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To what degree, if any, should race in general and particularly the race of an accused person play a role in the criminal justice system?

Historically, racialized individuals have endured endemically poor outcomes in their interactions with the criminal justice system. Along with this, actors within the criminal justice system have used race punitively against racially accused persons. Examples of this include the war on drugs (unconscionably against blacks), abhorrent practices of carding (disproportionately used against minorities), and the current crisis of overly incarcerated Black individuals and Indigenous Canadians. Such policies have excessively criminalized racialized people and are informed by systemic white supremacy, co-opted by actors in the criminal justice system. Despite ongoing efforts to redress the filth of these practices, its remnants remain. Understanding this fact leads to the conclusion that it is wholly improper for race to play a punitive role within the criminal justice system, as it has been historically. However, race should play a role in the criminal justice system if used affirmatively. An affirmative use of race should aim to ameliorate and rectify the negative legacy of racial mistreatment and prevent its continuation. This paper will briefly explore the history and underlying reasons for racial subjugation within the criminal justice system. Furthermore, it will describe the role of poverty and socio-economic factors fostered through colonialism as a critical cause of racialized people's criminal involvement. Lastly, this paper will advocate for racial affirmativism as a plausible and innovative solution to the crisis of criminalization of race within the criminal justice system.

Research shows, in comparison with non-racialized people, racially accused individuals encounter more direct contact with police forces. This contact often serves as the beginning of recidivism, leading to repeated and continued involvement with the criminal justice system. When assessed in a deeper context, the root cause of criminality is not inherent criminality, but rather the result of socio-economic factors these individuals endure. For instance, these socio-economic disparities segregate racialized people within more impoverished neighborhoods, which are marred with violence and are excessively surveilled by police officers. Furthermore, right-wing media and many politicians have endorsed the notion of being tough on crime, using rhetoric that incorrectly informs public perceptions of the nature of racialized people. The conversation within these contexts entertains gross vilifications of racialized people as "thugs," "hooligans," and "gangsters." This rhetoric does not encourage an appropriate and accurate analysis of the ideal role of race within the criminal justice system. Constructing and branding racialized people in this way detracts from understanding the root causes of criminality. Furthermore, it blinds the public, by creating a false mandate, and directing the dialogue away from the historical use of how race has enabled a colonial criminal justice system. A report released by the United States Sentencing Commission (2017) revealed that black male offenders received 19.1% lengthier sentences than similarly situated white counterparts. Concurrently, evidence suggests that black women are more likely to be convicted than white females and white males for the same crime (Brock, 2018). The valid assumption here is that these two groups experience starker fates within the criminal justice system, from arrest to conviction, because of their skin color.

Attempting to understand why the criminal justice system uses race in the way it does, requires a comprehension of the genesis of Western empire and civilization. As history shows, the West, mainly the Americas, flourished through slavery and racial hierarchization. This

hierarchization juxtaposed blacks and other racialized people as inferior in comparison with the dominant white class. The most effective and pernicious way that the dominant class maintained their privileges was to utilize the law for sanctionable suppression of racialized people. Initially, this empire project enforced slavery to ensure this would occur. As time progressed, slavery morphed into segregation, and in the absence of segregation, laws and legal practices were sanctioned by the state to prolong an underclass of racialized people through overcriminalization and incarceration. The latter era is currently still in effect.

The improper legal vassalage described above created persistent economic hardship for racialized communities, which enjoy limited access to proper education, adequate healthcare, and varied economic opportunities. Generationally, racialized individuals have been inhibited in their ability to further familial prosperity, contributing to their increased criminal involvement. The resulting actions of police forces, tough on crime politicians, and prosecutors create a false justification for the treatment of racialized people.

The criminal justice system thrives on the persistence of actions such as frequent policing of racialized communities. As a result, the punitive use of race is perceived and used by actors within the criminal justice system as a necessary tool to ensure their positions remain relevant. This retributive use of race is antithetical to the justice system's tenets and fairness that it aims to uphold. It also wholly voids the empire project of any validity, morality, and legitimacy.

Police officers, who experience the most intimate interaction with racially accused individuals, are prone to engage in brutal conduct. Thus, they must be sufficiently recruited, educated, and trained on the appropriate use of force but, most importantly, they must undergo the necessary anti-bias training to address the problem of criminalizing race. Police officers do not share this blame alone. There exists a link between their behaviour towards racialized people and

the culture enabled by police unions who often seem unwilling to discipline officers. Lastly, police forces attract officers who, to begin with, possess biased attitudinal dispositions towards racialized people. These standards deserve glaring scrutiny.

Affirmatively using the race of an accused involves unlearning harmful stereotypes and barriers regarding racially accused persons. Affirmative racial treatment includes using a cognizance of race and its mired history within the criminal justice system to inform the treatment of racially accused persons. Racial affirmativism can be immensely useful when it comprises intentionally situating the outcomes of criminal cases involving racialized people in a way that allows them to enjoy more comprehensive access to rehabilitative resources. Doing so represents a recognition that this lack of access is an inarguable determinant of being involved in the criminal justice system. Further to this, prosecutors and Judges should affirmatively use race within the criminal justice system, to curtail their willingness to offer and hand down harsh sentences to racialized people, respectively. This curtailment must include an effort to actively engage racially convicted people in diversionary sentences as an alternative to jail sentences. Governments must share the responsibility of these commitments by providing financial literacy, education, and skills training programs to racially accused and convicted individuals. This provision would lower recidivism significantly. Key stakeholders within the criminal justice system (defence lawyers, community agencies, prosecutors, Judges, police officers/unions) should ensure the delivery of these programs are equitable and accessible. For accessibility to prevail, these stakeholders need to be vested in subsidizing them.

To address the discrepancy and systemic bias against racialized people, prosecutors and judges should consciously and empathetically sentence racialized people. This process should be fair to ensure that racialized individuals' sentences are on-par with non-racialized people. This

process requires a deliberate recognition and understanding of the historical context of race within the criminal justice system, and a willingness by prosecutors and judges to limit unfair outcomes. To ensure this standard survives long enough to change the tide within the criminal justice system, ombudsmanship of the criminal justice system is necessary, in the form of report analysis, to measure the effectiveness of affirmativism.

Racial affirmativism within the criminal justice system does not only extend to policing, and sentencing, but also the selection of juries. Historically, juries have impeded progress and have been deftly used by many prosecutors to enhance their cases and exploit the race of accused persons. Racial affirmativism would encourage prosecutors to disdain such practices and to operate in a spirit of good faith by cooperating with defence counsel to ensure jury members do not hold any biases that would unfairly corrupt criminal proceedings.

The premise of racial affirmativism addresses the legacy of white supremacy within the criminal justice system. As previously described, the criminal justice system has thrived on criminalizing and perpetuating the false notion of racialized people's inherent criminality. To combat the underpinnings of this legacy requires an innovative approach of affirmativism as a constructive way to address the adverse treatment numerous racialized people face daily in their interactions with the criminal justice system. Racial affirmativism would ensure that the harm racialized people have experienced in their interactions with the criminal justice system is redressed and prevented in the future. For these compelling reasons, racial affirmativism represents the most appropriate use of race, specifically the race of an accused person, within the criminal justice system.

Works Cited

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