Judicial Racism and the Lammy Review

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1. Mohammed Mattan

- Mr Mattan was a Somali man living in Cardiff.
- In 1952, he was tried, convicted and hanged for a murder he did not commit. Important exculpatory evidence was not disclosed to the defence or put before the jury.
- At his trial, his own defence counsel described him as, *"this half-child of nature, a semi-civilised savage".*
- Following the refusal of leave to appeal, he was hanged at Cardiff prison on 8 September 1952. Eventually, following a reference by the Criminal Cases Review Commission, he was finally acquitted by the Court of Appeal in 1998.

2. David Oluwale

- Mr Oluwale was a Nigerian immigrant living in Leeds in the 1960s, who spent eight years in an asylum following a fight with police officers.
- After his release, he became street-homeless and was subjected to a systematic and horrifying campaign of beating, harassment and humiliation by two White police officers.
- Eventually, under circumstances which remain unclear, he drowned in the River Aire. In a 1971 trial, the two officers were convicted of multiple counts of assault but acquitted of manslaughter.
- Startlingly, however, the trial judge, Mr Justice Hinchliffe, described Mr Oluwale as *"a dirty, filthy, violent vagrant"*, a *"menace to society"* and *"a frightening apparition to come across at night".* That is what a High Court judge in 1971 thought of a homeless Black man who was brutalised by the police.

The Issue

The English legal system has long had a race problem. Yet, we often attribute this to policing only, allowing the wider justice system – judges in particular – to get off scot-free.

However, judicial racism has, and still does, play a critical role in perpetuating racial inequity.

Judges are some of the most powerful actors in our society, and decisions they take can often be life-changing for individuals, communities, and society as a whole. A good judge can transform lives for the better. A bad judge can ruin lives irreparably.

Structure of the Lecture

1. history of judicial racism;
2. judicial racism today;
3. some thoughts about what we, as a society, can do about it.

Historical Context (1) – Black people in Britain

- We must understand, albeit briefly, the relevant history before we can understand present issues.
- The presence of Black people in Britain is not a recent phenomenon. In 1596, Elizabeth I's Privy Council issued a proclamation authorising a Lubeck merchant called Casper van Senden to take "blackamoors" from England and sell them as slaves in Spain and Portugal, to defray his costs incurred by repatriating English prisoners.
- During the 17th and 18th century Britain profited greatly from the trans-Atlantic slave trade. The 18th century saw numerous Black people in Britain itself, many purchased as slave overseas.
- Many of the wealthiest and most powerful families in Britain made their fortunes through slavery. It's sometimes said that *"every brick in Bristol was cemented with the blood of a slave."*

Historical Context (2) – Slavery and the Law

- The 1772 case of *Somerset v Stewart – the* Lord Chief Justice, Lord Mansfield, granted a petition for habeas corpus brought by an enslaved man held aboard a ship bound for Jamaica, ruling that there was no basis for his detention.

- Many people have credited Lord Mansfield's judgment with catalysing the end of slavery in England.

- However, some 13 years later in the case of *Crown v the Inhabitants of Thames Ditton, Lord Mansfield* stressed that his judgment in the case of James Somerset was to *"go no further than to establish, that the master had no power to take the slave by force out of the Kingdom*".

- As historian Carolyn Steedman has underlined, these words by Lord Mansfield made "*his famous Somerset judgment seem a very small thing indeed. It is his qualification that will echo through the law reports, down to the 1830*".

- And as we know, it wasn't in fact until the Slave Trade Act 1807 that the slave trade was abolished in England. And not until 1833, with the Slavery Abolition Act, that slavery itself was formally abolished.

Historical Context (3) – The Criminal Law

- At the end of the 18th and the beginning of the 19th centuries, criminal law sanctions handed out by local magistrates (unpaid officials) and Crown Court judges were particularly brutal – often called the 'bloody code'.

- A huge number of offences, including damaging Westminster Bridge and impersonating a Chelsea Pensioner, were punishable by death. Public hangings, transportation to the colonies, and whipping were all everyday practices.

- Historian Norma Myers, in a study of Old Bailey court records, documented the stories of Black people who came before the criminal court in the late 18th and early 19th centuries, including many who were transported to Australia. Myers' work underscored the extreme harshness of the criminal law – for Black defendants, Irish defendant, but also for the English White working class.

- Britain exported this system of disproportionate punishment and brutality to its colonies.

- Historian Diana Paton noted after a study of the records of slave trials in eighteenth-century Jamaica: *"Jamaican slave courts and the punishments they inflicted … enacted rituals that both dramatized and sustained the power relations of this colonial slave society. Rather than representing the supposed common discipline of all to a single rule of law, as did the contemporary English spectacle of trial and punishment, Jamaican judicial practice emphasized the difference between enslaved and free, and valorized the slaveholder's private penal power"*.

- In the West Indies, the magistrates were drawn from the plantation-owning aristocracy, and this did not change when slavery was finally abolished in 1834. As Colin Bobb-Semple writes, *"Throughout the British plantation system, it was customary for the planters to become magistrates. They were the people responsible for constant whipping and other forms of torture of enslaved Africans, in addition to performing their roles as justices. After emancipation, the planters continued to act as magistrates and dispensed justice, sometimes very harshly."*

Historical Context (4) – Eugenics

- At the end of the 19th and beginning of the 20th century, eugenics was very much in vogue in Britain and America.

- The central tenet was that some humans were genetically superior, while others were genetically inferior. Crime, poverty and mental illness were all ascribable to inferior genes.

- This tended to go along with pseudoscientific racism. Many eugenicists divided human beings into “Caucasoid”, “Mongoloid” and “Negroid” races – with the so-called “Negroid” race being at the bottom of the pile. And as such colonialism was regarded as being justified because of the inherent superiority of the White race, and inherent inferiority of the Negroid race. These ideas were very politically influential before and after the First World War on both sides of the Atlantic.

- Eugenics had a great deal of influence on the legal system. E.g. n the United States, numerous states passed laws that provided for the compulsory sterilisation of “defectives”. In Britain, eugenic ideas inspired the enactment of the Mental Deficiency Act 1913, which provided for the institutionalisation of those it labelled “defectives”, including – in the explicit language of the Act – “idiots”, “imbeciles” and the “feeble-minded”.

- Many scholars have argued that the ongoing legacy of eugenic thinking about crime and punishment, the inherently criminal, continues today.

Historical Context (5) – Immigration

- As I noted in my Gresham lecture – *The Immigration Act 1971: Celebrated or Flawed?* – between the 1940s and 60s, large numbers of Black and Asian people came to Britain from the Commonwealth. This group of people are often known as the "Windrush generation".

- This era was a high point of racial tensions. Until the Race Relations Act was passed in 1968, it was common for landlords and businesses to display signs saying, "No blacks, no Irish, no dogs".

- The vicious racism of this era resulted in the enactment of the Commonwealth Immigrants Acts 1962 and 1968 and the Immigration Act 1971, which, as covered in detail in the last lecture, restricted immigration from the Commonwealth for the first time.

Historical Context (6) – Police Corruption

- The cases of Mohammed Mattan and David Oluwale, with which I opened this lecture, both took place within the above context on fraught racial tensions.

- This era was also a real high point of police corruption: fabrication of cases, framing people, planting evidence, blackmailing and bribery. This affected working-class people of all races, but fell most heavily on Black people and people of colour, who were persecuted by the police.

- Thee image of the “British bobby” permeated the attitudes of judges. Time after time, the judiciary allowed the police to get away with it and the prosecution to present cases that would now be dismissed, potentially for an abuse of process. The judiciary were part of the establishment, and they were not on the side of people of colour or working-class people.

- Well-known miscarriage of justice cases involving police corruption and the deliberate framing of Black people – e.g. Stockwell Six and the Oval Four, all of whom had their convictions recently overturned by the Court of Appeal.

Judicial Racism Today

- Examples given thus far in this lecture are about the distant past? No – judicial racism is still very much with us, and still influences the fate of the many Black and minority ethnic people who come before the courts as criminal defendants, civil litigants, victims of crime and bereaved families and survivors.

- Four manifestations of judicial racism:

  (i) The criminal courts, racial disparities, and racialised evidence.
  (ii) Judicial decisions which attempt to silence race in cases where Black people are victims.
  (i) The Supreme Court's approach to race issues.
  (ii) The legal profession and judicial bullying and mistreatment.

Criminal courts, racial disparities, and racialised evidence (1)

Sentencing practices

- The 2017 Lammy Review reported the results of a 2016 Ministry of Justice review of Crown Court sentencing for three groups of offences – offences involving acquisitive violence, sexual offences and drugs offences. This review found that *"[u]nder similar criminal circumstances the odds of imprisonment for offenders from self-reported Black, Asian, and Chinese or other backgrounds were higher than for offenders from self-reported White backgrounds."* Starkly, it also found that *"[w]ithin drug offences, the odds of receiving a prison sentence were around 240% higher for BAME offenders, compared to White offenders."*

- *Firearms offence – 2021* Sentencing Council guidelines for firearms offences stressed that judges and magistrates must "be aware" of disparities in sentence outcomes, including that *"a higher proportion of Black and Asian offenders receive an immediate custodial sentence than White offenders and that for Black offenders custodial sentence lengths have on average been longer than for White offenders."*

- The Lammy Review also raised concern about magistrates' court decisions, although stressed that comprehensive data collection was a big problem. But the data that did exist showed some racial disparities in the rate of conviction of women of colour, as compared with White women.

Criminal courts, racial disparities, and racialised evidence (2)

Children

- The picture for “BAME” children is even more depressing, where judicial discretion is leading to real problems.

- Last year, Transform Justice and the Howard League for Penal Reform revealed that between July and September 2020, 87% of children on remand in London were from a BAME background, while 61% were Black.

- A recent report by the Youth Justice Board (YJB) also paints a worrying picture for BAME children, concluding that BAME children are:
  - more likely to receive custodial remand as opposed to bail
  - less likely to benefit from out-of-court disposals
  - more likely to receive a custodial sentence and the length of the sentence is likely to be longer
  - more likely to be subject to harsher requirements if a Youth Rehabilitation Order is imposed

- The YJB further noted that *“even when taking into account all available information (demographics, offence-related factors, remand status and practitioner-assessments) we are unable to explain all of the disproportionality seen for Black children. Black children are still more likely to receive harsher sentences*”.

Criminal courts, racial disparities, and racialised evidence (3)

Juries

- The Lammy Review described juries as a "success story". It cited a 2010 study of jury verdicts, which was updated in 2017 to inform the review, with analysis of over 390,000 jury decisions between 2006 and 2014. This study found that jury conviction rates were very similar across different ethnic groups. BAME and White conviction rates were similar across a range of offence-types, with only small differences and no overall pattern. The review concluded: *"This does not mean that every jury decision is perfect, but it does indicate that the system as a whole is working."*

- This data confirmed what many working lawyers know from our anecdotal experience: judges are, on average, more racially prejudiced than juries. I am not a criminal practitioner, but in my experience as a civil practitioner representing claimants in actions against the police, a Black claimant is generally better off with a jury trial than a bench trial. In my experience, the jury system has much to commend it.

Criminal courts, racial disparities, and racialised evidence (4)

Prejudicial evidence

- Jurors can of course also be influenced by race – often by racist tropes, stereotypes and unfairly prejudicial evidence.

- E.g. Drill music in cases involving predominantly Black people accused of gang-related crime. Garden Court Chambers: *'Drill music, gangs and prosecutions – challenging racist stereotypes in the criminal justice system*'.

- Effectively, the simple presence of young Black boys in a drill music videos can lead to the courts passing gang injunctions and criminal behaviour orders.

The legal system's approach to race is pernicious and paradoxically convenient.

As the Institute of Race Relations neatly captured:

"Ironically, 'race' marks individuals out when they are the alleged perpetrator of a crime, but race and racism are elided by institutions when such individuals are victims of crime. And families end up disillusioned and isolated by legal process that appears unwilling to address the impact of racism in their lives."

Silencing Race (1) – The West

- The West has long had a race problem. But denied it. Racists and racist violence are treated as outliers. And using the term 'institutional racism' is shunned as 'unhelpful', or outright rejected.

- Judge Bonello's dissenting opinion in the 2002 Strasbourg case of *Anguelova v Bulgaria*. *A* case brought by the mother of a 17-year-old Roma boy who died in police custody in Bulgaria. It was alleged that racial discrimination was a decisive factor in the police's use of force as well as the subsequent bungled investigation; however, the ECtHR rejected the discrimination claim under Article 14 of the Convention (non-discrimination). As Judge Bonello said:

> *"I consider it particularly disturbing that the Court, in over fifty years of pertinacious judicial scrutiny, has not, to date, found one single instance of violation of the right to life (Article 2) or the right not to be subjected to torture or to other degrading or inhuman treatment or punishment (Article 3) induced by the race, colour or place of origin of the victim … Leafing through the annals of the Court, an uninformed observer would be justified to conclude that, for over fifty years democratic Europe has been exempted from any suspicion of racism, intolerance or xenophobia. The Europe projected by the Court's case-law is that of an exemplary haven of ethnic fraternity, in which peoples of the most diverse origin coalesce without distress, prejudice or recrimination … [As such], Misfortunes punctually visit disadvantaged minority groups, but only as the result of well-disposed coincidence."*

Silencing Race (2) – England and Wales

- Such a charge can justifiably be levied at England and Wales. A charge I make.
- From the Met, to the Government's recent Sewell Report, issues of racism and racial inequality continue to be refuted.
- Judicial decision making has itself played a critical role in the silencing of race, especially cases involving violence and where the state is implicated. This includes criminal justice processes, senior judiciary, inquests, public inquiries as well as other fact-finding and accountability processes.
- Those who seek to expose racism via state and legal processes face an arduous task, where the potential for *meaningful accountability and racial justice remains illusory*.

Silencing Race (3) – Deaths in Custody

- European Commission against Racism and Intolerance (2016): *"racially-motivated aspects of cases are often filtered out by the police, CPS or **judiciary through a combination of unwillingness to recognise racist motivation**, the reclassifying of racist attacks as disputes or other forms of hostility, and the over-strict interpretation of the provisions on racist motivation".*

- Joint Committee on Human Rights (JCHR) report into deaths in custody (2004): *"the unsafe use of restraint is an ongoing problem across all forms of detention"* and *"the possibility that racial stereotyping has been a contributory factor in at least some deaths in custody resulting from restraint should be taken seriously"*.

- JCHR (2020): *"[a] key issue that needs addressing"* is *"transparency over the role that race and/or racism played"* in a death in custody, and that due to the *"absence of greater action, Black people have continued to die"* disproportionately.

- United Nations High Commissioner on Human Rights (2021) published a scathing report calling on the UK (and others) to "end impunity" for human rights violations against Black communities by law enforcement agencies and reverse the "cultures of denial" towards institutional and systemic racism, particularly in the context of policing and deaths in custody.

Silencing Race (4) – Jimmy Mubenga

- Mr Mubenga died in October 2010 of cardio-respiratory failure caused by restraint used by three G4S guards on a plane during his deportation to Angola. Mr Mubenga was handcuffed from behind, in a compressed position in his seat for over 30 minutes, where guards ignored his cries that he could not breathe.

- Guards stood were acquitted of manslaughter by negligence at the Old Bailey in late 2014.

- Mr Justice Spencer ruled as inadmissible copious amounts of racist texts sent by two of the guards because allowing such evidence would *"release an unpredictable cloud of prejudice"* in the jury.

- Take for example one text which read: *"Fuck off and go home you free-loading, benefit grabbing, kid producing, violent, non-English speaking cock suckers and take those hairy faced, sandal wearing, bomb making, goat fucking, smelly rag head bastards with you."*

- Also excluded the earlier inquest jury conclusion of unlawful killing as well as the coroner's Rule 43 report, which said: *"it seems unlikely that endemic racism would not impact at all on service provision. It was not possible to explore at the Inquest the true extent of racist opinion or tolerance amongst DCOs or more widely. However, there was enough evidence to cause real concern, particularly at the possibility that such racism might find reflection in race-based antipathy towards detainees and deportees and that in turn might manifest itself in inappropriate treatment of them … This may, self-evidently, result in a lack of empathy and respect for their dignity and humanity, potentially putting their safety at risk, especially if force is used against them"*.

Silencing Race (5) – Inquests

- Inquests have offered the only opportunity to officially establish whether racism contributed to a person's death but have consistently failed.

- Never has a coroner and/or jury explicitly concluded that racism contributed to a person's death, save for the Jimmy Mubenga inquest.

- INQUEST submission to UNHRC inquiry : "*the question of racism remains the 'elephant in the room', neither part of the investigation process nor inquest*".

Silencing Race (6) – Inquests

- Black families' private life and that of their relative subject to the most scrutiny.
- Attempts by the state to "demonise" the deceased, introduce racist narratives, creating a negative reputation and the idea of an undeserving victim. Like with criminal trials, drug and gang stereotypes are often part of the state's defamatory arsenal during inquests.
- Coroners have also engaged in the perpetuation of stereotypes.
- Official incompetence, criminality or wrongdoing are cloaked by disinformation

Supreme Court (1)

N v Secretary of State for the Home Department [2005] UKHL 31

- A Ugandan woman who was a rape survivor and was suffering from HIV was facing removal to Uganda.
- If she returned to Uganda, she would be unable to access antiretroviral medication and would face an early and painful death.
- She sought to remain in the UK under Article 3 ECHR, the prohibition of inhuman or degrading treatment or punishment.

Supreme Court (2)

- The House of Lords had an opportunity to define the ambit of Article 3 for sick and disabled migrants for a generation, but chose to dismiss her appeal, holding that Article 3 did not preclude her removal to Uganda.

- This case served as a precedent for the next 15 years which led to many sick and disabled migrants being sent back to their deaths – even people with end-stage kidney failure.

- Not a case where the House of Lords was simply applying pre-existing law. It had an opportunity to define the boundaries of the law.

- A panel of White judges chose to send a disabled Black woman to her death because she wasn’t British.

Supreme Court (3)

Roberts v Commissioner of Police for the Metropolis [2015] UKSC 79

- "Suspicionless" stop and search powers which allow the police to stop and search a person despite having no basis for suspicion that they are guilty of any crime.

- In deciding that this law was not incompatible with the human rights of Black and minority ethnic people, Baroness Hale stated:

> *"The purpose of [any random "suspicionless" power of stop and search] is to reduce the risk of serious violence where knives and other offensive weapons are used, especially that associated with gangs and large crowds. It must be borne in mind that many of these gangs are largely composed of young people from black and minority ethnic groups. While there is a concern that members of these groups should not be disproportionately targeted, it is members of these groups who will benefit most from the reduction in violence, serious injury and death that may result from the use of such powers. Put bluntly, it is mostly young black lives that will be saved if there is less gang violence in London and some other cities."*

Supreme Court (4)

***Begum v Special Immigration Appeals Commission* [2021] UKSC 7**

- This was the high-profile case of Shamima Begum.

- Ms Begum was born and raised in the UK, yet the UK Government used draconian powers to deprive her of her British citizenship.

- The Supreme Court, reversing the Court of Appeal decision, held that Ms Begum had no right to return to the UK to pursue her appeal against the deprivation of her British citizenship, even though it was acknowledged that she could not have a fair hearing of her appeal from Syria.

- Supreme Court didn't stop there. It changed the standard of review in all appeals against deprivation of citizenship, reducing the freedom of tribunal judges to gainsay the Home Office's decisions.

- Emphasised the need for judges to defer to the Government's assessment of what "national security" requires. In short, it handed the Government everything it wanted, while denying Shamima Begum the basic right to a fair hearing of her case.

Supreme Court (5)

- Would all these cases have gone the same way if we had a genuinely diverse senior judiciary?
- Would they have gone the same way if we had Supreme Court justices who had lived experience of racialised stop-and-search?
- Or Supreme Court justices who had lived experience of the immigration system?
- Well, let's pause and take a look at the judiciary and the profession more generally.. In order to understand our judiciary, we have to look at our legal profession. With the exception of lay magistrates, all of our judges are drawn from the ranks of barristers or solicitors. Most senior judges are barristers.

Judicial mistreatment, bullying and discrimination (1)

- This systemic inequality in the legal profession is reflected in the make-up of our judiciary.

- 1% of judges are Black, while 5% are Asian and 2% are mixed race.

- While the junior judiciary is slowly diversifying, the senior judiciary is not, and remains overwhelmingly White, and overwhelmingly from privileged backgrounds. There are currently no Black judges in the High Court, Court of Appeal or Supreme Court. There never has been, save for Dame Linda Dobbs.

- When a working-class Black person looks at the judges who may decide their fate, they don't see their own face or their own experiences reflected back at them. So too for other marginalised minorities, in particular the Gypsy, Roma, Traveller community, who often face horrific levels of racism in the legal system.

Judicial mistreatment, bullying and discrimination (2)

- This is reflected in the lived experience of the legal system for litigants, lawyers and judges from ethnic minorities.

- Racist remarks in Court are far from unknown.

- I once wrote in Counsel magazine, a colleague of mine, who is Black herself, once appeared before an immigration judge who, upon seeing her clients, remarked how nice it was to see a Somali family working.

- In 2000, a senior Old Bailey judge in his summing up of the case told a jury (which included two Black women) that: *"When a lot of witnesses give evidence in a case that is going to take a little time I try to pencil in a description. I try to bring them back to you when I sum up. It was quite difficult in this case with the Ethiopian witnesses because you may think they all looked rather similar and it was difficult to find any distinguishing features."* Judge Stephens' summing up was made just months after the Lord Chancellor had issued the Equal Treatment Bench Book, which the then chair of the bar's race relations committee said was intended to *"sensitise judges to the effect their pronouncements have on the minorities who appear before them and sit as jurors."*

Judicial mistreatment, bullying and discrimination (3)

- Bullying between judges is a real issue. The Times: “judges face ‘bullying on an industrial scale’”.

- April 2020 – a group of serving judges called for a parliamentary inquiry into claims of discrimination and bullying, saying it had led to ethnic minority judges missing out on top jobs.

- Retired a crown court recorder and an immigration judge Peter Herbert settled a high-profile claim of racial discrimination as well as victimisation and harassment against the judiciary. Judge Herbert contended that: *“The judiciary is probably one of the last bastions of the British establishment”*, adding further that, *“Racism is alive and well and living in Tower Hamlets, in Westminster and, yes, sometimes in the judiciary.”*

Judicial mistreatment, bullying and discrimination (4)

The Bar Council report, “Race at the bar”. The report writers must be commended for their frank words and for shining a light on the apparent inequality in our profession.

“ a) *Black, Asian and other ethnic minority candidates are less successful in achieving judicial appointment; rates of recommendation from the eligible pool of applicants are an estimated 36%, 73% and 44% lower respectively when compared to White candidates*.”

b) *Black and Asian barristers are under-represented in taking Silk (becoming Queen’s Counsel). There are just 5 Black/Black British female QCs and 17 male Black/Black British QCs in England and Wales. There are 16 male and 9 female Silks of Mixed ethnicity. There are 17 Asian/Asian British female QCs and 60 male Asian/Asian British QCs. This compares 1,303 White men and 286 White women*.

c) *Black and Asian women at the Bar are 4 times more likely to experience bullying and harassment at work than White men.*

d) This report categorically and definitively evidences, in quantitative and qualitative terms, that barristers from ethnic minority backgrounds, and especially Black and Asian women, face systemic obstacles to building and progressing a sustainable and rewarding career at the Bar.

e) Candidates from ethnic minority backgrounds are less likely to obtain pupillage than candidates from White backgrounds, even when controlling for educational attainment [university ranking, BPTC grade and degree class].

f) Even when factoring in practice area, work volume, region and seniority, women earn on average less than men; Black men earn less than White men; and Black and Asian women earn less than Black and Asian men, and Black women earn the least. The income differentials vary between practice area but are significant.”

Judicial mistreatment, bullying and discrimination (5)

Bar Council:

"The point was made that there is not an obvious route for a self-employed barrister to raise the bullying where it was not potentially detrimental to an individual's career. Participants felt that they had to quietly internalise others' behaviour…

…in the courtroom when judicial bullying and hostility were repeated the experience was inevitably both unpleasant and exhausting for counsel…

Recognition also needs to be given to the impact on perceptions of the justice system and on perceptions of the decisions that are reached about clients of ethnic minority barristers. Clients, witnessing bullying and discriminatory treatment of their counsel, may well have the feeling that if counsel is not treated with basic respect, they themselves can have little confidence that the case being made on their behalf has been fairly considered."

Judicial mistreatment, bullying and discrimination (6)

- Another helpful feature of this report, as you can see from the findings I've just read out, is that it looked at gender as well as race. It explicitly acknowledges the role of intersectionality, with Black women being disadvantaged at the Bar even compared to Black men. As the report states:

> *"The Bar Council recognises that we live in a society in which interpersonal, structural and institutional racism contribute to differing experiences and outcomes for individuals based on their race and ethnicity. There is an additional impact where race and ethnicity intersect with other protected characteristics such as sex or religion, or with poverty or social class."*
>
> *…*
>
> *"Access to the Bar, career progression at the Bar, access to the most prestigious and best paying work, retention, and working environment are all bound up with forms of privilege and power."*

What should we do about judicial racism? (1)

Seven obvious steps:

1. Judges must accept their own prejudices and be committed to ensuring they do not influence their decision making. But is this a reasonable expectation? As Lord Nicholls recognised in *Nagarajan v London Regional Transport* [1999]: *"All human beings have preconceptions, beliefs, attitudes and prejudices on many subject. ... We do not always recognise our own prejudices. Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated."* The judiciary as a whole and individual judges must accept this – and engage in meaningful introspection.

2. Appoint more Black judges and judges of colour; reform legal training, recruitment and career progression; and break barriers. The responsibility for this falls on a number of bodies – the Judicial Appointments Commission, the Bar Standards Board, the Solicitors Regulation Authority, and law firms and chambers.

3. Mandate training on race issues for all judges. This would require action by the Ministry of Justice.

What should we do about judicial racism? (2)

4. Swift and decisive disciplinary action when judges make racist comments or treat litigants and lawyers of colour with disrespect; foster a climate in which junior lawyers no longer feel afraid to speak out against poor treatment. Responsibility falls mainly on the Judicial Conduct Investigation Office, judges with leadership roles, the legal profession's the regulatory bodies and on law firms and chambers.

5. Conduct comprehensive race audits of the key institutions within the legal system to expose and address the causes of race inequality – regulatory bodies, law firms and chambers, the Judicial Appointments Commission, and the judiciary.

6. Mentoring of talented young people of colour at school and university level and to help them to access careers in law. This is a responsibility that we all have, and I'm glad to say that my own chambers is already doing it.

7. Reverse mentoring – judges must be required to do outreach work, working and communicating with the communities that their decisions affect.

What should we do about judicial racism? (3)

The simple answers aren't enough!

- Even if the judiciary reflected the racial and ethnic diversity of Britain, and even if our judges were completely "free" of prejudice, we would still have a problem.

- Our judges administer laws and operate within a legal system which have racism baked into their very fabric. E.g. our system of immigration law has been built on foundations of racism ever since its inception and it continues to have a hugely disproportionate impact on Black people and people of colour today.

- Our legal system was designed by and for the rich, to protect the property and privileges of the rich against encroachment by the poor. Our law punishes poor people for shoplifting or begging: it doesn't punish the politicians whose policies keep them poor. Our law punishes homeless people for squatting in empty buildings: it doesn't punish the landlords who leave buildings empty. It punishes environmental protestors for disrupting fracking operations or blocking roads: it doesn't punish the corporations that are destroying our environment.

- And in our system of racialised capitalism, the rich are disproportionately White and the poor are disproportionately people of colour.

- We won't have a truly just legal system until we have fundamental social and political change, until we change the balance of power in our society.