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RACIAL DISCRIMINATION IN THE CANADIAN CRIMINAL JUSTICE SYSTEM: HOW ANTI-BLACK RACISM BY THE TORONTO POLICE HARMS US ALL

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Résumé de l'article

En raison des pratiques persistantes et tenaces du racisme contre les Noirs, ancrées dans les pratiques policières influencées par la suprématie blanche, les Noirs et les Autochtones sont surreprésentés dans le système de justice pénale canadien. Il n'est donc pas surprenant qu'un nombre disproportionné de Noirs soient tués par la police à Toronto. Le système de justice pénale canadien est complice de la perpétuation du racisme contre les Noirs par des pratiques de surveillance, de fichage et de profilage racial. Cet article contribue à l'analyse du racisme contre les Noirs dans le système de justice pénale canadien, en mettant l'accent sur la situation des personnes noires à Toronto. L'objectif est de lier l'étude de la criminalisation des Noirs à l'analyse du racisme contre les Noirs et l'analyse de la stratification sociale au Canada, afin de montrer comment les modèles existants de racisme et de marginalisation socioéconomique sont renforcés par un système de justice pénale fondé sur la suprématie blanche. L'article propose des recommandations pour combattre le racisme contre les Noirs, notamment l'embauche d'un plus grand nombre de personnes noires dans les forces de police. Sur le plan conceptuel, l'article contribue à notre compréhension de la façon dont le racisme contre les Noirs affecte négativement toute la société.

RACIAL DISCRIMINATION IN THE CANADIAN CRIMINAL JUSTICE SYSTEM: HOW ANTI-BLACK RACISM BY THE TORONTO POLICE HARMS US ALL

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Abstract: Due to the persistent and tenacious practices of anti-Black racism, embedded in White supremacist policing practices, Black and Indigenous people are overwhelmingly overrepresented in the Canadian criminal justice system. Unsurprisingly, a disproportionate number of Black people are killed at the hands of police in Toronto. The Canadian criminal justice system is complicit in perpetuating anti-Black racism through practices of surveillance, carding, and racial profiling. This paper contributes to the analysis of anti-Black racism in the Canadian criminal justice system, emphasizing the circumstances of Black people in Toronto. The goal is to wed the study of Black criminalization with the analysis of anti-Black racism and social stratification in Canada to show how existing patterns of racism and socioeconomic marginalization are reinforced by a White supremacist criminal justice system. The paper offers recommendations to address the issue of anti-Black racism, including the hiring of more Black people in the police force. Conceptually, the paper contributes to our understanding of how anti-Black racism ricochets to hurt us all in society.

Keywords: Anti-Black racism, Criminal Justice System, Black people, Racial Disparities, Toronto-Canada, White supremacy

Abrégé: En raison des pratiques persistantes et tenaces du racisme contre les Noirs, ancrées dans les pratiques policières influencées par la suprématie blanche, les Noirs et les Autochtones sont surreprésentés dans le système de justice pénale canadien. Il n'est donc pas surprenant qu'un nombre disproportionné de Noirs soient tués par la police à Toronto. Le système de justice pénale canadien est complice de la perpétuation du racisme contre les Noirs par des pratiques de surveillance, de fichage et de profilage racial. Cet article contribue à l'analyse du racisme contre les Noirs dans le système de justice pénale canadien, en mettant l'accent sur la situation des personnes noires à Toronto. L'objectif est de lier l'étude de la criminalisation des Noirs à l'analyse du racisme contre les Noirs et l'analyse de la stratification sociale au Canada, afin de montrer comment les modèles existants de racisme et de marginalisation socioéconomique sont renforcés par un système de justice pénale fondé sur la suprématie blanche. L'article propose des recommandations pour combattre le racisme contre les Noirs, notamment l'embauche d'un plus grand nombre de personnes noires dans les forces de police. Sur le plan conceptuel, l'article contribue à notre compréhension de la façon dont le racisme contre les Noirs affecte négativement toute la société.

Mots-clés: racisme contre les Noirs, système de justice pénale, personnes noires, disparités raciales, Toronto-Canada, suprématie blanche

THE CRIMINAL JUSTICE SYSTEM IS generally couched in a discursive field marked by state-centric moral claims. Consider, firstly, that insofar as criminality equals immorality in the minds of many, the criminal justice system positions itself on high moral ground as a triadic institutional complex—comprised of the police, courts, and prisons—dedicated to punishing criminals and preventing crime. This purported preoccupation with crime (typically thought of as injurious acts with identifiable victims) feeds into a mode of paternalism, or a "father image" of a sort (Fromm, 1930/2000, p. 125), by which the system is said to protect the general public from specific individuals and groups who have scant regard for the criminal law. Secondly, the system, in its fatherly role, is not supposed to (dis)favour citizens based on race, class, or any other aspect of social location given the standards and demands associated with justice conceived as fairness. The only relevant consideration for the purpose of meting out differential treatment pivots on the criminal versus non-criminal distinction; and, even then, the supposedly magnanimous criminal justice system is expected to work to the benefit of criminals who are granted opportunities to be corrected, morally and behaviourally, within the rehabilitative confines of correctional facilities.

Beyond the domain of such lofty self-representations, however, one encounters a compelling body of facts that paint a contrary picture. For instance, as we shall soon see, extralegal factors in the form of racial

considerations are active in the criminal justice system, notwithstanding its supposed commitments to race-neutral operational standards. For the most part, these racial considerations are shrouded in secrecy, but there are instances where they unfold in blatant forms. When underhanded racial considerations infest the criminal justice system, the ability of the police, in particular, to arbitrarily manufacture racially coded "offenders" is heightened, and sometimes even taken for granted. Indeed, racism is a longstanding problem in the Canadian criminal justice system, and is acknowledged by official reports such as those of the Law Reform Commission of Canada in 1992 and the Commission on Systemic Racism in the Ontario Criminal Justice System (Government of Ontario, 1995); however, the phenomenon has received only a scant attention from Canadian scholars over the years. As Owusu-Bempah and Wortley (2014) observe, this gap is attributable, in part, to the dearth of reliable racially disaggregated criminal justice statistics in Canada. This lack of reliable race-based data has made it difficult to determine the extent of racism in the Canadian criminal justice system. As a corollary, allegations and counter-allegations regarding racial biases in the system persist. In a way, this lack of relevant data has, on the one hand, provided a "convenient shield against allegations of racial bias for the justice institutions and the Canadian governments" (Owusu-Bempah & Wortley, 2014, p. 281). On the other hand, this has engendered allegations of the police having something to hide.

Notwithstanding the lack of comprehensive race-based crime data, some recent studies (Owusu-Bempah & Wortley, 2014; Tanovich, 2006; Tator & Henry, 2006; Wortley, 2018) suggest that Indigenous people and people of colour are treated worse than their similarly situated White counterparts at nearly every stage of the Canadian criminal justice system. The present paper contributes to the analysis of racial disparities in the Canadian criminal justice system with a particular emphasis on the circumstances of Black people in the City of Toronto. The goal is to wed the study of Black criminalization with the analysis of racism and social stratification in Canada to show how existing patterns of racism and socioeconomic marginalization are reinforced by the criminal justice system. Moreover, the paper explores how anti-Black racism in the criminal justice system boomerangs to hurt all of society.

Black people are not the only ones who are treated worse than White people in the Canadian criminal justice system. Studies suggest that Aboriginals[1] people in particular are treated equally bad, if not worse (Ngo, 2018; Owusu-Bempah & Wortley, 2014; Tanovich, 2006). Therefore, our focus on Black people is by no means an attempt to trivialize the experience of other minorities who face similar problems. We focus on Black people not only because of our interest and background as Black Canadian intellectuals, but also because Black people are, arguably, victimized the most in Toronto, where our research interest lies. Also, one

can make a case for the uniqueness of the Black experience in Canada, as in the United States, since Black people remain the only people whose ancestors were forcibly shipped and enslaved in the Americas and who experience enduring negative racial stereotypes that stem from this enslavement.

The next section sets the theoretical context of the paper with a discussion of how the use of discretionary power in the criminal justice system makes it easier to perpetrate racism. Following this, we analyse empirical data from the Special Investigation Unit (SIU)[2] to show the extent of anti-Black racism in the operations of the Toronto Police Service (TPS). Our substantive discussion comes in the next section, where we show how the direct and ramified effects of racism in the criminal justice system affect not only Black people, but also White people and society at large. In particular, we show how criminal records often serve as a negative credential to undermine the socioeconomic chances of those who are charged, justifiably or otherwise. The paper concludes with suggestions aimed at redressing racism in the criminal justice system.

The Exercise of Discretion for Selective Targeting in the Criminal Justice System

Far from being automatons who automatically, mechanically, and universally respond to violations of criminal law, criminal justice functionaries are typically free to pick and choose various courses of (in)action depending on their preferences and priorities. We thus agree with the criminologist Marc Mauer's (2006) assertion that the "entire criminal justice process is predicated on the use of discretion" (p. 152). The exercise of discretionary agency, in Mauer's (2006) view, is especially evident in relation to drug crimes: "[d]rug law enforcement is far more discretionary than for other offences. The police decide when and where they will seek to make drug arrests, and most important, what priority they will place on enforcing drug laws" (p. 158). No wonder two or more jurisdictions with very similar levels of drug use can have very dissimilar rates of drug-related arrests, charges, and convictions. This also explains why the demographic composition of drug arrestees can dramatically shift over time within a single jurisdiction. So, for instance, from the mid-1980s to the early 1990s, Black people in Toronto experienced a sharp rise in drug-related police targeting: Black peoples' prison admissions for drug trafficking went from 131 admissions in 1986/87 to 1,656 admissions in 1992/93 (Tanovich, 2006, p. 88)—a nearly thirteen-fold increase. Among the possible explanations for this increase, the proverbial Occam's razor tends to slice in favour of the argument that drug enforcement became more race-specific during that time period. Parallel trends unfolded south of the border from the 1980s to the 1990s, as indicated by the fact that, among juveniles in the US, Black people constituted 13% of drug

possession arrestees in 1980 and 40% of arrestees in 1991 (Mauer, 2006, p. 160). Now then, over that stretch of time, did Black juveniles become more demonic, while non-Black juveniles—particularly those who are White— became more angelic with respect to drug involvement? Of course not. Instead, key material and ideational components of the so-called "war on drugs" (i.e., increased police resources, opportunistic moral panics, racist constructions of Black people as incorrigible criminals, etc.) combined, in mutually reinforcing fashion, to bolster the presence of Black bodies on the criminal justice conveyor belt.

Obviously, the consequential exercise of discretion by a criminal justice system, which is controlled by White supremacists' agents, goes beyond the enforcement of drug laws and ordinances. A similar use of discretion comes into play when White supremacist police officers and other law enforcement agents are dealing with many other offences, including jaywalking, traffic violations, theft under $5000, uttering threat, impaired driving, and mischief disturbing the peace. In the case of Toronto, one can also add the problematic issue of selective carding. Over the years, controversy has swirled in Toronto around the police practice of carding, by which they extract detailed personal information from civilians in primarily non-criminal encounters. The information— which includes name, age, gender, race, address, eye colour, weight, and clothing—is recorded on "contact cards" and is subsequently entered into a searchable database and retained for an indefinite period of time. The reasons for contact vary widely; officers can enter "general investigation," "loitering," "suspicious activity," "traffic stop," "trespassing," and so forth. While contact cards may be potentially useful for future investigations in the view of some police officers, there is little doubt the practices are imbued with police discretion, with a disproportionate race-specific targeting that ends up netting more Black people than non-Black people. Black people, who comprise 8.1% of Toronto's population, account for 24% of those entered into the contact card database; citywide, Black people are three times more likely to be carded than White people, and the disparities are substantially greater in affluent, predominantly White areas of the city—a pattern consistent with stay-in-your-place racial social control (Mensah & William, 2017).

Discretionary power is also actuated by policymakers and legislators in ways that produce two-tiered justice in which differential treatment is meted out, often along racial lines. One sees this clearly in association with "the spatialization of race and the racialization of space" (Lipsitz, 2011, p. 133), whereby race and space are so closely imbricated that racial profiling and spatial profiling become almost indistinguishable in terms of their end results. For a prime example of this phenomenon, the urban/suburban divide in the US city of Milwaukee is instructive. As Marc Mauer (2006) observes:

> In the city of Milwaukee . . . possession of marijuana for many years was classified as a misdemeanor, whereas the same behavior in the suburbs was treated as an ordinance violation. Thus, the mostly non-white arrests in the city could result in jail time and a criminal record, while white offenders in the suburbs were issued a ticket and made to pay a fine. (p. 149)

Even though proponents of anything-but-racism theses might perform their standard dances of denial (i.e., this is all about geography, not race), they would then have to explain why situational inversion—in this case, ordinance violations in the inner city, and criminal violations in the suburbs—is so hard to imagine. Clearly, ostensibly non-racial policies or practices can spawn detrimental race-specific results, such as racially skewed distributions of criminal records; still, the indirect character of these processes does not render them innocuously non-racist.

Manifestations: Racial Disparities in the Canadian Criminal Justice System

Over the last decade, racial disparities in criminal justice systems have come under intense scrutiny, primarily because of the sensational cases of police brutality in the US that have gone viral on social media platforms. Recently, the tragic deaths of George Floyd, Breonna Taylor, Ahmaud Arbery, Regis Korchinski-Paquet, and many other Black people have not only served as a blatant reminder of the realities of racial disparities, but also a long history of Black oppression by systems and structures controlled predominantly by White supremacy (Firang, 2020). Whiteness establishes institutional structures to produce privilege and oppression, which in turn constructs anti-Black racism that feeds into police brutality against Black people and the overrepresentation of Black people in the criminal justice system.

While much of the scholarly attention on anti-Black racism has focused on the American experience, Canadian researchers are delving into increasingly similar situations in this country. However, unlike the situation in the US or UK, where racially disaggregated crime statistics are readily available to the public and researchers, the situation is quite different in Canada: here, criminal justice agencies do not systematically collect and publish race-based crime statistics (Owusu-Bempah & Wortley, 2014, p. 287). In fact, in general, Canadian criminal justice agencies are hesitant to release any race-based crime data to the public or researchers, prompting some scholars—notably Akwasi Owusu-Bempah and Scot Wortley of the University of Toronto—to regularly resort to freedom

of information requests for the procurement of relevant data for their research. Nonetheless, the available literature suggests that racial and ethnic minority groups are generally treated poorly in the Canadian justice system. This differential treatment is not only discernible in the administration of justice and in incidences of police brutality and harassment, but also in the lack of jobs and positions of power for people of colour in the police, court, and correctional systems. No wonder Tanovich (2006) observed some years ago that the "colour of justice in Canada is White" (p. 1).

Canada has a two-tiered correctional system—(i) federal and (ii) provincial and territorial. The former deals with offenders with sentences of two years or more, while the latter handles those with less than a two-year sentence. Of the two tiers, the federal system is more systematic in collecting race-based statistics, which it publishes annually in the national Correctional and Conditional Releases Statistics Overview (Public Safety Canada, 2012). Even though the provincial correctional system collects some race-based crime data, it hardly releases them to the general public or researchers (Owusu-Bempah & Wortley, 2014).

Table 1 shows the federal correctional population for 2011, disaggregated by race. As can be seen, even though Black people formed only 2.5% of the total population of Canada (according to the 2006 census), they constituted some 8.4% of the federal correctional population. This proportionate share translates to an odds ratio of 3.36—meaning that Black people were 3.36 times overrepresented in the federal correctional population relative to their share in the national population. The only group that had a higher overrepresentation in the federal correctional population than Black people then was Indigenous people, whose relative share in the Canadian population in 2006 stood at only 3.8% but constituted a whopping 18.5% of the federal correctional population. Unsurprisingly, whereas White people formed 80% of the national population in 2006, their share in the federal correctional population was 64.1%, yielding an odds ratio of 0.80—or an underrepresentation of 20%.

In the context of the provinces, the work of Owusu-Bempah and Wortley (2014) shows that Black people were overrepresented in Nova Scotia, New Brunswick, Ontario, and Alberta—the four provinces for which data were available in 2011. Indeed, Black people were at least three times more likely to be incarcerated in all of these provinces than their presence in the general provincial population would warrant, *ceteris paribus.*

Table 1. *Canadian Federal Correctional Population by Race, 2011*

Racial Background	National Population[3]	Percent of National Population	Federal Correctional Population[4]	Percent Federal Correctional Population	Odds Ratio
White	25,000,155	80.0	14,646	64.1	0.80
Indigenous	1,172,785	3.8	4,236	18.5	4.87
Black	783,795	2.5	1,925	8.4	3.36
Asian[5]	2,090,390	6.7	678	3.0	0.45
South Asian[6]	1,262,865	4.0	226	1.0	0.25
Hispanic	304,245	1.0	234	1.0	1.00
West Asian[7]	422,245	1.3	268	1.2	0.92
Other[8]	204,550	0.7	650	2.8	4.00
TOTAL	31,241,030	100.0	22,863	100.0	1.00

Source: Owusu-Bempah and Wortley (2014, p. 291, Table 10.1)

Table 2 shows data for the period of January 2013 to June 2017 from the Special Investigations Unit (SIU) of the Toronto Police Service on investigations of (i) police use of force, (ii) police shooting, (iii) civilian death caused by police use of force, and (iv) civilian death caused by police shootings, broken down by race. A striking feature of the table concerns a glaring overrepresentation of Black people in all of the four variables presented. In the case of investigations of police use of force, for instance, Black people were 3.27 times overrepresented: whereas they formed only 8.8% of the Toronto population, they constituted as much as 28.8% of SIU cases on police use of force. Even more dramatic were Black peoples' overrepresentation in SIU investigations of civilian deaths caused by police shooting, as Black people were 7.95 times more likely to be the victims than their relative share in the general Toronto population would predict under normal circumstance.

Table 2. *Special Investigations Unit (SIU) Investigations of Toronto Police Service[9] by Race of Civilian, January 1, 2013, to June 30, 2017*

I. SIU Investigations of Police Use of Force						
Racial Group	Population Estimate	Percent of Population[10]	No. of SIU Investigations	Percent of SIU Investigations	Odds Ratios	SIU Inv. Rate per 100, 000
White	1,322,656	48.4	55	44.0	0.91	4.16
Black	239,850	8.8	36	28.8	3.27	15.01
Other Min.	1,169,065	42.8	30	24.0	0.56	2.57
Unknown	—	—	4	3.2	—	—
TOTAL	2,731,571	100.0	125	100.0	—	4.58

II. SIU Investigations of Police Shootings					
White	1,322,656	48.4	10	40.0	0.83	0.76
Black	239,850	8.8	9	36.0	4.09	3.75
Other Min.	1,169,065	42.8	6	24.0	0.56	0.51
Unknown	—	—	0	0.0	—	—
TOTAL	2,731,571	100.0	25	100.0	—	0.91
III. SIU Investigations of Civilian Death Caused by Police Use of Force					
White	1,322,656	48.4	4	30.8	0.64	0.30
Black	239,850	8.8	8	61.5	6.99	3.34
Other Min.	1,169,065	42.8	1	7.7	0.18	0.09
Unknown	—	—	0	0.0	—	—
TOTAL	2,731,571	100.0	13	100.0	—	0.48
IV. SIU Investigations of Civilian Deaths Caused by Police Shootings					
White	1,322,656	48.4	2	20.0	0.41	0.15
Black	239,850	8.8	7	70.0	7.95	2.92
Other Min.	1,169,065	42.8	1	10.0	0.23	0.09
Unknown	—	—	0	—	—	—
TOTAL	2,731,571	100.0	10	100.0	—	0.37

Source: Wortley (2018)

Andrew Loku, Frank Anthony Berry, Michael Eligon, and Kwasi Skene-Peters are just some of the Black men whose deaths, albeit faultily investigated by the SIU, were caused by police shootings in the City of Toronto since 2010. While these names may not mean much to many people in Toronto, they have resounding resonance in the city's Black community. Undoubtedly, police killings of Black men are not as rampant in Canada as they are in the US. Still, such killings do occur, going as far back as the 1970s, when the Black presence in cities such as Toronto and Montreal became quite conspicuous. Presently, with the proliferation of social media, coupled with intense advocacy by anti-racist groups such as the Toronto chapter of Black Lives Matter (BLM), such killings provoke considerable public protest.

Table 3 identifies Black people who have died in the City of Toronto as a result of police shootings from 1992 to 2017, together with a brief summary of the circumstances surrounding each case. As the tables shows, the victims were males, most of whom were young, with some clearly struggling with mental illness at the time of their death. The case of Andrew Loku is quite emblematic: this 45-year-old Black man was shot by a Toronto police officer only a few seconds after the officer saw him wielding a hammer, which he refused to drop when asked to do so by the officers. Loku had a mental illness; in fact, the Gilbert Avenue apartment complex where he lived was subsidized by the Canadian Mental Health Association. As in many of the other cases presented in Table 3, the police officer involved in Loku's death was not charged. Jonathan Shime, the Loku family's lawyer, lamented in an interview with the Canadian Press (2017) that

They shot him because they let their fear of a [B]lack man with a hammer (8.5 meters) away overcome what should have been a compassionate and humane response . . . If they had let compassion guide them instead of fear, if only they had let good sense and training guide them instead of panic . . . then Andrew would be alive today (Canadian Press, 2017, n.p.)

We live in a society that is unjustifiably afraid of Black people, especially Black men. This fear—which derives mainly from racist myths, stereotypes and guilt—becomes deadly in the hands of police officers, especially when they are compelled to make a split-second determination entailing their own safety; otherwise, couldn't they have stopped Loku with a non-lethal shot to, say, his legs? Because of this racism-induced fear, Black people are policed like no one else in stores, on the streets, at airports and many other public spaces. Often, the ages of young Black boys are overestimated by the police, just as the ages of their White counterparts are underestimated (Goff et al., 2014; Ingraham, 2015). And the moment young Black boys are perceived to be old enough to be legally culpable, they are deemed dangerous by the police, and this racist estimation gets even deadlier when the Black person involved has or exhibits signs of mental illness, as in Loku's case.

Table 3. *Black Civilian Deaths Caused by Police Shootings in Toronto, 1992 to 2017*

Year	Name of Deceased	Age of Deceased	Description of Circumstance
1992	Raymond Lawrence	22	Lawrence was shot and killed by two Peel Regional Police officers; this killing sparked the Yonge Street Uprising.
1993	Ian Coley	21	Coley was shot and killed by two Toronto Police officers in a car that was monitored as part of an operation against illegal firearms.
1996	Tommy Anthony Barnett	22	Barnett was killed by a Toronto Police officer for allegedly unsheathing a sword. He was shot four times in the chest; no charges were laid.
1999	Henry Musaka	26	Musaka was shot twice in the head and once in the chest by Toronto Police officers who were responding to an allegation that Musaka had taken a doctor at Toronto's St. Michael's Hospital hostage. An unloaded pellet gun was later found on Musaka.
2010	Reyal Jensen Jardine-Douglas	25	Jardine-Douglas, who a had mental illness, was shot several times by a Toronto Police officer after his own family had called the police to help them get him to the hospital. No criminal charges were laid against the officers.
2010	Eric Osawe	26	Osawe was shot and killed in his own apartment by a Toronto Police officer who was charged with manslaughter, only for the charges to be dismissed at the preliminary hearing.

Year	Name of Deceased	Age of Deceased	Description of Circumstance
2012	Michael Eligon	29	Eligon, who was being held at the Toronto East General Hospital for mental health issues, was killed by Toronto Police officers while holding a pair of scissors. The officers were not charged.
2012	Frank Anthony Berry	48	Berry was killed by Toronto Police officers who believed he was coming at them with a knife. The object in Berry's hand was later found to be a pair of scissors; the officers were not charged.
2015	Andrew Loku	45	Loku was shot and killed by a Toronto Police officer a few seconds after officers saw him wielding a hammer, which he did not drop when asked. The Gilbert Avenue apartment complex Loku lived in was subsidized by the Canadian Mental Health Association.
2015	Kwasi Skene-Peters	21	Skene-Peters was killed at Toronto's entertainment district by two Toronto Police officers for allegedly firing on the police first. At the time of his death, he was under a Canada-wide warrant in connection with a crime committed less than a month before his death. The SIU found the officer to have acted in self-defence.
2016	Alexander Wetlaufer	21	Wetlaufer was killed by Toronto Police officers who were responding to a call report of a man armed with a gun. He was shot three times after refusing to drop his gun, which was later found to be a BB gun. The officers were not charged.

Source: Ontario Human Rights Commission [OHRC] (2018)

What, then, is the picture that emerges from the preceding data on racial differences in correctional populations and SIU investigations? Can we emphatically say that the observed differences are due to anti-Black racial animus on the part of the police and the criminal justice system in general? In fact, since we do not have reliable and fine-grained racial data by which we could hold relevant socioeconomic variables constant in a multivariate fashion, it is virtually impossible to assign categorical attribution to racism in accounting for the observed racial disparities. At the same time, it is not unreasonable to apportion some blame to racism here, especially given what we know about anti-Black racism in other spheres of Canadian life. Not only that, multivariate analyses by Wortley and Tanner (2003) and Wortley and Kellough (2004) could not attribute racial differences in police contact to racial variations in education, social class, or other demographic variables. Indeed, their findings show that, whereas White people with high education and high income were much less likely to have any contact with the police, the reverse was the case among similarly situated Black people.

Targeted and Tagged: Criminal Justice Racism as Multifaceted Malignancy

According to legal scholar Bernard Harcourt (2007), a "central moral intuition regarding just punishment" is that "similarly situated individuals should have the same likelihood of being apprehended when they offend *regardless of race, ethnicity, gender, or class"* (p. 5, emphasis mine). Racism, as a deviation from this basic principle, enables the maintenance of innumerable circumstances in which apprehension probabilities are differentiated along racial lines. Perhaps no other differential treatment undergirds and epitomizes this breach in principle more than the practice of racial profiling. Picture two men of roughly the same age— one Black, one White—driving separate cars from Toronto to Montreal with guns and cocaine in the trunk of each vehicle. Then picture one man being pulled over, searched, and arrested by police while, in contrast, the other man successfully completes the 540-kilometre journey. Insofar as one imagines the successful courier as White, one might get a good sense of why racially driven policing and racial profiling in particular are problematic *vis-à-vis* crime control.

To begin with, rational calculations on the part of White criminals, which are rooted in repetitive personal experiences of non-apprehension, give them solid reasons to view certain forms of criminal activity from a low-risk–high-reward standpoint. Indeed, as one researcher observes, "those who commit crimes without being caught seem to adjust their perceptions of risk downward, to the point that criminal activity may seem a reasonable choice" (Clear, 2007, p. 30). More concretely, a notable 2016 *Maclean's* story on anti-Indigenous racism in the Canadian criminal justice system made mention of how White criminality is enabled by racial profiling. Speaking about White people who transport drugs and weapons within Saskatchewan, Robert Henry, a PhD candidate at the University of Saskatchewan, reveals that "they use their Whiteness to move around police stop checks" (MacDonald, 2016, n.p.). The full effects of this apparent racial immunity cannot be precisely measured; although, for contextual purposes, it should be noted that Saskatchewan often leads Canadian provinces in rates of firearm-related violent crime (Cotter, 2014). To some degree, therefore, police racism contributes to the prevalence of such crime by granting quasi-preferential treatment to White gun couriers.

Consequently, discussions of racial profiling that pivot on deterrent effects, which discourage crime, are problematically one-sided; appropriately nuanced discussions would instead include reflections on incentive effects, which encourage crime. Harcourt (2007), who has carefully considered the likely impacts of these contrary effects, states that:

> racial profiling on the highways probably increases the overall amount of criminal activity in society. The likely increase in drug and other offending among Whites, as a result of their accurate perception that the police are focusing on African Americans and Hispanics, will probably exceed the potential reduction in drug offending among minorities. (p. 4)

And along the same lines, "Because of . . . the fact that profiled groups are usually small minorities, the raw increase in offending among the non-profiled group will be greater numerically than the raw decrease in offending of the profiled group" (Harcourt, 2007, p. 24). So, one can paradoxically argue, with no contradiction, that racial profiling has deterrent value and leads to net increases in aggregate rates of crime, because its incentive effects likely outweigh the deterrent effects.

The criminogenic consequences of a racist police practice, such as racial profiling, are also evident with respect to the issue of community cooperation (or lack thereof) with police. In judicial settings, warnings are sometimes issued by judges and other key parties about the importance of avoiding paths of action that could "bring the justice system into disrepute," as the expression goes. But away from stately courtrooms and down on gritty streets, the disreputable dimensions of the system are on full display each time racially motivated police harassment takes place. Indeed, the frequency and visibility of racial profiling and carding in cities such as Toronto means that Black people and other racialized individuals develop antipathies toward the criminal justice system at early ages. Many Black people in Toronto, for instance, can tell stories of police racism; validation of these tales is detectable in the available empirical data, as we just saw. Racial profiling is so common in Toronto that many people have long seen it as a rite of passage for young Black men in the city (James, 1998; Tanovich, 2006). It is such racist practices that prompt many to see the police and the state as a nemesis to be avoided on the street or elsewhere (Tanovich, 2006). Such avoidance is widespread and multifaceted, and ranges from direct, corporeal methods of distancing (e.g., crossing streets when officers approach) to withholding crime-related information, to handling dangerous situations without criminal justice assistance of any sort. In sum, "trust in the police is important because people who do not trust the police are less willing to call the police for help, may be more likely to turn to self-help vigilantism, and may be less willing to cooperate with the police in criminal investigations" (Epp et al., 2014, p. 135). One need not be a distinguished professor of criminology to see how these behavioral orientations can lead to more criminality than would otherwise occur.

Moving beyond the lack of trust between racialized people and the police, rich bodies of research have shown how the "justice system produces, at least in part, its own business" (Clear, 2007, p. 179)—thus, the problem of crime is exacerbated by the same system ostensibly

designed to reduce it. Delving into the realm of medical terminology, criminologists often invoke the notion of *iatrogenesis* to capture the crime-producing dimensions of the criminal justice system with a particular focus on racialized communities, from which large numbers of jail and prison inmates are drawn. Todd Clear (2007), the author of *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse*, contends that, contrary to conventional wisdom, excessive imprisonment undermines public safety:

> There is good evidence that high rates of incarceration destabilize families, increase rates of delinquency, increase rates of teenage births, foster alienation of youth from pro-social norms, damage frail social networks, and weaken labor markets. It requires a stretch of logic to think that concentrated incarceration contributes to all of these problems, each of which tends to weaken informal social control, but somehow incarceration does *not* lead to less public safety. (p. 173, emphasis in original)

Think, in this regard, about high-crime communities in major cities throughout North America: their unenviable status tends to persist over the course of decades, even as they are subjected to aggressive policing and the constant funnelling of their residents—primarily young men—into jails and prisons. The iatrogenic effects are compounded by the reputational damage done to racialized communities by criminal justice functionaries who homogenize certain locales as "bad areas," irrespective of the degree to which a small percentage of residents are responsible for the bulk of serious criminality. When a nuanced picture of community life is painted over by the strokes of a "bad" broad brush, some familiar economic consequences emerge: diminished property values readily come to mind. And the profundity of property denigration is matched, if not exceeded, by capital flight. As Martinot (2010) shrewdly points out:

> The aura of criminalization that police (with media collaboration) have overlaid on communities of color only serves to rationalize a disinvestment of capital. As a community gets the reputation for criminality, businesses close and leave, decreasing the possibilities for a communal economic life. (p. 74)

Notwithstanding the lazy imprecision of "high-crime area" designations, the fact that they are propounded by police gives them great weight. Of course, these labels are never precise, since their exact boundaries are rarely specified, and statistical thresholds indicating when areas become "high-crime" are typically unstated. Meanwhile, when the material by-products of discourses of demonization include truncated life chances, it is predictable that the casualties of capital flight will formulate strategies of self-preservation that may entail criminal activity.

The resultant crime is never absolutely localized—its spillover into other areas is inevitable—which means generalized costs (financial, psychological, and otherwise) are borne by a variety of communities, not just those directly disadvantaged by disinvestment. We must also note that to the extent that resources by their very nature are always scarce, there is an *opportunity cost* for any money we spend on prisons and the criminal justice system in general. There is usually a zero-sum bargain involved in such expenditure: paying for more prisons would only limit the money we have to pay for our universities, hospitals, etc.

Criminal Record as a Negative Credential

In this subsection, we show how the racial criminalization of Black people are affected by and sustained in the Canadian criminal justice system. In particular, we pay attention to carding and criminal records and their ramified effects, especially insofar as such records undercut opportunities for the social mobility of those implicated in the system. The TPS in particular deems carding as a valuable investigative tool that permits officers to record crucial information about people, places, and crimes, without any prejudice (Jeyapal, 2018). The TPS believes that fair and equal treatment is justified when any person can be stopped, questioned, and recorded. However, the nature of the carding process dictates that officers use discretion in determining suspicious criminal activities. Undoubtedly, police discretion is subjectively defined, making carding practice sceptical to racial profiling which then targets members of racialized communities (Jeyapal, 2018). A 2015 inquiry by the *Toronto Star* into race, policing, and crime has exposed significant disparity and bias in carding (Jeyapal, 2018; Toronto Star, 2015). *The Toronto Star* found that Black people are more likely than White people to be subjected to police stops that result in laying criminal charges (Jeyapal, 2018; Toronto Star, 2015).

Given the reality of interinstitutional recognition, whereby the formal decisions of one institution are accepted as valid by other institutions, criminal charges and criminal records are potent *negative credentials*. We thus agree with Pager's (2007) observation that:

> We tend to think of the credentialing process only in its positive form, as a formal status that enables access and upward mobility. A college degree, a medical license, or an MBA are common examples of positive credentials that facilitate access to restricted social positions. What the case of the criminal record brings into bold relief, however, is that the credentialing of status positions can also take place in the opposite direction. *Negative credentials* are those official markers that restrict access and opportunity rather than enabling them. (p. 32, emphasis in original)

So, in a place like Toronto, and indeed, in jurisdictions throughout North America, racialized persons who engage in the *same behaviours* as their White counterparts (e.g., drug possession) are more likely to be saddled with negative credentials leading to multiple modes of exclusion, the likes of which are outlined in a report by the Canadian Civil Liberties Association (2014) in these words:

> Individuals with [criminal] records experience significant barriers in the areas of employment, volunteer and educational opportunities; housing; immigration; and mobility and subsequent interactions with the criminal justice system… A criminal record can extend punishment beyond the judicial sentence, preventing individuals from moving on with their lives and returning to a full, normal participation in the labour force, family and community. (p. 61)

Describable as an iron cage of cross-cutting stigmatization, this brand of interinstitutional recognition grants a great degree of potency to the labelling practices of the criminal justice system. Upon being branded as a criminal, an individual can easily be encumbered by a master status or meta-narrative that signals vice, overrides virtue and, accordingly, situates them as a legitimate candidate for a grim future.

It is quite deducible from the preceding discussion of carding in Toronto that negative credentials can even accrue to individuals who have never been convicted, charged, or even arrested. Contact cards, as negative credentials, are not benign and inert police records; they are instead actively injurious based on their capacity to signal (assumed) moral turpitude on the part of carded individuals. In a truly circular and self-referential manner, for example, Toronto Police Service employers have been known to use carding records as an excuse to deny employment to people. At the meeting of the Toronto Police Services Board held on December 15, 2005, they stated:

> Because Blacks and other Racialized persons are more likely to be stopped by the police, they are more likely to have their names recorded on contact cards. Those contact cards come back to haunt them during the recruitment process, when investigators conducting background checks assume that their prior contact with the police 'means they're guilty of something'—and they are eliminated from competition. (p. 149)

This process of elimination might be labelled as negative affirmative action: action taken to affirmatively generate negative employment results for racialized populations. The implications for racial inequality are quite clear, particularly when considered in conjunction with the fact that securing a job as a police officer in Toronto enables access to a comfortable middle-class existence—public sector salary disclosure

documents show that 4,125 employees of the Toronto Police Service made over $100,000 in 2014 (Alcoba & Edmiston, 2015).

Anyone Can Get It: White People as Victims of Anti-Black Racism

Before drawing the paper to a close, we examine a seemingly peculiar question, namely: to what degree are Whites victimized by anti-Black racism in the criminal justice system? To begin with, it is sociologically evident that many modes of oppression exhibit expansive properties, such that primary targets (e.g., Black people) are not necessarily exclusive targets insofar as secondary and tertiary preys are eventually brought into circles of the damned. "When discrimination succeeds, it does not stop with one group but rather becomes generalized as a social principle and practice," observes George Lipsitz (2011, p. 13). This basic realization conforms with the well-known yet regretful *confession* of Martin Niemöller several decades ago:

> First, they came for the socialists, and I did not speak out, because I was not a socialist. Then they came for the trade unionists, and I did not speak out, because I was not a trade unionist. Then they came for the Jews, and I did not speak out, because I was not a Jew. Then they came for me, and there was no one left to speak for me. (1946, as cited in United States Holocaust Memorial Museum, 2012)

At minimum, accounting for target expansions in our criminal justice system entails insights into two main issues: the first of which concerns a recognition of how systematic violations of civil liberties, as directed toward Black people, become routinized to the point where some White people are also subjected to dubious exercises of police power, albeit to a lesser extent. The second, with reference to Harcourt's aforementioned point that "profiled groups are usually small minorities," necessitates that we note the criminal justice system abhors underutilization of resources, and therefore tends to create incentives to zero in on relatively powerless segments of the White majority. Concrete illustrations of blue-on-White (or police-on-White) microaggression can be gleaned from multiple bodies of research. Certain studies of how police handle individuals have shown that White people in predominantly Black or Brown neighbourhoods are sometimes viewed by police as potential or actual purchasers of drugs or sex and are consequently subjected to intense police scrutiny (Rosenberg et al., 2017; Weitzer & Tuch, 2006; Wortley & Tanner, 2003). Aside from the insult of being automatically perceived as morally or legally suspect, White people in these situations may also face threats of violence if they raise strenuous objections to such intrusions.

Transposing argument to the so-called "war on drugs" in the US is a task that has been ably taken up by legal scholar Michelle Alexander, who contends that "[W]hites never had to sit at the back of the bus during

Jim Crow, but today a [W]hite man may find himself in prison for a drug offense, sharing a cell with a [B]lack man" (2010, p. 204). Striking degrees of racial disproportionality are no doubt a hallmark of the "war on drugs," yet White people are not exempt from enduring hundreds of thousands of drug arrests each year. Clearly, far from being a far-fetched thesis, the argument that anti-Black racism functions as an engine of White victimization is supported by serious appraisals of routine criminal justice practices.

Racial Discrimination and the Canadian Education System

To understand racial discrimination in the Canadian criminal justice system certainly requires an understanding of racism in the Canadian educational system. Discrimination and anti-Black racism in the Canadian education system have not only contributed to negative educational and psychological outcomes for Black youth and children, but have also fuelled their involvement in the criminal justice system. The Canadian education system is a site of complex interaction of different forms of racism—namely individual/interpersonal and systemic—which have resulted in the marginalization of ethno-racial students (Ngo, 2018). Individual/interpersonal racism in the Canadian education system often involves biased opinions and prejudicial attitudes expressed by non-racialized students and school authorities against racialized students. These discriminatory actions are expressed by non-racialized students through social avoidance and by school authorities in the form of differential treatment against racialized students. Studies have demonstrated that Black students are often perceived by their peers and school authorities as academically inferior compared to non-racialized students (Dei, 1996; James, 2012; Ngo, 2018). These individual/interpersonal discriminatory actions against racialized students often provoke Black students to engage in physical and violent confrontations against their non-racialized peers, consequently predisposing them to the youth criminal justice system.

Systemic racism—policies and practices within the Canadian education system—acts through *institutional arrangements* against racialized students. The current educational policy framework has maintained the status quo of short-sighted institutional arrangements that have generated pedagogical inequities to favour students from dominant and privileged backgrounds (Ngo, 2018). Institutional arrangements in the Canadian educational system reinforce Eurocentric worldviews and values in the school system in a way that creates differential treatments for racialized students. Unequal racial representations also exist in school governance, school administration, curriculum development, and teaching practices. Black people are absent from or have limited representation in decision-making process in all policies and practices in the Canadian education system (Ngo, 2018), increasing the likelihood of Black students

experiencing suspension and expulsion, being overrepresented in special educational classes, and suffering poor performances (Dei, 1999; Ngo, 2018). Suspension and expulsion are some of the key factors that drive racialized children and youth into criminal activities. When children and youth are kept in the classroom, they are kept off the streets and have less free time to commit crimes.

Perhaps the implementation of a zero-tolerance educational policy in Ontario helps us to better understand how institutional discrimination in the Canadian educational system predisposes Black children and youth to the youth criminal justice system. The Ontario government's Safe Schools Act (SSA) was a zero-tolerance safety policy intended to keep students and teachers safe in the school system. It also was considered a neutral and colour-blind policy aimed to discipline all students involved in violent behaviours in the school system (Jeyapal, 2018). Since its implementation, the policy has failed to provide equal treatment to ensure safety and security for all students. Rather, as Jeyapal (2018) has noted, the SSA has disproportionately impacted racialized male students and other students with disabilities. Racialized male students receive much harsher penalties for minor aggressive behaviours compared to all other students. Often times, school authorities would deem these aggressive behaviours as violent and criminal, and consequently make a report to the police, who would press charges against these Black students. The introduction of SSA has also led to the practice of stationing police officers in schools, leading to disproportional arrests of racialized children and youth who engaged in violent and aggressive behaviours, although these offences could have been handled by school officials without involvement of the criminal justice system (Jeyapal, 2018).

The Ontario Human Rights Commission (OHRC) has also found that the implementation of the SSA has correlated with an increased number of racialized students and students with disabilities involved in the youth criminal justice system due to issues of expulsions and suspensions (Jeyapal, 2018; OHRC, 2018). Therefore, addressing issues of anti-Black racism in the criminal justice system certainly involves the role of the school system.

Conclusion

The preceding discussion suggests that the criminal justice system allocates substantial amounts of time and energy to exercising discretion in service of selective targeting that produces unjustifiable racial disparities with respect to arrests, charges, the distribution of negative credentials, and so on, to Blacks, Indigenous people, and other racialized populations. Clearly, as Lipsitz (2011) notes, "racism is not incidental, aberrant, or individual, but rather collective, cumulative, and continuing" (p. 41). The aggregate costs of racism in the criminal justice system are incalculable

and are primarily borne by the usual suspects, *primarily* but not *solely* because, as we saw, all segments of the population are directly or indirectly harmed by racism in the system.

Before ending the discussion, we have a few suggestions by which racism in the criminal justice system could be attenuated, if not eliminated. Firstly, given the deep-seated nature of the racial biases in the criminal justice system, it would be worthwhile to mount an extensive racial sensitivity training for law enforcement agents. In particular, it would be valuable to pay attention to matters of implicit racial bias and the links between race and adolescent development in this training. Secondly, efforts should be made to improve police–community relations with initiatives that seek to hire people of colour, patronize minority-owned businesses, and treat people of colour with respect and dignity. Thirdly, there is the urgent need for a government-mandated collection of finely disaggregated race-based data on crime at all levels of the criminal justice system. If nothing else, such data would help to ascertain the level of racism in the system, and whether the extant corrective initiatives are working or not. Fourthly, and relatedly, there is the need for a race-audit of a sort, by which the police and other criminal justice agencies would undertake a thorough analysis of all their regulations and practices to identify the inherent and taken-for-granted racial biases within them; of course, this cannot happen without reliable race-based statistics.

Fifthly, to minimize discrimination in the criminal justice system, it is imperative to address issues of systemic and individual/interpersonal racism in the Canadian educational system that drives Black students' involvement with the youth criminal justice system. As we learned from the preceding discussion, the issues that create problems for racialized students—interracial interactions among students, teachers and school administrators; racial representation in governance, administration and teaching; school policies and regulations; and curricula development— require anti-racist educational policy (Ngo, 2018). Anti-racist educational policy necessitates the readiness of policymakers and school boards to address racial representation in governance, school administration, and teaching to provide equal access for ethno-racial minorities in decision-making processes. There is also the need for school boards and authorities to reflect on their social locations, their experiences, and their privileged positions in relation to racialized families and students. Anti-racist educational strategy also requires that school trustees and authorities engage in meaningful conversation about race, equity, diversity, and inclusion to better understand the root causes of Black students' dropout rates, expulsions, suspensions, and involvements in the youth criminal justice system. Moreover, as discussed in the preceding section, given that Black people are more likely to be arrested or killed in encounters with the police, we recommend that carding should be abolished entirely. Eliminating carding is important because bias and stereotyping inform

police officers' decisions of who to stop and why. As we learned from this paper, police officers' subjective decisions affect many racialized groups, especially Black people.

Finally, at the societal level, we should all work to improve the socioeconomic circumstances of people of colour and low-income people in general; these circumstances prompt many to engage in crime for their material needs. While none of these suggestions could singularly ameliorate racial biases in the criminal justice system, they could collectively engender significant improvements in how the police relates to minorities and thus reduce racism in the criminal justice system. In the end, we should all remember that treating all people, irrespective of their racial backgrounds, with fairness, dignity, and respect through institutions, such as the criminal justice system, is the *sine qua non* of genuine justice (Currie & Kiefl, 1994).

NOTES

1. In this paper, we use 'Aboriginal' interchangeably as 'Indigenous'. The reason being, the term 'Aboriginal Peoples' was legally adopted as a collective noun for First Nations, Inuit and Métis by the 1982 Constitution Act, Section 35 (2). However, resistance to the use of the term emerged from some groups, who preferred the use of 'Indigenous People' to 'Aboriginal People'. Currently, the federal government has accepted 'Indigenous', recognizing First Nations, Inuit and Métis as Indigenous Peoples. This move is in line with the United Nations Declaration of the Rights of Indigenous Peoples.

    The Special Investigations Unit (SIU) is a civilian body and arm's-length agency of the Ministry of the Attorney General with jurisdiction extending to all police officers in the province of Ontario. The SIU is mandated to investigate the circumstances of serious injuries and death caused by police officers, including allegations of sexual assault by the police. The SIU has the power to lay criminal charges against police officers.

    The Toronto Police Service covers the City of Toronto and not the entire Greater Toronto Area (GTA) or the Toronto Metropolitan Area, and thus does not include data on suburban municipalities such as Brampton, Oakville, Mississauga, or Scarborough.

2. Population estimates for the racial groups were derived from the 2006 Census (Chui, Tran & Maheux, 2008).

3. Population estimates for each racial group were derived from the 2006 Census (Chui, Tran & Maheux, 2008).

4. The 2011 federal correctional statistics provided in this table include inmates within federal prisons and those under federal community supervision (Public Safety Canada 2012).

5. The "Asian" category includes people of Chinese, Japanese, South-East Asian, Korean, and Filipino descent.

6. The "South Asian" category includes people of Indian, Pakistani, Sri Lankan, and Tamil descent.

7.   The "West Asian" category includes people of Arab or other Middle Eastern descent.
8.   The "Other" category includes people who report multiple racial backgrounds.
9.   The Toronto Police Service covers the City of Toronto and not the entire Greater Toronto Area (GTA) or the Toronto Metropolitan Area, and thus does not include data on suburban municipalities such as Brampton, Oakville, Mississauga, or Scarborough.
10.   Population estimates for the racial groups were derived from the 2006 Census (Chui, Tran & Maheux, 2008).

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