

*How do people's experiences of authority differ, depending on their identity or their socioeconomic or racial background? Should the law, institutions or people in positions of authority or power, change in order to address these differences and, if so, how?*

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Legal authority has been charged with ensuring equal justice for every individual. We rely on the Criminal Justice System (CGS) to protect us and hope that if we ever come into contact with it, we will be treated fairly. The system functions on trust; its legitimacy depends on how much we believe in it and its ability to produce fair outcomes. It is therefore concerning that in a survey carried out in 2018, it was found that only 54% of the British and Welsh public believe that the current CGS is 'fair.'<sup>1</sup> A lack of public confidence in legal authority is detrimental to our safety, as it erodes the incentive to abide by the laws imposed. It appears futile to follow the rules of a system that seemingly conspires against you. While concerning, this 54% figure is not surprising. The Criminal Justice System was never built to be 'fair' – it was constructed to safeguard the interests of a privileged few. Indeed, the lauded 1215 Magna Carta states that 'no **man**'<sup>2</sup> should be denied access to justice. Consequently, people who do not fit into this intended mould have different, largely unfavourable experiences of this authority. Our ethnicity, gender and socio-economic status all impact our experiences of legal authority. This essay will explore the extent to which this is the case in the judiciary, and how this can be mitigated.

The power of ethnicity to affect the outcomes of criminal trials has been widely acknowledged since the publication of the 1997 Macpherson Report, in which it was found that the investigation into the murder of Stephen Lawrence was 'marred by [...] institutional racism.'<sup>3</sup> Stephen Lawrence was an 18-year-old Black British teenager who was brutally murdered in a racist attack as he waited for the bus. Nevertheless, his mother Doreen Lawrence stated that while pursuing justice, she was 'patronised' and treated like a 'gullible simpleton.'<sup>4</sup> In this instance, Mrs Lawrence felt that her negative experience of the legal system was caused by her Black British identity. She felt that the police were less willing to engage in her son's case because he was black, and the main murder suspects were white. Unfortunately, Mrs Lawrence's allegation that people belonging to ethnic minorities are treated less favourably by legal authority is grounded in both statistical and theoretical analysis. In David Lammy's 2017 report on disproportionality in the CGS, it was found that 'within drug offences, the odds of receiving a prison sentence were around 240% higher for BAME offenders, compared to White offenders.'<sup>5</sup> This statistic is deeply worrying as it indicates

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<sup>1</sup> Nicola Marsh and others, 'ComRes PUBLIC KNOWLEDGE OF AND CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM AND SENTENCING A REPORT FOR THE SENTENCING COUNCIL' (2019).

<sup>2</sup> 'The Contents of Magna Carta - UK Parliament' <<https://www.parliament.uk/about/living-heritage/evolutionofparliament/originsofparliament/birthofparliament/overview/magnacarta/magnacartaclauses/>> accessed 13 October 2020.

<sup>3</sup> 'THE STEPHEN LAWRENCE INQUIRY REPORT OF AN INQUIRY BY SIR WILLIAM MACPHERSON OF CLUNY ADVISED BY' (1999).

<sup>4</sup> *ibid.*

<sup>5</sup> Ministry of Justice, 'The Lammy Review An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System'.

substantial bias within the judiciary. In the long term, this disproportionality could be contributing to resentment and distrust of the state which often culminates in violence.

This disproportionality may be related to the dissonance between the Magna Carta's concept of 'judgement of peers'<sup>6</sup> and the lack of BAME representation in the judiciary. Less than 1% of all criminal trials are jury trials<sup>7</sup>, with most cases being seen by the Magistrates. However, in contrast to the jury, magistrates are not randomly selected, rather they are volunteers. The consequence is that they tend to come from similar social strata, namely those that can afford to work without pay. Only 12% of magistrates declare themselves as BAME<sup>8</sup>, and according to a report conducted by the University of London, magistrates are 'considerably older, whiter and more middle class than the general population.'<sup>9</sup> Consequently, our magistrates are not representative of our society and their implicit biases likely affect their judgement.

This can be evidenced by Lammy's 2017 review which found that 'of those women tried at Magistrates' Court, Black women, Asian women, Mixed ethnic women and Chinese/Other women were all more likely to be convicted than White women.' If Magistrates' trials are to be considered a viable alternative to jury trials, then the Magistrates themselves must come from varied backgrounds. The figure for BAME representation in the High Court and above stands even lower at a meagre 4%.<sup>10</sup> In order to ensure that we are delivering justice, we should aim for the judiciary to be proportionately representative of the general population; judicial quotas could be introduced to guarantee this. Such a quota system would be underpinned by meritocracy to counter the argument that unqualified judges would be appointed. Indeed, an understanding of life as part of a minority group is a qualification in itself. To supplement this, the Harvard Implicit Association test could be used as part of the judicial appointment selection. Those with 'strong'<sup>11</sup> implicit biases against certain groups would then not be appointed to positions of significant legal authority.

Gender is able to impact our experiences of legal authority in a more insidious way. For how can women be disadvantaged in the legal system when men make up a higher proportion of the prison population? In 2019, only 4% of the prison population was female.<sup>12</sup> This argument conceals the reality of the prejudice women face when interacting with legal authority. Although the 2010 Equality Act treats sex as a protected characteristic, common social perceptions of what it means to be a woman and a mother often overwhelm this. Women are held accountable for the actions of their children in a way that men are not. An example of this can be seen with the prosecution of parents for child truancy. In 2017, 72% of defendants prosecuted for truancy were female.<sup>13</sup> Even when taking into account the number of single mothers, this statistic is unreasonably high.<sup>14</sup> In a report conducted in 2019, it was found that many of the 'truancy children' had special educational needs, and that mothers were disproportionately targeted because the father with parental responsibility left the family home (often because of difficulties dealing with the child).<sup>15</sup> Yet these impossibly high standards are still being enforced on these women. Janet from Hertfordshire, who is the mother of a 15-year-old boy with severe health problems stated, 'I had

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<sup>6</sup> 'The Contents of Magna Carta - UK Parliament' (n 2).

<sup>7</sup> 'When Are Juries Used in Criminal and Civil Cases? - InBrief.Co.Uk' <<https://www.inbrief.co.uk/legalsystem/when-are-juries-used/>> accessed 31 January 2021.

<sup>8</sup> Criminal Justice System Statistics, 'Criminal Justice System Statistics Quarterly Update to June 2013' (2019).

<sup>9</sup> Penelope Gibbs, Transform Justice and Amy Kirby, 'Judged by Peers? The Diversity of Lay Magistrates in England and Wales'.

<sup>10</sup> 'Diversity of the Judiciary: Legal Professions, New Appointments and Current Post-Holders 2020 Statistics' (2020).

<sup>11</sup> 'About the IAT' <<https://implicit.harvard.edu/implicit/iatdetails.html>> accessed 31 January 2021.

<sup>12</sup> Ministry of Justice, 'UK Prison Population Statistics 2017' [2017] Ministry of Justice 1.

<sup>13</sup> 'Statistics on Women and the Criminal Justice System 2017' (2018).

<sup>14</sup> 'Revealed: Twice as Many Mothers Prosecuted for Their Children's Truancy than Fathers, Figures Show | The Independent | The Independent' <<https://www.independent.co.uk/news/education/truancy-mothers-childschool-attendance-women-prosecuted-moj-a8787746.html>> accessed 31 January 2021.

<sup>15</sup> Rona Epstein and coventryacuk O Sarah, *PROSECUTING PARENTS FOR TRUANCY: Who Pays the Price?*

to borrow the money to pay the fine, £60 each time.’<sup>16</sup> To help combat this unconscionable targeting of women, more women must be in senior legal positions. Again, the quota system could prove useful here, as currently, only 26% of High Court judges and above are female.<sup>17</sup> A counterargument to this could be that women cannot be assumed to harbour less bias than men. To safeguard against this, a continuous programme of unconscious bias training should be put in place for the judiciary, which would be evaluated by audit.

To help combat the discrimination that women face in other areas of law, we must update all legislation so that inclusive language is used. The language used in legislation affects the way the judge interprets the case, and in many cases, confusing gendered language is used. For example, in Section 14 of the 2003 Sexual Offences Act, ‘he’ and ‘person’ are used interchangeably,<sup>18</sup> thereby subtly denying women of personhood. While some argue that this is insignificant, legislation is often the highest source of authority in our society, and if it implies that women are less-than, it follows that as a society, we hold the same belief.

Finally, our socioeconomic status greatly impacts our experience of legal authority. The access to legal counsel ensures that we have fair legal proceedings, however, our access to legal counsel is dictated by the funds we have available. Those who cannot pay the private legal fees must rely on government legal aid. While the budget for criminal defence legal aid was £1.3 billion in 2010, by 2019, it had been reduced to £879 million<sup>19</sup> - a cut of approximately 32%. These cuts have reduced the number of services that not-for-profit legal aid providers can offer.<sup>20</sup> Amnesty International interviewed a woman based in Oxford who had been affected by these cuts. She said:

‘I’ve got nowhere to go for help now in Oxford. The organisation that used to give me advice on my case, as well as confidence that things would be OK, has gone. I’ve lost that support. I’m totally on my own and that terrifies me.’<sup>21</sup>

Nobody should be denied justice because they have limited means. The government must invest further in criminal legal aid so that those who are punished for crimes are those who committed them, and not simply those who could not afford advice.

Our ethnicity, gender and socioeconomic status currently shape the experience we have with legal authority. Our ethnicity has been shown to impact incarceration rates, our gender increases our culpability for certain crimes and our income determines the quality of legal advice that we can access. These are in addition to differences brought about by disability, sexuality and even religious belief. These disadvantages are not mutually exclusive, and the compounding effect could be devastating. Furthermore, we must review the language used in legislation, the diversity within the judiciary, and the value that we attach to legal aid. Fair outcomes benefit all of us, not just those of us who fall into these disadvantaged categories; they make society safer and ultimately, that is the goal of legal authority.

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<sup>16</sup> *ibid.*

<sup>17</sup> ‘Diversity of the Judiciary: Legal Professions, New Appointments and Current Post-Holders 2020 Statistics’ (n 10).

<sup>18</sup> ‘Rape and Sexual Offences - Chapter 7: Key Legislation and Offences | The Crown Prosecution Service’ <<https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-7-key-legislation-and-offences>> accessed 30 January 2021.

<sup>19</sup> ‘Behind the Numbers: The Demise of Legal Aid | News | The Times’

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<sup>20</sup> *CUTS THAT HURT* (2016).

<sup>21</sup> *ibid.*

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