

Sentencing Disparity: Aboriginal Canadians, Drunk Driving and Age*

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Abstract. *Researchers have tried to explain the over-representation of Aboriginal peoples in custody by attributing this to more punitive sentencing. A few investigators have discovered harsher sanctions, some have actually found shorter sentences that indicate paternalistic sentencing, but generally better research designs show little evidence of bias once prior criminal history and offence severity are considered. In the US, sentencing research on racial bias has moved towards models that incorporate age, gender and race interactions and use specific crimes to better contextualize findings and uncover discrimination not easily discerned in univariate and bivariate research on general offences. These models have shown evidence of an age advantage for older offenders conditioned by race and offence type. This exploratory study used focal concerns theory to test racial disparity and age advantage hypotheses, and examined interactions to further assess the possible mediating influence of race. The study sample consisted of 237 male drunk drivers sentenced to custody for Drive Under the Influence (DUI) in Alberta, Canada from 1989-1991. Controls included prior drunk driving charges, collision severity indicators, and standard demographic variables. Findings provided partial support for focal concerns related to age and race. Age impacted Aboriginal drunk drivers, favorably for younger drivers, but negatively for older DUI cases in their forties.*

Keywords: sentence length; age; Aboriginal; DUI; drunk driving; collision

Introduction

Indigenous peoples are severely over-represented in justice systems throughout the world (Bachman, Alvarez, and Perkins, 1996; Indian and Northern Affairs Canada, 1996; Broadhurst, 1997). In Canada, provincial and federal government inquiries have concluded that the plight of Aboriginal Canadians is a result of “systemic discrimination” by agents operating in the criminal justice system (Aboriginal Justice Inquiry, 1991; Cawsey, 1991; Indian and Northern Affairs Canada, 1996). Indeed, ample data has been assembled displaying that Aboriginals are disproportionately charged and incarcerated, relative to their numbers in the population (Beattie, 2005; LaPrairie, 2002; Roberts and Doob, 1997; Roberts and Melcher, 2003). One intuitive explanation for higher incarceration rates is that Aboriginals receive harsher (longer) prison sentences than non-Aboriginals for similar crimes.

Researchers generally, however, do not find evidence of lengthier custody terms. In fact, many investigators find that Aboriginal offenders are treated more leniently, not more severely, than Non-Aboriginal Canadians (LaPrairie, 1990, 1996; Stenning and Roberts, 2001). Nor is this paradoxical finding limited to Canada. Studies

conducted in the United States also find that Native Americans often are assigned shorter custody terms than other racial/ethnic groups for similar crimes (Alvarez and Bachman, 1996; Leiber, 1994; Feimer, Pommersheim, and Wise, 1990). The recurring finding of shorter sentences is surprising, but still not considered conclusive. The evidence of greater leniency for Aboriginals is questioned because of recurring methodological flaws in sentencing disparity studies (Bachman, Alvarez, and Perkins, 1996; Pratt, 1998). To answer some of these methodological conundrums, theories of sentencing disparity have moved beyond assessment of direct effects of race upon court outcomes. Unraveling the complexity of the criminal court has led to more sophisticated analyses of offender attributes and their influence on court decisions. An emergent theme in the sentencing literature is the importance of interaction affects, particularly with respect to race, gender, and age (Albonetti, 1997; Steffensmeier and Motivans, 2000).

This study assesses sentencing disparity for Aboriginal offenders by testing focal concerns theory on the single offence of drunk driving, and incorporates statistical controls and interaction terms to see if these strategies can reveal patterns of discrimination previously

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masked by measurement problems. Consistent with an emergent trend in the literature, possible age interactions with race are examined to see if leniency effects for older offenders that have been found in some studies are also applicable to Aboriginal offenders. Study data comprises a sample of male incarcerated drunk drivers from Alberta, Canada. The data incorporates auto crash involvement as a means to distinguish crime severity, a measure not observed previously in the sentencing literature.

Literature Review

Issues in Researching Race and Sentencing

There are few studies concerned with indigenous peoples; hence, it is useful to draw on the extant research on race and sentencing. Disadvantaged racial and ethnic immigrant minorities in many different nations are disproportionately represented as offenders in official statistics maintained by police, courts and corrections (Lynch and Patterson, 1991; Mann, 1993; Tonry, 1997). It is argued that race can increase the likelihood of detection, arrest, prosecution, conviction and punitive sanctions, and limit the likelihood of early release from prison. Descriptively, verification of minority over-representation is relatively straightforward. Racial and ethnic minorities such as Blacks and Hispanics and immigrant groups are over-represented in arrest and imprisonment statistics in western nations such as Australia, Canada, the United States, the United Kingdom, and European nations (Tonry, 1997). Of particular relevance to this paper, indigenous peoples are over-represented in criminal statistics in Canada, the U.S. and Australia (Broadhurst, 1997; Lynch and Patterson, 1991; Mann, 1993; Roberts and Doob, 1997; Roberts and Melchers, 2003).

While evidence of over-representation is abundant, support for a discrimination hypothesis is harder to establish. Early efforts by investigators are plagued by methodological problems. In particular, small samples and a lack of control for legal attributes that contribute directly to sentence severity (e.g., prior record, offence severity), make many early studies fairly suspect in their conclusions (Hagan and Bumiller, 1983; Pratt, 1998). On the American scene, differences between State legal codes and the timing of legislative changes can affect the comparability of research outcomes between jurisdictions and over time (Sampson and Lauritsen, 1997).

The sophistication of analyses can also affect outcomes. In multivariate analyses, subtle discrimination effects may not be discerned because interaction effects are not considered. In his meta-analysis of the race and

sentencing literature, Pratt (1998) reports on studies that initially find no race relationship with sentence outcomes until offender race interactions are examined in conjunction with both legal factors (offence, prior history) and non-legal factors such as age, gender, socioeconomic status, and victim race. Also, the bulk of sentencing research on race discrimination focuses on African-Americans, and indeed, it may be that this emphasis has served to obscure bias towards other racial groups. Recent studies show discrimination effects are more apparent when other ethnic groups such as Hispanic Americans are considered, either directly (Demuth and Steffensmeier, 2004; Steffensmeier and Demuth, 2000) or when interaction effects are examined (Albonetti, 1997; Zatz, 1987).

While race and sentencing studies have progressed in methodological rigor (Sampson and Lauritsen, 1997), studies are preferred that incorporate controls for alternative explanations of sentence disparity, and conduct analysis to assess interaction effects. Furthermore, in North America, there is also a clear lack of research in the area of Aboriginal minorities—much of what has been done concerns African-Americans and, to a lesser extent, Hispanic Americans.

Over-representation of Indigenous Peoples and Sentence Length Patterns

Canadian Aboriginals represent 3.3 percent of Canada's total population (Statistics Canada, 2003). Census data indicates that they are socially and economically disadvantaged relative to other Canadians (Statistics Canada, 2001). In contrast to other Canadians, Aboriginal children 15 and under are twice as likely to living with a lone parent (35.4% vs. 16.9%), 54 percent have not finished high school (Non-Aboriginals, 34%), and only 3 percent have post-secondary degrees (Non-Aboriginals 13%). Unemployment rates are more than double for adult Aboriginals (24% vs. 10%), and 46 percent of Aboriginals earned less than \$10,000 in the most recent year, compared to only 27 percent of Non-Aboriginals.

Given their economic difficulties, it is not surprising that Aboriginals are greatly over-represented in provincial/territorial and federal prisons. In 2003-2004, despite making up only 3.3 percent of the adult Canadian population, they made up 21 percent of sentenced admissions to provincial/territorial correctional facilities (Beattie, 2005). The situation is worse in Alberta, where this paper's research was conducted: Aboriginals make up 5 percent of the adult population, but in 2003-2004 they made up 39 percent of all provincially-sentenced admissions (Beattie, 2005).

This over-representation and other issues have led Canadian provincial and federal government task forces to conclude that the justice system systemically discriminates against Aboriginal Canadians (Cawsey, 1991, Indian and Northern Affairs Canada, 1996). Going into the 21st century the Canadian government has made efforts to decrease the use of any form of incarceration for Aboriginals, including the passage of section 718.1 in their Criminal Code. This legislation asks judges to consider every alternative possible to avoid sentencing Aboriginal peoples into custody. To-date, regrettably, this innovation has produced little in the way of declines in Aboriginal custody (Stenning and Roberts, 2001). The proportion of Aboriginals in prisons continues to be high, and many researchers find that the prior criminal history and recidivism rates of many Aboriginals make them poor candidates for community supervision (Stenning and Roberts, 2001; Welsh and Ogloff, 2000).

Over-representation does not translate so easily into discrimination, however. Some scholars argue that Aboriginals are not discriminated against at the point of sentence, they simply are sentenced to more jail time for longer periods proportionate to their lengthy criminal histories, i.e., Non-Aboriginals with similar criminal histories receive similar punishments. Furthermore, investigators often find that North America's indigenous peoples receive shorter, not longer, custodial sentences. In Canada, initially it was thought that this was because Aboriginals more frequently serve time for fine default, involving minor crimes that warrant short jail terms (Hagan, 1974). Follow-up reviews in the 1990s on specific offences, however, found that a leniency pattern is present in some cases, even after controls for prior record and offence severity were introduced (LaPrairie, 1990, 1996; Shaw, 1994; Stenning and Roberts, 2001; York, 1995). Similar findings are reported in several US Native American studies. In Iowa, Leiber (1994) finds in his examination of juvenile court outcomes that Native American youth receive more favorable dispositions than African-Americans or Whites. In South Dakota, Feimer and his colleagues (1990) discover shorter prison sentences for Native American state inmates when compared to others. Alvarez and Bachman (1996) also report Native Americans are given lower mean sentences for assault, sex assault and homicide offences, although burglary shows a slightly longer average sentence.

The pattern of leniency has not been consistent, however (Latimer and Foss, 2005). In Canada, a spirited debate has emerged over whether or not legislative changes or studies of judicial sentencing can result in any reduction of Aboriginal over-representation (for

one view see Stenning and Roberts, 2001; but compare with Rudin and Roach, 2002). It may be that sentencing research questions should not address discrimination directly, but might instead evaluate which crimes and in what circumstances dispositions are impacted, favorably or punitively.

Focal Concerns Theory

Explanations for racial inequality in sentencing have moved from consensus-based legal characteristics (current offence severity, prior record), to labeling-interactionist-based notions of racial discrimination (status characteristics), to more general conflict models that infer the court system is an instrument of oppression by dominant social elites (Leiber, 1994). More recently, Steffensmeier, Ulmer and Kramer (1998) theorize that sentencing disparity emanates directly from three focal concerns that frame judicial decisions. The first, blameworthiness, sees judges assigning sanctions based on more conventional, consensus-based legal factors such as offence severity and circumstances, the offender's possible active/passive role in the offence, prior criminal history, and mitigating factors such as prior victimization. The second focal concern, protection of the community, has the judiciary considering the need to incapacitate the individual offender or punish him or her in order to deter others. Judges here may again consider blameworthiness factors that also indicate risk (offence severity and criminal history), but they also assess offender attributes that indicate social bonds such as employment, education, and marital status. The prevention of further harm and recidivism are vital considerations for the judiciary at the point of sentence. Thus, subsumed under community protection is the notion of "dangerousness," an evaluation of an offender's potential to commit future violence or otherwise reoffend. The third focal point, practical constraints and consequences, speaks first to individual limitations such as offender attributes that may decrease their ability to serve a prison term, such as health or disruption of family, a particular concern for female offenders. Constraints at the organizational level may include a need to maintain working relationships in the court room setting, overcrowding in jails and prisons, and community reaction, a particular concern in some U.S. settings where the judiciary are elected.

A central thrust of focal concerns theory is to assess if the judiciary adopts a "perceptual shorthand." This is a cognitive patterning whereby age, race and gender influence a judge's assessments of community protection, "dangerous" status and/or recidivism risk. Problematic

are cognitive designations of “dangerousness” that lie outside current offence or prior criminal history circumstances. Viewing defendants as a threat simply due to age, gender and race introduces an extra-legal, discriminatory bias into sentencing. The sentencing literature finds this most pronounced towards young, African American male offenders, and to a lesser degree, Hispanic Americans.

In their initial test of focal concerns theory, Steffensmeier and his colleagues (1998) use Pennsylvania official court records to provide quantitative empirical support, and then add further evidence from qualitative interviews of the judiciary. Both data sources confirm the existence of judicial cognitions that differentially weigh individual offender circumstances by age, gender and race. An analysis of federal court data also shows greater punitiveness towards Hispanic Americans, as well as African Americans (Steffensmeier and Demuth, 2000). Recent studies by other investigators affirm the impact of focal concerns: on urban court processing for Black defendants in a southeastern state (Leiber and Blowers, 2003) and incarceration of African-American and Hispanic offenders in a three-city study (Spohn and Holleran, 2000). More lenient treatment is also a possible outcome explained by focal concerns. Female offenders are viewed as less dangerous and more likely to have family commitments, and their own prior victimization experiences are viewed as mitigating factors by judges (Steffensmeier et al., 1998). More favorable sentencing outcomes are also associated with elderly status (Steffensmeier and Motivans, 2000).

Focal concern theory and its proponents have given greater prominence to age as a conditioning factor at the point of sentence. Previously neglected in sentencing research, age has been found to operate in a curvilinear fashion, interacting with race and gender, to influence the severity of criminal justice sanctions (Johnson and Alozie, 2001; Steffensmeier and Motivans, 2000; Steffensmeier, Kramer, and Ulmer, 1995). Very young offenders may be afforded minor or community-based sanctions because their lack of experience and (in some cases) poor parental supervision make them less blameworthy. Younger adults (18-40), on the other hand, have had their chance to mature and might now be assumed to be committed to a criminal lifestyle. The blameworthiness of older offenders (40+, but especially 60+) might be muted by a greater chance to have accumulated some employment experience or marital bonds. Older offenders are not perceived as a large threat to reoffend violently, particularly when elderly. Organizationally, judges may give some thought to the vulnerability of older offenders to assault by younger inmates if sent to prison. For the very elderly,

health problems might preclude a lengthy custodial disposition.

In their review of a sparse literature, Steffensmeier et al. (1995) find few examples of empirical work that tests age effects with appropriate statistical controls. In their own work, they identify, net of controls, an inverted J-shaped relationship whereby judges sentence more harshly from 18-19 to 20-29 years of age, then less harshly at 10 year intervals (30-39, 40-49, 50-59, 60+) until 60 year-olds are least likely to be incarcerated and serve the shortest prison terms. In more carefully specified models, the “age advantage” is found to be conditioned by offence type and gender (Steffensmeier and Motivans, 2000). Drug trafficking convictions attenuate age benefits for older offenders and older females tend to do better than older males. In their Arizona study, Johnston and Alozie (2001) indicate that decisions to charge or divert 5,715 drug offenders become favorable to defendants at a threshold age of 52, and then only for White and Native Americans. African American and Hispanic offenders are treated more harshly regardless of age. Regrettably, the small number of Native Americans in their sample precludes multivariate analysis, inhibiting the potential generalizability of their findings. Contrary to focal concerns, Alvarez and Bachman (1996) find that the direct effect of being younger results in less onerous sentencing, net of controls for offence type, prior record, gender and Aboriginal status. Their study findings do not, however, take into account potential interactions or curvilinear relationships.

We can use focal concerns theory to consider the potential influence of the drunken Indian stereotype or “firewater myth.” This stereotype of indigenous peoples in North America has a long history (Mancall, 1995). The assumption is that Aboriginals cannot control their drinking, and that this may even have a biological basis (Esqueda and Swanson, 1997). This myth persists, but has been debunked on a number of occasions by the scientific community (Beauvais, 1998; Garcia-Andrade, Wall, and Ehlers 1997; Bennion and Li, 1976). The stereotype, however, has implications for Aboriginals convicted of drunk driving and attributions of blameworthiness and considerations of community protection.

Research Hypotheses

The empirical literature is inconsistent on sentence length and Aboriginal status, thus we must derive alternative hypotheses from focal concerns theory when we assess race and sentence length. Blameworthiness leads us on the one hand to consider that the judiciary will sym-

pathize with the social and economic plight of Aboriginal peoples and their inability to control their drinking, and thus be more lenient in their dispositions. On the other hand, focal concerns also allow us to derive a punitive hypothesis (longer custody sentences): Aboriginals are more blameworthy because, as a distinct racial group, they choose to deal with their life circumstances by drinking excessively and driving.

Protection of the community focal concerns may weigh more heavily against Aboriginal offenders. They may receive longer custody terms because they cannot control their drinking and are at a greater risk for recidivism. Furthermore, they may also be considered more dangerous as drunk drivers because they are stereotyped as more chronic drinkers than other DUI offenders, increasing the likelihood of a serious property- or injury-related crash.

The extant literature suggests that advancing age will result in shorter sentences for both White and Aboriginal offenders. Given that the youngest offenders in this study are in their twenties (not teens), it is unlikely that leniency will be observed for the youngest drunk drivers in the sample, Aboriginal or White.

Methods

Using one offence type (drunk driving) in this study helps avoid possible errors in interpreting sentence length. In practice, custodial remand time sometimes impacts sentence length assigned upon plea or conviction (i.e., credit for time served). Unlike property or violent offenders, however, it is unusual in practice for drunk drivers to be remanded for more than overnight (to sober up) prior to trial or sentencing. This is because once sober, a drunk driver is unlikely to be considered a danger, even in cases where property damage or injury is alleged.

The dataset used to test these hypotheses offers several advantages, as it controls for offence type (DUI), number of current charges, severity, priors, as well as key demographic attributes. The study data also predate several legislative initiatives and custody trends in Canadian courts that now “muddy the waters” for researchers interpreting sentencing outcomes.

However, these advantages also result in some study limitations. For instance, the sample, while fair-sized, is still somewhat limited for a rigorous evaluation of interaction effects. While focusing on one offence (drunk driving) works effectively as a control, it might also limit the generalizability of results to other crimes. Using these data also avoids having to contend with conditional sentencing legislation enacted in 1996 (option of

custody served in community), the proclamation of section 718.2(e) of the Criminal Code (avoidance of sentencing Aboriginals to custody), and the issue of increased custody remands in Canada, all developments that could impact dispositions at the point of sentence.

Sample and Data Collection

The study sample consists of 237 male drunk drivers incarcerated in the Alberta provincial correctional system. The data come from a province-wide evaluation of a correctional impaired driving program (Weinrath, 1994). The original study sample consisted of 514 male offenders sentenced from 1989-1991 who had a sentence length minimum of 90 days straight time. Setting a sentence length minimum of 90 days allows for the examination of substantive differences in custody terms, rather than trivial discrepancies. Furthermore, by not including sentences of less than 90 days, the study group is considered more representative of serious drunk drivers sentenced to custody in Alberta. For example, to get a sentence of at least 90 days DUI cases must have at least one prior conviction, be involved in a collision, or both. Minor DUI offenders with one or two convictions typically receive fines or weekend intermittent sentences of up to 30-90 days (more sampling details are provided in Weinrath, 1994).

Among the original 514 offenders, sentence lengths were affected by other crimes, such as predatory (e.g., theft, assault), and non-drinking convictions (e.g., drug possession) unrelated to drunk driving. To allow for a focus solely on potential disparity for drunk driving charges, offenders serving time on other non-DUI offences were removed from the analysis. Because all 6 offenders serving on drunk driving fatality charges are White, they were also excluded. The remaining 237 offenders comprise the final study group, and all are sentenced solely for drunk driving charges. Thus, a tradeoff for losing a larger sample is the analysis of a DUI group that judges consider only on the basis of current offence(s), and related prior history.

Canada’s provincial prisons house inmates serving two years less a day, plus a few inmates serving longer sentences by agreement with the federal government. For example, in the study group only three inmates are serving sentence lengths of more than two years (24 months), but 88 percent are serving less than a year, and the majority (65%) are serving six months or less.

Other important controls are also available in this dataset. Official records from Provincial Corrections, Motor Vehicles and Transportation Departments auto-

mated databases provided offender demographic characteristics and legal history used in controlled analyses. Motor Vehicles automated systems contained driver records of drunk driving criminal code convictions. The Transportation department collision database provided motor vehicle collision information (property, injury, fatality). The Corrections database contained remand and sentence admission dates, charge data, sentencing data, and demographic data, some of which is self-reported by inmates.

Linkage of multiple sources increased the reliability and validity of study data. For example, in a few cases Motor Vehicle records did not show a record of prior drunk driving conviction, but the Corrections database had them, and vice versa. In another application, serious outcome measures such as injury collisions were indicated by charge type in the Corrections database, but some injury collisions that did not result in criminal charges were recorded in the Transportation vehicle crash database. Property damage collisions were only available in the Transportation vehicle databases, but details were presumably available to the Crown to reference at the point of sentence.

Dependent Variable

Sentence length, a ratio variable, is calculated as the number of days offenders were sentenced to custody. The data is skewed by several long sentences (mean = 219.2, standard deviation = 155.3). The minimum sentence is 90 days, the maximum 1573 days, but only 1.3 percent of all cases exceed two years in length. The use of skewed data is common in sentencing research. We will not use the typical method to manage this (natural log transformation of the data), because first, it is felt more effective to present sentence lengths in their unlogged form, and second, the transformed and untransformed results were almost identical (logged results are available on request).

Independent Variables

Race. There are only two racial groups represented in the study, Aboriginal (1) and White (0). This information is self-reported by inmates upon admission to provincial prisons.²

Age. Age is measured in two ways, as an interval/ratio variable, and as a categorical variable to assess age ranges. Dummy variables will represent four age range intervals: 20-29, 30-39, 40-49, and 50+.

Education, Employment, Marital Status. These three variables are typically used as controls in sentencing

research, although effects vary from study to study. Data here come from the provincial Corrections database and are self-reported by inmates upon admission. Education will be treated as an interval variable. Employment and marital status are coded as dichotomous indicators. Employment is simply 1= yes, 0=unemployed. Those married or living common-law (1) are contrasted with those single, divorced or widowed (0).

Current Drunk Driving Related Charges, Prior DUI, and Collision Events. Legal factors indicating offence severity or prior criminal history have strong impacts on sentencing and hence are important controls. Current DUI charges are coded into a truncated ordinal variable (0=1, 1=2, 2=3+charges). Prior DUI is treated as an interval variable. The association of property or injury collisions with any DUI charge(s) is indicated yes/no (most serious outcome noted).

Analysis Plan

Analysis of the data proceeds in three stages. First, the Aboriginal and Non-Aboriginal DUI cases will be contrasted for differences, including an assessment of the direct effects of race on sentence length. Statistical significance will be appraised using t-test for interval/ratio variables and chi square for categorical data

To ensure that group differences do not influence outcomes, multivariate analysis (ordinary least squares regression) will then be used to determine the effect of the race and age variables, net of controls, on drunk driver sentence length. Initially, the sentence length variable will be regressed on legal and demographic factors, and the direct effect of age and Aboriginal status will be assessed. A second equation will estimate age and race interactions by introducing the age-race terms by category. The analysis will also assess whether or not older Aboriginals and older Whites experience the “age advantage” observed for some groups in previous studies. Finally, the regression equations will be used to estimate conditional means for each age-race category. This method will provide a synopsis of findings and simplify comparisons by category.

Findings

Sample Description

The drunk drivers in this study generally are serving shorter sentences (Table 1). Recall that the minimum sentence is 90 days, but fully 50 percent of cases range from 90-180 days, and 85 percent are sentenced to a year

Table 1. Drunk Driver Sample Description

Categorical variables	f	%
Race		
Aboriginal	81	34.2 %
White	156	65.8
Age		
20-29	68	28.7 %
30-39	86	36.3
40-49	50	21.1
50+	33	13.9
Employment		
Employed	179	75.5 %
Unemployed	58	24.5
Living arrangements		
Married	76	14.8 %
Common-law	35	32.1
Single	70	29.5
Divorce/separated	53	22.3
Widowed	3	1.3
Collision type		
Property	10	4.2 %
Injury	13	5.5
None	214	90.3
Current DUI charges		
1	158	66.7 %
2	48	20.3
3+	31	13.0
Interval variables	Mean	SD
Age	36.2	10.4
Education	9.8	2.1
Prior DUI	2.79	1.9
Sentence length	219.2	155.3

Table 2. Race by Demographic and Legal Variables

Categorical variables	Aboriginal		White		T or chi square statistic
	f	%	f	%	
Employment					
Employed	51	63.0 %	151	82.1 %	10.510 ***
Unemployed	28	37.0	30	17.9	
Living arrangements					
Married common-law	47	58.0 %	64	41.0 %	6.187 **
Single/divorced/separated/widowed	34	42.0	92	59.0	
Collision type					
Property	3	3.7 %	7	4.5 %	.862
Injury	3	3.7	10	6.4	
None	75	92.6	139	89.1	
Current DUI charges					
1	62	76.5 %	96	61.5 %	12.426 ***
2	17	21.0	31	19.9	
3+	2	2.5	29	18.6	
Interval variables	Mean	Std. dev.	Mean	Std. dev.	T or chi square statistic
Age	33.7	10.8	37.4	10	2.620 *
Education	9.1	2.5	10.2	1.8	3.780 ***
Prior DUI	2.73	1.9	2.82	1.9	.353
Sentence length	204	112	227	173	1.270

*p<.05, **p<.01, ***p<.001

or less. As mentioned, the mean score is pulled up by a few extreme cases. These outlier cases had little effect on later analysis, however, and consequently, are left in.

The sample is generally white, in their thirties, achieved more than grade ten, are employed and married or living common-law. About two-thirds of the 237 member study sample is White, still leaving a substantial number of Aboriginal participants. Subjects range in age from 20 to 66. The highest proportion of DUI cases is in the 30-39 group, the lowest in 50+ (13.9%). Education varies from 1 to 15 years, with 75 percent of the sample having at least grade eleven. Those married or living common-law comprise just under half the sample (46.9%), while those single, divorced or widowed comprise the remaining 53.1 percent. Inmates serving on drunk driving charges are more likely to report being employed than other provincial inmates. About 76 percent of the DUI sample stated that they were employed upon admission to custody. This rate is higher than other inmates (40%

figure supplied by Alberta Solicitor General). The higher rate of employment is typical for drunk driving inmates, who tend to have backgrounds in blue-collar occupations and more stable employment histories than other inmates.

Two-thirds of the sample has only one current DUI-related charge, 21 percent have two charges, and 13.2 percent show 3-7 current charges. Prior DUI ranges from 0-14 (mean=2.79, std. dev.=1.9). Official records indicate that only 9.7 percent of the study sample offences involve crashes. Ten (10) offenders were involved in property collisions and 13 in injury crashes.

Bivariate Relationships

Looking at the direct effects of race on sentencing, results are consistent with the predicted direction for a leniency hypothesis (shorter for Aboriginal DUI), but the findings are unreliable (Table 2). Aboriginal drunk

Table 3. Regressions of Sentence Length on Aboriginal Status, Age, and Legal Status Variables, and Race-Age Interaction terms

	B	SE	Beta	B	SE	Beta
Constant	107.1	36.94		95.07	27.61	
Aboriginal 30-39				52.59	33.54	0.12
Aboriginal 40-49				164.36 ***	48.24	0.21
Aboriginal 50 and up				64.61	52.61	0.08
White 20-29				67.29 *	32.72	0.16
White 30-39				17.03	30.23	0.05
White 40-49				39.06	32.02	0.09
White 50 and up				58.15	35.73	0.12
Aboriginal	9.43	19.22	0.03			
Age	0.88	0.87	0.06			
Current DUI Charges	71.77 ***	12.7	0.33	71.58 ***	12.48	0.33
Prior DUI	10.96 *	4.73	0.13	12.34 *	4.67	0.15
Injury Collision	239.47 ***	39.77	0.35	239.19 ***	39.21	0.35
Adjusted R ²	0.25			0.28		
n	237			237		

*p < .05, **p < .01, ***p < .001

drivers average 203.6 days compared to 227.24 days for White offenders, lower by 11.6 percent. This small difference does not achieve significance at the .05 level (t=1.27, ns).

Other bivariate results indicate consistent differences between Aboriginal and Non-Aboriginal cases on key demographic and legal variables that may influence sentence length. Aboriginals are younger, have less education and are much more likely to be unemployed, factors that might work against them at the point of sentence. On the other hand, Aboriginal DUI offenders are serving on fewer multiple DUI charges, and are more likely to be married or co-habiting in a common-law relationship, factors that could count in their favor. These Aboriginal-White differences support multivariate analysis, to assess whether the race-sentence relationship holds when group variation is controlled.

Multivariate Analyses

Indicators of social bonds such as marital status, education, and employment did not show any association with sentence length in preliminary analysis, nor did property damage, thus none of these controls are reported in the analysis. The Aboriginal 20-29 year old group is used as a reference group in the second equation.

Direct Effects and Interactions. The first equation shows no evidence of racial bias, either positively or negatively, supporting neither of our focal concern hypotheses (Table 3). The direct effect of being Aboriginal shows almost no impact. Age also has no direct influ-

ence on sentence length, indicating no support for age advantage hypothesis. Consistent with the sentencing literature, legal variables assessing offence severity and prior history account for the majority of the equation’s explanatory power (R²=.25). Injury collisions, number of current charges, and prior drunk driving convictions clearly affect one’s sentence for drunk driving.

The second equation introduces the race-age interaction terms, and increases the overall variance explained to 3 percent, from 25 percent to 28 percent. The increase in R² is attributable to the introduction of the interaction terms, as little change is observable in the magnitude of effect for the legal controls. In other words, the addition of interaction terms improved ability to predict sentence length, albeit modestly.

Conditional Means. To simplify analysis, conditional means are estimated for all race-age groups, and presented in Table 4. Although some age groups had sub-sample sizes that were too small to show stable effects, all race/age groups are presented for comparison purposes. The interaction terms reveal several outcomes, some consistent with our hypotheses, some not. Net of the effect of

Table 4. Conditional Mean Sentence Length for Race-Age Groups

Sub-group	Mean sentence	Sub-group
Aboriginal 20-29	95.07	White 20-29
Aboriginal 30-39	147.66	White 30-39
Aboriginal 40-49	259.43	White 40-49
Aboriginal 50 and up	159.68	White 50 and up

controls, the conditional mean sentence for the Aboriginal 20-29 reference category is 95 days. This group serves the shortest sentence by far compared to the other Aboriginal age categories. The 30-39 year old Aboriginals serve an average 148 days, while the 40-49 year old Aboriginal DUI category receives the highest mean sentence of any race/age group, 259 days. Aboriginals 50+ years of age serve 160 days, 100 lower than the 40-49 year olds, but about the 65 days more on average than the youngest group. The curvilinear relationship for Aboriginal drunk drivers and age escalates in a lenient-to-punitive fashion from shorter sentences (younger drunk drivers) to higher, much higher (middle-aged DUI), and then shows a moderate decline (oldest drunk drivers).

Younger Whites, in contrast, receive the harshest sentences among White age groups (162 days). There are no apparent signs of an age advantage for Whites older than 50, as they receive mean sentences of 153 days, only slightly lower than the youngest group. White 30-39 and 40-49 show comparatively lower average custody terms. The curvilinear relationship for Whites is a U-shape: higher sentences for younger DUI cases, lower for 30-39 and then increasing as age increases.

In comparing the two groups, young Aboriginals receive much more lenient treatment from the judiciary than young Whites (95 days versus 162 days). Such consideration is not, however, extended to other Aboriginal age groups. All three of the older Aboriginal age groups have higher mean sentences than their White counterparts. Aboriginal 30-39 year olds serve sentences almost 30 percent longer, and 40-49 year olds receive terms twice that of Whites. This tendency moderates for those 50 and older: the oldest Aboriginals serve only about 5 more days on average than Whites, which is almost no difference.

Discussion and Conclusion

Findings partially support some of our hypotheses, challenge others, but results generally support the use of age-interactions to contextualize sentencing research on race. First, the notion that Aboriginals might be viewed as less blameworthy and receive more lenient treatment than Whites is partially supported, but only for younger Aboriginals. The punitive hypothesis, that Aboriginals might be viewed as more dangerous and treated more severely than Whites for similar crimes, is also partially supported, but only for middle-aged Aboriginals.

The general age advantage hypothesis derived from focal concerns theory, that older offenders will receive more moderate sanctions, was generally not supported

for Aboriginals or Whites. In fact, for Aboriginals the tendency was for severity to increase to middle age, and then decline. Although an age advantage for younger offenders is acknowledged in the focal concerns literature, it is generally expected for those younger than twenty, and minorities would expect to receive less benefit. It is further puzzling that, net of controls, Aboriginals aged 20-29 received shorter sentences than any other group, while younger whites, conversely, received the longest sentences. As mentioned, however, the "U" shape of the White-age sentence length relationship indicated that even though younger Whites were punished most severely, there appeared to a general tendency for White DUI custody lengths to increase with age.

To interpret some of the contradictions in these results, it is important to consider the general perception of drunk driving risk and the drunken Indian stereotype, and how they might influence focal concerns. It was hypothesized that the judiciary might consider leniency for Aboriginals because their often low socioeconomic status and perceived difficulties managing their drinking made them less blameworthy. This was only the case for younger Aboriginals. The judiciary may have viewed the younger DUI cases as presenting greater promise for rehabilitation. Once Aboriginal drunk drivers reach a threshold age in their 30s, however, it is plausible that such beneficence stopped, at least until they are older than 50. The judiciary appeared to hold middle-aged Aboriginals more individually accountable for their drinking and driving behavior, more so than younger Aboriginal males, and was particularly punitive against those in their 40s.

Focal concerns research has shown that younger minority males are perceived as dangerous and considered higher risk when sentenced. Our findings are contrary, however, for young drivers in the White DUI group. Why would young White drivers, net of the effect of legal controls, be considered so much more dangerous than older drivers? Risk here is probably associated not only with drunk driving but high risk driving generally. Whether drunk or sober, young male drivers present by far the greatest crash risk, and this is certainly the case in Alberta (Weinrath, 1999). Research also shows a clear overlap between young high risk drivers and drunk drivers (Weinrath, 1999). Unless drinking problems are evident, middle aged drivers are known to be less involved in collisions and, hence, may not be considered as dangerous by the judiciary, resulting in shorter sentences. For young White drivers, there are no compelling reasons for the judiciary to hold them less blameworthy, thus their sentences are far longer than young Aboriginals.

Comparing older Aboriginal and White DUI cases, Aboriginals receive longer sentences, despite offering similar lower risk driving profiles to older Whites. The drunken Indian stereotype comes into play here, with a greater likelihood of chronic alcoholism being attributed to older Aboriginal offenders. From a focal concerns perspective, this stereotype leads them to be viewed as being more dangerous (than Whites) because they cannot control their drinking, have no realistic hope of reform, and thus are highly likely to drink and drive again.

Possibly hard-drinking younger Aboriginals are more frequently considered worth taking a chance on, while those older are labeled with a chronic problem not amenable to treatment. The irony here is that alcoholism or dependent drinking, while it has later onset than other forms of deviant behaviour, still tends to decline with age, invariant of race (Fillmore et al., 1991). In terms of which age group is at risk or likely to pose a problem, May (1994) has commented on hardcore drinking amongst youthful Aboriginal subcultures as being one of the more serious alcohol related problems on Indian reserves.

Methodologically, this study shows some benefits in the utilization of collision data in controlling for DUI offence severity. Injury collisions exert a powerful influence on sentence lengths. Still, one would intuitively have surmised that property damage would have resulted in a more consistent escalation of custody length. This lack of distinction might speak to weaknesses in study data. Amongst some of the weaknesses in assessing property damage: the dollar amount of property damage was not captured; it is also uncertain if the crash occurrence was introduced in court; and the damage may have been to the offender's own vehicle, limiting its use as an aggravating factor.

The most prominent findings in this drunk driving sentencing study are age-race interactions. Shorter sentences for Aboriginals are evident for younger males, at least in the case of drunk driving offences. The intersection of the drunken Indian stereotype with the drunk driving offence indeed seems to influence estimations of dangerousness, albeit for older 30–49 year old Aboriginals, compared to Whites. The J-shaped distribution seen in other age-race studies is not replicated here, although there is curvilinearity in the relationships observed. Older Aboriginals are generally treated more severely. Older White drunk drivers are treated less severely than young White DUI offenders, but there does not seem to be any notable escalation by 10-year intervals. There are limitations to our study findings. The sample size and focus on Alberta offenders limits the generalizability of results. Although

the data concern drunk drivers from across the province and are representative of serious DUI cases, only drunk drivers sentenced to custody were included. It may be that many young Aboriginals seemed to receive shorter sentences because similarly charged Whites received weekend custody or fines. Our control variables give us some confidence that this is not the case, but we cannot be sure. Better measurement of social bond factors such as education, employment, and marital status might have provided insight into some sentencing situations. While an age advantage was not uncovered, use of a 60-year old category (if a larger sample can be found) is probably a fairer test of this thesis. Finally, qualitative observation and interviews with criminal justice actors would help better examine external factors that might explain some of the discrepancies in study findings.

Focal concerns theory forged a useful framework for this analysis. Its central tenets, that social as well as legal contexts influence the cognitive decisions involved in sentencing, receive partial support from this study. Being young and White is not an advantage in the case of drunk driving. Middle-aged Aboriginals experience the harshest sentences. Future research is recommended that replicates the study focus here, using larger samples and assessing gender effects where possible. A continued research emphasis on race/age interactions is endorsed. Shorter sentences for Aboriginals are definitely not the whole story when it comes to sentencing disparity.

Endnotes

1. This suggests that the data may not be as reflective of current sentencing practices in Canada as is desirable. It is best to consider the study findings as exploratory in nature. Given the paucity of sentencing literature on indigenous peoples, however, it is felt that the study still makes a useful contribution to the literature.

2. The designation of Aboriginal unfortunately collapses Registered Indian, Métis and Non-Status Aboriginal categories, due to sample size limitations. As noted in the literature, finer distinctions in ethnicity can reveal patterns of sentencing disparity (Demuth and Steffensmeier, 2004). White indicates self-classification as Caucasian. There were other racial categories in the original 514 inmate sample, but only Aboriginal and White cases remained in the pared down 237 DUI offence group.

3. The standard errors and size of most of the t-ratios (not shown) suggest that statistical significance could be achieved with even a moderate increase in sample size, thus the comparisons are felt legitimate.

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