Mitigating Racial Inequity by Addressing Racism in the Criminal Justice System: A
Behavior Analytic Approach

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Abstract

Racial inequity in the United States' criminal justice system is a long-standing problem that has recently garnered international attention. This paper frames the problem of racial inequity in a behavior analytic context and offers potential solutions based on existent research and behavior analytic principles. We draw a parallel between the analysis of racist behavior enabled by the definitions provided by Kendi in *How to Be an Antiracist* and the analysis of verbal behavior made possible by the terminology posited by Skinner in *Verbal Behavior* in order to highlight the pertinence of applying a behavior analytic approach to the problem of racial inequity upheld by racist behavior. Immediately actionable steps to address racism in the criminal justice system and beyond are offered on a cultural, organizational and individual level.

Keywords: Racial inequity, criminal justice, verbal behavior, antiracist

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“To be an antiracist is a radical choice in the face of this history, requiring a radical reorientation of our consciousness” (Kendi, 2019, p. 23).

Racial disparity in the United States’ criminal justice system is an issue that impacts the wellbeing and threatens the civil liberties of all people in the nation. The legal, ethical, and financial costs produced by the current system have only recently gained widespread attention and begun to be evaluated on an international level. The focus on racial inequity in the criminal justice system is relatively prevalent in criminological, sociological, and psychological research, but has not garnered as much attention from the field of behavior analysis. The purpose of this paper is to frame the problem of racial inequity in the United States’ criminal justice system in a behavior analytic context, identify contingencies in place maintaining the problem, and propose potential solutions based on behavior analytic principles in the form of immediate actions that can be taken to affect change on an individual, organizational, and societal level.

The field of behavior analysis, founded in Skinner’s radical behaviorism, is uniquely situated to address this problem because of the science’s inherent focus on environmental factors that maintain behavior and its rejection of mentalistic explanations. A mentalistic methodology assumes behavior is a result of internal processes and produces explanatory fictions. The cause of behavior is attributed to phenomena of “inner” dimensions commonly discussed in terms of “neural, psychic, spiritual, subjective, conceptual or hypothetical properties” (Moore, 2003, p.181). This approach is antithetical to the philosophy underlying behavior analysis, which seeks to explain behavior by identifying functional relations between behavior and controlling variables in the environment. Skinner (1957) warns against the dangers of applying a mentalistic approach to explain behavior, “It is the function of an explanatory fiction to allay curiosity and to bring inquiry to an end” (p. 6). Appealing to an internal dimension to explain behavior leaves little action available to those interested in changing behavior. The behavior analytic approach of identifying causes of behavior in the environment enables practitioners in applied behavior analysis to affect substantial and socially significant behavior change.

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While behavior analysis typically evaluates behavior at the ontological level, the science of behavior affords us the technology to examine and affect behavior change at the cultural or societal level. Practitioners in behavior analysis, having demonstrated the science's efficacy in the traditional domains of education, learning, and working with individuals with an autism spectrum disorder, have the opportunity to shift their focus to solving broader social problems, a call that has been made frequently in recent years (e.g. Alligood, Anderson, & McGee, 2019; LeBlanc, Heinicke, & Baker, 2012; Normand & Kohn, 2013).

In a recent article regarding gender equity and diversity in behavior analysis, Szabo (2020) notes:

The hallmark contribution of behavior analysis to psychological science is the establishment of a bar that is set higher than prediction. We aim to influence the future course of behavior. This requires a precise and functional definition of the response class slated for change and a clear evaluation of the conditions under which new behaviors are most likely to occur" (Szabo, 2020, p.376).

The field of behavior analysis has much to contribute to the national conversation concerning racism and much to learn from those most negatively impacted by the consequences of racist policies and ideas: Black, Indigenous, and People of Color (BIPOC). A task of primary importance is to establish precise and functional definitions of the response class targeted for change: racism.

Racism Terminology

In his book, *How to be an Antiracist*, Kendi discusses the issues of racial disparity in clear and concise language and provides readers definitions that enable constructive discussion regarding racism and inequity. He defines racism as "a marriage of racist policies and racist ideas that produces and normalizes racial inequities" and racial inequity as "when two or more racial groups are not standing on approximately equal footing" (Kendi, 2019, p.17-18). Kendi chooses the term racist policy over "systemic racism" or "institutional racism," highlighting the effect of word choice on the audience or listener as he notes that describing the issue in terms of racist policy is "more likely to be immediately understood by people, including its victims, who may not have the benefit of extensive fluency in racial terms" (Kendi, 2019, p.18). He also supplants

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the often used phrase, “not racist,” with “antiracist,” which he defines as “someone who is supporting antiracist policy by their actions or expressing an antiracist idea” (Kendi, 2019, p. 22-23). In eliminating the phrase “not racist,” from discourse concerning racism, Kendi dismantles a tool used by racist power. Being “not racist” is associated with neutrality and as Kendi (2019) identifies, “there is no neutrality in the racism struggle...One either believes problems are rooted in groups of people, as a racist, or locates the roots of problems in power and policies, as antiracists” (p. 9). It is necessary to acknowledge race in order to acknowledge racism. Claims of being “colorblind” to race, similar to claims of being “not racist” are analogous to a mentalistic approach to explaining behavior. Claiming to not see race is to not see racism, which results in the individual falling “into racist passivity” (Kendi, 2019, p.10). The colorblind approach to racist behavior ignores the aggregate effect of historical oppression (e.g., enslavement and segregation), while purporting the existence of culture in which BIPOC experience opportunities and outcomes on the same level as white individuals (Escayg, 2018). Refusing to acknowledge race is akin to a refusal to acknowledge the environmental factors that establish and maintain behavior, including racist behavior. Behavior analysis is already primed to look for causes of behavior outside of the person or group of people because of the field’s theoretical foundation in radical behaviorism and is poised to make contributions toward meaningful change with its applied focus on the common social good (Miller, Cruz, & Ala’I-Rosales, 2019).

In addition, practitioners in behavior analysis are well versed in modifying verbal behavior to affect outcomes. Explaining behavioral concepts using nontechnical language and describing and explaining behavior in behavior analytic terms are two skills in which Board Certified behavior analysts (BCBA®) are expected to be proficient according to the 5th edition task list (Behavior Analyst Certification Board, 2017). Behavior analysts continue to weigh the effects technical and nontechnical language may have on different audiences. Neuman (2018) discusses verbal behavior of behavior analysts and its effect on listeners within and outside the behavior analytic verbal community. He emphasizes the large effect that small differences in descriptions of behavior can have on the listener’s interpretation of behavior. The author

suggests desirable effects can be produced by engaging in nontechnical verbal behavior and at the same time maintaining precision by avoiding mentalistic or meditational explanations, noting that “subtle changes in phrasing can focus listeners’ attention on external events without being technical” (Neuman, 2018, p. 69).

Applying this approach to language used to discuss racism means carefully selecting terms in the vernacular of the audience and framing them in a manner that emphasizes the environmental variables maintaining the behavior of interest. Neuman (2018) highlights the importance of engaging in verbal behavior that brings the listener’s behavior “under the control of relevant functional relations and temporally extended patterns of events and activities” as opposed to a topographical description of the behavior explained by a mentalistic explanatory fiction (p. 76). The term posited by Kendi (2019), “racist policy,” fulfills this mandate by saying “exactly what the problem is and where it is” (p.18). Just as Skinner established novel terminology to discuss verbal behavior (i.e., the verbal operants as well as the term *verbal behavior* itself instead of *language*) in order to obviate the associations present with existent terms, Kendi offers an alternative to existing terms to discuss racism. He provides an example in the term “racial discrimination,” which has been appropriated by racist policymakers in order to equivocate discrimination behavior based on the stimulus of skin color or race with racist behavior (Kendi, 2019, p. 19). Following Kendi’s definition of racism, the act of discriminating based on race is no longer equivalent to racist behavior, but is vital for producing an antiracist society and reducing racial inequity. Changing our own verbal behavior by adopting the terminology offered by Kendi is an antiracist action every practitioner in the field of behavior analysis can implement immediately as a first step towards reducing racial inequity in the criminal justice system, our organizations, and our communities.

Inequity in Criminal Justice

Examples of racial inequity in the criminal justice system are abundant. Law enforcement agencies have disproportionately high levels of contact with BIPOC. Black and Latino individuals have more interactions with law enforcement agencies and are more likely to be

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detained or searched for contraband than their white counterparts (Edwards, Bunting, & Garcia, 2013; Leinfelt, 2006). At the pre-trial level, Blacks are jailed prior to trial 3.5 times more frequently than whites (Carson, 2018). Black and Latino individuals are also denied bail, made to pay higher money bonds, and are detained due to inability to pay the money bond more often than white individuals (Jones, 2013). The disparity at the judicial sentencing level is typified by the statistic that Black individuals are imprisoned on average more than 5 times the rate for whites and in some states, more than 10 times the rate for whites (Nellis, 2016). Nellis comments, "Persistent racial disparities have long been a focus in criminological research and the presence of disparities is not disputed" (p. 9). The existence of these racial inequities in the criminal justice system presents a multitude of societal challenges including the invitation of international concern and condemnation, evidenced by occurrence of protests in support of the Black Lives Matter movement on nearly every continent (Erdekian, 2020).

Analyses attempting to explain the existence of racial disparities in criminal justice that have been proposed in the past include racial differences in offending rates, racial bias at the decision making level in the criminal justice system, and a variety of factors at the individual level such as low socioeconomic status, lack of education, unemployment, and criminal history (Nellis, 2016). The first proposed explanation, that certain races commit crimes at a higher rate than other races, is derived from the statistic that certain races are convicted of crimes at a higher rate than other races. This proposed explanation is mentalistic and promotes circular reasoning and should therefore be rejected by those with a behavior analytic perspective. It is difficult to assess rates of criminal behavior that go undetected by law enforcement. However, research into drug law violations and drug usage suggests that although Black individuals are significantly more likely to be arrested for a drug related offense relative to white individuals, drug usage rates between Blacks and whites are not significantly different (Edwards, Bunting, & Garcia, 2013), providing some evidence that Black and white individuals engage in criminal behavior at comparable rates. Explanations for racial inequity in the criminal justice system that include the presence of racial bias at the decision-making level in the criminal justice system in addition to

variables on the individual level have more empirical support (Bonczar, 2003). While factors on the individual level (i.e., poverty, education level) very likely influence racial disparities, these factors themselves are a product of the same racist policies that produce racial inequity in the criminal justice system.

Behavior Analytic Explanation

Behavior analytic analyses concerning racial inequity, racial prejudice, and racism emphasize contingencies that shape and maintain behavior. Matsuda, Garcia, Catagnus, and Brandt (2020) highlight “three basic direct-contingency principles: respondent, operant, and observational learning” (p. 337). Respondent conditioning is a process in which an unconditioned stimulus is associated with a neutral stimulus, which then becomes a conditioned stimulus that elicits a conditioned response. Matsuda et al. (2020) provide the example of a Black person (a previously neutral stimulus) being paired with an unconditioned stimulus in the form of a frightening event like a murder, which elicits an unconditioned response of a fear response and ultimately results in a Black person (now a conditioned stimulus) eliciting a fear response (a conditioned response elicited by the new conditioned stimulus) (p. 337). This example is particularly concerning considering how Black people and particularly Black men are represented in media, an issue that is well documented in social science research (“Media Representations and Impact,” 2011). Examples of such bias include the different language used to describe events such as gatherings of people protesting in support of the Black Lives Matter movement and events such as gatherings of people protesting or celebrating the result of a sporting event. Following an Eagles victory in the 2018 Super Bowl, thousands of people flooded the streets of Philadelphia to celebrate. During the event, individuals engaged in looting, violent behavior such as fighting and setting fires including setting fire to a police vehicle (Herbert, 2018). The New York Times published an article describing the event as an “unruly” and “rowdy” celebration (Hurdle, 2018). The New York Times described growing protests in response to the murder of George Floyd, a Black civilian, by a white police officer in Minneapolis as “absolute chaos” in a 2020 headline (New York Times, 2020).

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Contiguous usage, “the tendency to occur together,” can be an explanation for the occurrence of some intraverbal operants (Skinner, 1957, p.75). Verbal stimuli, or descriptors such as “unruly” and “rowdy,” generally co-occur with stimuli, or events, that are boisterous but not dangerous. Descriptors like “absolute chaos” are associated with violence and danger due to a history of contiguous usage. Describing certain groups of people with words associated with punishing consequences establishes a conditioned relation between that group of people and punishing stimuli. Ultimately, stimuli associated with the group described, for example a BIPOC individual, may evoke behavior previously controlled by stimuli associated with punishment. News organizations that engage in this type of verbal behavior may receive reinforcement in the form of an increase in number of viewers. “A response which has received a special measure of reinforcement is emitted in the absence of the circumstances under which it is characteristically reinforced” (Skinner, 1957, p.149). If accurate reporting of events are the circumstances under which such descriptions are characteristically reinforced, the special measure of reinforcement in the increase in attention to the news outlet and subsequent revenue produced by that attention may establish and maintain such descriptions even if the reporting of the events is no longer accurate. The words used to describe different groups of people engaging in similar behavior are significant because of the effect on the listeners. The group of people associated with aversive verbal stimuli takes on some aversive properties through the process of respondent conditioning, which can then occasion racist behavior. Another process that can establish and maintain racist behavior is operant conditioning. Operant conditioning is a process in which contingent reinforcing consequences result in an increase in future frequency of a behavior and contingent punishing consequences result in a future decrease in frequency of a behavior under similar conditions.

An interaction between respondent and operant conditioning may occur when a conditioned stimulus elicits a response that becomes operant when it contacts reinforcement. For example, the behavior of crossing the street when a Black individual is approaching on the sidewalk is reinforced because the individual crossing the street avoids the conditioned fear

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response elicited by the presence of the Black person. That individual is then more likely to cross the street the next time a Black person is near or approaching because the behavior has been negatively reinforced under similar circumstances.

Reinforcement and punishment contingencies shape and maintain behavior on an individual and societal level. Skinner discusses the control a group or culture exerts over the individual in terms of the reinforcement that is accessible through participation in a group outweighing the aversive properties of being part of the controlled group. The individual gains access to more and greater reinforcement and the potential to control others' behavior, in exchange for being "subject to control" (Skinner, 1953, p. 327). The controlling group determines what behaviors and stimuli qualify as "good" or "bad," typically based on the extent to which it produces reinforcing or aversive consequences for others in the group. Skinner (1953) notes, "The behavior of the individual is classified as either "good" or "bad" or, to the same effect, "right" or "wrong" and is reinforced or punished accordingly" (p. 324). One behavior categorized as good and right by most controlling groups is conforming to the standard of the group to at least some extent. Skinner (1953) notes the recurrent association of nonconforming behavior with behavior that produces aversive consequences to the group, "Nonconforming behavior is not always aversive, but aversive behavior is always nonconforming. If these properties are paired often enough, the property of nonconformance becomes aversive," (p. 418). Individuals who possess traits that do not conform to standards or practices within the controlling group, such as those who look or behave differently due to racial or cultural differences, are likely to experience punishing contingencies because nonconformance has been conditioned to be aversive.

If a law enforcement officer interacts with an individual whom he or she perceives to be inside the controlling group, the officer may be more likely to engage in behaviors that could be classified as appropriate policing behaviors due to a history of reinforcement for engaging in those behaviors or punishment for not engaging in those behaviors in similar circumstances. New law enforcement officers may have a very limited learning history interacting with members

outside their group or may have experienced contingencies that reinforced behavior that is inappropriate in a law enforcement context.

Previous Research and Interventions

A potential solution for the issues produced by law enforcement interacting with individuals perceived to be outside the group is to make efforts to ensure the individuals working in law enforcement live in or have some connection to the communities they serve. Hiring a law enforcement team that is representative of the demographics of the communities they interact with on a daily basis might decrease the likelihood of an officer engaging in racist policing behavior. The individual officer may have more experience interacting with members of different controlling groups or have a more varied learning history that increases the likelihood of appropriate policing behavior. The inclusion of BIPOC individuals within law enforcement might also function as discriminative stimuli for antiracist behavior as well as serve to expand the other officers' concept of the controlling group, which may also increase the likelihood of appropriate policing behavior. While increasing diversity in law enforcement may produce an increase in desirable policing behavior, it is not sufficient to produce sustained antiracist behavior change because of the contingencies in place on a cultural level that reinforce racist police behavior such as financial incentives for police departments that meet predetermined arrest quotas (Bronstein, 2014). Substantial changes must be made to the factors maintaining racist policing behavior in order to affect substantive antiracist behavior change.

Attempts to provide empirical evidence to justify the need for methodological change in existing police officer training practices and to offer recommendations founded in behavior analytic principles have been made. O'Neill et al. (2018) evaluated the efficacy of existent representative training approaches and procedures used to instruct new law enforcement officers in performing defense and control tactics at three large police academies in the United States. The authors also incorporated behavior analytic procedures and methods into the training including "a multiple-probe experimental design, task analysis (e.g., objective measurement of performance), follow-up tests to assess for learning, and booster training" (O'Neill, 2018, p.

364). The study highlighted several issues of concern regarding existing police training practices including the amount of time spent on training the use of lethal weapons relative to time spent on training the use of nonlethal weapons. Substantially more time is spent on firearms training ($M = 71$ hours) than training on the use of nonlethal weapons ($M = 16$ hours) (Reaves, 2016) despite findings that the probability of officers using nonlethal methods is far higher than that of using lethal options when force is used (Hyland, Langston, & Davis, 2015; International Association of Chiefs of Police, 2001, via O'Neill et al., 2018, p. 354). The authors also identified the lack of an objective and reliable measurement system to assess performance on each targeted skill as a significant impediment to effective training practices. The skill proficiency exams implemented at 93% of academies (Reaves, 2016 via O'Neill et al., 2018) have not been empirically validated and anecdotal evidence suggests subjective scoring in evaluating police cadets is prevalent. O'Neill and colleagues (2018) note, "Instructors typically observe cadets engaged in a skill, may ask a cadet to repeat a skill for closer examination, and then assign a pass/fail if mandated" (p. 354). Experimenters developed task analyses for each of the skills targeted in training as well as a control skill not targeted in training and established mastery criteria (80% or higher accuracy) to objectively evaluate individual and group performance of the trained and untrained skills.

While training did produce a sizable increase in performance of the trained skills relative to the untrained control skill, the initial training did not result in mastery-level group performance for any of the five trained skills at any of the three police academies (O'Neill et al., 2018, p. 365). This finding suggests the training practices currently used across police academies in the United States are likely not sufficient to produce mastery-level performance of skills necessary to consistently and safely execute responsibilities required of law enforcement officers.

Immediately Actionable Steps

Those interested in affecting antiracist behavior change in the United States must evaluate the contingencies in place maintaining dangerous and racist behavior in the policing and incarceration systems. The difference in rates of incarceration in for-profit prisons compared to all prisons is an example of the effect of a racist policy. "From 2000 to 2016 the number of

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people housed in private prisons increased five times faster than the total prison population. Over a similar timeframe, the proportion of people detained in private immigration facilities increased by 442 percent” (Gotsch & Basti, 2018). The two largest organizations that together manage over half of private corrections contracts, Core Civic and GEO Group, made a combined revenue of \$3.5 billion in 2015 (Gotsch & Basti, 2018). The lack of sufficient police training (O’Neill et al, 2018) and the monetary incentives in place for fining, arresting and imprisoning individuals is a problem that must be immediately addressed on a societal and legislative level.

Behavior analysts are ethically obliged to support empirically validated and effective treatment (Behavior Analyst Certification Board, 2014). A 2018 report from the Bureau of Justice Statistics regarding prisoner recidivism across 30 states in the U.S. reported that 83% of individuals imprisoned in state prisons who were released in 2005 were arrested again at least once in the following 9 years (Alper, Durose, & Markman, 2018). Based on the rate of recidivism in the United States, the practice of jailing and imprisoning individuals is not an effective intervention for reducing criminal behavior (Apel & Diller, 2016). Refocusing efforts and resources from ineffective consequent strategies to antecedent interventions in the form of programs that target specific problems in the community like poverty or drug addiction may produce decreases in criminal behavior. Additionally, redefining what constitutes criminal behavior (e.g., ending the War on Drugs) is necessary for antiracist behavior change.

On an organizational level, behavior analysis must continue to expand its focus to broad social change and collaborate with other disciplines to affect behavior change on a larger scale. Supporting the work of antiracist researchers by establishing research laboratories, as Boston University has done through the creation of the Center for Antiracist Research that will be headed by Kendi (Most, 2020), is an example of antiracist action that should be replicated across academic institutions. Additional immediate action that can be taken by organizations is to increase positive BIPOC representations in the environment. This must be done at every level, from featuring children’s books and television shows that prominently and positively portray BIPOC individuals and communities to appointing people of color to senior leadership positions

on the boards of companies and academic institutions. Developing interventions that explicitly target increasing antiracist behavior and decreasing racist behavior is another immediate action that can be taken on an organizational level. Hauserman, Walen, and Behling (1973) found that providing social and tangible reinforcement contingent on interracial social interaction increased the positive social interactions of 25 first grade children and the results generalized to times in which reinforcement was not delivered (Ahrin & Thyer, 2004). A behavioral cusp is “a behavior that has sudden and dramatic consequences that extend well beyond the idiosyncratic change itself because it exposes the person to new environments, reinforcers, contingencies, responses, and stimulus controls” (Cooper, Heron, & Heward, 2020). Initiating interracial social interactions may be considered a behavioral cusp that may ultimately produce increases in antiracist behavior.

Immediate action everyone can take, in addition to adopting the terminology and definitions Kendi puts forth, is to punish racist behavior and reinforce antiracist behavior in our everyday environment. Examples of punishing racist behavior include interrupting a racist statement made by another person, explicitly disagreeing with the racist statement and labeling the statement as racist as well as removing resources from organizations that engage in racist behavior through organized boycotts. An example of reinforcing antiracist behavior is providing positive social attention and allocating more resources to individuals and organizations engaging in antiracist action by donating funds or time volunteering. Actively campaigning and voting for political candidates who have a history of antiracist behavior is crucial antiracist action everyone committed to decreasing racism and increasing racial equity must take. Supporting politicians with a history of antiracist behavior at the local level is just as imperative, if not more so, than on the national level. Electing representatives who have demonstrated support for antiracist policies like affordable housing, police accountability and budget reform, equitable school funding is an essential action in the fight against racism.

Call to Action

Behavior analysis is particularly well suited to addressing social problems like racism and racial inequity because of its foundation in radical behaviorism, which rejects mentalistic explanatory fictions in favor of functional relations between behavior and environmental variables. Kendi's (2019) point, "Antiracist ideas argue that racist policies are the cause of racial inequities" (p. 20), aligns with the behavior analytic orientation of sourcing explanations for behavior from the environment as opposed to solely within the individual or group. Behavior analysis has established empirically validated technology derived from the science of human behavior that can be used to address socially significant problems on an individual, organizational, and cultural scale. The cost of inaction is too great; behavior analysts must employ their technology to mitigate the effects of racist power and reduce racial inequity in the criminal justice system and beyond until racial equity is achieved.

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