

Open Research Online

The Open University's repository of research publications and other research outputs

Racism and racial discrimination in the criminal justice system: Exploring the experiences and views of men serving sentences of imprisonment

Journal Item

How to cite:

Irwin-Rogers, Keir (2018). Racism and racial discrimination in the criminal justice system: Exploring the experiences and views of men serving sentences of imprisonment. *Justice, Power and Resistance*, 2(2) pp. 243–266.

For guidance on citations see [FAQs](#).

© [\[not recorded\]](#)

Version: Accepted Manuscript

Copyright and Moral Rights for the articles on this site are retained by the individual authors and/or other copyright owners. For more information on Open Research Online's [data policy](#) on reuse of materials please consult the [policies page](#).

oro.open.ac.uk

RACISM AND RACIAL DISCRIMINATION IN THE CRIMINAL JUSTICE SYSTEM:
EXPLORING THE EXPERIENCES AND VIEWS OF MEN SERVING SENTENCES OF IMPRISONMENT

Abstract

An array of macro level statistics reveals a damning portrait of racial disproportionality across various components of England and Wales' criminal justice system. This paper outlines some of the most striking areas of disproportionality, before providing an insight into the lived experiences that lie behind these statistics. Based on four focus groups with a total of 26 participants serving sentences of imprisonment in a London prison, the paper explores men's experiences and views of racism across several components of the criminal justice system including policing, the courts and imprisonment. The data were collected as part of a project led by the charity, Catch22, and was conducted to inform an independent Parliamentary Review into the treatment of, and outcomes for, Black and Minority Ethnic individuals in the criminal justice system of England and Wales. Participants' primary concerns centred on institutionalised forms of racism such as the police's use of stop and search and the targeting of alleged gang nominals, as well as racism operating at the micro-level of decision-making, including decisions around so-called privilege levels in prison.

Introduction

As evidenced by an array of macro-level statistics, Black, Asian or Minority Ethnic (BAME) individuals (of all ages and genders) are grossly over-represented in the criminal justice system of England and Wales and subjected to a range of unfavourable treatment and outcomes. For example, as of March 2017, Black or Black British men and women accounted for 13 percent of the total prison population in England and Wales, despite making up just four percent of the general population (Ministry of Justice, 2017c; ETHPOP, 2017). In absolute numbers, this equates to 10,668 of the 85,513 people in prison. Black and Black British individuals are also overrepresented in probation statistics: in 2016, six percent of people sentenced to community orders and seven percent of people sentenced to suspended sentences were Black or Black British (Ministry of Justice, 2017d). The racial disproportionality evident in the youth secure estate is even more stark. Although there has been a significant decline in the number of young people being imprisoned over the last decade, the extent of over-representation of Black young people has increased. Around nine in every 10,000 Black young people were in youth custody in 2015/16, compared to just one in every 10,000 white young people (Ministry of Justice, 2017a). Similar trends have occurred in relation to stop and search. While the number of police incidents of stop and search has declined over the last decade, the latest data released by the Metropolitan Police (2017b), for example, indicate that Black individuals in London are over four times more likely to be stopped and searched compared to white individuals.

This paper provides an insight into the experiences of views of male prisoners with regards to racism and racial discrimination in the criminal justice system – experiences and views that lie behind the above mentioned, and many other, macro-level statistics that reveal such a damning portrait of BAME disproportionality. To do so, it presents the findings of a qualitative study comprised of four focus groups with men serving sentences of imprisonment in an English prison. Before proceeding to discuss the study's methodology and main findings, it is worth highlighting some issues in relation to the paper's scope. To fully understand the levels of racial disproportionality in the criminal justice

system laid bare by the statistics cited in this introduction, a range of factors outside the criminal justice need to be considered. There is a substantial body of literature evidencing the racism that BAME individuals are subject to across a broad range of domains including, but not limited to: education (Gillborn, 2008; Kelaher et al., 2008; Stevens, 2007); employment (Bagley and Abubaker, 2017; Becares et al., 2009); health (Ahmad and Bradby, 2009); and housing (Aspinall and Mitton, 2007). Adverse outcomes in these areas have knock-on effects that increase the likelihood of BAME individuals being identified and targeted by agents of social control, such as the police, and ultimately being drawn into the criminal justice system.

In addition, as has been documented by an established body of research, BAME individuals not only face racial discrimination across a range of domains in the present day, but also have been subjected to historic and brutal forms of racism that have a significant and lasting legacy (De Lissovoy, 2012; Hall, 2011). While issues relating to historic racism and contemporary examples of racism in numerous other public domains are crucial to fully understanding the levels of racial disproportionality in the criminal justice system, the scope and purpose of this paper is more concentrated: to highlight various forms of racism and racial discrimination operating within the criminal justice system by placing the experiences and views of BAME individuals at its core.

Methodology

The research discussed in this paper was conducted to inform an independent Parliamentary Review into the treatment of, and outcomes for, BAME individuals in the criminal justice system, headed by MP David Lammy. Discussions with the review team at the Ministry of Justice in May 2016 indicated that their analysis would largely centre on aggregate level statistics. While such analyses play an important role in exposing areas of gross racial disproportionality across various components of the criminal justice system, the Ministry of Justice team suggested to the author of this paper that the Review would benefit from qualitative research exploring people's experiences and views of racism and racial discrimination. During the time the study was conducted, I worked for a charity, Catch22, which had been invited to support the Parliamentary Review. I negotiated access to a prison in London and invited men serving sentences of imprisonment to participate in focus groups to talk about their experiences and views. The research aimed to explore men's perspectives, as the Review team had made us aware of another ongoing study that focused squarely on women (see Cox and Sacks-Jones, 2017). While we used a broad framework of 'fairness' to frame our discussions, we took opportunities to prompt participants around the issues of racism and racial discrimination and expanded on these issues whenever they arose.

In total, we held four focus groups with 26 people serving sentences of imprisonment. Although we were primarily interested in the experiences and views of BAME individuals, we were also interested to examine the extent to which these experiences and views converged or differed when compared to those of white individuals. We therefore conducted two focus groups with BAME individuals (15 participants) and two focus groups with white individuals (11 participants). Based on previous research, we also thought there was potential for the experiences and views of people who had been labelled as 'gang-involved' to differ from people who had not been labelled as gang-involved (see Phillips, 2014). Therefore, two of the focus groups were conducted with people who had been labelled by the prison as 'gang nominals' and two with people who had not been so labelled. The age of participants ranged from 21 years to 52 years, with an average age of 32. Sentence lengths ranged from four months to 14 years, with an average length of five years. Participants had been convicted of a range of offences, including drug, property, violent and sexual offences.

Focus groups were preferred over one-to-one interviews, as we expected that discussions would benefit from the exchange of views between participants. Previous studies suggest that group dynamics, for example, can play an important role in the discovery process, particularly concerning preliminary explorations of broad topics (Stewart and Shamdasani, 1990). In addition, professionals working in the prison advised that people would be more willing to volunteer for, and feel more comfortable attending, group discussion sessions rather than one-to-one interviews. Prison staff suggested that the latter were likely to have been perceived as a more formal and intense examination of an individual's experiences and views. Based on people's willingness to participate in the research and the level of engagement across all four focus groups, we believe that the decision to use focus groups as opposed to one-to-one interviews was a good one.

While the discussions were guided by a list of suggested topics – policing, legal aid, bail and remand decisions, sentencing, prisons, and community sanctions – we did not stick rigidly to these areas and instead allowed the flow of discussions to be led by participants. The strength of this approach was that participants were able to focus on the issues that they felt were most pressing, as opposed to the issues that we felt might be most important based on our initial literature review and preparation for the discussions. Ultimately, this meant that more data were generated in relation to certain topics (e.g. policing, legal aid, and prisons) than others (e.g. bail and remand decisions, and community sanctions) – something that is reflected in the space provided to these topics in the current paper.

Digital recordings of the focus groups were transcribed and the data contained in each transcript was divided into seven categories: policing; legal aid; bail and remand; sentencing; prisons; community sanctions; and other. The data were then coded and analysed thematically. As there was little divergence between the views of gang-involved and non-gang participants, I have labelled the quotations cited in this paper with either 'BAME participant(s)' or 'white participant(s)', but I have not typically distinguished between people who had been labelled as 'gang nominals' and those who had not. All participants were fully informed, both verbally and in writing, about why the research was being conducted and how the data would be used. All participants were asked to provide their consent to involvement in the study and all names in this report have been changed to protect the identities of those who participated.

A note on terminology

Before exploring the main findings of the current study, it is worth briefly discussing the intended meaning of some of the terms used in this paper. I recently co-authored a report for the charity, Catch22, aimed specifically at influencing policy and practice and based on the same data that underpins the current paper (see Irwin-Rogers and Shuter, 2017). After reading the report, a colleague at The Open University¹ made the observation that the report seemed to be skewed towards a consideration of 'episodes of inappropriate behaviour' at the expense of system-level, structural factors (the importance of which has been highlighted by a substantial body of previous research, see Lea, 2000; Phillips, 2012), and that this was potentially linked to our use of the term 'racial discrimination' and neglect of the term 'racism' (Earle, personal communication).

Based on everyday experience and conversation, behaviour that people regard as 'racist' seems to evince something that attracts a measure of moral condemnation over and above that associated with racial discrimination. It seems likely that this is because the former is associated primarily with

¹ I am grateful to Rod Earle (Senior Lecturer in Youth Justice, The Open University) for providing constructive comments on the Catch22 report based on the same data explored in this paper.

conscious beliefs about racial superiority and hierarchies, and the latter with unconscious or unintended racial bias. An exchange during one of the focus groups between two BAME individuals provides an example of this:

Focus group facilitator: Do the police treat everyone equally?

Michael: No, they're racist.

Liam: No, I don't even think it is always about racists. It's what he just said: it's a stereotype.

Michael: Na, they're racist bruv.

Focus group, BAME participants

While Michael repeatedly stated throughout the focus group that police officers consciously discriminate against Black individuals (and particularly Black young men) – in other words, that they are racist – Liam felt that such discrimination typically stemmed from unconscious racial bias, which he was hesitant to characterise as 'racist'. Unconscious racial bias, however, can be more pernicious in its nature and effects than conscious bias, largely because it is more difficult to identify and address (Spencer et al., 2016). Indeed, there is mounting evidence of the widespread and significant influence of unconscious racial bias at both an individual and societal level (Greenwald et al., 2015).

After examining examples of literature that use the terms 'racism' and 'racial discrimination', it is clear that many authors use the terms interchangeably (see, for example, Carter and Sant-Barket, 2015; Goff et al., 2012; Nazroo, 2003). In this paper, however, following a similar approach to that taken by the Institute of Race Relations (1998), I have used the term 'racial discrimination' to refer to practices associated with unconscious racial bias, 'racism' to denote practices associated with consciously held beliefs about racial superiority and hierarchies, and 'institutional racism' to represent racism that, covertly or overtly, resides in an institution's policies, procedures, operations or culture.

Findings

Many concerns regarding institutionalised forms of racism, racial discrimination and racism at the everyday level of decision-making were raised across all four focus groups and in relation to various parts of the criminal justice system. For the purposes of this paper, I have divided the findings into two main sections: racism operating at an institutional level, and racism and racial discrimination operating at the micro-level of decision-making. The paper prioritises the issues on which participants focused during each of the group discussions.

Institutional racism

Previous research has evidenced various forms of institutional racism across numerous parts of the criminal justice system (Deuchar and Bhopal, 2017; Home Office, 1999; Phillips, 2012). Adding weight to these studies, discussions across all four focus groups highlighted several examples of racism operating at the level of the institution. Although no part of the criminal justice was immune to criticism, participants were particularly keen to discuss their experiences and views of policing.

Stop and search

One prominent form of institutional racism flagged by participants was the police's use of stop and search, which has a long and controversial history in the UK. A report by Lord Scarman (1981), for

example, suggested that the police's intensive campaign of stop and search was a central cause of the 1981 Brixton riots. Although the prevalence of stop and search policing tactics has varied over recent decades, this policy continues to catalyse tensions between the police and BAME communities, and has been cited as a contributing factor to the recent public order riots in 2011 (Ariza, 2014).

Both BAME and white participants argued that the likelihood of being stopped and searched was directly affected by the colour of a person's skin:

Ryan: I believe if I wasn't Black I wouldn't get stopped . . . like the last time I got stopped . . . [the police officer] stopped me and goes, 'What do you do?' I said, 'I don't know why I've been stopped; why are you asking these questions?' And he says 'There have been robberies lately in the area, of cars'. And I said, 'Oh, has this car been flagged as being stolen?' He says, 'No', and I'm like, 'Well then, why are you stopping me?'

Focus group: BAME participant

There was candid discussion about the extent to which the police disproportionately focus their time and resources targeting BAME communities. Some participants argued that the racial disparities that manifest in various places further down the criminal justice pipeline are overwhelmingly the result of the initial criminalisation of young Black men by the police, particularly in relation to incidents of stop and search based on the supposed suspicion of drug or weapon possession. Indeed, the 2017 statistics on stop and search support this view, with the rate of stop and search for drug offences being four times higher for Black people compared to white people (Metropolitan Police, 2017b). In relation to stop and search for suspected weapon possession, Black individuals are over ten times more likely to be stopped and searched compared to white individuals (ibid.). Closely related to concerns around stop and search was the way in which the police labelled and targeted supposed 'gang members'.

Gang Matrices and Joint Enterprise

In a number of major cities in the UK, such as London, Manchester and Liverpool, police forces have compiled city-specific gang matrices. These are essentially lists of individuals deemed to be 'gang nominals', with each person receiving a certain ranking dependant on their supposed threat or risk level. Many BAME and white participants discussed the institutionalised forms of racism associated with the policing of gangs. Although the data is not openly or regularly published, a recent Freedom of Information Request revealed that Black individuals accounted for 78 percent of gang nominals on London's Trident Gang Matrix in 2016, compared to just 13 percent of the London population (ETHPOP, 2017; Metropolitan Police, 2016). These significant levels of disproportionality are made even more concerning by the opaque processes and criteria by which the police decide whether someone warrants the label of 'gang nominal'.

While police forces seem reluctant to share information about the processes and mechanisms underpinning gang matrices, Freedom of Information requests indicate that people are classified as 'gang nominals' through a combination of intelligence from police and other public and third sector agencies, which in turn is gleaned from various sources such as stop of search activity or through content uploaded to social media platforms (Metropolitan Police, 2016). Participants argued that information from these sources, particularly social media, could be unreliable and misleading:

Luke: Where do they get this information from? If you're not telling them, 'I'm a gang member', they say, 'It's because you got a picture with four boys on your phone' – 'Yeah, I've grown up with them' – 'Well, you're a gang'.

Tim: No Black man gets their picture taken standing like this [gestures standing up straight] – we just don't do it. When I have my picture taken, I have my hands up, I'm pointing, I just do that. . . when they say you're in a gang, you don't have no defence.

Focus group: BAME participants

When someone is labelled as a 'gang nominal', this not only results in them being subjected to a significant ramping up of police surveillance, but also may affect decision outcomes around prosecution and sentencing (discussed below). In June 2017, I made a Freedom of Information request to ascertain the extent to which alleged gang nominals are associated with various types of recorded crime in London. According to MET data, less than two percent of all knife crime offences in London between the beginning of January and the end of June 2017 were gang related (Metropolitan Police, 2017a). Similarly, less than one percent of all offences of 'violence with injury' in London in 2017 were flagged as gang related and the proportions of non-violent offences flagged as gang related were even lower. The data reiterated findings from a previous study exploring data on serious youth violence in Manchester and London, which indicated that the vast majority of serious youth violence was not related to gangs (Williams and Clarke, 2016).

Despite the vast majority of crime being unrelated to gangs, alleged gang members who have been inserted onto police gang matrices are subject to intense levels of surveillance and heavily targeted by the police (Smithson et al. 2013; Williams, 2015). It was unsurprising, therefore, that people who had been labelled as gang nominals perceived the police in a particularly negative light. While both white and BAME individuals identified as gang members will be subject to enhanced levels of surveillance and harassment, the fact that 87 percent of alleged gang nominals are BAME individuals provides a clear indication of how this policy will impact disproportionately on young men from BAME backgrounds (Metropolitan Police, 2016).

While the Lammy Review into racial bias in the criminal justice system was welcomed by some for its potential to shed light on racial injustice in the criminal justice system, many have also highlighted a number of important limitations (Carr, 2017; Fekete, 2018). Given the significance of stop and search policies and police gang matrices, the exclusion of policing from the scope of the Review was a source of particular criticism (Bridges, 2018). More broadly, however, concern also centred on the way in which the Review neglected to highlight and frame issues as institutionalised forms of racism (Fekete, 2018). Instead, the Review opted to isolate specific instances of racism and neglected the interactive effects of different forms of racism across numerous stages of the criminal justice process. Indeed, of particular cause for concern are the potential cumulative effects of multiple forms of institutional racism, which are likely to intensify the adversity faced by BAME individuals (Bridges, 2018). For example, the disproportionate targeting of stop and search activity against BAME communities is made still worse by the police's decision to focus their resources on alleged gang activity, which in practice means directing their gaze predominantly on Black young men – this, despite official police statistics which show very clearly that only a tiny proportion of crime is gang-related (Metropolitan Police, 2017a).

One consequence of these policing tactics is that Black young people, many of whom will never have been charged with an offence, are left feeling stigmatised, humiliated and violated by an institution that purports to have harm prevention as its primary purpose and 'earning the trust and confidence of every community' as its central vision (Metropolitan Police, 2017c). These stigmatising effects, which are likely to increase the chances of BAME young people being drawn into the criminal justice system, are further compounded by racial disproportionality at the stage of sentencing. The odds of

receiving a prison sentence for drug offences, for example, are 240 percent higher for BAME individuals compared to white individuals (Lammy, 2017).

For a number of reasons, when individuals have been labelled as gang members, their sentences are likely to be more severe than those who have not been so labelled. Playing a ‘leading role in a group or gang’, for example, is a ‘step one aggravating factor’ in many sentencing guidelines that systematically structure decisions on sentence severity (see Sentencing Council for England & Wales, 2011). Moreover, there have been many cases in which alleged gang membership has been used as a justification for prosecutions based on the doctrine of joint enterprise, resulting in disproportionately severe sentences for what are often relatively minor or tenuous forms of involvement in the alleged crimes (Williams and Clarke, 2016). Participants were unanimous in their condemnation of the doctrine of joint enterprise. Some suggested that it was only a matter of time before the law was changed, but lamented the damage that had already been done, and was continuing to be done, to so many predominantly young BAME lives. In relation to this specific issue, Bridges (2018: 83) has criticised the Lammy Review for failing to call for wholesale reform of the doctrine of joint enterprise, as well as redress for those who have already been unjustly convicted.

Legal Aid

Another institutional-level factor with particular implications for BAME individuals was the fairness and effectiveness of the legal aid system. The majority of participants reported having a lack of trust and confidence in legal aid lawyers:

Michael: It depends if you pay for your lawyer. The lawyers that work for free ain’t gonna help you – they just wanna get their pay.

Liam: If you are getting legal aid then as soon as they get their money they don’t care. Money talks, so if you aren’t paying for your lawyer then you aren’t going to get as much help.

Andy: I don’t reckon I’d be in here now if I had paid for my lawyer.

Focus group: BAME participants

Although precise figures are difficult to ascertain due to the high proportion of cases in which the ethnicity of clients is unknown, the available data indicate that BAME individuals are more likely to rely on legal aid at disproportionate rates with regards to representation in police custody, magistrates’ courts and the Crown Court (Ministry of Justice, 2017b). Sharp cuts to the legal aid budget in recent years are likely to have exacerbated levels of distrust between legal aid lawyers and their clients, owing to the declining quality of legal representation that inevitably accompanies enhanced resource pressures (Edwards, 2011). The quality and motivations of legal aid lawyers were perceived to be particularly important in influencing defendants’ decisions to plead guilty or not guilty, with some participants reporting that they received inadequate advice on this issue.

If people with legal aid representation are more likely to lack trust in the advice of their lawyers regarding guilty pleas (relative to defendants paying for private lawyers), this may go some way towards accounting for the racial disparities found in relation guilty plea decisions and related sentence severity. For example, recent statistics revealed that in 2014, 74 percent of white defendants pled guilty for selected violence against the person offences at the Crown Court, compared to only 63 percent of defendants from a Mixed ethnic background, 54 percent of Black defendants, and 53 percent of Asian defendants (Ministry of Justice, 2015). As has been highlighted by Bridges (2018) in

his critique of the Lammy Review, however, decisions regarding early guilty pleas are likely to depend on a wide range of factors that might better explain these disparities, such as the disproportionate rates at which BAME defendants are arrested and charged for offences that attract relatively severe sentences.

Racial diversity in criminal justice institutions

There is a general lack of racial diversity with regards to professionals working across the criminal justice system. Statistics cited in the recent House of Commons Home Affairs Committee (2016) report on police diversity, for instance, revealed that in 2015, only 5.5 percent of police officers were from a BAME background, compared to 14 percent of the population, with no police force having a BAME representation matching its local demographic. In relation to the courts, around 20 percent of defendants are from BAME backgrounds, but only seven percent of around 3,000 court judges are from BAME backgrounds (Lammy, 2017).

Opinion is polarised, however, regarding the extent to which increasing the racial diversity of criminal justice professions would reduce institutionalised forms of racism or racial discrimination and racism at the micro-level of decision-making across the criminal justice system. On the one hand, some have argued that when the racial demographics of institutions broadly reflect those of the communities they serve, this can convey a powerful message of equity (Fridell et al., 2008). Racial diversity has been held to enhance the likelihood of institutions understanding the perspectives of minority groups and better enable informed decisions to be made at a strategic level. At ground level, it has been argued that racially diverse institutions can increase the likelihood of positive day-to-day interactions between front line professionals and BAME communities, which can help improve trust and confidence in institutions (Hong, 2016).

On the other hand, some research indicates that the racial diversity of people working in the criminal justice system might constitute a distraction from more pressing issues (Bridges, 2018; Fekete, 2018; Thomas, 2010), and that there is a lack of robust empirical data evidencing the benefits of increasing racial diversity in criminal justice institutions (Fan, 2015; Sklansky, 2006). BAME participants were generally cynical about the intentions underlying moves toward ensuring that criminal justice professionals were more racially diverse, particularly in relation to policing. Some people believed that diversification was a ploy to gain support, rather than an authentic attempt to make policing fairer:

Anthony: You know what that is to me, them trying to diversify the whole thing, it's a ploy . . . it's about what you've done in your history to tarnish your relationship with the people. That's what's gotta be addressed.

Joe: They are doing more diversity because they have to . . . they do it for their own reasons . . . they're trying to get people to trust them innit.

Focus group: BAME participants

The diversity of the judiciary was another institutional-level factor that many participants were keen to discuss. According to some, this meant that judges are unable to understand the challenges faced by young people, particularly those from a BAME background:

Michael: The judges don't understand, especially black youths. They don't understand us – they're not from our world. So, if I say to a judge, 'I don't really know man's name', then the

judge will say, 'You're hiding something'. But I don't know his real name; he doesn't understand that. I might know a man by 'Phazer' or 'Crazy', I might even know where he lives, but I won't know his real name. And [the judge] will be like, 'How come he doesn't know his real name?' They don't understand.

Focus group: BAME participant

While a number of participants suggested that cultural differences adversely affected judges' perceptions of BAME defendants, others went further and argued that the severity of sentences could be influenced by the colour of a defendant's skin:

Kevin: Look at Anton: Anton got a 22 [22 years' imprisonment]. See if that had been a white boy, he would never have got a 22; never in a million years. Everyone knows that . . . if Anton was white, he would have got a 12 or 14, all day long . . . it's a piss-take.

Focus group: white participant

It was clear from our discussions that the cultural memory of historic police racism in particular would not be erased overnight simply by addressing racial diversity among police officers or doing away with specific policies such as stop and search or the targeting of 'gangs' (discussed above). One participant made a succinct point about the damage that had been done to police legitimacy through prolonged historic racism, alluding to the fact that rebuilding trust and confidence in policing will take substantial and sustained efforts:

Anthony: When I go back to grandma and hear those stories, it's hard to erase that and forget about it. They have to prove it, that there's been a change, but really and truly, a lot of people suffered.

Focus group: BAME participants

Racism at the micro-level of decision-making

Aside from racism operating at an institutional level in the criminal justice system, participants spent a large proportion of our discussions recounting numerous episodes of racism at the micro, everyday level of decision-making. The three main areas of concern for participants centred on policing, sentencing and imprisonment, each of which will be addressed in turn.

While the police were castigated for pursuing institutionally racist policies such as stop and search and the targeting of alleged gang nominals, participants were equally keen to speak about their everyday experiences which highlighted the potential for racism to operate at a micro-level. One BAME participant, for example, recounted an incident in which he and a friend were seen as easy targets because of the colour of their skin:

Paul: Me and my mate was walking down [location removed]. It was about eleven o'clock at night, a cab driver got robbed, and me and him were walking in the same area. And [the police] just come round, saw the two of us and like, 'Yep, that's them', and took us away for the night. They let us go the next morning. That was it.

Focus group: BAME participant

Opinion was divided on the extent to which police officers consciously or subconsciously discriminated against BAME individuals. Previous studies have warned that several forms of

unconscious bias are likely to shape frontline policing decisions on a day-to-day basis, including general trait and behaviour stereotypes, race-crime stereotypes, and more specific stereotypes such as race-weapon association (Spencer et al., 2016). Several participants argued that racism was deeply embedded in the fabric of policing, to the extent that individual police officers become almost passive, unthinking agents implementing racist practices:

Matthew: We can sit here and say not every police officer is the same, not every police officer is racist, but we all know there is a certain colour that they always look for, you know it's not their fault, but it's just how it is, innit.

Daniel: On YouTube yeah, I've seen someone on a park bench yeah. . . there's a group of them and they're rapping and whatever yeah, a policeman has come over and said, 'You're making too much noise in this corner, ra ra ra'. The boys have kind of shunned him and carried on doing their thing and he's like, 'Oi mate, I'm talking to you'. And they said, 'We don't have to talk to you, cos we're not doing nothing', and this, that and the other. They know their law and when they started pulling things out the hat, his attitude changed, which means there's something in their actual teaching. . . the ones that aren't aware of it, can't rectify it, cos they don't know what to rectify, cos they don't know they're doing anything wrong.

Focus group: BAME participants

While it is difficult to ascertain the precise proportion of police officers whose frontline work is shaped by conscious racist attitudes, previous studies have emphasised the importance of tackling unconscious forms of racial bias that have been shown to exert a significance widespread influence and generate pernicious individual and cumulative effects (Rachlinski et al., 2009; Spencer et al., 2016).

Decisions made at the sentencing stage were another cause for concern in relation to the potential influence of negative stereotypes. Participants' accounts alluded to the interactive effects of racism in different parts of the criminal justice system, which greatly increased the likelihood of adverse outcomes for BAME individuals. For example, racism operating at the institutional level in policing around the labelling of predominantly BAME young men as 'gang nominals' was perceived to negatively affect the treatment of BAME individuals in other parts of the criminal justice system, such as at the stage of remand decisions or sentencing:

Michael: First time I went to court, I didn't have no previous. But first time I saw the judge, I went straight to jail. First thing he looked at was: he's in a gang; he's in a gang.

Focus group: BAME participant

Finally, a number of participants felt that a person's race could influence the outcome of important decisions in prison, particularly around Incentive and Earned Privilege (IEP) levels. IEP levels regulate people's access to various 'privileges' such as the number of visits someone is allowed each month, the amount of private money that can be spent each week, and access to other personal items such as in-cell televisions:

Steve: Black and white could be a problem, and it's if you've had issues before.

Focus group: white participant

Michael: Of course they [decisions] would [be affected by a prisoner's race]. . . I tend to find it's the screws . . . who are Black that are a bit more understanding; maybe that's just my perception.

Focus group: BAME participant

Previous research indicates that prison officers are more likely to perceive BAME individuals' behaviour as 'loud and aggressive' – in other words, as problematic – compared to the behaviour of white prisoners (Cox and Sacks-Jones, 2017; Phillips, 2012). Indeed, statistics evidencing the racial disproportionality of IEP levels is revealing: in March 2016, while 4.9 percent of white individuals were subject to basic IEP status (the lowest privilege level), the figure was 7.2 percent for Mixed ethnicity individuals and 7.6 percent for Black individuals (National Offender Management Service, 2016).

Participants' resentment of the racism evident in some prison officers' everyday decision-making were compounded by the perceived lack of recourse to challenge decisions that seemed unfair. David Lammy MP's recent report on the treatment of, and outcomes for, BAME individuals in the criminal justice system, highlights this problem and revealed that only one percent of prisoners' complaints alleging discrimination by prison staff were upheld (Lammy, 2017). Indeed, there was a widespread perception among participants that the best (and sometimes the only) way to get prison staff to act on prisoners' requests or challenges in relation to certain decisions was to behave aggressively:

Chris: These places make us angry – don't make us angry. They make us turn to violence to get what we want.

Focus group: BAME participant

Tim: If you're too quiet in here you get fuck all. If you're in here and you really need something and you just ask politely, you're more than likely to just get brushed off. You need to go into their office and lay on their desk and tell them that you ain't moving until they fucking sort it.

Tom: The more you abuse the staff in here, the better you get treated. The more afraid the staff are of you, the better you get treated.

Focus group: white participants

It is important to highlight that these findings on racism in prisons reiterate those of numerous prisoners' rights organisations, such as Radical Alternatives to Prisons (RAP) and Preservation of the Rights of Prisoners (PROP), as well as an established body of research spanning back several decades (Burnett and Farrall, 1994; Genders and Player, 1989; Gordon, 1983). Nevertheless, these statements serve as a stark warning of the likely inflammatory effects of austerity politics, which have left people locked in prison cells for over 23 hours a day without access to basic goods and services (HM Chief Inspector of Prisons for England and Wales, 2017). In the ensuing climate of rising tension between people serving prison sentences and people enforcing them, whether it is because of conscious racist beliefs, unconscious racial bias or institutionalised forms of racism, BAME individuals are likely to be disproportionately affected by adverse decisions that further undermine their dignity and bring about still greater levels of dehumanising treatment in prison.

Discussion

Although participants raised a wide range of concerns about various parts of the criminal justice system, policing was by far the main area on which people's attention was most directed. Discussions across all four focus groups highlighted institutionalised forms of racism – for example, policies that encouraged racially disproportionate stop and search activities and the targeting of alleged gang nominals – as well as racism and racial discrimination operating at the micro-level of everyday decision-making by frontline criminal justice professionals. These various manifestations of racism have resulted in the stigmatisation, degradation and criminalisation of BAME communities, affecting young Black men in particular. Despite there being clear implications for policy and practice, participants' accounts highlighted very clearly that reversing policies such as stop and search and the targeting of gang nominals would not restore the perceived legitimacy of the police among BAME communities overnight.

The courts and imprisonment were two other key sites of concern. In relation to the courts, the racial diversity of the judiciary was held to be a fundamental source of discrimination. While many participants highlighted the vast and problematic cultural divide between a predominantly Middle-Class judiciary judging Working-Class defendants, the additional cultural gulf on the grounds of race was also stressed by several participants. The racialized doctrine of joint enterprise and its disproportionate targeting of BAME young men was also a source of major criticism. In particular, it is worth reiterating that the disproportionately adverse outcomes received by BAME individuals at the stage of sentencing were seen in large part to be extensions of institutionalised forms of racism operating further upstream through various police policies and practices (discussed above).

In relation to imprisonment, the Incentives and Earned Privileges scheme was singled out as a significant source of discrimination. There was a generally held perception that BAME individuals serving sentences of imprisonment would be treated more harshly and subjected to a greater rate of adverse decisions around privilege levels than white individuals. Indeed, this perception accords with official prison statistics, which reveal a disproportionate number of BAME individuals subject to the lowest privilege level compared to their white counterparts (National Offender Management Service, 2016).

While this paper sheds light on some of the experiences and views of men serving sentences of imprisonment with regards to racism and racial discrimination in the criminal justice system, some limitations should be noted. First, the data on which this paper is based was drawn from a relatively small qualitative study in one prison in England. Therefore, it should not be assumed that the experiences and views explored in this paper are necessarily representative of the experiences and views of men serving sentences of imprisonment more generally, or indeed the wider population of people who have had some form of contact with the criminal justice system.

Moreover, while it was clear from the data generated by this study that no part of the criminal justice system was immune to criticism, there were parts of it which both BAME and white participants held in particular disdain. The depth of analysis presented in this paper would not have been possible had I attempted to cover all of the issues raised across the four focus groups, therefore, I restricted its focus to participants' primary sites of concern (see Irwin-Rogers and Shuter, 2017, for a more comprehensive coverage of the data generated by this study, including a discussion of bail and remand decisions and community sanctions).

Conclusion

The data on which this paper is based reveal a damning portrait of a criminal justice system that is permeated by policies and practices that are racist or racially discriminatory in their design and/or effects. This paper sheds light on some of the most concerning policies and practices by highlighting the micro-level lived experiences and views of a participating sample of men serving sentences of imprisonment. It comes as no surprise that these experiences and views are supported by a raft of macro-level statistics that provide evidence of stark racial disproportionality across the criminal justice system. Reiterating the findings of an established body of research, some of the most prominent concerns raised by participants include: racially disproportionate stop and search activities; the surveillance, targeting and harassment of alleged gang nominals; the racialized doctrine of joint enterprise that makes a mockery of established principles of proportionality in sentencing; a lack of racial diversity in staffing across the spectrum of criminal justice institutions, with particular concerns centring on the judiciary; and prison policies such as the Incentives and Earned Privileges scheme that expose BAME individuals to disproportionately harsh and degrading treatment in prison.

If we are to better understand and expose the various forms of racialized injustices operating within criminal justice systems, it is right that the experiences and views of those on the receiving end of these injustices take centre stage. Qualitative research that homes in on subjective accounts of racism and racial discrimination can shed light on particular areas of injustice and better direct the attention of academics and activists alike. But there are dangers in becoming overly focused on such accounts, particularly when it comes to the task of identifying effective policy ‘solutions’ to these injustices.

As highlighted at the outset of this paper, the over-representation of BAME individuals in the criminal justice system, in large part, is the result of wider racialized injustices. In education, Black Caribbean children are over three times more likely to be excluded from school compared to white British children (Office for National Statistics, 2017). BAME communities have been systematically demonised across various forms of media for decades, generating severe inequalities in recognition (Bhatia et al., 2018). Black individuals are more than twice as likely to live in poverty compared to white individuals (Joseph Rowntree Foundation, 2017), to some extent the result of discrimination against BAME individuals in the labour market (Booth et al., 2011; Drydakis et al., 2017).

Criminal justice systems can, however, operate in ways that generate more or less harm in a particular society. For those who broadly accept the arguments made in this paper, it would be desirable for the police to radically rethink the scope and nature of stop and search activities and to sound the death knell of police gang lists (Clarke, 2017). Similarly, increasing racial diversity across a range of criminal justice institutions and abandoning the highly racialized doctrine of joint enterprise would mark welcome developments in criminal justice policy. However, if eliminating the over-representation and adverse treatment of BAME individuals in the criminal justice system are the core and ultimate aims, these criminal justice-centred policy developments can only ever constitute a limited part of the solution.

References:

- Ahmad, W. and Bradby, H. (2009) *Ethnicity, Health and Health Care*. Hoboken: Wiley.
- Ariza, J. J. M. (2014) Police-initiated contacts: young people, ethnicity, and the ‘usual suspects’. *Policing and Society*. 24(2): 208-223.

- Aspinall, P. and Mitton, L. (2007) Are English local authorities' practices on housing and council tax benefit administration meeting race equality requirements? *Critical Social Policy*. 27(3): 381-414.
- Bagley, C. and Abubaker, M. (2017) Muslim woman seeking work: An English Case Study with a Dutch Comparison of Discrimination and Achievement. *Social Sciences*. 6(17): 1-13.
- Becares, L., Stafford, M. and Nazroo, J. (2009) Fear of racism, employment and expected organizational racism: their association with health. *The European Journal of Public Health*. 19(5): 504-510.
- Bhatia, M., Poynting, S. and Tufail, W. (Eds.) (2018) *Media, Crime and Racism*. Palgrave: London.
- Booth, A. L., Leigh, A. and Varganova, E. (2011) Does Ethnic Discrimination Vary Across Minority Groups? Evidence from a Field Experiment. *Oxford Bulletin of Economics and Statistics*. 74(4): 547-573.
- Bridges, L. (2018) Lammy Review: will it change outcomes in the criminal justice system? *Race & Class*. 59(3): 80-90.
- Burnett, R. and Farrell, G. (1994) *Reported and Unreported Racial Incidents in Prisons*. Oxford: Centre for Criminological Research, University of Oxford.
- Carr, N. (2017) The Lammy Review and race bias in the criminal justice system. *Probation Review*. 64(4): 333-336.
- Carter, R. T. and Sant-Barket, S. M. (2015) Assessment of the Impact of Racial Discrimination and Racism: How to Use the Race-Based Traumatic Stress Symptom Scale in Practice. *Traumatology*. 21(1): 32-39.
- Clarke, B. (2017) *Death Knell for Police Gang Lists*. Available at: www.sitesofresistance.org
- Cox, J. and Sacks-Jones, K. (2017) "Double Disadvantage": *The experiences of Black, Asian and Minority Ethnic women in the criminal justice system*. Available online at: www.weareagenda.org
- De Lissovoy, N. (2012) Conceptualising the Carceral Turn: Neoliberalism, Racism, and Violation. *Critical Sociology*. 39(5): 739-755.
- Deuchar, R. and Bhopal, K. (2017) *Young People and Social Control: Problems and Prospects from the Margins*. Palgrave Macmillan.
- Drydakis, N., MacDonald, P., Chiotis, V. and Somers, L. (2017) Age discrimination in the UK labour market: Does race moderate ageism? An experimental investigation. *Applied Economics Letters*. 1-4.
- Edwards, A. (2011) Will defendants survive changes to criminal legal aid? *Criminal Justice Matters*. 86(1): 30-32.
- ETHPOP (2017) *Population search*. Available from: www.ethpop.org
- Fan, M. D. (2015) Violence and Police Diversity: A Call for Research. *Brigham Young University Law Review*. 4: 875-914.
- Fekete, L. (2018) Lammy Review: without racial justice, can there be trust? *Race & Class*. 59(3): 75-79.

- Fridell, L., Lunney, R., Diamond, D. and Kabu, B. (2008) *Racially biased policing: A principled response*. Washington DC: Police Executive Research Forum.
- Genders, E. and Player, E. (1989) *Race Relations in Prisons*. Oxford: Clarendon Press.
- Gillborn, D. (2008) *Racism and Education: Coincidence or Conspiracy?* London: Routledge.
- Goff, P. A., Di Leone, B. A. L. and Kahn, K. B. (2012) Racism leads to pushups: How racial discrimination threatens subordinate men's masculinity. *Journal of Experimental Social Psychology*. 48(5): 1111-1116.
- Gordon, P. (1983) *White Law: Racism in the Police, Courts, and Prisons*. London: Pluto.
- Greenwald, A. G., Banaji, M. R., Nosek, B. A. and Smith, E. R. (2015) Statistically small effects of the Implicit Association Test can have Societally Large Effects. *Journal of Personality and Social Psychology*. 108(4): 553-561.
- Hall, S. (2011) The Neo-Liberal Revolution. *Journal of Cultural Studies*. 25(6): 705-728.
- HM Chief Inspector of Prisons for England and Wales (2017) *Annual Report 2016-17*. Available at: www.gov.uk
- Home Office (1999) *The Stephen Lawrence Inquiry: report of an inquiry by Sir William Macpherson of Cluny*. Cm4262-1. London: The Stationary Office.
- Hong, S. (2016) Representative Bureaucracy, Organizational Integrity, and Citizen Coproduction: Does an increase in police ethnic representativeness reduce crime? *Journal of Policy Analysis and Management*. 35 (1): 11-33.
- House of Commons Home Affairs Committee (2016) *Police Diversity: First report of session 2016-17*. Available at: www.publications.parliament.uk
- Institute of Race Relations (1998) *What is Institutional Racism?* Available at: <http://www.irr.org.uk/news/what-is-institutional-racism/>
- Irwin-Rogers, K. and Shuter, M. (2017) *Fairness in the Criminal Justice System: What's race got to do with it?* London: Catch22.
- Joseph Rowntree Foundation (2017) *Poverty rate by ethnicity*. Available at: www.jrf.org.uk
- Kelaher, M., Paul, S., Lambert, H., Ahmad, W., Paradies, Y. and Davey Smith, G. (2008) Discrimination and health in an English study. *Social Science & Medicine*. 66(7): 1627-1636.
- Lammy, D. (2017) *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*.
- Lea, J. (2000) The Macpherson Report and the Question of Institutional Racism. *The Howard Journal of Crime and Justice*. 39(3): 219-233.
- Metropolitan Police (2017a) Freedom of Information Request No: 2017070000040. Unpublished (Available on request from the author of this paper).
- Metropolitan Police (2017b) Stop and Search Dashboard. Available at: www.met.police.uk

- Metropolitan Police (2017c) Vision and values. Available: www.met.police.uk
- Metropolitan Police (2016) Freedom of Information Request. Available at: https://www.met.police.uk/globalassets/foi-media/disclosure_2016/november_2016/information-rights-unit---data-kept-on-the-mpss-gang-matrix-database-for-the-last-three-financial-years
- Ministry of Justice (2017a) *Exploratory analysis of 10-17 year olds in the youth secure estate by black and other minority ethnic groups*. Available at: www.gov.uk
- Ministry of Justice (2017b) *Legal Aid Statistics in England and Wales: January to March 2017*. Available from: www.gov.uk
- Ministry of Justice (2017c) *Prison population: 31 March 2017*. Available at: www.gov.uk
- Ministry of Justice (2017d) *Probation: 2016*. Available at: www.gov.uk
- Ministry of Justice (2015) Statistics on Race and the Criminal Justice System 2014: A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991. Available at: www.gov.uk
- National Offender Management Service (2016) *National Offender Management Service Offender Equalities Annual Report 2015/16*. Available at: www.gov.uk
- Nazroo, J. Y. (2003) The structuring of ethnic inequalities in health: economic position, racial discrimination and racism. *American Journal of Public Health*. 93(2): 277-284.
- Office for National Statistics (2017) *Permanent and fixed-period exclusions in England 2015-2016: National Tables SFR36/2017*. Available at: www.gov.uk
- Oxford Living Dictionaries (2017) 'Racism'. Available at: www.en.oxforddictionaries.com
- Phillips, C. (2014) 'It ain't nothing like America with the Bloods and the Crips': Gang narratives inside two English prisons. *Punishment & Society*. 14(1): 51-68.
- Phillips, C. (2012) *The Multicultural Prison: Ethnicity, Masculinity, and Social Relations among Prisoners*. Oxford: Oxford University Press.
- Rachlinski, J. J., Johnson, S. L., Wistrich, A. J. and Guthrie, C. (2009) Does unconscious racial bias affect trial judges? *Notre Dame Law Review*. 84(3): 1195-1246.
- Sentencing Council for England & Wales (2011) Assault: Definitive Guideline. Available at: www.sentencingcouncil.org.uk
- Sklansky, D. A. (2006) Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement. *Journal of Criminal Law & Criminology*. 96: 1209-1225.
- Smithson, H., Ralphs, R. and Williams, P. (2013) Used and abused: the problematic usage of the term gang and its implications for ethnic minority youth. *British Journal of Criminology*. 53(1): 113-128.
- Spencer, K. B., Charbonneau, A. K. and Glaser, J. (2016) Implicit Bias in Policing. *Social and Personality Psychology Compass*. 10(1): 50-63.

Stevens, P. A. J. (2007) Researching race/ethnicity and educational inequality in English secondary schools: a critical review of the research literature between 1980 and 2005. *Review of Educational Research*. 77(2): 147-185.

Stewart, D. W. and Shamdasani, P. N. (1990) *Focus Groups: Theory and Practice*. Applied Social Research Methods Series. Volume 20. London: Sage.

Thomas, C. (2010) *Are Juries Fair?* Ministry of Justice Research Series 1/10.

Williams, P. (2015) Criminalising the Other: challenging the race-gang nexus. *Race & Class*. 56(3): 18-35.

Williams, P. and Clarke, B. (2016) *Dangerous Associations: Joint enterprise, gangs and racism*. London: Centre for Crime and Justice Studies.