. The values for each subscale were found to be: perspective taking ($\alpha = .75$), fantasy ($\alpha = .83$), empathic concern ($\alpha = .83$) and personal distress ($\alpha = .69$). The overall means and standard deviations for each subscale were as follows: perspective taking ($M= 17.18, SD= 4.56$), fantasy scale ($M= 12.86, SD= 6.17$), empathic concern ($M= 19.02, SD= 4.25$) and personal distress ($M= 10.87, SD= 4.98$). However, empathy scales typically vary with the sex of a participant and thus the mean and standard deviation of both males and females were also calculated separately and are located in the table on the following page. These means are comparable to the averages found by Davis (1980) in the initial design of the *IRI*.

Table 2

Means and Standard Deviations of Male and Female Participants on the IRI

Gender	<i>IRI</i> Subscale	
	<u>Present study</u> (male n = 55) (female n = 46)	<u>Davis (1980)</u> (male n = 579) (female n = 582)
	<u>Perspective Taking</u>	
Male		
<i>M</i>	16.85	16.78
<i>SD</i>	5.10	4.72
Female		
<i>M</i>	17.57	17.96
<i>SD</i>	3.86	4.85
	<u>Fantasy</u>	
Male		
<i>M</i>	11.25	15.73
<i>SD</i>	5.97	5.60
Female		
<i>M</i>	14.78	18.75
<i>SD</i>	5.90	5.17
	<u>Empathic Concern</u>	
Male		
<i>M</i>	18.19	19.04

<i>SD</i>	4.21	4.21
Female		
<i>M</i>	20.00	21.67
<i>SD</i>	4.13	3.83
Personal Distress		
Male		
<i>M</i>	10.26	9.46
<i>SD</i>	4.60	4.55
Female		
<i>M</i>	11.59	12.28
<i>SD</i>	5.35	5.01

From Davis, M. (1980). A multidimensional approach to individual differences in empathy. *JSAS Catalogue of Selected Documents in Psychology*, 10, 85.

One way ANOVAs were conducted in order to compare the mean scores on the *IRI* to demographic variables of participants. One-way ANOVAs performed on the variables of age, annual family income, employment status and ethnic background found no significant effect on scores on the subscales of the *IRI*.

A one-way ANOVA conducted upon the effect of sex and scores on the *IRI* found no significant effect for the subscales of perspective taking and personal distress. There was a significant difference of gender on the subscale of fantasy ($F(1, 99) = 8.84$, $p < .05$) and empathic concern ($F(1, 98) = 4.69$, $p < .05$) (Appendix G), with females scoring higher on these subscales than males (for means and standard deviations see above table).

Furthermore, a one-way ANOVA conducted on education and empathy scores

was significant on the subscale of empathic concern ($F(3, 96) = 3.46, p < .05$), with participants of the educational level of primary ($M = 21.0, SD = 1.41$) and high school ($M = 21.30, SD = 3.71$) scoring higher on empathic concern than those at the educational level of TAFE ($M = 17.97, SD = 3.57$) or university ($M = 18.46, SD = 4.60$) (Appendix H). Thus, gender and education were found to be necessary to be controlled for in subsequent statistical analyses.

Perception of Seriousness of Fraud and Assault

The seriousness of the crimes of assault and fraud were compared to one another utilising a dependent samples t test, as all participants rated the seriousness of both crimes of assault and fraud. The data met the parametric assumptions and thus the dependent samples t test was viable for use (Field, 2005). A significant difference was found between assault and fraud on seriousness ($t(98) = 3.37, p < .05$). On average, participants rated assault ($M = 3.58, SD = .91$) as more serious than fraud ($M = 3.20, SD = .10$) (see Appendix I).

Punishment of Fraud and Assault

A chi square analysis was conducted to determine if frequency of endorsement of particular punishments differed for fraud and assault. However, no significant difference in frequency of type of punishment between these crimes was found.

Perception of Seriousness of Crime and Race of the Offender

A MANOVA was conducted between the independent variables of type of crime (fraud or assault) and race of the offender (Indigenous or Caucasian), and the dependent variables of seriousness of fraud and seriousness of assault. The data met the assumptions for the MANOVA (Field, 2005). Box's test of the assumption of equality of covariance matrices was not significant. The multivariate test statistic of Pillai's trace

indicated that the interaction between type of crime, race of the offender and perceived seriousness of a crime was not significant.

Punishment of Crime and Race of the Offender

A chi square analysis was conducted upon the frequency of types of punishment for the race of the offender. It was found that there was no significant effect of race upon the punishment of both assault and fraud. However, a small percentage of cells (25 - 33.3%) had expected values less than five. Due to the small sample size of the present study, the cells were unable to be collapsed further in order to overcome this limitation.

Victim and Offender Reasons for Punishment and Race of the Offender

Frequency tables were constructed in order to ascertain the percentage of participants who punished the offender based upon offender or victim reasons. In regards to assault, a total of 58.8% of participants selected an offender reason, and 41.2% selected a victim reason, with 22.9% of participants selecting both an offender and a victim reason for the punishment they selected. In the fraud vignette, 73.6% of participants selected an offender reason for sentencing, with 26.4% of participants selecting a victim reason, and 19.2% of participants selecting both an offender and a victim reason for their selected punishment. Responses are shown in the table on the following page. In regards to the crimes of assault and fraud, there was a strong focus on both punishment and deterrence for both Indigenous and Caucasian offenders. Deterrence of others and protection of the community also featured prominently in victim reasons for punishment of the offender.

Table 3

Frequencies for Offender and Victim Reasons across Race of the Offender

	Race of offender	
	Caucasian	Indigenous
Assault offender reason		
Punishment	39.5%	35.9%
Deterrence	36.8%	41%
Rehabilitation	10.5%	7.7%
Condemnation	13.2%	15.4%
Assault victim reason		
Protect victim	13.0%	0%
Provide justice	26.1%	35.5%
Protect community	47.8%	41.9%
Deter others	13.0%	22.6%
Fraud offender reason		
Punishment	33.3%	42.6%
Deterrence	46.7%	38.3%
Rehabilitation	2.2%	8.5%
Condemnation	17.8%	10.6%
Fraud victim reason		
Protect victim	8.3%	4.8%

Provide justice	8.3%	23.8%
Protect community	33.3%	19.0%
Deter others	50.0%	52.4%

Empathy and the Perception of Seriousness of Crime

MANCOVAs were conducted in order to ascertain whether the subscales of the *IRI* had any effect on the perception of crime seriousness. Four MANCOVAs were conducted upon the subscales of perspective taking, fantasy, empathic concern and personal distress, which were the covariates of the analysis. The independent variables were type of crime, and race of the offender. The dependent variables were the seriousness ratings for both crimes of assault and fraud. The demographic variables of sex and education level were controlled for in regards to their effect upon dispositional empathy. Levene's test of homogeneity of variance was not significant, indicating that group variances not significantly different. All other assumptions for the MANCOVA were met also (Field, 2005). All MANCOVAs with perspective taking, fantasy, empathic concern and personal distress as covariates were found to be not significant.

Empathy, Offender Race and Reasons for Punishment

Four separate logistic regression analyses were conducted upon the dependent variables of assault offender reason, assault victim reason, fraud offender reason and fraud victim reason. The dependent variables were categorical but consisted of more than two levels and thus were recoded into dummy variables (Field, 2005). Each dependent variable was compared separately to several covariates, including the four empathy subscales (perspective taking, fantasy, empathic concern and personal distress), race of the offender and type of crime committed. Gender and education were

controlled for also, as they were found to significantly influence the expression of empathy in earlier analyses. However, none of these covariate variables made a significant contribution to the predictive power of the model within the logistic regression analyses.

Discussion

The findings of this study provide limited support for the hypotheses included within this research design. Firstly, there was a slight difference of the perception of seriousness of assault and fraud. Secondly, crimes by Indigenous offenders were not considered to be more serious nor were they more harshly punished than crimes by their Caucasian counterparts. Thus the race-crime congruency effect was also supported by the results of this study. Dispositional empathy was not found to alter participants responses to seriousness of crime, offender punishment, or reason for punishment across both Indigenous and Caucasian offenders.

Overall, participants perceived assault to be marginally more serious crime than fraud. This is consistent with previous research, which has generally found that interpersonal crimes are often viewed as the most serious forms of offence, above non-interpersonal crimes (e.g. Herzog, 2003; Mann, Wheeler & Sarrat, 1980; Rosenmerkel, 2001; Stylianou, 2003). This study provides some support for the notion that actual physical harm to a victim in a crime such as assault is perceived as more severe than the victimisation of a corporate structure, in a crime such as fraud (e.g. Chapman & Smith, 2001; Friedman & Rosenbaum, 1988; Podgor, 2007; Smith, 2001). However, the present findings do not lend support to the notion that interpersonal crimes are punished more severely, as this study found no significant differences between punishment of assault and fraud (e.g. Byrne et al., 1999; Cullen, Link, & Polanzi, 1982; Rosenmerkel).

The findings of this study also did not find support for the differential perception of seriousness of crime based upon the race of an offender. That is, participants did not view the crimes of assault or fraud as more or less severe if they were perpetrated by an Indigenous or Caucasian offender. Furthermore, there was no difference in the selected punishment severity of Indigenous or Caucasian offenders who had committed assault or fraud. In addition, the frequencies of selection of offender or victim reasons for punishment were relatively consistent across race of the offender. Furthermore, no evidence for the race-crime congruency effect was found (e.g. Gordon, 1990; Jones & Kaplan, 2003). Such a finding is largely inconsistent with the majority of international research on the differential perception and sentencing of crimes by racial minority defendants (Pratt, 1998).

These findings regarding race are also inconsistent with previous Australian research that has been conducted on the perception of crimes committed by Indigenous and Caucasian offenders. For instance, as has been previously found, crimes by Indigenous offenders have been more leniently perceived (e.g. Feather & Souter, 2002) when compared to Caucasian offenders. Conversely, crimes by Indigenous offenders have also been more seriously perceived than the crimes of their Caucasian counterparts (e.g. ForsterLee et al., 2006)

However, Field et al. (2008) also found a non-significant effect of race in their study of the perception of offender responsibility and sentence severity for Indigenous and Caucasian offenders convicted of assault or car theft. The study did find that race indirectly affected the perception of crime through attributions for the offence. As this study did not assess the presence of internal or external attributions regarding the participant's belief for the reason for the commission of each offence, it is difficult to

ascertain if race indirectly accounted for the differing perception of crime in this research.

An alternative explanation for the findings regarding offender race of the present study is that of the watchdog effect. The watchdog effect is characteristic of the presence of modern racism (Petty et al., 1999; Sargent & Bradfield, 2004). For instance, previous studies regarding the differential sentencing and perception of crime by offenders of differing racial backgrounds have found no effect of race (e.g. Feather & Souter, 2002; Sargent & Bradfield). This has been suggested as being due to the covert and suppressed nature of modern racism (Mellor, 2003). That is, individuals act as 'watchdogs' against appearing biased or discriminatory by responding in a guarded and neutral manner (Petty et al.; Sargent & Bradfield). This theory is especially relevant to the findings of the present study, especially when the large proportion of discrimination towards Indigenous Australians that has been documented within the literature is considered (e.g. Dunn et al., 2004; Dunn et al., 2003; Dunn & McDonald, 2001; Feather & McKee, 2008; Mellor, 2003; Pedersen et al., 2000; Sweeney & Haney, 1992). However, as discriminatory attitudes towards Indigenous people were not measured within this study, it is uncertain whether the effect found is a result of the watchdog effect or if a lower proportion of racial discrimination was present in participants than is comparable to the wider population (Dunn et al., 2004; Dunn et al., 2003; Dunn & McDonald, 2001; Feather & McKee, 2008; Mellor, 2003; Pedersen et al., 2000; Sweeney & Haney, 1992).

Lastly, the findings of this study were not supportive of any effect of dispositional effect upon the perception of seriousness of crime committed by either Indigenous or Caucasian offenders. This study did not find that participants were more

likely to relate to an offender based upon a shared racial background. Furthermore, the empathic abilities of participants did not alter the reasons for their punishment selection. Also, offender and victim reasons for punishment did not vary according to dispositional empathy and race of the offender. This is incongruent with previous research that has found that the variable of dispositional empathy within the criminal justice system can cause more lenient sentencing of a defendant if similarities are shared between the observer and the defendant (e.g. Archer et al., 1979; Kerr et al., 1995). Thus, this study is inconsistent with previous research that has found a significant effect of dispositional empathy upon the perception and sentencing of crime (e.g. Archer et al., 1979; Barnett et al., 1987; Kerr et al., 1995).

The findings of the present study are also incongruent with previous research that has documented that lower scores on the *IRI* correlate with more prejudice expressed towards Indigenous Australians (Pedersen et al., 2004). That is, in this study, participants who had dispositional empathy scores below the expected norms did not show more prejudice towards Indigenous offenders through perceived severity of crime and punishment selection. However, due to the lack of research in the area of the effect of dispositional empathy on the perception of crime seriousness, it is difficult to interpret the meaning of these results without further research being conducted.

Limitations

The present study did have several limitations that may have impacted the results obtained. Firstly, a relatively small sample size ($n = 101$) was utilised within the research design. Consequently, it was not within the scope of this research to alter the gender of the offender, or the race of the victim within the vignettes. This may have affected the perceived similarity and consequent identification with and dispositional

empathy for a proportion of participants. Furthermore, the sample itself was not normally distributed, in respect to the wider population. Thus, this sample may not have been representative of the general population, which may have eventuated due to the sampling technique utilised within this study design. A non-probability method was utilised in order to recruit participants, which may have reduced the independence of the sample (Martin, 2004).

Furthermore, the scope of this study did not allow for the control of confounding variables (such as previous personal experience with crime), which may have legitimately affected research results. Finally, no Indigenous or Torres Strait Islander participants were recruited for participation within this study, despite the snowballing method of recruitment being utilised (Martin, 2004). As the snowballing method is a non-probability method, this may have contributed to the racial homogeneity of participants (Martin). Had there been an Indigenous comparison group to Caucasian participants, the results of this study may have been different.

Future Research

Future research could counteract such limitations in an attempt to better clarify the effect of dispositional empathy upon race and offence type in the perception of crime seriousness. Furthermore, future studies need to be conducted on a wider scale with a larger sample size. This is necessary in order to contribute more to the knowledge regarding the effect of psychological variables within the justice system (e.g. Feather & McKee, 2008). Future research needs to consider such variables, for instance personality, and their effect upon the perception of crime within the justice system. Much more research is also required in terms of the perception of crimes committed by Indigenous and Caucasian offenders, as the present research is

contradictory and inconclusive. Furthermore, such a study could be extended to include the perceptions of crime seriousness when committed by other racial groups present within Australia. This would assist in a greater understanding of any other racial biases that might be present within the Australian justice system.

Summary and Conclusions

This study has contributed to the area of perception of crime and sentencing. This is especially so in regard to the psychological and extra-legal variables that may affect perception of seriousness of crime. Perception of crime can have a considerable effect at all levels of the criminal justice system, and can contribute to the differential treatment and sentencing of defendants (Jones, 1997). This study has found some support for the notion that participants consistently view interpersonal crimes as more serious than their non-interpersonal counterparts (Rosenmerkel, 2001; Stylianou, 2003).

Furthermore, although this study found no effect of the extra-legal variable of race of the offender, an effect of modern racism has been documented in the 'watchdog' effect (e.g. Perry et al., 1999; Sargent & Bradfield, 2004). This explanation is congruent with prior findings within the literature concerning the high proportion of racism present within Australian society regarding Indigenous Australians (e.g. Dunn et al., 2004; Dunn & McDonald, 2004; Dunn et al., 2003; Feather & McKee, 2008; Mellor, 2003; Pedersen et al., 2006; Pedersen et al., 2000; Pedersen & Walker, 1997). However, alternatively, the participants within the study may have simply possessed lower prejudicial attitudes towards Indigenous Australians than is to be expected from the general population (Dunn et al., 2004; Dunn et al., 2003; Dunn & McDonald, 2001; Feather & McKee, 2008; Mellor, 2003; Pedersen et al., 2000; Sweeney & Haney, 1992). Future research will need to clarify this by strengthening study design in order to

better understand this effect.

Finally, this study has identified areas of need within the present Australian literature, in the exploration of the effect of psychological constructs within the criminal justice system. Although dispositional empathy was not found to alter perception of crime in this study, areas for future research have been identified. This study provides grounding for future research to be conducted in order that more about the effect of extra-legal and psychological variables within the Australian justice system might be known. An understanding of such factors and their impact upon perceptions of crime committed by Indigenous and Caucasian offenders may be vitally important to the reduction of the over-representation of Indigenous Australians within the criminal justice system.

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Appendix A

Participant Information Letter

Dear Participant,

We are currently completing a research project as part of an Honours degree in Psychology at Edith Cowan University. We have chosen to undertake research projects that will assess public perception towards crime. This study has been approved by the Faculty of Computing, Health and Science Ethics Committee.

Please be aware that your participation in this study is both optional and voluntary. Should you choose to participate in this study, your responses will be completely confidential. You are free to withdraw from the study at any time, before submitting your questionnaire. If you complete and return this survey, your consent to participate is implied.

This study will ask you to complete two questionnaires based on crime perception. For both questionnaires you will be asked to read crime scenarios and answer questions relating to the scenarios. There is also a short section in which you will have to record some information about yourself. In total, the questionnaires should take you approximately 15 minutes to complete.

Although the content of this study should not distress you in any way, we have included the contact details of health care services below to contact should you feel distress at your personal opinions being asked.

Crisis Care – Ph: (08) 9223 1111

Lifeline – Ph: (08) 131 114

The Samaritans – Ph: (08) 9381 5555

If you have any further questions regarding this study, please do not hesitate in contacting our supervisors or us:

Associate Professor Denise Charman

Ph: (08) 6304 5393

Email: d.charman@ecu.edu.au

Dr Deidre Drake

Ph: (08) 9304 5020)

Andrea Kysely:

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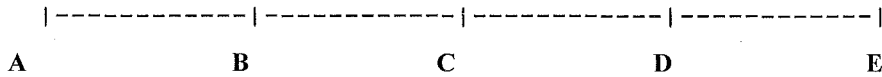
Email: glarkins@student.ecu.edu.au

Thank you for your time and consideration. It is greatly appreciated.

Andrea Kysely and Giselle Larkins

Appendix B

The following statements inquire about your thoughts and feelings in a variety of situations. For each item, indicate how well it describes you by choosing the appropriate letter on the scale at the top of the page: A, B, C, D, or E. When you have decided on your answer, place a cross in the corresponding box. Please answer as honestly as you can.



Does not describe me well

Describes me very well

	A	B	C	D	E
1. I daydream and fantasise, with some regularity, about things that might happen to me.					
2. I often have tender, concerned feelings for people less fortunate than me.					
3. I sometimes find it difficult to see things from the "other guy's" point of view.					
4. Sometimes I don't feel very sorry for other people when they are having problems.					
5. I really get involved with the feelings of the characters in a novel.					
6. In emergency situations, I feel apprehensive and ill-at-ease.					
7. I am usually objective when I watch a movie or play, and I don't often get completely caught up in it.					
8. I try to look at everybody's side of a disagreement before I make a decision.					
9. When I see someone being taken advantage of, I feel kind of protective towards them.					
10. I sometimes feel helpless when I am in the middle of a very emotional situation.					
11. I sometimes try to understand my friends better by imagining how things look from their perspective.					
12. Becoming extremely involved in a good book or movie is somewhat rare for me.					
13. When I see someone get hurt, I tend to remain calm.					
14. Other people's misfortunes do not usually disturb me a great deal.					
15. If I'm sure I'm right about something, I don't waste much time listening to other people's arguments.					
16. After seeing a play or movie, I have felt as though I were one of the characters.					
17. Being in a tense emotional situation scares me.					
18. When I see someone being treated unfairly, I sometimes don't feel very much pity for them.					

19. I am usually pretty effective in dealing with emergencies.					
20. I am often quite touched by things that I see happen.					
21. I believe that there are two sides to every question and try to look at them both.					
22. I would describe myself as a pretty soft-hearted person.					
23. When I watch a good movie, I can very easily put myself in the place of a leading character.					
24. I tend to lose control during emergencies.					
25. When I'm upset at someone, I usually try to "put myself in his shoes" for a while.					
26. When I am reading an interesting story or novel, I imagine how I would feel if the events in the story were happening to me.					
27. When I see someone who badly needs help in an emergency, I go to pieces.					
28. Before criticizing somebody, I try to imagine how I would feel if I were in their place.					

Appendix C

Vignette One: Indigenous offender, assault

Sam is an adult indigenous male. He has recently been in a fight at the local pub, and was arrested as a consequence. The victim of the assault had to receive medical attention following the incident. Sam has been found guilty of assault.

Vignette Two: Indigenous offender, fraud

Sam is an adult indigenous male. He has recently been involved in a health insurance fraud scheme. The insurance company has lost money through Sam's actions. Sam has been found guilty of fraud.

Vignette Three: Caucasian offender, assault

Sam is an adult white male. He has recently been in a fight at the local pub, and was arrested as a consequence. The victim of the assault had to receive medical attention following the incident. Sam has been found guilty of assault.

Vignette Four: Caucasian offender, fraud

Sam is an adult white male. He has recently been involved in a health insurance fraud scheme. The insurance company has lost money through Sam's actions. Sam has been found guilty of fraud.

Appendix D

Please read the scenario below and answer the following questions. They are based on your personal opinion and there are no right or wrong answers.

Scenario

****A copy of each vignette is located under Appendix C****

Questions

1) How serious is this crime? Please circle a number on the scale to indicate seriousness.

1	2	3	4	5
not serious		moderately serious		very serious

2) How severe should the punishment be for this crime? Please circle **one** of the punishments below to indicate severity.

- | | |
|----------------------------------|-----------------------------|
| A. No punishment | E. 1 – 2 years imprisonment |
| B. Monetary fine | F. 4 -5 years imprisonment |
| C. Suspended sentence | G. 10 years + imprisonmen |
| D. Less than a year imprisonment | |

3) Why did you give Sam the particular punishment that you chose? Please circle **one**.

If the reason was to do with the offender and the offence, place a cross here.

Specifically, was it (please circle one): **A. To punish the offender**

B. To deter the offender from reoffending

C. To rehabilitate the offender

D. To publicly condemn the offence

If the reason was to do with the victim and the impact, place a cross here.

Specifically, was it (please circle one): **E. To protect the victim**

F. To provide justice for the victim

G. To protect the community

H. To deter others from offending

If there was another reason, please specify: _____

Appendix E

General information about the person who has completed this questionnaire

Please be advised this questionnaire is completely anonymous. Please do not record your name anywhere on the answer sheets.

Your assistance in providing the following information would be greatly appreciated, as it will allow me to demonstrate that I have collected a wide range of participants from various social and demographic backgrounds.

- 1) To allow us to establish we have survey people from a varied age group, please advise your **age** _____
- 2) To allow us to establish we have surveyed people from both genders, please advise us of whether you are **male or female** _____
- 3) To allow us to establish we have surveyed people from varied economic circumstances, please circle the amount that best represents **your annual family income**.
 - A less than \$25 000
 - B more than \$25 000 but less than \$75 000
 - C more than \$75 000 but less than \$100 000
 - D more than \$100 000
- 4) To allow us to establish we have surveyed people from varied **educational backgrounds** please circle each answer that applies to you.
 - A I have completed primary school
 - B I have completed/completing high school
 - C I have completed/completing a TAFE certificate
 - D I have completed/completing a university degree
- 5) To allow us to establish that we have surveyed people from varied **employment backgrounds** please circle which answer applies to you .
 - A Unemployed
 - B Casual Please specify your job type: _____
 - C Part-time
 - D Full-time

6) To allow us to establish we have surveyed people from varied **ethnic backgrounds** please circle which answer applies to you.

A Australian

B Indigenous Australian or Torres Strait Islander

C Immigrant

If c) please specify your country of origin: _____

This completes your participation. Thank you again for your time and input, it is greatly appreciated.

Appendix G

Table 6. *One way ANOVA Results for the IRI Subscales for the Variable of Gender*

ANOVA						
		Sum of Squares	df	Mean Square	F	Sig.
Subscale_perspective	Between Groups	12.641	1	12.641	.604	.439
	Within Groups	2050.119	98	20.920		
	Total	2062.760	99			
Subscale_fantasy	Between Groups	311.797	1	311.797	8.839	.004
	Within Groups	3492.262	99	35.275		
	Total	3804.059	100			
Subscale_concern	Between Groups	81.812	1	81.812	4.694	.033
	Within Groups	1708.148	98	17.430		
	Total	1789.960	99			
Subscale_distress	Between Groups	43.787	1	43.787	1.779	.185
	Within Groups	2411.523	98	24.607		
	Total	2455.310	99			

Appendix H

Table 7. *One way ANOVA Results for the IRI Subscales for the Variable of Education*

		ANOVA				
		Sum of Squares	df	Mean Square	F	Sig.
Subscale_perspective	Between Groups	111.628	3	37.209	1.831	.147
	Within Groups	1951.132	96	20.324		
	Total	2062.760	99			
Subscale_fantasy	Between Groups	53.808	3	17.936	.464	.708
	Within Groups	3750.251	97	38.662		
	Total	3804.059	100			
Subscale_concern	Between Groups	174.712	3	58.237	3.461	.019
	Within Groups	1615.248	96	16.826		
	Total	1789.960	99			
Subscale_distress	Between Groups	126.731	3	42.244	1.742	.164
	Within Groups	2328.579	96	24.256		
	Total	2455.310	99			

Appendix I

Table 8. *Dependent Samples t Test Results for Seriousness of Assault and Fraud*

Paired Samples Correlations

		N	Correlation	Sig.
Pair 1	Assault_seriousness & Fraud_seriousness	99	.333	.001

Paired Samples Test

		Paired Differences							
		Mean	Std. Deviation	Std. Error Mean	95% Confidence Interval of the Difference		t	df	Sig. (2-tailed)
					Lower	Upper			
Pair 1	Assault_seriousness - Fraud_seriousness	.374	1.103	.111	-.154	.594	3.372	98	.001

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