TRUE COLORS: CRIME, RACE AND COLORBLINDNESS REVISITED

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The violent, racially motivated events of the Charlottesville rally unleashed demons that many Americans believed were long buried. Old Jim Crow-inspired racism came straight through the front door. Yet critics of colorblind policies were not surprised. For them, such an eruption of racial hatred manifested what they had repeatedly argued: colorblind policies neither alter racial predispositions nor affect the unequal treatment of minorities in the United States. In fact, colorblindness has given rise to a modern, latent type of racism. This Article empirically investigates this claim in an unexplored context—the media's colorblind, crime-related coverage policies. Utilizing a novel dataset spanning ten years of crime coverage under the media's colorblind policy contrasted with national and state-level crime statistics, this longitudinal study complicates the controversy around colorblindness. First, while explicit racial references in crime reports declined, they were replaced by implicit racial cues, primarily by the use of visuals. Second, racial schemas in the criminal context prevailed with unbalanced representations of black and white perpetrators compared to real crime statistics, both at the local and national level. Through these findings, this Article adds a new dimension to the scholarship on the indivisibility between race and crime in an era of colorblindness. It offers the incognizant liberal trap as a conceptual framework to engage with these findings, and an explanation for the failure of liberal news outlets to combat racially distorted narratives. This Article calls for an "affirmative action" in crime coverage to combat institutional inertia and to allow counter-stereotypical racial schemas to take hold. More broadly, this Article sheds light on the poten-

tial links between crime reports and persistent inequalities in the criminal justice system.

Introduction

It was another warm night in the summer of 2001 in the Washington, D.C. metropolitan area. Light winds were blowing as Jane Doe went out on her daily jog. She did not expect the upcoming tragic course of events, when an unknown man would brutally attack her. Jane was severely beaten and raped.[1] During the assault, Jane was able to take a look at her attacker, and later, to provide the police department with a description: "a black male, under 30 years old, about 6 feet 1 to 2 inches tall, with a muscular build."[2] The police put out a press release which included the description, but the Washington Post (WaPo) refused to publish it when reporting the assault. The refusal was grounded in a "colorblind" policy, aimed at minimizing the presence of race in crime-related stories. The WaPo style book states that in crime stories, race will only be used when there is sufficient specific identifying information to

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[1] *See* Michael Getler, *Race and Relevance*, Wash. Post, Aug. 12, 2001, at B6; Richard Cohen, *Profiles in Evasiveness*, Wash. Post, Oct. 11, 2001, at A33.

[2] *Id.*

publish a description of a suspect. In Jane's case, it was decided that mentioning the suspect's race did not comply with the stated guidelines. The rationale was to stop feeding dangerous and unfair racial stereotyping.[3] Times have changed, suggested the then-editor of the Metro section when asked to explain the decision, and using race with no relevance to the story belongs to the past, to "a time when newspapers pandered to the racism in society."[4]

This Article challenges this somewhat naïve presumption. Using a novel dataset spanning ten years of WaPo coverage of crime (1997–2006)[5] alongside crime statistics collected from the U.S. Census Bureau, the FBI Uniform Crime Reporting Project, and archived State level crime data, this Article shows that times have not changed as drastically as we might have hoped. Even with colorblind policies, the media continued to play a role in preserving crime-related racial stereotypes.[6] The current reemergence of public, shameless, overt racism[7] may be sad

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[3] See Getler, *supra* note 1. Michael Getler was the WaPo's ombudsman during these events, and in a response to a reader inquiring on why the WaPo did not include the description when covering the story, rebuked the newspaper for the decision.

[4] Getler, *supra* note 1; Cohen, *supra* note 1. Alongside the policy discussed by Getler and Cohen, which specifically relates to crime suspects, the Washington Post Deskbook of Style includes guidelines pertaining to "race and racial identification." These guidelines state that "[i]n general, race and ethnic background should not be mentioned unless they are clearly relevant." THE WASHINGTON POST DESKBOOK ON STYLE 178 (Thomas W. Lippman ed., 2d ed. 1989). It should be noted that other newspapers adopted similar "colorblind" policies. For example, the New York Times Manual of Style and Usage mentions that "race should be cited only when it is pertinent and its pertinence is clear to the reader." ALLAN M. SIEGAL & WILLIAM G. CONNOLLY, THE NEW YORK TIMES MANUAL OF STYLE AND USAGE 267 (5th revised paperback ed. 2015).

[5] *See infra* Parts II and III, coverage of Washington Post's front page and Metro section from 1997–2006.

[6] The assertion that racism has morphed, but remained active, over decades of colorblindness may not surprise critics of colorblind policies. *See, e.g.*, ALPHONSO PINKNEY, THE MYTH OF BLACK PROGRESS (CAMBRIDGE U.P., 1984) (refuting the popular neoconservative stance that race is no longer a meaningful part of life in modern America); *see also*, EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA 53–55 (Rowman & Littlefield eds., 5th ed. 2017) (tracing the emergence of colorblindness as a new racial ideology from the early sixties to these days of Trump's America, and claiming that "Jim Crow's Racial Structure has been replaced by a 'new racism,' . . . a new powerful ideology [that] has emerged to defend the contemporary racial order");. *see also*, LESLIE G. CARR, "COLOR-BLIND" RACISM (1997) (discussing colorblindness as the latest in series of racist ideologies); *see also*, MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2012) (discussing colorblindness as the latest in a series of racist ideologies and raising similar critiques in criminal contexts).

[7] For example, see events such as the summer of 2017 Charlottesville rally, where a woman was killed, and more than three dozen were injured in an eruption of racial hatred. *See* Joe Heim, *Recounting a Day of Rage, Hate, Violence, and Death: How a Rally of White Nationalists and Supremacists at the University of Virginia Turned into a "[T]ragic, [T]ragic [W]eekend."* WASH. POST (Aug. 14, 2017), https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/.

evidence to the "muting" role that colorblind approaches had in preventing social healing.[8] This reality raises important questions as to whether colorblind policies in fact reduced racially motivated thought and action and altered racial attitudes. This Article delves into these questions, and is one of the first to consider the effect of purportedly colorblind media policies on representations of race in reporting.

The data illustrate the shortcomings of colorblindness. First, while explicit racial references indeed declined in crime reports,[9] they were not eliminated. Instead, they were replaced by implicit racial cues, mostly the use of visuals. Moreover, the presence of race in crime reports increased over time with the shift towards visuals. Thus, race remained present in crime reports even by liberal news outlets. Second, crime-related racial schemas prevailed even under colorblind policies; although black perpetrators were covered in accordance to their actual arrest rates, Whites were consistently underrepresented as perpetrators both in national and local news. Moreover, crime reports on black perpetrators were, on average, more salient than reports on non-black perpetrators.[10]

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[8] Studies have addressed the gap between declared colorblind policies and de facto treatment of minority groups in different settings. *See* Bonilla-Silva, *supra* note 6, at 4–5 (suggesting that colorblind policies implemented over the last sixty years, through which Whites gradually adopted views that racism is "no longer an issue" in contemporary America, thwarted attempts to uproot deep racial attitudes); *see also* Douglas S. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass (10th ed. 2003) (illustrating the disturbing reality of deliberate segregation that black communities experience in American cities); *But see* Jacob L. Vigdor & Edward L. Glaeser, Manhattan Institute, The End of the Segregated Century: Racial Separation in America's Neighborhoods, 1890–2010, (2012), https://www.manhattan-institute.org/html/end-segregated-century-racial-separation-americas-neighborhoods-1890-2010-5848.html (showing a decline in segregation among Blacks in some parts of the U.S. and an increase in residential segregation in others); *see also* Gary Orfield et al., The Growth of Segregation in American Schools: Changing Patterns of Separation and Poverty Since 1968 (1993) (noting that despite educational progress, the level of school segregation for black students remained high, e.g., an average black student attended school that was about 50 percent black and 28 percent white, while an average white student attended school that was about 70 percent white and only 8 percent black); *see also* Amanda E. Lewis & John B. Diamond, Despite the Best Intentions: Why Racial Inequality Thrives in Good Schools (2015) (showing how black students are being punished more frequently and more severely). Voting encompasses other methods that were adopted over the years aiming to disenfranchise Blacks from equally participating in politics, including gerrymandering, voter ID laws, and election runoff. *See, e.g.*, Benjamin Cover, *Quantifying Partisan Gerrymandering: An Evaluation of the Efficiency Gap Proposal,* 70(4) Stan. L. Rev. 1131 (2018); *see also* Bonilla-Silva, *supra* note 6, at 28–29 (discussing studies that point to "a dense network of discriminatory practices confronted by middle class blacks in everyday life" including poor service, inequitable requirements, refusal for use of a coatroom, and special seat assignments).

[9] *See infra* Parts II and III, crime reports in which race was mentioned (overall twenty-one percent (21%) of the sample).

[10] White victims, on the contrary, were overrepresented as victims, while Blacks were underrepresented compared to their victimhood rates at the local level (thus preserving the invisibility of the black victim). *See* Lisa L. Miller, *The Invisible Black Victim: How American Federalism Perpetuates Racial Inequality in Criminal Justice,* 44 Law Soc. Rev. 805, 807–08

Offering a new dimension to the scholarship on the indivisibility of race and crime, this Article reaffirms that overt racism might have dissipated, but modern, unconscious racism remained. Moreover, the empirical evidence here demonstrates the flaws of colorblind policies in crime coverage and their failure to alter unequal racial representations.[11]

Building on organizational, economic, and cognitive literature, I introduce the *incognizant liberal trap*[12] as a conceptual framework to interpret these findings. This framework suggests that liberal media outlets, wholeheartedly believing they need to alter their reporting style on crime, instead fall into a trap impeding their ability to effect change due to a host of institutional circumstances and cognitive biases, most dominantly a *blind spot in the coverage of white perpetrators*.[13] This unsatisfying outcome of colorblindness thus begs the question: can the media defeat the *incognizant liberal trap* and challenge the dominant, racially-imbalanced narratives? This Article offers to adopt a kind of "affirmative action" in crime coverage as a way to achieve this goal.

Finally, this Article argues that the use of implicit racial cues, even under a colorblind regime, goes well beyond the newsroom. Scholars of race and criminal justice have identified similar patterns, emphasizing the evolving nature of racism in the era of colorblindness.[14] According to Michelle Alexander, modern racism is mostly about relabeling and creat-

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(2010) (claiming that American-style federalism "has allowed the national government to escape pressure and responsibility for addressing inequality and stagnation in racial progress" emphasizing such failure in the realm of black victimization); *see also* Itay Ravid, *On Black Victimization and the Double-edged Sword of Colorblindness* (working paper, 2019) (providing a comprehensive analysis on the representation of black and white homicide victims).

[11] *See infra* Parts II and III.

[12] *See id.* for further explanation.

[13] Among the reasons for biased coverage are economic and psychological reasons. These questions have hardly been addressed in the relevant literature and the few scholars addressing it have overlooked existing colorblind policies while treating news outlets as politically monolithic. *See, e.g.*, Robert M. Entman, *Representation and Reality in the Portrayal of Blacks on Network Television News*, 71 J.Q. 509–20 (1994) (investigating thirty days of TV coverage, Entman highlights the narrow range of positive roles that are associated with Blacks as opposed to Whites, showing that disparate treatment is explained by conventional journalistic norms and not by conscious racial bias).

[14] *See* ALEXANDER, *supra* note 6, at 2 (noting that "what has changed since the collapse of Jim Crow has less to do with the basic structure of our society than with the language we use to justify it"); *see also* NICOLE GONZALEZ VAN CLEVE, CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA'S LARGEST CRIMINAL COURT 2–3, 42–43 (2016) (offering a story of the criminal justice system in action in the largest criminal courthouse in the country, emphasizing the ways by which criminal justice professionals "participate in the incarceration 'machine' despite obvious racial divides," and challenging the notion that modern colorblind racism is different from past overt racism); *see also* BONILLA-SILVA, *supra* note 6, at 4–5; *see also* KHALIL GIBRAN MUHAMMAD, THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA (2010) (tracing how black people and crime became inseparable in modern day America in contrast to working class Whites or European immigrants).

ing a new discriminatory paradigm—from "Black" to "Criminal."[15] Despite the similar processes by which black and criminal are fused into one social concept—in both the media and the criminal justice system—the tight connections between the inequalities that permeated the two entities are still underexplored.[16] Drawing on literature on the media's role in reinforcing racial schemas[17] and affecting policies pertaining to race,[18] this Article discusses the potential contribution of the media to the establishment of the black criminal stereotype.[19] The consistent reinforcement of this stereotype contributed to its penetration into all parts of society, including the criminal justice system: police, prosecutors,[20] correction officials, and the judiciary.[21] The dominance of this schema in local

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[15] *See* ALEXANDER, *supra* note 6; *see also* MUHAMMAD, *supra* note 14, at 2–14 (describing a process in which criminality has become the most distinctive feature of black inferiority); Michelle Alexander, Opinion, *The Newest Jim Crow,* N.Y. TIMES, Nov. 8, 2018, at SR3; For recent examples on how race and crime themes are represented from the top down, see John J. Donohue, *Comey, Trump, and the Puzzling Pattern of Crime in 2015 and Beyond*, 117 COLUM. L. REV. 1297, 1298 (2017) (Reporting on the way such themes were used in President Trump's presidential campaign). The criminal justice system thus became the main institutional mechanism through which discrimination pervades American society. Although the intuitive associations when thinking about the criminal justice system are suspects and incarceration rates, the other part of the criminal equation—victims—are similarly ill-treated based on racial divide, even though Blacks are far more afflicted by violent crime than Whites. *See* SAMUEL WALKER ET AL., THE COLOR OF JUSTICE: RACE, ETHNICITY, AND CRIME IN AMERICA (5th ed. 2011). *See generally* Wanda Parham-Payne, *The Role of the Media in the Disparate Response to Gun Violence in America*, 45 J. BLACK STUD. 752 (2014) (claiming that structural and policy resolutions to address gun violence among Blacks are being excluded from national and political discourse).

[16] This is puzzling given that there are few institutions that have more to do with the transformation and evolution of language than the media.

[17] *See generally* Travis L. Dixon, *Good Guys Are Still Always in White? Positive Change and Continued Misrepresentation of Race and Crime on Local Television News*, 44 COMMUN. RES. 775–92 (2017); *see also* Travis L. Dixon, *Black Criminals and White Officers: The Effects of Racially Misrepresenting Law Breakers and Law Defenders on Television News*, 10 MEDIA PSYCH. 270–91 (2007); *see also* Eileen E. S. Bjornstrom et al., *Race and Ethnic Representations of Lawbreakers and Victims in Crime News: A National Study of Television Coverage*, 57 SOC. PROB. 269–93 (2010).

[18] Franklin D. Gilliam & Shanto Iyengar, *Prime Suspects: The Influence of Local Television News on the Viewing Public*, 44 AM. J. POL. SCI. 560 (2000) (showing how exposure to local news coverage in Los Angeles resulted in support for three-strikes legislation and the death penalty).

[19] The same stereotype that is now dominating the criminal justice system and becoming the rationale for racial disparities in indicting, convicting, and sentencing.

[20] MONA PAULINE LYNCH, HARD BARGAINS: THE COERCIVE POWER OF DRUG LAWS IN FEDERAL COURT 134–35 (2016) (showing how the coercive power of prosecutors is highly susceptible to racial predispositions through a study on the "war on drugs" in the federal court system).

[21] *See* Bjornstrom et al., *supra* note 17, at 288–89; *see also* Jeffrey Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195–1246 (2009) (supporting the presence of racial biases among the judiciary by running the Implicit Association Test (IAT) on a large sample of trial judges); *see also* Gilliam and Iyengar, *supra* note 18, at 567–80 (supporting the hypothesis that among Whites crime scripts increase support in punitive remedies).

news suggests an even greater impact on state-level criminal justice systems. Such interrelations call for a deeper inquiry into the media's potential role in producing racial animosity, which this Article seeks to begin.

Part I of this Article sets the conceptual framework of the study, addressing the scope and limitations of the literature on media's representations of race and crime, the potential effects of distorted racial portrayal on public perceptions of perpetrators, and implicit racial cues in the era of colorblindness. It also discusses how this Article tackles some of these limitations. Part II explains the research design, the coding protocol, and the operationalization of the variables. Part III presents the findings: how crime is covered in the print media, how race is communicated under colorblindness policies, and how perpetrators are portrayed in national and local news. Part IV discusses the practical, theoretical, and normative implications of the findings. It introduces the *incognizant liberal trap* and offers to adopt an "affirmative action" of sorts in covering crime in hopes of achieving racial advancement.

I. CONCEPTUAL FRAMEWORK

A. *Crime-related Media Representations of Racial Groups*

Over the last two decades, scholars have realized the importance of studying the ways by which different racial groups–especially Whites and Blacks, and to a lesser extent, Latinos–are portrayed in the media in the context of crime and criminality. Most of the work focused on the portrayal of perpetrators,[22] though studies increasingly pay more attention to the racial portrayal of crime victims too.[23] Until the 1990s, most studies focused on print media,[24] but from the 1990s onward, print media have been somewhat abandoned by scholars, and the focus shifted to

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[22] *See, e.g.*, Dixon, *supra* note 17; Travis L. Dixon & Daniel Linz, *Overrepresentation and Underrepresentation of African Americans and Latinos as Lawbreakers on Television News*, 50 J. COMMUN. 131–54 (2000); *see also* Robert M. Entman, *Blacks in the News: Television, Modern Racism and Cultural Change*, 69 J.Q. 341–61 (1992); *see also* Gilliam and Iyengar, *supra* note 18; *see also* Mary Beth Oliver & Dana Fonash, *Race and Crime in the News: Whites' Identification and Misidentification of Violent and Nonviolent Criminal Suspects*, 4 MEDIA PSYCHOL. 137–56 (2002). For discussion on the findings of some of these studies *See infra* note 29.

[23] Daniel Romer et al., *The Treatment of Persons of Color in Local Television News: Ethnic Blame Discourse or Realistic Group Conflict?*, 25 COMMUN. RES. 286–305 (1998). *See also* Dixon, *supra* note 17; Bjornstrom et al., *supra* note 17. Still, the scholarship on the portrayal of crime victims is limited and requires more scholarly attention. *See also* Ravid, *supra* note 10.

[24] Harry L. Marsh, *A Comparative Analysis of Crime Coverage in Newspapers in the United States and Other Countries from 1960–1989: A Review of the Literature*, 19 J. CRIM. JUSTICE 67–79 (1991) (providing a comprehensive overview of all the studies conducted on coverage of crime in the print media over three decades). One conclusion that stands out from Marsh's overview relates to the lack of longitudinal studies, an issue this Article seeks to address; Fred Fedler & Deane Jordan, *How Emphasis on People Affects Coverage of Crime*,

studies of TV—mostly local TV coverage of crime.[25] In fact, studies of how different racial groups are portrayed in the *print media* in the context of crime were neglected over the years, despite the fact that newspaper coverage serves as the foundation for TV and radio news coverage,[26] and the important role that print media still have in providing information to the public.[27] The reliance on print media was undoubtedly the case in the past, and even more so among specific elite audiences, such as the judiciary, whose actions and decisions shape the criminal justice system.[28] Moreover, most studies were conducted by psychologists, political scientists, and media scholars, resulting in a limited discussion on the legal implications of the findings on minority groups and the unequal treatment they receive from the criminal justice system.

The review of the literature points at mixed outcomes; some studies support the hypothesis that minority groups, especially Blacks, are more likely to be reported as perpetrators and are overrepresented in media stories on crime perpetrators compared to Whites, while others reject it.[29] These findings are heavily dependent on how one chooses to define "over" and "under" representation, and whether the media outlet under investigation is a local or a national outlet. Scholars adopt two leading

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JOURNAL. Q. 474–78 (1982); George E. Antunes & Patricia A. Hurley, *The Representation of Criminal Events in Houston's Two Daily Newspapers,* 54 J. Q. 756 (1977).

[25] Entman, *supra* note 22; Travis L. Dixon et al., *The Portrayal of Race and Crime on Television Network News*, 47 J. BROAD. ELEC. MEDIA 498–523 (2003); Gilliam and Iyengar, *supra* note 18; Ted Chiricos & Sarah Eschholz, *The Racial and Ethnic Typification of Crime and The Criminal Typification of Race and Ethnicity in Local Television News*, 39 J. RES. CRIME DELINQUENCY 400–20 (2002); Bjornstrom et al., *supra* note 17; Dixon, *supra* note 17.

[26] MARIAN MEYERS, NEWS COVERAGE OF VIOLENCE AGAINST WOMEN: ENGENDERING BLAME (1996); *See also* Richard J. Lundman, *The Newsworthiness and Selection Bias in News About Murder: Comparative and Relative Effects of Novelty and Race and Gender Typifications on Newspaper Coverage of Homicide*, 18 SOCIOL. FORUM 357–86 (2003). (emphasizing the importance of continuously studying the print media given its foundational role in coverage of crime).

[27] Hunt Allcott & Matthew Gentzkow, *Social Media and Fake News in the 2016 Election*, 31 J. ECON. PERSPECT. 211–36 (2017). (providing compelling and most timely empirical evidence to the public reliance on traditional print news media in consuming political news and information compared to social media).

[28] *Id.*

[29] *See* Dixon & Linz, *supra* note 22 (showing patterns of black overrepresentation in local news programming in Los Angeles); *see also* Gilliam & Iyengar, *supra* note 18 (showing racial disparities in coverage on crime in Los Angeles area; *see also* Lundman, *supra* note 26 (studying the Columbus Dispatch and showing that black violators and male violators receive more media attention); *see also* Entman, *supra* note 13 (analyzing local TV channels in Chicago and showing that Blacks were depicted as more threatening than Whites in the context of coverage on crime); Bjornstrom et al., *supra* note 17 (describing one of few studies of national level TV coverage, and finding that Blacks are not significantly more or less likely to be portrayed as perpetrators). They did find, however, that stories about an index crime increase the odds of mentioning black perpetrators over white; *see also* Fedler & Jordan, *supra* note 24 (studying the Sentinel Star newspaper in Florida, and rejecting the thesis that Blacks were covered as perpetrators more than Whites).

methodological approaches, either separately or in conjunction, to assess these questions. The "internal comparison"[30] assesses the likelihood of a specific racial group to appear as perpetrators compared to another group in the sample. In contrast, the "external comparison"[31] assesses the representations of racial groups based on census data or true crime statistics. Within the external approach, studies compared the frequencies by which racial groups were mentioned either to their proportion in the general population[32] or to official arrest rates.[33] This study uses both approaches.

This Study adds another unique dimension to the analysis, that goes beyond the internal and external analysis. Through the analysis of the proposed intensity variable discussed in chapter II, the Article captures differences in the *salience* specific racial groups receive in the news that goes beyond the traditional intergroup or interreality analysis.

Aside from the variance in methodological approaches, which results in difficulty interpreting the findings, current studies prompt two other challenges. First, most studies emphasize the importance of local news, overlooking national-level media coverage, making it difficult to examine social structures in a broader context.[34] Second, few studies use large longitudinal data sets.[35] Even those rare studies usually adopt retrospective longitudinal design, thus limiting the ability to carefully trace changes and nuances over the studied time. For those interested in the potential effects of media representations on socio-legal reality, the stability of the messages is key, as changes in representations over time may alter cognitive links pertaining to stereotypical views of different groups.[36] Moreover, understanding the subtle ways by which racial stereotypes are socially reproduced, creeping into social structures and organizations, calls for a close read of the journalistic techniques used over sequential periods of time, which cannot be done under a retrospective design. This study addresses some of these challenges. First, as noted, by adopting both internal and external approaches to racial group representations. Second, by analyzing the Washington Post (WaPo), a media out-

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[30] Dixon & Linz referred to this level of analysis as "intergroup," *supra* note 22, at 132–33.

[31] Jeff Gruenewald et al., *Quantitative Studies on Media and Crime*, in ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 4228–35 (Gerben Bruinsma & David Weisburd eds., 2014) (addressing the need to increase the number of studies focusing on this line of research).

[32] Chiricos & Eschholz, *supra* note 25.

[33] Dixon & Linz adopted the term "interreality comparison" to describe the external approach. Dixon & Linz, *supra* note 22, at 132–33; *see also*, Bjornstrom et al., *supra* note 17, at 272.

[34] *See* Bjornstrom et al., *supra* note 17 (presenting a notable exception).

[35] Studies range from 55 days (Entman, *supra* note 22), to 14 weeks (Romer et al., *supra* note 23), to 1 to 2 years (Bjornstrom et al., *supra* note 17), with a few rare exceptions such as 5 years (Dixon, *supra* note 17). *See also* Chiricos & Eschholz, *supra* note 25, at 404 (summarizing the scope and the findings of eight studies).

[36] Dixon, *supra* note 17, at 777.

let that is both a leading national paper and a local newspaper. This approach increases the external validity of the study.[37] Third, by using a large sample of longitudinal data spanning ten years of coverage, allowing for a careful and nuanced analysis up to the quarter level. Finally, the novel coding scheme adopted in this study breaks down the patterns through which race—despite an official colorblind policy—reemerged in crime coverage over the years 1997–2006.[38]

Indeed, and especially when discussing liberal newspapers who openly declared colorblind policies, it is puzzling how racially unequal representations—as those revealed from the data—persist. Only a few studies took on the challenge of providing an analytical framework to investigate this conundrum. Upon reviewing these studies, three leading explanations emerge. First, *ethnic blame discourse* postulates that ethnocentric narratives that are routinely used shape the mindset of those exposed to these narratives, for instance Whites referring to outgroups (notwhite) as criminals and in-group as victims.[39] Ethnic blame views behaviors of "ethnic others" as inter-group conflict affecting the in-group.[40] Scholars claim that journalists and news editors reproduce such discourse to appeal to those engaged in ethnic blame discourse, where people of color tend to be blamed for problems of Whites.[41] With time, the ethnic blame discourse is embedded in the institutional DNA,[42] turning into a second explanation which Don Heider referred to as incognizant racism.[43] The claim is that the "routine" social racism influences news practices, though it is incognizant as news professionals are often unaware of that racial bias. It is an institutional argument claiming that "years of training, cultural orientation, and institutionalized neglect"

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[37] Bjornstrom et al., *supra* note 17, at 273.

[38] *Id.*

[39] Teun A. Van Dijk, Elite discourse and racism 43–48 (1993) (addressing the role of White elites in establishing and preserving in-group-out-group racially driven discourse); *see also* Romer et al., *supra* note 23, at 286–87.

[40] Dixon, *supra* note 17, at 786.

[41] *Id.* The context of this study, given the WaPo's readership especially in Washington, D.C.—comprised of majority of black readers—complicates the classic ethnic blame discourse narrative. Not only in-group-out-group discourse but also in-group disparities among Blacks, with black elites adopting narratives that unintentionally support the violent-dangerous Black schema. James Forman's recent book illustrates how such outcomes may occur. By studying the decisions that black mayors, judges, and police chiefs made, Forman finds how these political and professional elites supported "tough on crime" policies with the belief this would contribute to stabilizing struggling black communities. *See* James Forman, Locking up Our Own: Crime and Punishment in Black America (1st ed. 2017).

[42] Robert M. Entman & Andrew Rojecki, The Black Image in the White Mind: Media and Race in America (2004) (discussing the institutionalism of racial predispositions among news outlets.

[43] Don Heider, White News: Why Local News Programs Don't Cover People of Color (2013) (describing the concept of incognizant racism as an extension of the ethnic blame discourse to news reporting).

lead—mostly white—editors and journalists to reproduce racially biased news coverage.[44]

In this Article, I offer a more nuanced read of the incognizant bias, discussing what I call the *liberal incognizant trap*, challenging the abilities of liberal media outlets to resist self-produced racially skewed messages.

Economic interests and institutional limitations are a third, related group of explanations for the distorted media portrayal of minorities. In hopes of attracting readership, journalists adopt "newsworthy" narratives that will appeal to white audiences (such as ethnic blame narratives), or unconsciously do so because of long-term socialization processes (incognizant bias).[45] Moreover, scholars raised the argument that racial typifications make the work of journalists easier as it provides "obvious templates" for coverage,[46] and therefore ready-made scripts.[47]

B.   The Media Creating and Reinforcing Racially-Skewed Messages

Creating the link between media portrayals of racial groups in the context of crime and the criminal justice system begs the questions: what are the potential psychological effects of exposure to racial misrepresentation in the media, and how do these affect the mindset and policy attitudes of media consumers? An increasing number of studies explore these questions, but none of these studies addresses them in the same context as this study—the criminal justice system.[48] Theories of "social

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[44] Entman, *supra* note 13, at 516–17.

[45] HERBERT J. GANS, DECIDING WHAT'S NEWS: A STUDY OF CBS EVENING NEWS, NBC NIGHTLY NEWS, NEWSWEEK, AND TIME (2004) (recognizing the role of race in news making and specifically in the coverage of crime, based on a qualitative research approach including interviews and observations); Lundman, *supra* note 26, at 378–79 (empirically identifying a selection bias in the coverage of homicide victims so that typified beliefs about Blacks and Whites are more likely to be seen as newsworthy); *see also* JAMES H. MADISON, A LYNCHING IN THE HEARTLAND: RACE AND MEMORY IN AMERICA (2001); *see also* David E. Pritchard & Kenneth Hughes, *Patterns of Deviance in Crime News*, 47 J. COMM. 49–67 (1997) (introducing the concept of deviance as an explanatory mechanism to journalists' assessment of newsworthiness).

[46] Lundman, *supra* note 26, at 360–61; *see generally* Pamela E. Oliver & Daniel J. Myers, *How Events Enter the Public Sphere: Conflict, Location, and Sponsorship in Local Newspaper Coverage of Public Events*, 105 AM. J. SOC. 38–87 (1999) (emphasizing the circular process of news production that preserves the ease of coverage under specific racial schemas).

[47] Gilliam & Iyengar, *supra* note 18, at 560; *see also* Dixon *supra* note 17.

[48] *See* Dixon, *supra* note 17; *see also* Mary Beth Oliver et al., *The Face of Crime: Viewers' Memory of Race-Related Facial Features of Individuals Pictured in the News*, 54 J. COMM. 88–104 (2004); Gilliam and Iyengar, *supra* note 18. These studies use lab experiments to investigate media effects, but look at such effects from a rather narrow prism. As discussed in this Article, for legal scholars there is a growing interest in deciphering how media representation affects the criminal justice system.

cognition, priming, schemas and scripts" dominate the discourse,[49] contending that through media consumption, cognitive linkage between social groups and social roles can be reinforced.[50] In the context of crime, the claim is that the prevalence of a specific narrative or script, i.e., crime is violent and perpetrators are non-white, has become "an ingrained heuristic" for understanding crime and race.[51] Consequently, these scripts reinforce what Robert Entman and others referred to as "modern racism."[52] Moreover, schemas that are constantly activated by repeating racial cues will remain on the "top of the mental bin," which would make the schemas highly accessible, and easily used in judgments.[53] Crime schemas affect not only what is reported in the media, but also, and maybe with greater force, what is left out of the media's messages. Accordingly, constant and repeating racialized crime scripts serve as "cognitive fillers" in stories when no information is presented, so that audiences will attribute criminal activity to Blacks.[54]

Lab experiments and surveys indeed showed that the consistent representations of perpetrators in the news can either create or reinforce stereotypes of Blacks as criminal perpetrators, especially among Whites.[55] Moreover, it was shown that news content, even if distorted, might rein-

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[49] Dixon, supra note 17, at 776. See also: L.J. SHRUM, MEDIA CONSUMPTION AND PERCEPTIONS OF SOCIAL REALITY: EFFECTS AND UNDERLYING PROCESSES IN MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH 50–73 (Bryant & Zillmann eds., 2002) (introducing the heuristic processing model which works under two main assumptions: (1) the media enhances the accessibility of frequently presented concepts, and (2) heavy consumers overestimate the frequency of subordinate category on a superordinate category, and thus are due to heuristic processing—instead of systematic processing—during the construction of memory-based cultivation judgment).

[50] Dixon, *supra* note 17, at 776–77.

[51] Gilliam and Iyengar, *supra* note 18, at 560.

[52] Entman, *supra* note 22, at 341; *see generally* J. B. McConahay, *Modern Racism, Ambivalence, and the Modern Racism Scale, in* PREJUDICE, DISCRIMINATION, AND RACISM 91–125 (J. F. Dovidio & S. L. Gaertner eds., 1986); *see also* P. J. Henry & David O. Sears, *The Symbolic Racism 2000 Scale*, 23 POL. PSYCHOL. 253–83 (2002); *see also* T. F. Pettigrew & R.W. Meertens, *Subtle and Blatant Prejudice in Western Europe*, 25 EUR. J. SOC. PSYCHOL. 57–75 (1995); *see generally* DONALD R. KINDER & LYNN M. SANDERS, DIVIDED BY COLOR: RACIAL POLITICS AND DEMOCRATIC IDEALS (1996).

[53] Thomas K. Srull & Robert S. Wyer, *Person Memory and Judgment*, 96 PSYCHOL. REV. 58, 59–60 (1989) (offering a theoretical model for the processes underlying the formation of people's impressions); *see also* David Domke, *Racial Cues and Political Ideology: An Examination of Associative Priming*, 28 COMM. RES. 772, 774–75 (2001) (claiming that "racial stereotypes are mentally available for most individuals by adulthood; that is they are present in long term memory," and illustrating how subtle racial cues trigger these racial associations).

[54] Gilliam & Iyengar, *supra* note 18.

[55] Oliver & Fonash, *supra* note 22, at 142; *see also* Travis L. Dixon & Cristina L Azocar, *Priming Crime and Activating Blackness: Understanding the Psychological Impact of the Overrepresentation of Blacks as Lawbreakers on Television News*, 57 J. COMM. 229, 246 (2007); *see generally* D. L. Hamilton, S. J. Stroessner & D. M. Driscoll, *Social Cognition and the Study of Stereotypes, in Social Cognition: Contributions to Classic Issues in Social Psychology*, 291–321 (1994).

force beliefs about unequal distribution of Blacks among crime perpetrators and increase support for punitive crime policies.[56] These findings thus emphasize the importance of exploring, overtime, the content of crime scripts on perpetrators both at the national and local news media, as done in this Article. It should be noted that all the studies mentioned above assume stability in media messages, albeit changes in images over time might weaken the claimed cognitive links between racial groups and roles.[57] This concern is mitigated in the current study by analyzing a consistent flow of media messages over ten years.

C.   Race Through the Back Door

Besides the content of the messages, this Article also investigates the mechanisms through which stereotypical construction occurs in the "era of colorblindness." Research has investigated these mechanisms under non-racist socially desired forms of communication in which explicit messages of racial stereotypes have been enormously shrunk.[58] The research focused on the process of *racial priming*, i.e., how informational cues, including in the media, activate or deactivate racial dispositions.[59] These studies focus mainly on implicit—as opposed to explicit—racial messages, aiming to assess whether the former carry similar racial weight and consequently activate racial stereotypes, specifically in the context of Blacks and crime. According to Tali Mendelberg, there are a wide array of implied messages serving as racial cues, from racial-non-judgmental mentioning ("Black" or "White"), racially coded words ("Inner City"), to the use of visuals. The literature indeed shows that these messages stimulate racial responses.[60] A study conducted by Gregory

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[56] Gilliam & Iyengar, *supra* note 18, at 567–70; *see also* Travis L. Dixon, *Crime News and Racialized Beliefs: Understanding the Relationship Between Local News Viewing and Perceptions of African Americans and Crime*, 58 J. COMM. 106, 121 (2008).

[57] Dixon, *supra* note 17, at 3.

[58] Henry & Sears, *supra* note 52; Patricia G. Devine & Andrew J. Elliot, *Are Racial Stereotypes Really Fading? The Princeton Trilogy Revisited*, 21 PERS. SOC. PSYCHOL. BULL. 1139, 1146 (1995) (challenging the claim that was prevalent among social scientists for over 50 years—dominated by the "Classic Princeton Trilogy"—that "individual racial stereotypes . . . have faded over the years").

[59] *See* Tali Mendelberg, *Racial Priming Revived*, 6 PERSP. POL. 109, 109 (2008); *see generally* TALI MENDELBERG, THE RACE CARD: CAMPAIGN STRATEGY, IMPLICIT MESSAGES, AND THE NORM OF EQUALITY (2001).

[60] *See* Jon Hurwitz & Mark Peffley, *Playing the Race Card in the Post-Willie Horton Era: The Impact of Racialized Code Words on Support for Punitive Crime Policy*, 69 PUB. OP. Q. 99, 107 (2005) (showing that Whites' racial attitudes were much more important in shaping preferences for punitive polices when introduced to racially coded words); *see also* Mark Peffley et al., *The Intersection of Race and Crime in Television News Stories: An Experimental Study*, 13 POL. COMM. 309, 315 (1996) (finding that even a brief visual image of an African American male suspect in a televised crime story activated racial stereotypes, in turn biasing Whites' evaluations of the suspect along racial lines); *see also* Nicholas A. Valentino et al., *Cues That Matter: How Political Ads Prime Racial Attitudes During Campaigns*, 96 AM. POL.

Huber and John Lapinski in 2006 challenged the notion that implicit messages are more effective than explicit messages in priming racial resentment, suggesting that racial priming may occur only at the less educated subset of the population, and that those more educated will most likely reach decisions already embedded with racial predisposition, regardless of the messages they receive.[61] Mendelberg has expressed some valuable methodological concerns pertaining Huber and Lapinkski's study,[62] and given the large number of studies demonstrating the influence of implicit bias, the theory of implicit racial priming remains dominant.[63]

Huber and Lapinski's study raises a pivotal issue especially when thinking of the professionals who shape the criminal justice system, most notably attorneys and the judiciary: how does racial priming affect different groups in society, and specifically the judiciary? The consensus among scholars of behavioral theories on judicial decision-making is that judges, like any human being, are susceptible to the unconscious effects of interrelated cognitive biases and psychological phenomena.[64] Few studies though have shown empirically how heuristics and biases, such as framing, priming, compromise effect, and hindsight bias, affect judicial decision-making.[65] Even fewer studies provide compelling empirical evidence as to the extent of such effects on judges. Rachlinski et al. are among the few scholars that have directly studied racial biases among the judiciary by running the Implicit Association Test (IAT) on a large sam-

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Sci. Rev. 75, 83 (2002) (showing that a wide range of implicit racial cues can prime racial attitudes); *see also* Mendelberg, *supra* note 59; Vincent L. Hutchings & Ashley E. Jardina, *Experiments on Racial Priming in Political Campaigns*, 12 Ann. Rev. Pol. Sci. 397, 400 (2009).

[61] Gregory Huber & John Lapinski, *The "Race Card" Revisited: Assessing Racial Priming in Policy Contests,* 50 Am. J. Political Sci. 421 (2006); *see* Hutchings and Jardina, *supra* note 60; *see also* Abigail M. Thernstrom, Whose votes count? Affirmative action and minority voting rights 2 (1987) (arguing that racists operate "on the fringe" and that implicit appeals work given their subtlety).

[62] Mendelberg, *supra* note 59, at 115–17 (suggesting that (1) subjects in the Huber and Lapinski experiment did not receive their assigned message, and (2) racial predispositions were measured just before messages were sent out and thus likely washed the effect of the message).

[63] *See* Hutchings & Jardina, *supra* note 60.

[64] Doron Teichman & Eyal Zamir, *Judicial Decision-Making: A Behavioral Perspective* (2014), http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199945474.001.0001/oxfordhb-9780199945474-e-026 (claiming that judicial behavior is a unique domain in which the standard economic assumption that people are maximizers of their own utility may not be a helpful explanatory mechanism because judges are generally insulated from market incentives and their decisions do not affect their own being); *see also* Nancy Pennington & Reid Hastie, *Evidence Evaluation in Complex Decision Making*, 51 J. Pers. Soc. Psychol. 242–58 (1986) (emphasizing that cognitive aspects of performance, such as the presentation of evidence, should be considered under theories of decision making).

[65] Hutchings & Jardina, *supra* note 60.

ple of trial judges.[66] Their study revealed the hard truth—judges harbor the same racial implicit bias as others in society. According to Rachlinski et al., what distinguishes judges from the rest of society is their ability to mitigate the effect of implicit racial bias through awareness. Though there are few other studies with judges as subjects, those studies that do feature judges as subjects seem to similarly support judges' susceptibility to cognitive biases.[67] In sum, there is no compelling reason to exclude the judiciary from the discussion on racial priming that results from media representations in the criminal context. Indeed, the peculiarity of the judiciary should not be ignored, but rather, discussed under the assumption of potential susceptibility to racial biases.

II.   DATA AND SAMPLE

This study spans ten years of coverage on crime in the WaPo, between 1997 and 2006. The WaPo was chosen for three reasons: first, it is one of the leading national U.S. newspapers; second, it serves as a local newspaper for Washington, D.C.; Maryland; and Virginia; and third, it is traditionally characterized on the liberal end of the journalistic spectrum.[68] Therefore, one would expect such a newspaper to have an increased awareness of potential racial biases, and even more so in an era of colorblindness. Any pattern of coverage identified in the WaPo serves as a litmus test for media misrepresentations on race and crime; if unequal treatment is identified, the challenge of tackling the media schema on black criminals may be greater than expected. The time frame for the study lies at an interesting junction. It represents the era prior to the "explosion" of the information age, before social media outlets joined the arena alongside other alternative online news outlets.[69] This study thus captures a decade in which newspapers served, alongside TV, as main

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66 Rachlinski et al., *supra* note 21.

67 *See, e.g.*, Birte Englich & Kirsten Soder, *Moody experts—How Mood and Expertise Influence Judgmental Anchoring*, 4 JUDGMENT DECISION MAKING 41, 47–49 (2009) (tracing the robustness of anchoring effects in judicial decision making); *see also* Chris Guthrie et al., *The "Hidden Judiciary": An Empirical Examination of Executive Branch Justice*, 58 DUKE L.J. 1477, 1501–06 (2009) (showing how administrative law judges tend to make intuitive rather than deliberative decisions); *see also* Chris Guthrie et al., *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1, 6–10 (2007) (offering the intuitive-override model of judging that takes into account two stages in processes of decision making: system 1 process, that is "automatic and heuristic-based," and system 2 process, that is a "mental operation requiring effort, motivation, concentration, and the execution of learned rules." I contend, and scholars of rational-choice theories of judicial decision making may oppose, that such a model better grasps the complexity of the judicial decision-making process).

68 Susan Wishinsky, *Newspapers—Which Way Do They Lean?*, B.U. LIBR., http://library.bu.edu/news/bias (last visited Oct. 21, 2018).

69 Facebook was founded in 2004 but opened to the public in 2006. Twitter was launched July 2006. Huffington Post was launched May 2005.

providers of public information.[70] This socio-cultural context bolsters the argument as for the potential effects of preserving the black-criminal schema.

I adopted a "constructed week" sampling strategy, frequently used by scholars aiming to approximate content for larger populations of textual data in content analysis projects.[71] This sampling strategy ensures the sample of stories is unaffected by the seasonality of news events and coverage decisions. Studies provide compelling evidence that for daily American newspapers, this method is the most effective in capturing variations within days of news coverage.[72] Moreover, studies have shown that two constructed weeks are sufficient to provide a representative sample of a year of newspaper coverage.[73] As this study offers a nuanced and detailed portrayal of coverage on crime in the print media over a decade, I sampled four constructed weeks per year, a week per quarter, thus allowing both yearly and quarterly analysis. The final sample included 4,689 stories on crime, including 1,279 national level stories and 3,410 local level stories.

A.   *Codebook Development and Coder Training*

The codebook was developed in two stages: first, a pilot coding process in which 35% of a yearly data were sampled.[74] The coders were provided with an initial coding scheme containing a detailed definition of each variable. Second, the main researcher conducted an individual and group level training and the pilot coding began. After the pilot reliabili-

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[70] Allcott & Gentzkow, *supra* note 27, at 212 (claiming newspaper and TV dominance remains also in the current "fake news" era, and that, in fact, newspapers seem to have regained the public trust, representing accuracy and "reality"—if such term can even be used when discussing media coverage). *See* discussion *infra* Part IV; *see also* note 155.

[71] Constructed week sampling is a form of stratified random sampling in which researchers identify all Sundays, Mondays etc. within a chosen period and randomly sample from those "grouped" days to create a fictitious week (i.e., randomly pick a Sunday, a Monday, etc. until forming a week of randomly sampled days). *See also* Marsh, *supra* note 24, at 71; Daniel Riffe et al., *The Effectiveness of Random, Consecutive Day and Constructed Week Sampling in Newspaper Content Analysis*, 70 Journalism Q. 133, 136 (1993); Daniel Riffe et al., Analyzing Media Messages: Using Quantitative Content Analysis in Research 97–100 (1st ed. 1998).

[72] Riffe et al., *supra* note 71, at 139; Stephen Lacy et al., *Sample Size for Newspaper Content Analysis in Multi-Year Studies*, 78 Journalism Mass Comm. Q. 836, 838–39 (2001); Douglas A. Luke et al., *How Much Is Enough? New Recommendations for Using Constructed Week Sampling in Newspaper Content Analysis of Health Stories*, 5 Comm. Methods Measurement 76, 78–80 (2011).

[73] Lacy et al., *supra* note 72, at 843 (showing that selecting two constructed weeks from a year or nine weeks from five years is sufficiently efficient unless variations are large, and then ten weeks should be selected); Luke et al., *supra* note 72, at 87–89 (suggesting that six weeks from five years should suffice).

[74] To reduce potential bias, the pilot data was not part of the data used in the final sample.

ties were analyzed, coders held seminar-like group discussions on coding decisions, specifically about where lower reliability values were obtained.[75] Changes to the protocol were made based on the reliability measurements and the group discussion.[76] Overall, coders were trained at the individual and group level for approximately 10–13 hours. To maximize the reliability of the coding process, Krippendorf's recommended coding guidelines were adopted.[77] Ten percent of the sample was used to assess inter-coder reliability for the full sample ranged from 0.74 to 0.96 with an average κ coefficient of 0.82.[78]

B.   Coding Criteria and Variables

The units of data collection were *stories* on crime in the newspaper, categorized by type of felonies. *Crime* was broadly defined as a behavior pertaining to a lawbreaking act, or social reaction to law breaking. The felonies coded reflect the National Archive of Criminal Justice Data ("NACJD") index of felonies.[79] Two sections were coded: main and local, the latter categorized by the local ("Metro") section specified for each state. To provide a detailed and comprehensive account, the study covered different modes of news reports on crime including hard news, editorials, letters from readers and cartoons.

The analysis included two main groups of variables and several auxiliary variables in analyzing each story:

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[75] Under Cohen's Kappa (κ) reliability measurement. Media scholars continue to debate what is the most efficient test to assess reliability in content analysis. *See, e.g.*, Andrew F. Hayes & Klaus Krippendorff, *Answering the Call for a Standard Reliability Measure for Coding Data*, 1 COMM. METHODS MEASURES 77, 81 (2007). Despite such debates, the review of the literature reveals the research community prefers specific tests over others, and following that norm, I used Cohen Kappa's (κ), which allows the assessment of multiple coders and has been established as a strong measure of reliability. Dixon, *supra* note 17, at 779; Klaus Krippendorff, *Reliability in Content Analysis*, 30 HUM. COMM. RES. 411, 419–22 (2004).

[76] Consequently, some variables remained as originally defined, others were revised, and a few were omitted.

[77] Krippendorff, *supra* note 75, at 430. Mostly: (1) employ pilot content analysis, (2) indicate clear instructions for coding, (3) use skilled coders and engage in training sessions, (4) code independently, and (5) use clear criteria and a single classification principle. Using these guidelines increases the reliability of the coding process. *See also* Revital Sela-Shayovitz, *Police Legitimacy Under the Spotlight: Media Coverage of Police Performance in the Face of a High Terrorism Threat*, 11 J. Experimental Criminology 117, 126 (2015).

[78] *Id.* Generally, Cohen's Kappa (κ) values of 0.8 and over are considered reliable.

[79] The study excluded terror-related incidents, espionage, corporate activity, tax evasion, car accidents that do not involve negligent manslaughter, and other non-violent felonies not mentioned in the sentencing data (such as car theft). Crime stories occurring outside the U.S. were also excluded.

Intensity

The uniquely proposed intensity variable captured the prominence of the coverage on crime based on several proxies.[80] The overall intensity of a story is the sum of all these proxies running from a minimum of 1 to a maximum of 13. Given that intensity of coverage has two dimensions: (a) how a story is presented, and (b) the number of stories on crime per day, the overall intensity of a day in the sample is calculated by adding up all the stories' intensities in each day.

Content

Content captured the content of a crime story. It analyzed type of story (specific report on a crime or a more general policy-related story), felonies covered, details about gender, race and age of both the perpetrators and victims, and details about what is included in the visual(s) referring to a story. Under visuals, different categories were offered in the code book: felon, victim, law enforcement, and lawyers, all categorized by race and gender.

Race

Race included six categories, following the NACJD classification: White, Black, American Indian or Alaskan Native, Asian, Pacific Islander, and other. Ethnicity was also defined, focusing on Hispanic origins.

Identification of race

Three ways to communicate race were considered, explicit, implicit and visual. Under *explicit* mention coders were asked to code any clear textual reference to race (i.e., ". . . a white suspect was identified"). Under *implicit* mention, coders were asked to code the race based on a few indicators inferring the race (family of felon/victim) or use of language alluding to racial stereotypes (i.e., "inner-city" or "ghetto" for Blacks).[81] To err on the side of caution, name only was not used as an implicit reference under the assumption it may be altered. Moreover, geographic location of neighborhoods was also not coded as implicit reference given lack of sufficient knowledge on racial composition within

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80 Where the story is located (i.e., page number, main or local edition), size of the story and its proportions compared to other stories in the same page, size of the headline and proportions compared to other stories in the same page, whether a visual exists, the visuals' size and proportions compared to the story and other stories, and total number of stories within a page.

81 Hurwitz and Peffley, *supra* note 60 (using "inner city" as an implicit racial cue); Valentino et al., *supra* note 60 (also using visual racial cues); Mendelberg, *supra* note 59; Mendelberg, *supra* note 59, at 111–14. "Implicit" racial reference in the context of the study somewhat differ from Mandelberg's approach, as it separates implicit *textual* cues (coded under "implicit mention") and visuals.

states during the years of the study.[82] Under *visuals,* race was coded based on the visual attached to a story, allowing multiple participants per visual. The coding book allowed for multiple perpetrators, victims, and visuals to be coded. Coders were asked to code individuals whenever the story allowed such coding, and a group if the story didn't provide any specifications pertaining perpetrators.

Felonies

Felonies were defined based on the NACJD 12-level-felonies classification and included murder, sexual assault, robbery, aggravated assault, other violent crime (such as kidnapping and negligent manslaughter), burglary, larceny, fraud, drug possession, drug trafficking, weapon offenses and other. The coding spreadsheet allowed coding of up to four felonies per story.

III.   FINDINGS

A.   How is Crime Covered?

The data confirmed what is a well-known axiom—the media cover crime intensively, both at the national and local level.[83] Over the ten years of the study, 4,689 crime stories were analyzed; 1,279 at the national level, with an average of 4.5 stories per day, and 3,410 stories at the overall local level.[84] For analysis purposes, I also coded each of the local regions (MD; VA; Washington, D.C.) separately to understand any stark disparities between them, identifying an average of 7.5 crime stories per day, per region. Graph 1 below summarizes the distribution of the data by year and a national/local divide. As visualized in graph 1, the only clear pattern in the number of crime stories is their ubiquitous nature, both at the national and local level, with an overall larger number of crime stories at the local level. In contrast, there is no clear pattern pertaining to the general coverage of crime, and only small variations in the coverage in each of the regions.

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[82] At most, such omission creates downward bias which implies the findings may in fact be more distinct.

[83] Donohue, *supra* note 15, at 1297 (providing a most recent account of the extent to which Americans fear of crime. Such fear in turn affect the media's tendency to cover crime).

[84] Local sections can either be printed separately for each region (i.e., separate MD; Washington, D.C.; and VA editions), or for two or more regions together.

GRAPH 1. COVERAGE ON CRIME BY YEAR
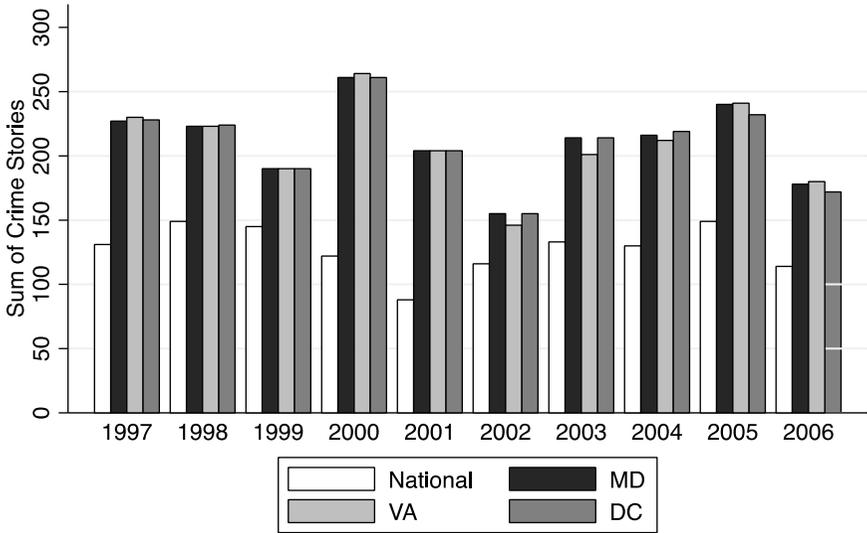
Washington Post (1997-2006)
Note: N=4,689

Ninety-seven percent (97%) of the stories focused on a specific crime story or stories, with only 2% of these discussing more generally crime-related policy with reference to specific crimes.[85] The rest (3%) were either editorials or letters sent to the WaPo; these could also address a specific crime story. Only two types of offenses showed statistically significant relationships with policy-oriented stories—weapon offenses and drug possession, topics that are in the center of public debates in recent years.[86] Murder is by far the most "newsworthy"—and hence most covered—crime, with 2,401 references in the sample (38%), followed by aggravated assault (911 times, 14.44%) and sexual assault (585 times, 9.28%). Table 1 below displays the overall distribution of felonies within the sample.

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[85] Although specific stories could raise more general questions, these usually were set at the background and less focused on the core of the crime report.

[86] Significance levels: for weapon offenses $\beta = 0.052$, p<0.05; and for drug possession $\beta = 0.084$, p<0.001 (tables with author).

TABLE 1. FELONIES IN CRIME STORIES

| Felony	Total Number of Mentions	%
Murder	2,401	38%
Aggravated Assault	911	14.44%
Sexual Assault	585	9.28%
Robbery	435	6.90%
Other Violent	393	6.23%
Weapon Offences	258	4.10%
Drug Offenses	253	4.03%
Burglary	201	3.20%
Fraud	193	3.06%
Larceny	151	2.4%
Other	527	8.36%
Overall Mentions	6,308	100%

Note: Aggregated data for the full sample. "Other Violent" includes completed and attempted offenses such as kidnapping and negligent manslaughter. A story may include more than one felony.

Felonies are covered differently at the national and the local level, although not necessarily as one would expect. For instance, there were no statistically significant differences in the coverage of murder or drug trafficking in local and national news. Sexual assault cases and drug possession cases, on the other hand, were covered more often on national news,[87] while aggravated assault and robbery stories were covered more on the local news.[88] Graph 2 below summarizes the important variations in the type of felonies covered in local and national news. These findings will be discussed in the Conclusion, as they can inform the findings on the differences in representations of black and white perpetrators in local and national news.

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[87] $\beta = 0.03$, $p<0.01$, $\beta = 0.013$, $p<0.01$ respectively (Positive coefficients suggest more coverage on national news.) (tables with author).

[88] $\beta = -0.039$, $p<0.01$; $\beta = -0.053$, $p<0.001$ respectively (Negative coefficients suggest less coverage on national news.) (tables with author).

GRAPH 2. COVERAGE OF FELONIES BY LOCAL AND NATIONAL NEWS
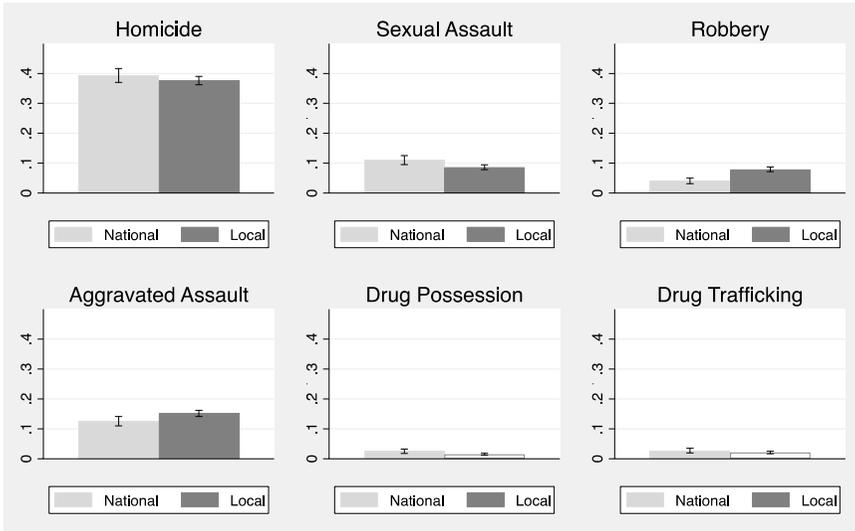
Note: Differences in Mean Mentions. Robbery p<0.001, Sexual assault, Aggravated assault, and Drug Possession p<0.01. NS for Homicide & Drug trafficking

B.   Methods of Communicating Race in an Era of Colorblindness

A key question in the study of media coverage of racial groups pertains to the ways by which race is discussed and communicated to the public. In an era of alleged colorblindness, direct and explicit racial references are heavily scrutinized and become "potentially racist." The combination of race and crime is particularly explosive. It was therefore not a surprise to discover WaPo's official policy with regards to coverage on crime, aspiring to reduce an unnecessary presence of race in crime stories. To get an empirical look at this policy's end-product, this Article examines the extent to which colorblind policies in the coverage of crime are indeed the default, and further, it asks, if not the default, what are the methods by which race still penetrated crime during the period of study? Finally, this Article considers whether the print media indeed no longer "panders to the racism in society."[89]

Under the alleged colorblind journalistic agenda, investigating the role of race is a challenging task, as explicit references to race are hard to detect. As mentioned, to overcome this challenge, the Study adopted a three-layered approach to investigate the presence of race in coverage on crime: explicit, implicit, and visuals-based. Indeed, and consistent with the declared policies, the data reveal that, between 1997–2006, in 79% of the stories, race was not mentioned. This section focuses on the remain-

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[89] Getler, *supra* note 1, Cohen, *supra* note 1. For the general guidelines on "race and racial identification" in coverage see THE WASHINGTON POST DESKBOOK ON STYLE, *supra* note 4.

ing 21% in which race was mentioned. It does so not only because 21% is not a negligible amount, but also given that the existing racial schemas serve as cognitive fillers for the rest of the crime stories.[90] As discussed, cognitive theories contend that the ways race is portrayed in crime stories play a meaningful role in the overall public pre-dispositions on race and crime. The dominant narratives in these stories create cognitive shortcuts to be used in interpretation of other crime stories, especially those lacking any specific information on race of perpetrators. Such a void in information is thus filled by prior, often-distorted, knowledge. The stories in which race is indeed mentioned are the source of this knowledge.

Without attempting to address whether race was clearly relevant to the story, I was interested in investigating the methods by which race remained a critical component of crime stories. The first surprising observation is that despite attempts to minimize the use of explicit racial mentioning, still in 33% of the stories, explicit language was used. The remaining 67% used subtler racial cues, with a clear dominance in the use of visuals (51%) in which perpetrators, victims, or family members appear. Such visualization is especially crucial for the black/white division which is at the focus of this study. Other implicit forms of mentioning were used in 16% of the stories. Graph 3 summarizes the overall methods through which race was communicated.

GRAPH 3. METHODS OF COMMUNICATING RACE (OVERALL)
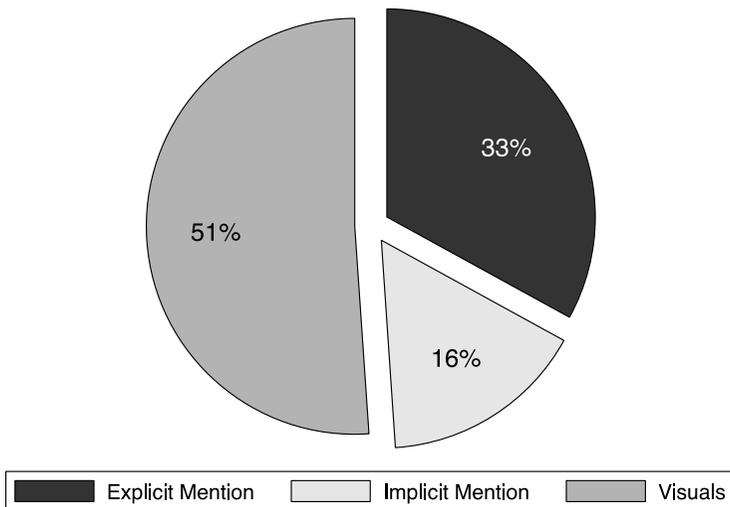
Note: N=962, Source: Washington Post 1997-2006

The longitudinal data allowed me to examine another intriguing question: whether the methods for communicating race used in the late

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90 Dixon, *supra* note 17, at 2–3; Gilliam and Iyengar, *supra* note 18, at 561.

1990s transformed towards the mid-2000s in number and in type? Analyzing coverage trends in blocks of five years revealed changes in the patterns by which race was communicated, with a trade-off between explicit mentions of race and visuals. While identifying a *decrease* in the overall usage of explicit language from 2002–2006 as compared to 1997–2001,[91] there was a parallel *increase* in the overall use of visuals.[92] Interestingly, the percentage point increase in the use of visuals containing race was *twice* the percentage point increase in the general use of visuals in other crime stories. These findings suggest that reference to race in the context of crime did not disappear, but rather transformed, similarly to racism itself.

Moreover, the data show that the decrease in using explicit language for race did not result in an overall decrease in the frequency race was mentioned. On the contrary, from 2002–2006 race was mentioned substantially more than the period from 1997–2001; while race was present 364 times in crime stories in the first five years, between 2002–2006, race was present 600 times with no meaningful changes in the overall number of crime stories in each period. This suggests that the increased use of visuals has in fact increased the presence of race in crime stories despite colorblind policies. Race remained dominant in crime reports. It was just communicated differently. Graph 4 below displays the changes in methods for communicating race over time.

GRAPH 4. METHODS OF COMMUNICATING RACE (OVER TIME)
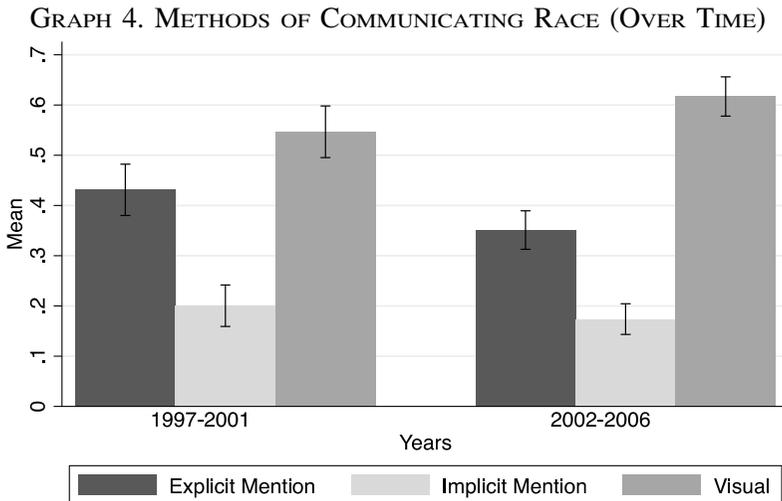
Washington Post (1997-2006)
Note: For differences in explicit mention and visuals p<0.05 (z=2.5 & z=2.2 respectively)
N=962

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[91] Eight percentage point difference. The differences between the time periods analyzed were statistically significant: z=2.5, p<0.05; two-tailed binomial proportions test.

[92] Seven percentage point difference. The differences between the time periods were statistically significant: z=2.2, p<0.05; two-tailed binomial proportions test.

C.   Racial Differences in Crime-related Coverage of Perpetrators

The mere mentioning of race, however, is only part of the story. This Article seeks to answer an additional question: how different racial groups of perpetrators are portrayed in the national and local print media, with a focus on differences between Blacks and Whites.[93] As elaborated earlier, the portrayal of the racial representation of perpetrators in the criminal context is key in establishing public perceptions towards crime.[94] The coding protocol adopted in this study thus allowed the identification of race even under official colorblind policies.[95]

When investigating the presence of race in reporting perpetrators of crime, intriguing patterns emerged, with descriptive differences in the coverage of crime at the national and local level. First, the data reveal that race of perpetrators was generally mentioned at the local level twice as much as it was mentioned at the national level. As for the specific racial division among perpetrators, calculating mean mentions of black perpetrators compared to white perpetrators out of the stories mentioning race, shows that at the national level, white perpetrators were mentioned in 58% of the stories, while black perpetrators were mentioned in 28% of the stories.[96] At the local news level, in contrast, the frequency of Blacks mentioned as perpetrators was larger than Whites—black perpetrators were mentioned in 50% of the stories, while white perpetrators were only mentioned in 39% of the stories.[97] Graph 5 below summarizes these findings.

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[93] For a comprehensive analysis on racial representations of homicide victims, see Ravid, *supra* note 10.

[94] Travis L. Dixon, *Black Criminals and White Officers: The Effects of Racially Misrepresenting Law Breakers and Law Defenders on Television News*, 10 MEDIA PSYCHOL. 270–91 (2007).

[95] *See infra* Part II elaborating on the three-layered approach to racial identification adopted in this study.

[96] Differences between the mean mentions of racial groups at the national level were statistically significant: z=6.5, p<0.001; two-tailed binomial proportions test.

[97] Again, differences between the mean mentions of racial groups at the local level were statistically significant: z=3.3, p<0.01; two-tailed binomial proportions test.

GRAPH 5. PERPETRATORS IN LOCAL AND NATIONAL NEWS BY RACE
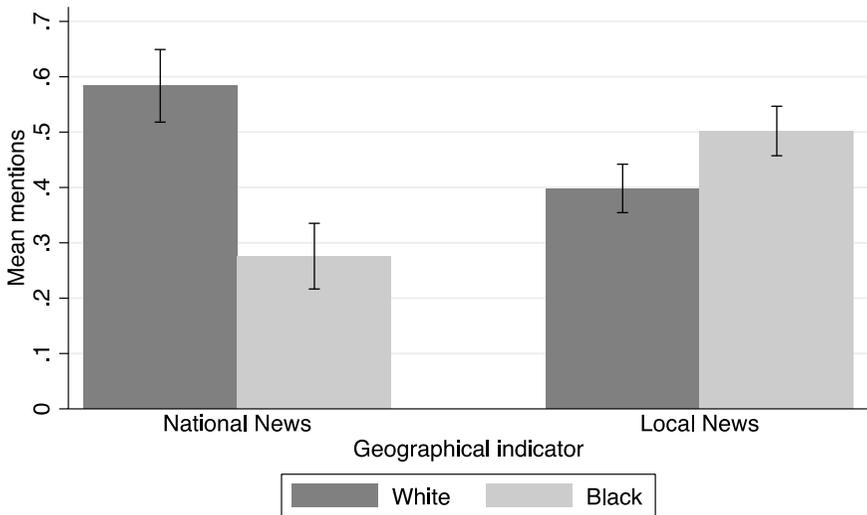
Washington Post (1997-2006)
Note: N=704
p(local)<0.01, p(national)<0.001

The findings suggest that at the national level, Whites are more likely to be portrayed as perpetrators than Blacks (with a black/white ratio of 0.46), while at the local level, Blacks are more likely than Whites to be portrayed as perpetrators (with a black/white ratio of 1.25).[98]

Moving forward, I will refer to these findings as "internal"—capturing the internal relationship between the representation of perpetrators from different racial groups.[99] These findings provide an important first step towards understanding crime-related racial divisions as established by media scripts, which in turn contribute to the creation and preservation of racial stereotypes. Studies found such internal findings to satisfy claims on unfair treatment of racial groups by the media.[100]

However, the frequency by which perpetrators from different racial groups are mentioned in the criminal context only partially captures differences in the coverage of black and white perpetrators. Another component of interest is whether reporting styles differ based on perpetrators' race, reflecting which racial group receives more prominence in coverage.[101] The *intensity* variable (see section II-b) captures these differences, as it classifies the salience a story receives based on several

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[98] A ratio of more than 1 suggests that black perpetrators appear more than Whites.

[99] Or "intergroup," *see* Dixon & Linz, *supra* note 22, at 132–33.

[100] Bjornstrom et al., *supra* note 17, at 282–83 (offering a few more layers of investigation and using the internal approach to argue against unequal media representations); *see also* Entman, *supra* note 22, at 359 (using the internal approach to argue against unequal media representations).

[101] *See infra* Part IV.

proxies. To understand the relationship between the intensity of coverage and race of perpetrators, the *intensity* variable was regressed on the binary variables *black* or *white felon mentioned* both for the national and local sections.

Two models were assessed, a baseline model with no controls (model 1) and model with controls and year fixed effects (model 2). Controls include the victim's race, the type of crime covered in a story, whether the story covers a specific incident or broader policy implications, and the overall number of stories in a day.[102] The results are shown in table 2 below. The results indicate that at the local level—where the frequency of mentioning black perpetrators is higher—crime stories on black perpetrators are also associated with an increased prominence compared to stories on non-black perpetrators (an increase of 0.58 intensity units, p<0.01). No significant association between white perpetrators and intensity was identified. At the national level—where white perpetrators are mentioned more in absolute values —there is no equally significant association between the intensity of coverage and the mention of a white perpetrator. The coefficient on Black perpetrators, however, is once again significantly associated with the intensity of coverage (on average stories with black perpetrators receive 1.34 units of intensity more than non-black perpetrators, p<0.1).

These findings indicate that at the local level, it is not only that Blacks are mentioned more often as perpetrators, but their stories also receive greater emphasis.[103] At the national level, although Whites are mentioned as perpetrators more often in absolute numbers, their stories are not significantly more salient compared to non-white perpetrators.[104]

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[102] I considered including additional controls such as the gender and race of the perpetrators and victims, but due to missing data, their inclusion resulted in a significant decrease in the sample size (approximately 50% at the local level and 65% at the national level). Given such meaningful reduction in the sample size, these controls were not included in the final models. It should be mentioned, however, that a model including all these controls and year fixed-effects was also examined, showing similar relationships between the race of the perpetrators and the prominence of coverage to those identified in models 1 and 2.

[103] Entman, *supra* note 22, at 359.

[104] To assess the robustness of the reported results to alternative analytic strategies, I performed several sensitivity checks. First, given the discrete nature of the intensity variable, an ordinal logit model was considered (with similar controls and year random-effects). The association between black perpetrators and the intensity of coverage remained significant both at the local and national levels ($\beta = 1.9$) p<0.05; $\beta = 3$, p<0.05 respectively (estimates in odds ratio) (tables with author)), and the lack of association between white perpetrators and the prominence of coverage similarly persists at the local level. At the national level, I identified association between white perpetrators and intensity $\beta = 1.74$, p<0.1 (estimates in odds ratio (tables with author)). The national level estimates on white perpetrators were sensitive to clustering, yielding nonsignificant associations when not clustered by year. Second, I limited the sample to two subsamples: violent crime (homicide, sexual assault, aggravated assault, and robbery) and homicide only and reassessed model 2 on both subsamples. At the local level, the results remain the same, indicating more prominent coverage of black perpetrators in the local

Crime stories on black perpetrators, however, remain more salient in their reporting style than stories on non-black perpetrators even at the national level.

TABLE 2. OLS REGRESSION OF THE INTENSITY OF COVERAGE ON
PERPETRATOR'S RACE, NATIONAL AND LOCAL LEVEL COVERAGE.

| | Local | | National | |
VARIABLES	Model 1	Model 2	Model 1	Model 2
Black Perpetrators	0.606***	0.575***	0.862*	1.338*
	(0.218)	(0.151)	(0.438)	(0.680)
White Perpetrators	0.249	0.279	0.491	0.639
	(0.225)	(0.194)	(0.402)	(0.360)
Observations	482	482	221	221
R-squared	0.017	0.107	0.016	0.221
Controls	No	Yes	No	Yes
Year FE	No	Yes	No	Yes

Note: This table shows OLS regression results. Source: Washington Post 1997-2006. The dependent variable is the intensity of coverage. The sample includes only the stories in which a perpetrator's race is mentioned. Controls include the race of the victim, the type of crime covered in a story, whether a story focuses on a specific incident or has broader policy implications, and the overall number of stories in a day. Robust standard errors in parentheses.
*** p<0.01, ** p<0.05, * p<0.1.

Both these analysis (mean mentions and the salience of stories) are useful to understand the internal mechanisms pertaining the representation of crime and race, and to consider the potential effects of these mechanisms on the readers' cognitive short-cuts when thinking about crime and race.

However, this analysis overlooks any "external" objective factors that are necessary to establish claims on the accuracy of the reports, and consequently on "distorted racial media portrayal" or on "over-" and "under-" representations of a specific racial group. Such external factors could be data on the distribution of each group in the population or the involvement in crime based on official crime statistics.[105] I now turn to investigate both these external approaches, building on the work of Dixon et al.[106]

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news (β = 0.77 p<0.05 for violent crime and β = 0.66, p<0.05 for homicide (tables with author)) and a non-significant relationship between the intensity of coverage and white perpetrators. At the national level, the non-significant relationship between white perpetrators and intensity remains, but the correlation between coverage of black perpetrators and intensity also becomes insignificant.

[105] Dixon & Linz, *supra* note 22, at 135–36; *see also* Dixon et al., *supra* note 25, at 503–05.

[106] This analysis builds primarily on Travis L. Dixon & Daniel Linz, *Race and the Misrepresentation of Victimization on Local Television News*, 27 COMM. RES. 547–73 (2000); *see also* Dixon et al., *supra* note 25; *see also* Dixon, *supra* note 94. It should be noted that I add another layer of external investigation to the one adopted in the numerous studies conducted

To understand how frequently Blacks and Whites are mentioned considering their proportion in the population, I collected census data for the studied years.[107] The data reveal that at the *national level*, during those years Whites comprised on average, 81.6% of the total U.S. population, while Blacks were only 12.7% of the total population. The census data thus sheds an intriguing light on the findings at the national level. Although the probability of a white perpetrator to be mentioned is greater than that of a black perpetrator, when looking at their proportion in the total population, we reveal that in fact, white perpetrators are underrepresented in media coverage while black perpetrators are overrepresented. Black perpetrators are portrayed in crime stories 15.3 percentage point *more* than their proportion in the population, while white perpetrators are portrayed 23.6 percentage point *less* than their proportion in the population. These differences provide a sense of the differences between newspaper coverage and proportions of each racial group in the population.[108] Given the sampling error, and as the last step in assessing "over-" and "under-" representations in the media, I calculated 95% confidence intervals (CI) around the sample estimate of the mean media mentions of each racial group.[109] Percentage point differences between the media mentions and proportions in the population that are larger than the confidence interval suggest that the "under-" or "over-" representation expressed by the mean mentions in the newspaper are statistically significant.[110] As portrayed in Table 3, the underrepresentation of white and overrepresentation of black perpetrators is statistically significant, given the confidence interval.

I followed similar analysis at the *local* level. Given that the mean mentions for the three states were similar whether analyzed jointly or separately, I used census data for each state and averaged the total proportion for all three states together over the ten-year period.[111] According to the data, in Washington, D.C.; Virginia; and Maryland, Whites comprised 58% of the total population, and Blacks comprised 36% of the total population, pointing at 19 and 14 percentage point difference, respectively, between their mean mentions and proportion in the popula-

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by Travis et al., not only comparing mean mentions of each racial group to arrest rates, but also to the proportions of each racial group in the general population at the national and state level.

[107] U.S. Census Bureau, Statistical Abstracts Series 1997–2006, https://www.census.gov/library/publications/time-series/statistical_abstracts.html (last visited Aug. 29, 2017) [hereinafter Bureau].

[108] Dixon, *supra* note 17, at 8.

[109] *See generally* DAVID S. MOORE & GEORGE P. MCCABE, INTRODUCTION TO THE PRACTICE OF STATISTICS (3rd ed. 1999); *see also* Dixon, *supra* note 17, at 9–10; *see also* Dixon & Linz, *supra* note 22, at 143–45.

[110] *See* Dixon, *supra* note 17, at 783; Dixon & Linz, *supra* note 22, at 143–46.

[111] Bureau, *supra* note 1077.

tion. Again, Blacks are overrepresented, and Whites are underrepresented as perpetrators. Given a confidence interval of +/-4.5 and the percentage-point differences mentioned on Table 3, the data once again support a statistically significant conclusion that Blacks are overrepresented as perpetrators in the *local* news while Whites are underrepresented.

TABLE 3. RACE OF PERPETRATORS IN CRIME STORIES COMPARED TO THEIR PROPORTION IN THE POPULATION, NATIONAL AND LOCAL

Race	Mean Mentions %	% In the Population	% Point Difference	95% Confidence Interval
National				
Black	28	12.7	+15.3	+/- 6
White	58	81.6	-23.6	+/- 6.5
Local				
Black	50	36	+14	+/- 4.5
White	39	58	-19	+/- 4.5

Note: N=704. Percentage of Blacks and Whites appearing as perpetrators on the national and local sections of the Washington Post. % of Blacks and Whites in the general population. Percentage point difference: Newspaper % - Racial Group in General Population %. Source: Washington Post 1997–2006, United States Census Bureau, Statistical Abstracts Series 1997–2006.

One may argue that using proportions of the general population to evaluate crime-related media representations of specific racial groups poses challenges, given that most of the general population is not involved in crime. Moreover, since media coverage is the key universe of interest, it is more likely for the media to report on crime in accordance with true crime data, and not based on census data. Therefore, another external reference was utilized: data on arrest rates by race, both at the national and local level.[112] For these purposes, I collected data from the FBI Uniform Crime Report Project for arrest rates at the national level, and from archived state reports for arrest rates at the local level.[113] I

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[112] *See* Dixon & Linz, *supra* note 22 (pointing out that although arrest rates may be a function of racial discrimination, there is a potential bias utilizing them); *see also* Chiricos, *supra* note 25, at 405. Moreover, as Dixon & Linz mention, there is "no evidence to suggest that viewers make meaningful distinctions between perpetrators who are accused and sought . . . versus those who have been arrested." *See* Dixon & Linz, *supra* note 22, at 138.

[113] At the national level: UNIFORM CRIME REPORTING, FBI, https://ucr.fbi.gov/ucr (last visited Jan. 25, 2018) (hereinafter UCR). At the local level: VIRGINIA STATE POLICE—CRIME IN VIRGINIA PUBLICATION, http://www.vsp.state.va.us/Crime_in_Virginia.shtm (last visited Jan. 25, 2018); STATE OF MARYLAND UNIFORM CRIME REPORTS & MARYLAND STATE POLICE. UNIFORM CRIME REPORTING SECTION, (1975), http://archive.org/details/stateofmarylandu2001stat (hereinafter Maryland Crime Reports). Reports in Washington, D.C. did not provide information on racial division in arrest rates, so only Maryland and Virginia data were utilized.

followed a similar procedure to assess over or underrepresentation in the media based on arrest data.

At the *national* level, white perpetrators were again underrepresented and mentioned in the print media 10.5 percentage point *less* than their actual arrest rates (68.5%). The mean mentions of black perpetrators in the media, on the contrary, were like their actual crime rates (28%), suggesting neither overrepresentation nor underrepresentation of Blacks could be assessed. At the *local* level, white perpetrators maintained their statistically significant underrepresentation, with a difference of 13 percentage point between their mean mentions and their actual arrest rates. Black perpetrators had a difference of 4 percentage point between their mean mentions in the media (50%) and their actual arrest rates (46%). Given the sampling error and the fact that the percentage point difference lies within the sample estimate confidence interval, however, such overrepresentation of black perpetrators is not statistically significant.

Table 4 summarizes the comparison between the mean mentions of black and white perpetrators and actual arrest rates.

TABLE 4. RACE OF PERPETRATORS IN CRIME STORIES COMPARED TO ACTUAL ARREST RATES, NATIONAL AND LOCAL

Race	Mean Mentions %	% Arrest Rates	% Point Difference	95% Confidence Interval
National				
Black	28	28	0	+/- 6
White	58	68.5	-10.5	+/- 6.5
Local				
Black	50	46	+4	+/- 4.5
White	39	52	-13	+/- 4.5

Note: N=704. Percentage of Blacks and Whites appearing as perpetrators on the national and local sections of the Washington Post. Arrest rates of Blacks and Whites. Percentage point difference: Newspaper % - Arrest %. Sources: Washington Post 1997–2006, Virginia Crime Reporting Section,[114] Maryland Central Records Division,[115] FBI Uniform Crime Reporting Program.[116]

Comparing media coverage on crime to true crime statistics could be potentially problematic given that the media covers specific types of felonies more than others. Different racial groups may indeed be involved differently with these crimes, regardless of an overall racial bias. This claim, however, should not affect the findings suggested above.[117] Media consumers are typically unaware or not interested in crime statis-

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[114] Virginia State Police—Crime in Virginia Publication, *supra* note 113.
[115] Maryland Crime Reports, *supra* note 113.
[116] UCR, *supra* note 113.
[117] Gilliam & Iyengar, *supra* note 18, at 560–61.

tics.[118] To them, the universe of crime as portrayed by the media represents the true reality of crime. As such, assessing the accuracy of this universe from a racially-sensitive perspective requires a comparison with the equivalent data as was done above. Regardless, I conducted another layer of analysis that addresses these concerns. The mean mentions of each racial group of perpetrators were recalculated based on the probabilities of each felony to be covered by the WaPo. This created a new weighted mean of mentions capturing the media distortion in covering crime. I then compared the data to arrest rates with respect to the felonies comprising the weighted means. Through this method, felonies that are covered more got higher weight in calculating the mean mentions of each racial group.

Table 5 below summarizes the findings based on the new weighted means. The trends identified in Table 4 remain, with Whites systematically underrepresented both at the local and national level. Similarly, the overrepresentation of Blacks is not statistically significant suggesting this racial group is covered in accordance with their true involvement in crime.[119]

Table 5. Race of Perpetrators in Crime Stories Compared to Actual Arrest Rates, National and Local (Weighted)

Race	Weighted Mean Mentions %	% Arrest Rates	% Point Difference	95% Confidence Interval
		National		
Black	37	32	+5	+/- 6
White	54	65	-11	+/- 6.5
		Local		
Black	49.5	48	+1.5	+/- 4.5
White	42	51.5	-9.5	+/- 4.5

Note: N=704. Percentage of Blacks and Whites appearing as perpetrators on the national and local sections of the Washington Post weighted by the probability of a specific felony to be reported. Arrest rates of Blacks and Whites only for the felonies that are part of the weighted means. Percentage point difference: Newspaper % - Arrest %. Sources: Washington Post 1997–2006, Virginia Crime Reporting Section,[120] Maryland Central Records Division,[121] FBI Uniform Crime Reporting Program.[122]

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[118] Id.

[119] I also compared the weighted mean of racial mentions to the full data on arrest rates (following the same strategy utilized in table 4). The trends pertaining the coverage of white perpetrators remained the same but indicated that black perpetrators at the local level are in fact significantly *overrepresented*.

[120] Virginia State Police—Crime in Virginia Publication, *supra* note 113.

[121] Maryland Crime Reports, *supra* note 113.

[122] UCR, *supra* note 113.

IV. DISCUSSION

A.   A Cautionary Tale on Colorblindness

The findings of this Article reaffirm: first, race and crime are inseparable, and second, new racism, albeit incognizant, prevails even among liberal news outlets that aspire to cut this Gordian knot by adopting colorblind policies.

Indeed, the way race is communicated has shifted. Evidently, in stories where race was mentioned, a decrease in the use of explicit mentions of race in the context of crime was traced. But racial associations in criminal contexts did not disappear. Instead they shifted toward a different method of communication, an increased use of visuals as an implicit signifier of race. This shift affects mostly the black-white division, reaffirming the corresponding schemas on black criminality. Moreover, and somewhat counter-intuitively, the frequency of race mentions in crime stories almost *doubled* over time, suggesting that increased use of visuals had a "liberating effect" on the presence of race in crime stories.

But this is only part of the story. Communicating race may have a positive outcome, if such references were used to challenge or offer racial counter-paradigms. Alas, on that front too, the Study fails to spread optimism. First, analysis of the internal patterns of the WaPo's coverage on crime reveals that at the local level, black perpetrators are mentioned significantly more than white perpetrators, while at the national level, White perpetrators appear significantly more often. But when assessing not only the frequency of mentions, but also differences in the reporting style of crime stories, stories on black criminality are deemed more salient than stories on non-black perpetrators, both at the national and local level. This suggests, for example, that even when more stories on non-black perpetrators are reported in absolute numbers, these are likely to be hidden deep within the pages. Stories on black perpetrators, however, even if lower in numbers, are likely to receive more attention.

Second, when evaluating the coverage through a media distortion perspective based on crime statistics, I identified a *systematic racial imbalance* in the portrayal of perpetrators, both at the local and national levels. Whites remain underrepresented as perpetrators compared to their actual involvement in crime. Blacks, on the other hand, are never underrepresented; at most, they are reported according to their arrest rates.

These findings add a new dimension to the scholarship on colorblindness and modern racism in the criminal context. It reveals how even liberal media outlets, consciously engaging in colorblind policies, fail to challenge existing racial schemas. First, the data shed light on the use of modern-time racial cues to corroborate racial stereotypes when use of

explicit language is decreasing.[123] Indeed, a host of reasons can explain the tradeoff between explicit racial mentions and visual-based communication of race, which are not necessarily race-originated. For instance, competition with alternative outlets such as TV or the expansion of the internet, which are two forms of media where visuals are more important for conveying a message than they are on the radio, might explain the tradeoff. Whatever the reasons, it is hard to underestimate the impact of this transition on the corroboration of racial stereotypes. Second, the data reveal that the racial schema on Blacks and crime prevails over the ten years studied. Although black perpetrators were represented according to their actual arrest rates, the fact that Whites remained underrepresented sheds light on the overall public perceptions regarding racial involvement in crime. This imbalanced coverage, when aggregated, provides a distorted picture that suggests that Blacks are involved in crime more than they actually are, thus preserving the schema on black criminality.[124]

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[123] Such as using visuals when other, more explicit forms of racial references are socially inappropriate. *See* Mendelberg, *supra* note 59 (explaining the effects of implicit cues in triggering racial responses); *see also* Hurwitz and Peffley, *supra* note 60; *see also* Valentino et al., *supra* note 61.

[124] The unequal representation of black versus white perpetrators is self-explanatory, but it can also be discussed through the lens of Bayesian statistics. Bayes' theorem provides a way to revise existing predictions given new evidence, for our purposes—how people update their assessment regarding the probability of Blacks being involved in crime given the WaPo's representation of perpetrators. Let's assume the following Bayesian formula:

$$\text{P(Black Perp|Perpetrator by Media)} = \frac{\text{P(Perp by Media|Black Perp)*P(Black Perp)}}{\text{P(Perp by Media)}}$$

Where:

"P(Black Perp)" is the probability that Blacks are involved in crime (Prior belief against Blacks)

"P(Black Perp|Perp by Media)" is the probability that Blacks are involved in crime given the media representation of crime involvement for all racial groups

"P(Perp by Media|Black Perp)" is the probability of being a perpetrator among all racial groups according to media representations given the probability that Blacks are involved in crime

"P(Perp by Media)" is the probability of being a perpetrator for all racial groups according to media representation

As the data show, Whites are systematically underrepresented as perpetrators, and so the overall probability of being a perpetrator for all racial groups according to the WaPo (the denominator) will be smaller than the actual probability of being a perpetrator based on crime statistics. Consequently, the left-hand side of the equation, i.e., the overall probability of Blacks being perpetrators among media consumers, increases. Although still contested, the idea that human cognition and inference are approximately following Bayesian models (even if not entirely accurately) was recognized by a broad spectrum of work in the cognitive sciences. *See, e.g.*, Joshua B. Tenenbaum et al., *Theory-Based Bayesian Models of Inductive Learning and Reasoning*, 10 TRENDS IN COGNITIVE SCI. 309–18 (2006); *see also* Mark Steyvers et al., *Inferring Causal Networks from Observations and Interventions*, 27 COGNITIVE SCI., 453–89 (2003); *see also* Thomas L. Griffiths et al., *Bayesian Models of Cognition*, THE CAMBRIDGE HANDBOOK OF COMPUTATIONAL PSYCHOL. 59 (2008).

As discussed, studies on information processing addressed the potential effects of such outcome on stereotyping, distancing and excluding Blacks, making the schema most vivid and immediate when thinking about crime.[125] This potentially affects participants in the criminal justice system, from police officers through prosecutors, parole officers, and judges. Moreover, given the structure of the U.S. criminal justice system, localization plays a meaningful role. The disparate portrayal of black perpetrators on local news can thus have an even greater impact on the state-level criminal justice system. This is especially true for the population of the study, given the generally high proportion of Blacks residing in Washington, D.C.; MD; and VA, and the significantly larger arrest rates among that group. Arrest rates of Blacks already reflect the unequal treatment they receive from the criminal justice system, and are part of a vicious cycle preserving stereotypes on black criminality, resulting in more arrests. The distorted media coverage perpetuates this cycle.

Furthermore, when considering the evolution of race relationships in the U.S. and the changes occurring over the course of the mid-20th century as discussed by Alexander[126] and others,[127] a recurring theme emerges. The message of alleged change in racial views and the way in which race was publicly communicated did not necessarily evoke real structural change or social perceptions that positively affect unequal treatment of Blacks. Instead, we experience a superficial change of language and labeling. In that process, the label of "black" was replaced with the new label, "criminal," carrying with it the original, discriminatory weight. The media is a meaningful agent of lingual changes and stereotypical transformations. As the study shows, it utilizes varied, subtle (and most likely unconscious) methods that result in the establishment and prolongation of the black criminal stereotype.[128] Arguably, the cognitive link between Blacks and crime consistently reaffirmed by the media is strongly tied to the rationale undergirding the stark realities of racial inequalities in the criminal justice system (i.e., Blacks are dangerous and as such deserve more social control).

As reflected in the WaPo's policy, which aspires to minimize the communication of race in general and specifically of perpetrators' race unless such information is essential and in conjunction with other identifying characteristics, editors and journalists are aware of the media's potential contribution to interracial animosity. In fact, the policy aims to stop feeding "dangerous and unfair racial stereotyping."[129] A conundrum

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[125] Oliver & Fonash, *supra* note 22, at 138–41; *see also* Gilliam & Iyengar, *supra* note 18, at 561–62; *see also* Dixon et al., *supra* note 25, at 502.

[126] ALEXANDER, *supra* note 6, at 2–3, 40–58.

[127] BONILLA-SILVA, *supra* note 6, at 17–23; Van Cleve, *supra* note 14, at 10–12, 131–35.

[128] Usually in conjunction with the complementary white victim paradigm.

[129] Getler, *supra* note 1; Cohen, *supra* note 1.

thus emerges: how can one reconcile modern progressive goals and this Study's findings, which reaffirm the dominance of racial stereotypes in crime reportage?

B.   The Incognizant Liberal Trap

I introduce the *incognizant liberal trap* as a framework to engage with this conundrum. As discussed below, it can shed light on the limitations of the media in detaching race from crime and in offering counter-stereotypical schemas in the criminal context despite colorblind policies.

A small number of studies have attempted to address the periphery of these questions, adopting an analytical framework that is rooted in theories of journalists' organizational behavior, most notably ethnic blame discourse originating in white dominance alongside economic structure.[130] Entman and Rojecki provide the most comprehensive analysis, discussing five, closely woven forces that shape the racially-biased messages produced by the media:[131] (1) the mainstream, white dominated culture; (2) limitations and professional norms of media personnel and their organization; (3) the economy of media industries;[132] (4) political elites; and (5) changes in the economic structure (both nationally and internationally). Per Entman and Rojecki, the end-product distributed by the media is the upshot of the interaction between these forces. Their approach focuses on structural-institutional limitations. It suggests that the depiction of race is somewhat arbitrary and only loosely connected to an actual intention to instill in audiences a precise understanding of racial issues. Moreover, journalists are only imperfectly aware of the cultural patterns and norms they follow. Entman and Rojecki argue that the coin seems to be flipping repeatedly on its racist head, reflecting the white-steeped mainstream culture.[133]

Although not directly discussed, this argument reflects the idea of "everyday racism" developed by Philomena Essed.[134] According to Essed, racism may not be a permanent feature of society, but rather, it emerges from a complex set of conditions or cumulative practices. Heider, also aiming to comprehend how the media keep reproducing ra-

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[130] DIJK, *supra* note 39, at 43–48.

[131] ENTMAN & ROJECKI, *supra* note 42, at 70–77.

[132] Moira Peelo et al., *Newspaper Reporting and the Public Construction of Homicide*, 44 BR. J. CRIMINOL. 256–75 (2004) (investigating the ways by which news becomes newsworthy, pointing at an interactive social process between media and society); Lundman, *supra* note 26, at 359–61; Alexander Weiss & Steven M. Chermak, *The News Value of African-American Victims: An Examination of the Media's Presentation of Homicide*, 21 J. CRIM. JUST. 71–88 (1998) (reaffirming the newsworthiness of white victims as opposed to black victims).

[133] ENTMAN & ROJECKI, *supra* note 42, at 77.

[134] PHILOMENA ESSED, UNDERSTANDING EVERYDAY RACISM: AN INTERDISCIPLINARY THEORY (1991) (comparing daily racial encounters of black women in the U.S. and the Netherlands).

cially-skewed messages, takes Essed's analytical approach a step further, discussing modern racism in the context of news reporters.[135] By adopting the term "incognizant racism," he emphasizes how journalists "consistently neglect to cover the issues and complexities of communities of color."[136] Entman & Rojecki and Heider share the notion that the unwarranted reality in which prototypical racist structures are reproduced in the news stems from an unconscious bias among journalists. A closer read of their views, though, reveals discrepancies. While Entman and Rojecki minimize any clues for journalists' culpability,[137] Heider offers a more critical view of the journalistic practices emphasizing the reluctance to challenge the status quo.[138] Both discussions, however, have a similar weakness—they look at the journalists and the media through a rather monolithic view, overlooking political orientation.[139] Admittedly, adopting such a monolithic approach may in itself be the result of a stereotype—perceiving the media as generally liberal. However, since different media outlets carry different ideological agendas, these should be addressed. I, therefore, offer a more sectional analysis in this Article.

To be clear, I agree that strong institutional and structural practices create an inertia leading to an unwarranted crime-related coverage of Blacks—the same vicious cycle that appeared in the first act. I also agree that journalists may not always realize the effects of such strong market and professional forces. Less persuasive is Entman and Rajecki's view that "[t]he news does not usually reflect any conscious effort" to promote accurate understanding of racial issues.[140] The WaPo's policies, aiming to alter the paradigmatic social perceptions on crime, contradict that claim. This study thus exposes a different phenomenon, one I refer to as the *incognizant liberal trap*, where newspapers, in full awareness of "everyday" racist practices, strive to challenge such practices yet fail to do so. I refer to it as a "trap" as liberal newspapers, like the WaPo, believe they should alter their reporting style, but remain trapped in their inability to affect change.

Indeed, and as the data reveal, journalists accurately cover the involvement of black perpetrators in crime but fail to do so when it comes to Whites, resulting in an overall distorted picture of the reality of crime.

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[135] Heider, *supra* note 43, at 19–25.

[136] Heider, *supra* note 43, at 25.

[137] Entman & Rojecki, *supra* note 42, at 205.

[138] Heider, *supra* note 43, at 51.

[139] *See* Entman & Rojecki, *supra* note 42; *see also* Heider, *supra* note 43. Indeed, Entman and Rojecki admit some journalists may drift from the model they propose in intentionally seeking to reinforce negative tendencies in race-based group dynamics, but their analysis does not offer politically nuanced separation. *See* Entman & Rojecki, *supra* note 42, at 57.

[140] *Id.* at 77.

This suggests that the institutional inertia discussed above creates a "blind spot" in the coverage of Whites, resulting in a systematic under-representation of this racial group in the criminal context.

Blind spots are a well-recognized psychological phenomenon in which one believes that she sees things "objectively" and as they are in "reality," but systematically overlooks the fact that this "reality" is distorted. Zooming out of the individual level, scholars of organizational behavior extensively explore the phenomenon of blind spots and its institutional origins. Of the explanations provided in the literature, at least two are tied to institutional inertia. First, blind spots are a product of a systematic, selective, organizational attention. The selection may stem from time pressure, information overload, or cognitive constraints.[141] Second, self-reinforcing organizational narratives silence competing narratives and contribute to the emergence of inertia and blind spots that limit the organization's capacity to challenge its underlying assumptions.[142] The "white blind spot" identified in this Article can thus be explained at the backdrop of the colorblind policy adopted by the WaPo. First, the heightened cognitive attention given to the coverage of black criminality under such policies inhibits the cognitive ability to give similar attention to the coverage of white criminality. Second, the liberal narrative of fighting unequal racial representation in the context of crime, as reflected by colorblind policies, dominates the discourse thus silencing critiques as for the ultimate success of such policies.[143]

Indeed, one can think of potential alternative explanations to the patterns identified by the data on the media's persistent reproduction of racially skewed narratives. For example, economic struggle could lead the media to knowingly adopt racially imbalanced narratives assuming these will adhere to larger audiences. Arguably, such explanation seems weak in the specific context of the WaPo.[144] Still, there is no doubt that more empirical work delving into the internal institutional practices of newsrooms in general and the WaPo in particular, will provide important insights on the nature and day-to-day effects of the *incognizant liberal trap* and the blind spot in the coverage of white perpetration, particularly under the regime of colorblind policies.

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[141] Nir Halevy & Eileen Y. Chou, *How Decisions Happen: Focal Points and Blind Spots in Interdependent Decision Making*, 106 J. Personality & Soc. Psychol. 398, 398 (2014).

[142] Daniel Geiger & Elena Antonacopoulou, *Narratives and Organizational Dynamics:Exploring Blind Spots and Organizational Inertia*, 45 J. Appl. Behav. Sci. 411–36 (2009).

[143] The WaPo's colorblind policy seems to fit what Geiger & Antonacopoulou call "success" narratives, which appear most influential in the emergence of inertia and blind spots. *Id.* at 432–33.

[144] Mostly given the WaPo's geographical distribution in areas with a predominantly black population that is less likely to support racially imbalanced coverage. *See* 2017 Market Book, Wash. Post (2017), https://www.washingtonpost.com/WaPo-stat/ad/public/static/media_kit/16-3762-01-MktBook-web.pdf.

C.   Can the Race & Crime Narrative be Challenged?

Given the deeply rooted behavioral and institutional patterns dis-cussed in this Article, suggesting a path for change may seem like walk-ing a very thin line between naïveté and impetuosity. Entman and Rojecki suggest, for example, a reorientation in the professional thinking and practices of the media.[145] They also call for the involvement of civil society organizations and the government to systematically address in-dustry practices and monitor media output on race matters.[146] Heider of-fers few, narrower remedies of his own.[147] Among these: create stylebooks suggesting how to avoid stereotypes; have reporters do out-reach with their local communities; and build reciprocal education initia-tives between reporters and communities.[148]

As much as I embrace—normatively and practically—the above so-lutions, this Article challenges their potential promise to alter crime-re-lated binary racial stereotypes. The WaPo has created a stylebook to clarify policies on how to cover race and specifically in the context of crime, and editors seemed to be well aware of the news media's role in corroborating stereotypes and the need to minimize such an outcome.[149] Education, thus, may not be the only factor. Still, as the empirical data show, in 21% of the stories, race was explicitly and implicitly communi-cated, and racially skewed paradigms were reproduced. I thus contend that addressing such an unwarranted outcome—not only from a societal point of view, but also from the newspaper's perspective—demands an acknowledgment of the *incognizant liberal trap*, including an identifica-tion of the "white blind spot." A deep and comprehensive institutional change should thus be discussed. If the goal is to tackle long-lasting, structural inequalities in crime-related media treatment of Blacks, why not adopt an "affirmative action" of sorts, this time in the coverage of crime?

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[145] ENTMAN & ROJECKI, *supra* note 42, at 217. Entman and Rojecki suggest reexamining goals like truth, accuracy, and personnel profit. *Id.* Specifically, they suggest providing accu-rate representation of facts, highlight causes of and remedies for social problems, and provide self-critical material offering context and causes for the appearance of images. *Id.*

[146] *Id.* They claim, however, that social responsibility and altruism are not the only incen-tives for the media to adopt such suggested changes. *Id.* at 223–24. Under a competitive reality of multiple information sources, the traditional media can distinguish itself by providing con-text and coherent narratives, and thus remain relevant. *Id.* Another non-trivial argument they raise posits that social cohesion may be profitable for the news media as it maintains belief in democratic deliberation and political action, resulting in more willingness to engage with the news media. *Id.*

[147] HEIDER, *supra* note 43, at 87–95.

[148] Heider's suggestions also include the expansion of rolodexes to include more minority groups as experts. *Id.* at 90, 95.

[149] The WaPo has adopted some of Heider's recommendations de facto. *Id.* at 87–95.

The idea of affirmative action assumes collective responsibility for the pervasive—but not easily recognized or controlled—discrimination against minority groups.[150] It essentially calls for forced interventions in common practices to break down legacies of institutionalized discrimination.[151] Not disregarding the contested nature of this tool, under the limitations of this Study, I do not intend to fully engage with the rich discourse revolving around affirmative action.[152] I mainly aspire to borrow the idea behind affirmative action to tackle the imbalanced racial coverage of perpetrators in the media. Under such a regime, news outlets should take more proactive steps to alter the current reality of coverage. For example, when deciding which of two crime stories to cover, the story involving a white perpetrator should be prioritized. This should obviously be followed with stories of equal interest but may also be considered when stories somewhat differ in their newsworthiness level. Such an approach can actively tackle concerns pertaining to the *incognizant liberal trap*, and specifically the "white blind spot." Indeed, adopting this approach may require more fieldwork or research preceding the coverage of stories. However, this, in fact, may be a necessary step for challenging dominant and well-established story-seeking journalistic practices and conventions.

No doubt, any suggestions to increase the presence of affirmative action or quasi-affirmative action in the public sphere may raise conceptual concerns.[153] Moreover, implementation may prompt challenges and ethical dilemmas. I address here two main concerns: (1) accuracy and truth seeking, and (2) economic limitations.

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[150] *See* Randall Kennedy, *Persuasion and Distrust: A Comment on the Affirmative Action Debate*, 99 Harv. L. Rev. 1327, 1328 (1986); *see also* Terry H. Anderson, The Pursuit of Fairness: A History of Affirmative Action x–xi (2004) (tracing the development of affirmative action from the Great Depression to the University of Michigan cases of 2003 and claiming that the definition and rationale of affirmative action have changed over time, eventually suggesting that the core idea behind affirmative action remains the same); *see also* Paul M. Sniderman & Thomas Piazza, The Scar of Race 11 (1993); *but see* Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do You Really Want to Be a Role Model Essay?*, 89 Mich. L. Rev. 1222, 1222–32 (1991).

[151] Affirmative action policies have mushroomed during the last five decades in issues such as admission and hiring, and received hefty scholarly attention. *See, e.g.*, Anderson, *supra* note 150, at 46; *see also* Delgado, *supra* note 151, at 1223; *see also* Kennedy, *supra* note 151, at 1331–32, 36.

[152] "Affirmative action . . . always raises emotions, contentious debate, and all too often charges of racism. Both sides claim moral superiority. Supporters declare themselves the champions of racial justice . . . while opponents see themselves as the defenders of merit, of colorblind equal protection enshrined in the U.S. Constitution" Anderson, *supra* note 150; *see also* Jennifer L. Pierce, Racing for Innocence: Whiteness, Gender, and the Backlash Against Affirmative Action (2012).

[153] Anderson, *supra* note 150; Daniel Farber, *The Outmoded Debate over Affirmative Action*, Cal. L. Rev. 893, 912 (1994).

As for accuracy, one may claim that embracing the affirmative action logic would require news outlets to divert from accurately representing "truth" or "reality" when covering crime. This is a highly-contested issue especially in a "fake news" era.[154] The broadest answer is ironic but simple—studies have repeatedly shown that the news media do not represent "reality" as reflected in official statistics when covering crime.[155] Although the combination gives viewers a false perception of the actual crime, a specific news story is not by itself false.[156] I thus do not suggest embracing "alternative" truths or representations. Instead, I proffer an alteration of the organizational dynamics in crime reportage.[157]

Another hurdle relates to economic considerations, namely the pressure on media organizations to sell their product. Some scholars have argued that the media work to deliver crime stories to the audience under the assumption that the audience is interested in a specific formulation of crime. This assumption defines the "newsworthiness" of a crime story.[158] "Newsworthiness" is an elusive concept that has attracted and sustained theoretical and empirical attention by criminologists, sociologists, and media scholars. Two main dimensions of newsworthiness have been identified: first, relative frequency—what is new and different is preferred;[159] and second, the combination of news stories with specific racial and gender typifications—stories with black perpetrators and white victims are preferred as they comply with established crime scripts.[160] Journalists can adhere to the frequency dimension even under the "affirmative action" approach. It may require more research and deeper in-

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[154] Allcott & Gentzkow, *supra* note 27, at 218–19.

[155] Vincent F. Sacco, *Media Constructions of Crime*, 539 ANN. AM. ACAD. POL. & SOC. SCI. 141, 143 (1995) (noting that "[a]nalyses of media content demonstrate that the news provides a map of the world of criminal events that differs in many ways from the one provided by official crime statistics."); *see also* Robert Reiner et al., *From Law and Order to Lynch Mobs: Crime News Since the Second World War*, *in* CRIMINAL VISIONS: MEDIA REPRESENTATIONS OF CRIME AND JUSTICE 13, 15–16 (2012) (claiming that the portrayal of crime in the media is like the "law of opposites," so that "[t]he characteristics of crime, criminals and victims represented in the media are in most respects the polar opposite of the pattern suggested by official crime statistics"); *see also* Damion Waymer, *Walking in Fear: An Autoethnographic Account of Media Framing of Inner-City Crime*, 33 J. COMM. INQUIRY 169, 169–70 (2009); *see also* Peelo et al., *supra* note 132, at 257–58.

[156] *See generally* Kevin Buckler & Lawrence Travis, *Assessing the Newsworthiness of Homicide Events: An Analysis of Coverage in the Houston Chronicle*, 12 J. CRIM. JUST. POP. CULT. 1–25 (2005); *see also* Peelo et al., *supra* note 132, at 256–75.

[157] Growing awareness to facts and empirical data accurately communicated to the audience can accomplish such an alteration.

[158] Buckler & Travis, *supra* note 156, at 2–3.

[159] *See generally* Oliver & Myers, *supra* note 46, at 38–87; *see also* STEVEN M. CHERMAK, VICTIMS IN THE NEWS: CRIME AND THE AMERICAN NEWS MEDIA (1995); Weiss & Chermak, *supra* note 132, at 71–88; Lundman, *supra* note 26, at 357–86.

[160] MEYERS, *supra* note 26, at 8–11; Lundman, *supra* note 26, at 357–86.

vestigation, emphasizing the unique features of the story and its potential to attract readers, but it is well worth the effort. Adhering to racial newsworthiness may be more challenging, as it is exactly the vicious institutional cycle that needs breaking. Entman and Rojecki recognized this difficulty, but showed empirically that local newspapers differ from local television news in the ways they report crimes, and the former offer a more flexible format for presenting crime stories that narrows down the potential racial sentiment and the re-construction of racial strereotypes.[161] Moreover, recent studies provide a more nuanced view of the newsworthiness of racial typifications, suggesting that it is not only the racial identity of the perpetrator or the victim that affects the likelihood of a story being published, but also the seriousness of the crime, the number of victims and other situational characteristics.[162] These findings provide the media—aiming to simultaneously tackle institutional inertia and adhere to economic needs—some leeway to identify crime stories that comply with both conditions. Such view lends hope for potential ways through which liberal media outlets may attempt to escape the incognizant trap.

D.   On Time and Change

Finally, one may claim that with the passage of time, changes have occurred in the ways through which race and crime are portrayed in the print media, and the racial divisions identified in this study are no longer of concern. Consequently, according to that argument, any normative discussion on ways to tackle these illnesses is obsolete. I am skeptical of this proposition, both empirically and normatively. Deep changes in institutional practices of the media can be explained primarily by *concrete patterns of crime coverage* or by *broader social processes* affecting racial relationships in the U.S. As for the former, two main processes can potentially affect patterns of coverage on crime: (i) a decrease in the "newsworthiness" of crime either due to shrinking social interest or a decrease in crime rates, or (ii) an emphasis on other public safety issues. As for the newsworthiness of crime, studies show that despite a decrease in crime rates since 2006, the fear for crime among Americans has in fact increased, suggesting that crime is still a focal concern.[163] As for emphasis on other public safety issues, the most meaningful change dates back to the 9/11 terror attacks which has indeed increased public concern of terrorism. The data analyzed in this study have already captured any potential effects such transition might have had on the coverage of crime.

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161 ENTMAN & ROJECKI, *supra* note 42, at 88–90.

162 Bjornstrom et al., *supra* note 17, at 280–81; Gruenewald et al., *Covering Victims in the News: What Makes Minority Homicides Newsworthy?*, 30 JUST. Q. 755–83 (2013).

163 *See* Donohue, *supra* note 15, at 1297.

As discussed, crime remained dominant and racial typifications prevailed.

As for broader social processes pertaining to changes in racial relationships in the U.S., these are often tied to the election of President Barak Obama in 2008, and maybe more so to his reelection in 2012.[164] After the elections, many celebrated the success of colorblindness, convinced that race was no longer an issue in modern-day America. Similar claims, though stemming from different reasons, were heard in the late 1990s and early 2000s.[165] This study suggests that in the context of media coverage of crime, these claims should be scrutinized as racially-skewed narratives of crime remained prevalent even under colorblind policies. Scholars of racial relations have reported similar findings in a host of other issues such as housing, politics, and employment.[166] Indeed, recent studies have claimed that not much has changed even after the Obama era. According to these studies, the Obama era failed to confront the problems laying beneath the surface and to challenge established patterns of new racism.[167] Social movements such as Black Lives Matter are now sending similar messages.[168] The time that has passed since President Trump's election and the resurfacing of "old school" racial animosity[169] emphasizes the importance of addressing these patterns.

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[164] BONILLA-SILVA, *supra* note 6, at 13–16, 206–20.

[165] *See id.*

[166] *See id.*

[167] *See id.*; *see also* LYNCH, *supra* note 20, at 134–35; *see also* ALEXANDER, *supra* note 6, at 2–3; *see also* VAN CLEVE, *supra* note 14, at 181–89, *Id.* at 203–37. In the context of crime and media, there are only two studies analyzing crime narratives in a more advanced time frame but in the broadcast and not the print media. The first study focused on local TV news in Los Angeles between 2008 and 2012. The study analyzed representations of three racial groups: Whites, Blacks, and Latinos. The authors identified what they called the "Black progress" and the "rise of the Latino perpetrator." As already identified in this Article, the progress referred to accurately representing black perpetrators. As for Whites, however, the authors claim that the findings do not suggest a meaningful departure from previous research on the positive depiction of Whites and crime compared to other minority groups, despite a more accurate representation of white perpetration. Moreover, the authors stress that their findings should be read at the backdrop of the unique demographic characteristics of the Los Angeles region where the black population decreased and the Latino population increased, potentially affecting the media focus on each of these racial groups. *See* Dixon, *supra* note 17, at 775–92. Another study in a similar time frame, though this one using a small sample of national level cable and network news programs, showed somewhat different tendency, with Whites being accurately represented as perpetrators, while Blacks being "invisible" as described by authors; underrepresented as both perpetrators and victims. Travis L. Dixon & Charlotte L. Williams, *The Changing Misrepresentation of Race and Crime on Network and Cable News*, 65 J. COMMUN. 24–39 (2015).

[168] BONILLA-SILVA, *supra* note 6, at 232–37 (arguing that although the Black Lives Matter movement is influential, it is still too early to assess its success in increasing the presence of racial counter narratives).

[169] BONILLA-SILVA, *supra* note 6, at xiii-xiv.

Under this social reality, normative discussion on ways to alter established racial practices has never been more relevant.

Finally, some limitations of the study should be addressed. Above all, the empirical findings rely on one liberal news outlet—the WaPo. The WaPo is an influential U.S. newspaper. Therefore, both its practices of covering crime and race, and the actual depiction of racial groups within its pages, are telling and impactful. Nevertheless, further research should investigate the liberal trap phenomenon and the existence of racial blind spots by studying a variety of media outlets of different political orientation (liberals and non-liberals, on a sensitive scale), practices, policies of covering crime, and relative success or failure in combating racial schemas during different periods of time and in different demographic regions. Moreover, future research should continue adopting a comparative approach of analyzing both local and national news outlets under similar coding schemes and periods. This approach not only increases the external validity of the study, but also teases out the characteristics of local and national news that in turn affects their abilities to offer alternative readings of the relationship between race and crime.

CONCLUSION

This Article opened with a disturbing rape story in which the WaPo refused to mention the suspect's race (black). On the surface, this omission seems to be a positive outcome of colorblindness, guided by the WaPo's aspiration to minimize the presence of race in crime stories in hopes of deconstructing the black-criminal schema and fight racial animosity. Below the surface, however, racial bias kept bubbling. This longitudinal study took a close look at ten years of newspaper coverage on crime, aiming to tease out: first, if race has indeed disappeared under such colorblind policies; second, if the answer is negative, the ways through which race continue to exist in the coverage of crime; and third, how differently racial groups are covered as crime perpetrators.

The findings suggest that race remained dominant in the coverage of crime despite colorblind policies. First, the data revealed extensive use of both explicit and implicit racial cues in the coverage of crime despite alleged colorblind policies. Moreover, the data showed an increased use of visuals as a substitute for explicit communication of race. Second, this Study showed that on average, stories on black perpetrators are more salient than stories on white perpetrators, both at the local and the national level. Third, comparing the frequencies of coverage to real crime statistics showed that although Blacks were represented in accordance with their arrest rates, Whites were grossly underrepresented as perpetrators. Such imbalance creates an overall skewed portrayal of racial in-

volvement in crime, with Blacks perceived to be involved in crime more often than actual crime statistics show. In sum, the schema on black perpetration was reaffirmed.

Given cognitive theories on the role of the media in both establishing and reaffirming stereotypical schemas, and how these schemas become societal cognitive shortcuts for understanding and judging crime in society, the tight connections between the racial portrayals predominating the media and those rationalizing racial inequalities in the criminal justice system were discussed. Those were emphasized even more at the local level.

It was discouraging to reveal the systematic presence of these schemas even among liberal news outlets openly aspiring for changes. The Article therefore went a step further in trying to explain the deficiencies of colorblind policies. The *incognizant liberal trap* was introduced as a potential perspective to interpret the findings and to explain the liberal outlets' limitations in fighting racial prejudice. This concept was attached to a deeply rooted institutional inertia resulting in a *blind spot in the coverage of white perpetrators* that may be the result of colorblind policies. As a potential solution to this inherent problem, I suggested an affirmative action-like policy in covering race and crime.

No doubt, such deeply institutionalized racial bias, even if known, cannot be instantly resolved as it demands an equally deep process of counter-racism. Market forces and individual cognitive biases hinder on the success of such processes. On the other hand, clearly, change is needed. The Article suggested ways of achieving such a change, including more awareness, heavier workload on journalists and editors, and a willingness to challenge the status quo. Nowadays, when racial issues are remerging across the U.S. in rage and violence, there are even stronger incentives to break the chain from the dominant paradigms in the criminal context, metaphorically and physically.