

# Race and the Justice System: What can we Do?

Then flashes, a siren, a stretched-out roar—and you are not the guy and still you fit the description because there is only one guy who is always the guy fitting the description.

— Claudia Rankine

The justice system is shot through with an inactive, unconscious, but far from innocent form of racism. It's the sort of racism that caused barrister Alexandra Wilson to be mistaken for a defendant three times in one day. It's the sort of racism that means people like the sprinter Linford Christie get stopped and searched on the street. Wilson and Christie suffer because they 'fit the description'. They are black.

At present, people of colour are much more likely to experience the sharp end of the justice system. A disproportionate number of prisoners are from BAME backgrounds; they receive longer sentences, are arrested more often, and are less likely to obtain parole. In particular, Black Britons are nine times more likely to be stopped and searched than White British people; they make up 13% of the prison population but 3.5% of the overall population; and they receive longer sentences than other ethnicities.

At the same time, the various parts of the justice system suffer from a severe lack of diversity. In 2020, only 6.5% of the UK's police officers and 4% of judges at High Court level and above are people of colour. The problem is again much worse when we consider Black British people. Just over 1% of QCs and police officers are Black and under 1% of senior judges.

The disproportionate impact of the justice system on people of colour produces a distrust in the system, especially among young Black British people. Lack of diversity fosters this distrust, since it produces an 'us-and-them' mentality. In turn, this distrust exacerbates the impact of the law on people of colour and discourages them from seeking legal careers. As an example, consider that Black British people plead not guilty at a much higher rate than those of other ethnicities and so are ineligible for the reduced sentences attached to plea deals. As the Lammy review argues, this can be explained as the product of a distrust in plea deals that is itself fuelled by the fact that most judges are white and the fact that Black British people are likely to have already had negative interactions with the law.

One way to address these problems is to tackle the problem of unconscious bias. Such biases operate at a subconscious level and involve the stereotyping of people of colour with unfair results. Charging and conviction seem to be relatively free from racial disparities; but sentencing, parole and arrest all exhibit racial disparities that may reflect unconscious bias. Further, the problem isn't just with those who go through the justice system: It's also with how members of the legal profession are treated in their daily lives, in court (witness Alexandra Wilson) and during hiring or selection processes.

A method of reducing unconscious bias is through unconscious bias training, which is designed to make individuals aware of their own biases. However, such training isn't enough on its own. As Lammy emphasizes, the best way to tackle unconscious bias is to create effective oversight bodies that collect data on outcomes by ethnicity and actively intervene when this turns up disparities. Data collection on ethnicity has improved, but a central body

empowered to investigate recruitment procedures and justice outcomes throughout the system has yet to be set up. This should be done.

Greater diversity can also help to address the problems arising from unconscious bias; those who come from minority backgrounds are less likely to have biases against other minorities. Diversity is also important for deeper reasons. Institutions such as the judiciary are a key part of our democratic state. If they are not representative, then they may be seen as the instruments of a sub-class of the population, rather than of the nation as a whole. Increased diversity can help to restore trust in the justice system not just because it reduces biases, but also because it provides a separate ground for legitimacy.

Increased diversity can be achieved through improved outreach. Legal bodies do engage in outreach; but they need to provide further support through mentoring schemes, university open days, foundation years, and scholarships. Another way to achieve diversity is to impose targets. Thus, Lammy recommends that the judiciary should be nationally representative by 2030 and suggests similar targets for prison and police leadership. The entire justice system should be held to this standard.

Structural reforms to the criminal law may be required to alleviate the justice system's impact on people of colour, especially in the short term. For example, Black Britons are much more likely to receive custodial sentences for drugs offences. That's partly because Black people get stopped and searched much more often and plead not guilty at higher rates. The law as it stands exacerbates an already bad situation by imposing custodial sentences for such offences. We should adopt deferred prosecution, reduce the penalties for drugs offences, and consider decriminalizing the possession of drugs such as cannabis.

As a final point, we should bear in mind the existence of racial inequalities in education and socioeconomic status. These inequalities mean that the barriers to entry into legal professions are higher for people of colour. Further, they are less likely to have a good grasp of the legal system and more likely to suffer from life circumstances that increase their chances of ending up in court and mean that they are less able to defend themselves once there. Every effort should be made to mitigate the influence of these background inequalities through measures such as an increase in legal aid funding and a reduction in the use of fines in local courts. We also ought to address the deeper inequalities themselves, which may entail radical alterations to our society. Ultimately, a fair justice system requires a fair society in which 'fitting the description' doesn't affect one's life chances.

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