

Racism and criminal justice

Rebecca Roberts explores the social and historical context to disproportionality in the criminal justice system

In February 2015 I had the privilege of participating in a conference on 'Police Corruption, Racism and Spying' from which many of the papers in this issue of *cjm* originate. We heard powerful accounts of the shape and impact of policing activities. One of the core themes was the role that racism plays in how criminal justice agencies often respond to and focus attention on black and minority ethnic people. The purpose of my contribution was to attempt to set criminal justice activities *in context*, highlighted how the interconnectedness between racism and discrimination by the police, courts and prisons is neither unique, nor surprising. This article draws on and develops the points I made in my speech to the conference.

Black on black crime?

Back in 2007, Will McMahon and myself were troubled by the political narrative about 'black on black crime', exemplified by the following quote from Tony Blair:

What we are dealing with is not a general social disorder; but specific groups or people who for one reason or another, are deciding not to abide by the same code of conduct as the rest of us... The black community – the vast majority of whom in these communities are decent, law-abiding people horrified at what is happening – need to be mobilised in denunciation of this gang culture that is killing innocent young black kids. But we won't stop this by pretending it isn't young black kids doing it. (Tony Blair, 2007)

We examined the evidence and data relating to the experiences of young black men in the criminal justice system and wider society. After looking at the data, we didn't accept claims made by politicians and other commentators that young black men, or the 'black community' were the problem. The 'problem', more often than not, seemed to be racism, surveillance and a society that creates problems and barriers for people. Black and minority ethnic people experience problems – they are not the problem.

While the shape of the debate about race, crime and justice has morphed and shifted since we first started looking at this area in 2007, the pattern of over-representation of black and minority ethnic people in the criminal justice system has continued with increasing numbers of Muslim people involved in it. The Young Review published its report, *Improving outcomes for young black and/or Muslim men in the Criminal Justice System*, in 2014 which looked at the experiences of black and Muslim men in the criminal justice system and highlights disproportionality in the prison system:

- 13.1 per cent of adult prisoners self-identify as black, compared with 2.9 per cent of the over 18 population recorded in the 2011 Census

- Muslim prisoners account for 13.4 per cent of the prison population compared with 4.2 per cent in the 2011 Census
- In prison, black or mixed origin service users are subject to higher rates of adjudication, spend more days than average in segregation and are more frequently subject to the use of force

When examining the experiences of children and young people in prison, survey results published in the 2013/14 Annual Report from Her Majesty's Chief Inspector of Prisons indicate that of children in young offenders institutions – 41 per cent were from a black or minority ethnic group, and 22 per cent were Muslim.

Ethnicity, harm and crime

The mainstream understanding of criminal justice is that criminal justice picks up the most dangerous individuals in society. That it targets attention on the criminals and protects victims. That it prevents crime from taking place and makes society safer. This is wrong on all accounts.

The US scholar Jeffrey Reiman, in his 2004 book *The Rich Get Richer and Poor Get Prison*, has described criminal justice as a 'carnival mirror',

reflecting a deceptive picture of reality:

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If criminal justice really gives us a carnival mirror image of 'crime' we are doubly deceived. First, we are led to believe that the criminal justice system is

protecting us against the gravest threats to our well-being when in fact the system is protecting us against only some threats and not necessarily the gravest ones. We are deceived about how much protection we are receiving and thus left vulnerable. The second deception is just the other side of this one. If people believe that the carnival mirror is a true mirror – that is they believe the criminal justice system simply

reacts to the gravest threats to their well-being – they come to believe that whatever is the target of the criminal justice system must be the greatest threat to their well-being.

In Reiman's idea of the 'carnival mirror', we find that 'crime' is considered to be the real and important issue for society, while inequalities in health, financial harms and economic hazards and state inflicted harms are seen as comparatively minor and almost inevitable.

Changing the focus

In 2008, the Centre for Crime and Justice Studies published the discussion paper *Ethnicity, Harm and Crime* within which we used the term 'ethnic penalty'. We found Lucinda Platt's term 'ethnic penalty' very helpful; she used it to explain poverty and ethnicity in the UK.

By ethnic penalty we mean a penalty or inequality in certain aspects of life (for example, earnings) that exist even if a person from an ethnic minority has the same background as a white person. It is a penalty or disadvantage experienced because of their ethnic background. This suggests an underlying racism and discrimination embedded in our institutions and day to day interactions. The ethnic penalty is, therefore, a product of racism and discrimination.

Matt Ford has revisited and updated the data, publishing a series of online articles from the Centre's website. In this issue of **cjm** he reproduces this data and details ethnic penalties in a range of social policy areas. Across a range of institutions, agencies and social practices, something is happening that BME results in people facing a series of barriers and obstructions across their lives.

What we are seeing is a mixture of thinking and unthinking, intentional and unintentional prejudice and racism that is acted out by and impacts upon a diverse

range of people in multiple ways. Importantly, this isn't about just being poor. Or only having fewer educational qualifications. Or being unemployed. These problems are connected and cumulative. They are experienced in higher rates amongst black and minority ethnic people and are caused, aggravated and compounded by racism and discrimination.

The data we are looking at tells us that barriers exist, but the important point about the ethnic penalty is that it is more than discrimination or racism.

Discrimination can affect tangible outcomes such as employment, wages and school exclusions. It can also affect your psychological and physical well-being. It affects how the world relates to you, and how you relate to the world.

This isn't just a problem of police and criminal justice. It filters through a range of organisations and institutions. Policing does not operate in a 'bubble'. It responds to and is driven by outside factors. The disproportionate punishment of black and minority ethnic people and the experience of the ethnic penalties build up throughout the life course. We are talking about a range of interconnected and related inequalities in education, employment, health and punishment. In particular, in terms of criminal justice, young black men (and increasingly so for young Muslim men) are frequently identified as different or dangerous and experience greater obstructions and barriers.

Historical roots

This is a contemporary problem that also has a historical context. The current focus and activities of

the criminal justice system and the racism and inequality inherent to it has deep roots in the UK's history of colonialism. A history rich with exploitation and the enslavement of people across the globe – without which this country's wealth, health and relative economic success would not have been possible.

In the USA, clear connections have been made by activists about the connections between slavery, its abolition, and the emergence of a criminal justice system that has criminalised and incarcerated black communities at a horrifying rate. The relationship between the history of slavery and contemporary punishment has been documented very well.

So what about the UK? Historian, J M Moore has written, in this issue, about the use of colonial punishment and violence of the British State and Empire. He documents the use of brutal punishment, surveillance and control of colonised populations across the globe – and how constructions of 'race' have been used to justify the inequality and exclusion that was created throughout British Empire. Racist stereotyping, he argues, is nothing new and has been used to connect 'race' and 'criminality'

throughout the history of colonialism to prevent and punish any form of uprising or dissent. He argues that what we are seeing in the criminal justice system in the UK today is simply 'the empire

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coming home'.

The over-policing, over-criminalisation and disproportionate punishment of people in this context is all part of our national history that has prioritised the lives and wellbeing of certain groups over others.

What can we do?

I'm not an expert on solutions – but here are two starting points. Simplistically put, the first is in the

area of criminal justice, and the second is that of 'social justice'.

1. Criminal justice: how can we downsize criminal justice to reduce the harm it causes and obscures?
2. Social justice: what can we do to change things so that criminal justice is irrelevant and unnecessary?

The police – individually and institutionally – must be held account for how they operate. This is legitimate given the powers they wield and they should be subject to close scrutiny. Improving mechanisms to bring the police and state agencies to account is important but this will only get us so far.

Alex Vitale, a US commentator has been covering some of the policy proposals emerging from recent police killings in the USA. He says 'We don't just need nicer cops. We need fewer cops'.

I want to see the police protecting people better and responding to violence and harm better. In the longer term, I would like to see a radical scaling back and dismantling of the police. The police should not be the primary agency empowered to tackle neighbourhood and social problems.

In an article on the Centre for Crime and Justice Studies' website, Tim Hope has argued that the uniformed police service should merge with community health, ambulance and fire services to become a civil harm-response service with the delegated task of protecting and supporting victims of crime.

I'm interested in exploring further community led ways to deal with harm and violence. Creative Interventions in the USA have drawn up toolkits for community-based anti-violence strategies that seek to increase safety without resort to punishment or police. We should resist over-policing and, for example,

support campaigns to keep police out of schools.

The point I want to make here is that we need to push for change within criminal justice *and* outside of criminal justice. We need to support ways to build individual and community capacity for tackling violence and disorder – and responding to harm. We need to make criminal justice irrelevant and unnecessary.

I also mentioned 'social justice' - and one dimension of this is redressing the balance in terms of inequality. One argument put forward by Myerson and Smith in the USA is for an economic programme to tackle wider racism, inequality and discrimination.

They say 'We'll need an economic program to make #blacklivesmatter' and put forward the following suggestions:

- True full employment (A government-funded job guarantee. Direct money to communities that need it most – fixing up buildings, caring roles of children and elderly, building decent homes. Set a minimum wage for this)
- Universal basic income unattached to employment
- Tax overhaul
- Baby bonds (Close the racial wealth gap: A trust fund at birth that matures at 18: everyone born into a 'wealth poor' family – below the median net wealth position would be granted a trust fund. Lowest quartile would receive in region of \$50k to \$60k)

Abolition or reform?

At the Centre for Crime and Justice Studies, we are involved in projects

that seek to improve and reform some aspects of the criminal justice system – for example prison conditions and probation practice. However, we are also deeply committed to a longer term vision of a society where criminal justice and punishment is relegated to the history books.

For a long time, criminal justice reformers of all political persuasions have convinced themselves and others that criminal justice can be fixed. With this comes a certain level

of pessimism – about the future scope for social change. It is essential that, in the here and now, we make things better for those people caught up in the criminal justice system. But the racism and inequality experienced by

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people in the criminal justice system is part of a wider societal problem that needs naming. Racism is not part of the mainstream debate. Racism exists at an individual as well as institutional level. It has not yet been solved or fixed.

These are complex problems, rooted in historical events, political decisions and what is often a serious public apathy to serious inequalities and harms. There are reasons to be optimistic. I am optimistic that the future can and will be better. I don't believe in 'golden ages' of the past that we should aspire to return to. Some things were better. Some things were worse.

We need to be informed by the past and be ambitious about the future. It is important to keep challenging the system and identify ways to resist injustice and build short term and long term solutions. ■

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