2015

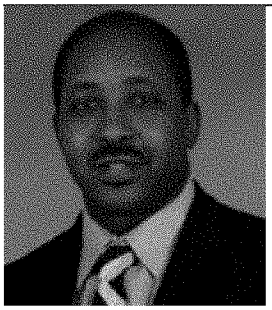
"Driving While Black" Redux: Illuminating New and Myriad Aspects of Auto(matic) Inequality

Mario Barnes
University of Washington School of Law

"Driving While Black" Redux: Illuminating New and Myriad Aspects of Auto(matic) Inequality

http://crim.jotwell.com/driving-while-black-redux-illuminating-new-and-myriad-aspects-of-automatic-inequality/

Charles R. Epp, Steven Maynard-Moody, and Donald Haider-Markel, Pulled Over: How Police Stops Define Race and Citizenship (2014).



Mario Barnes

In the wake of a recent spate of police killings of unarmed young, black males in various states, we have once again been reminded of the problematic connections between identity, crime and justice in the United States. For example, the stories surrounding the deaths of Michael Brown (Ferguson, MO), Eric Garner (Staten Island, NY), Tamir Rice (Cleveland, OH), and Walter Scott (North Charleston, SC) reflect the urgency of this Country's lingering need to seriously consider the differential policing of African-American boys and men. The effect of the killings has been so dramatic that along with the death of Trayvon Martin at the hands of George Zimmerman in Sanford, FL, they have inspired a social movement, the motto of which is "Black Lives Matter". While socially conscious movements stressing the need for equal treatment for people of color are important, in our ostensibly post-race world, large swaths of the citizenry are still likely to view with skepticism claims that racial animus and unconscious bias routinely infect policing. Within this context, little can be done to address vulnerabilities of the socially marginalized without the assistance of compelling empirical data. A new and excellent source of such research is found in *Pulled Over: How Police Stops Define Race and Citizenship* (2014). This book describes the results of research conducted by University of Kansas scholars Charles Epp, Steven Maynard-Moody and Donald Haider-Markel, which powerfully demonstrates how police practices not only reflect racial bias but operate to construct understandings of race and societal status.

The study at the heart of the text analyzes survey data for over 2300 police stops of motorists in the Kansas City metropolitan area. Based on 708 survey responses for drivers stopped by police, 30 percent of which were from black drivers (P. 20), a key finding of the study is that the effect of race on traffic stops depends on the justification for the stop. For traffic safety stops, which the authors describe as "must stop" situations involving potentially serious violations (P. 60), Blacks are less likely than Whites to a statistically significant degree to be provided such justifications for their stops. This is so because the most important influence on these stops is "how people drive." (P. 64). With investigatory stops—essentially described as stops for low-level violations—by contrast, Blacks a more likely than Whites to a statistically significant degree to be provided such justifications. Low-level stops, then, are significantly influenced not by driver conduct, but "how they look." (P. 64). Beyond this illuminating finding connecting the consideration of race in stops to the type of traffic stop, the study considers the relevance of a number of other driver and auto characteristics for police stops. Looking at such characteristics as gender, age, class and driver behavior, the data support additional findings for investigatory stops. (P. 68-69). For example, certain low-value vehicles—a marker for socioeconomic class—were stopped more often, race mattered more when drivers were perceived as driving in

locations where they were "out of place" and that young Black males driving low-status vehicles were the most vulnerable minority drivers. (P. 70-71). These survey data alone add significant nuance to our understanding of how perceived driver identity and behavior affect policing. The study, however, also collected interviews from among the survey participants. (P. 21). Using these interviews, throughout the text the researchers weave in driver narratives that provide powerful qualitative evidence of how drivers internalize the consequences of racially disparate policing.

There is much to appreciate about *Pulled Over*. Beyond illuminating the race distinctions between the policing of traffic safety and investigatory stops, the analysis of investigatory stops focuses on how these stops operate as institutional practice rather than as a by-product of individual police animus. (P. 38-39). Moreover, and importantly, the text explicates how the practice is important for co-constructing citizen understandings of race, and the debilitated status that accompanies certain minority racial categories. The authors demonstrate how this is done by the stops building on and accentuating negative racial stereotypes. (P. 12, 50). Second, these results reveal the danger of the U.S. Supreme Court decision in *Whren v. U.S.*, 517 U.S. 806 (1996), where the Court found stops based on minor infractions to be lawful even if they are partially motivated by race bias. *Pulled Over* reveals that considerations of race are most salient in the very low-level infraction environment in which the Court is unwilling to intervene. Third, the combined effect of the quantitative and narrative data, is not only to fully paint a picture of the story of police stops but effectively demonstrate how racially disparate stops convey a sense of second-class status. (P. 136). Not only does this data help to confirm the dangers of police profiling, but to explain why certain minority drivers are distrustful of police and more generally question the legitimacy of police stops.

The final chapter of the book includes a proposal for reforming police institutional practices for traffic stops. The proposal seeks to reduce the racial disparities between traffic safety and investigatory stops by only allowing stops where police have "clear evidence of criminal behavior." (P. 161). Additionally, searches during the stops would require probable cause, and police would need to develop internal oversight guidelines for stops. (P. 161-162). While I am not particularly hopeful about the wide-spread implementation of the proposal in police departments throughout America, this work still makes a powerful contribution. First, it stands as an excellent example of informative law and society research that takes race seriously. Critical Race Theory (CRT) scholars have recently been calling for such work as an important first step in exploring potential synergies between social science empirical research and the CRT anti-subordination theories constructed largely from the lived experience of individuals. Second, the work's emphasis on police stops as sites that manifest structural racism and convey a sense of a diminished quality of citizenship, should assist all but the willfully blind in better understanding the causes and consequences of racially biased policing. Concerning ourselves with this aspect of the text could help to move our national conversation about race and policing away from the notions of perceived black criminality that partially explain incidents such as those in Ferguson, Staten Island, Cleveland, and North Charleston, toward conversations about the actual inequality that routinely shapes the lives of young, black men in the United States.

Cite as: Mario Barnes, *"Driving While Black" Redux: Illuminating New and Myriad Aspects of Auto(matic) Inequality*, JOTWELL (May 13, 2015) (reviewing **Charles R. Epp, Steven Maynard-Moody, and Donald Haider-Markel, Pulled Over: How Police Stops Define Race and Citizenship** (2014)), http://crim.jotwell.com/driving-while-black-redux-illuminating-new-and-myriad-aspects-of-automatic-inequality/.