

Is there a racial disparity in the criminal justice system? A review of the Lammy Review

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Summary

Every year, about ten times as many men as women are sentenced to prison in England and Wales.¹ Prisoners are 14 times as likely to be in their twenties as they are to be 70 and over.² Gypsies, Roma and Travellers account for 5% of male prisoners and only 0.1% of the overall population,³ while Asians are underrepresented in prisons compared to their share of the overall population.⁴

These figures could point to unjust biases in the criminal justice system: in favour of Asians and against Travellers; in favour of the over 70s and against the young; in favour of women and against men.

One could argue that every group is equally crime prone: that women and men, or the young and the old, commit just as many crimes – and that the criminal justice system is fully 50 times as harsh towards Travellers as it is towards the general population. By rejecting this notion, we reject the notion that variation and disparities in themselves prove prejudice or discrimination. This variation could point to discrimination, or it could imply some people committing more crimes, and more serious crimes, than others – or a combination of these and other factors.

David Lammy's 2017 review into the criminal justice system of England and Wales shows evidence of being overly credulous towards arguments that variation is explained by flaws in the system, rather than differences in crime rates. This is especially true given some of the substantial variation shows white suspects and criminals receiving more stringent treatment.

The growth and structure of ethnic minority populations

The review makes much of the fact that 'BAME [black, Asian and minority ethnic] communities make up 14% of the population of England and Wales but 25% of adult prisoners' – and points to an increase in the number of Muslim prisoners from 8,900 to 13,200 in a decade.

¹ 'Offending History Tool: Sanction statistics', Criminal Justice System statistics quarterly: December 2016, Ministry of Justice, 18 May 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615135/criminal-history-pivot-table-2016-q4.xls

² Table 1.7: Prison population by nationality and sex, 30 September 2017, 'Prison Population: 30 September 2017, Offender management statistics quarterly: April to June 2017', Ministry of Justice, 26 October 2017, at <https://www.gov.uk/government/uploads/.../prison-population-30-september-2017.xlsx>

³ 'Lammy Review: final report', David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.11

⁴ 'Lammy Review: final report', David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.3

But crime is disproportionately committed by the young, and the BAME population is disproportionately young. These crude figures also ignore the overall growth of the BAME and Muslim populations. The young Muslim population doubled overall.

If the overall demographics of a country change, it is unsurprising if this is reflected in its prisons.

Ten thousand fewer young BAMEs a year offend for the first time

The Lammy review's biggest concern is with the youth justice system. While there has been a modest increase in the *proportion* of young BAMEs offending for the first time, the actual numbers have fallen 74% over the last decade – from 13,000 to 3,000. This points to anything but a large cohort of BAME young people on the verge of 'filling the nation's prisons'.

Trust in the criminal justice system

The Lammy review identifies trust in the system as vital, but offers dubious evidence that ethnic minorities are distrustful. The most recent Crime Survey of England and Wales finds that 66% of black people and 74% of Asian people consider the criminal justice system to be fair – compared to 67% of white people. Black and Asian people are considerably more likely than white people to judge the criminal justice system to be effective. Across the board, BAME and white people show similar trust in the criminal justice system and the police.

Arrest and charge

The review argues that while the Crown Prosecution Service's decisions are 'broadly proportionate', with 'suspects from different ethnic groups charged at relatively similar rates', arrest rates are higher for some BAME groups. The report argues that stop and search is disproportionately used on BAME communities.

But the data show stop and search is used more cautiously when it comes to black people than with other ethnic groups. It is white people who are most likely to be stopped and searched without arrest, and black people least likely.

Conviction and sentencing

The Lammy review also acknowledges that 'juries deliver equitable results, regardless of the ethnic make-up of the jury, or of the defendant in question'. Whites are actually the most likely to be found guilty in the Crown Courts, with Asians least likely.

The data shows some variation in who receives a custodial sentence. The Lammy review notes that this is partly owing to differences in likelihood of pleading guilty. It also reflects the seriousness of the crimes committed. White offenders are far more likely to have committed crimes with low custody rates, such as theft and summary offences – and far less likely to commit offences such as robbery and supplying class A drugs.

Reducing the number of BAME criminals in prison would harm BAME communities most

BAME people are substantially more likely to suffer crime and to fear crime.

The evidence also supports the idea that BAME people are disproportionately victimised by criminals from their own ethnic group. Sending (even) fewer BAME criminals to prison puts the public at risk, but puts BAME people at most risk.

Are BAME communities overrepresented in prisons?

A headline claim repeated in the author's letter to the Prime Minister, and that received much press attention, was that 'BAME communities make up 14% of the population of England and Wales but 25% of adult prisoners'.⁵ He also notes an increase in the number of Muslim prisoners from 8,900 to 13,200 in a decade.⁶

These crude figures ignore the overall growth of the BAME and Muslim populations – and in particular the fact that the BAME population is younger than the white population. Crime is far more likely to be committed by young people. As Munira Mirza notes, 'the population of Muslims in England and Wales grew by 75 per cent and the young Muslim population doubled overall'.⁷ If the overall demographics of a country change, it is unsurprising if this is reflected in its prisons.

As the Lammy review also notes, 'The proportion of prisoners who are Asian is lower than the general population' – suggesting factors other than prejudice against ethnic minorities are at work.⁸

Are young BAME people set to fill the nation's prisons?

The letter goes on to stress that Lammy's 'biggest concern is with the youth justice system ... Overall youth offending has fallen significantly over the last decade, but BAME young people now make up a larger share of those offending for the first time'.⁹

Lammy issues an ominous warning that 'We cannot allow these young people to become the next cohort of adult offenders filling the nation's prisons'.¹⁰

But the data suggests anything but a cause for alarm. Even as the young BAME population grew over the decade ending 2016, the number of young BAME first time entrants to the criminal justice system fell by 74% – from 13,363 to 3,466.

The number of white first-time entrants fell even faster, by 86%. This means that even as the number of young BAME first time entrants fell by three quarters, the proportion of the total rose from 12% to 19%.

Only by focusing on this data point alone (and ignoring the different age structures) can one paint a bleak picture of young BAME people 'filling the nation's prisons' when the true picture is of ten thousand fewer BAMEs a year entering the criminal justice system.

⁵ 'David Lammy's open letter to the Prime Minister', David Lammy, Gov.uk, 8 September 2017, at 'David Lammy's open letter to the Prime Minister', David Lammy, Gov.uk, 8 September 2017, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643002/david-lammy-open-letter-to-prime-minister.pdf, p.1

⁶ 'Lammy Review: final report', David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.3

⁷ 'Lammy Review: The Myth of Institutional Racism', Munira Mirza, Spiked, 11 September 2017, at http://www.spiked-online.com/newsite/article/lammy-review-the-myth-of-institutional-racism/20305#.Wh2PO0pl_cs

⁸ 'Lammy Review: final report', David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.3

⁹ 'David Lammy's open letter to the Prime Minister', David Lammy, Gov.uk, 8 September 2017, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643002/david-lammy-open-letter-to-prime-minister.pdf, p.1

¹⁰ 'David Lammy's open letter to the Prime Minister', David Lammy, Gov.uk, 8 September 2017, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643002/david-lammy-open-letter-to-prime-minister.pdf, p.1

Trust in the criminal justice system

The Lammy review highlights the importance of trust by BAMEs in the criminal justice system. One of its key arguments is that distrust indirectly contributes to a racial disparity in sentencing, because this distrust makes BAME offenders less likely to plead guilty, thereby reducing their sentence if found guilty.¹¹

This shows that perceptions of unfair treatment could be a cause of racial disparities – even if those perceptions are false. It is therefore important in all analysis to make claims of racial bias cautiously. Exaggerated claims of racial bias could foster distrust and thereby contribute to racial disparities in sentencing.

The review notes ‘A fundamental source of mistrust in the CSJ among BME communities is the lack of diversity among those who wield power within.’¹²

But the only sources for this statement are two American studies from 2002 and 2003 which make no reference to the Criminal Justice System or BAME communities in England and Wales.

Elsewhere the report cites ‘bespoke analysis’ in which ‘51% of people from BAME backgrounds born in England and Wales who were surveyed believe that ‘the criminal justice system discriminates against particular groups and individuals’’.¹³

Perhaps because the sample did not include all BAME people in England and Wales, this data corresponds poorly to broader samples of opinion in the Crime Survey of England and Wales.

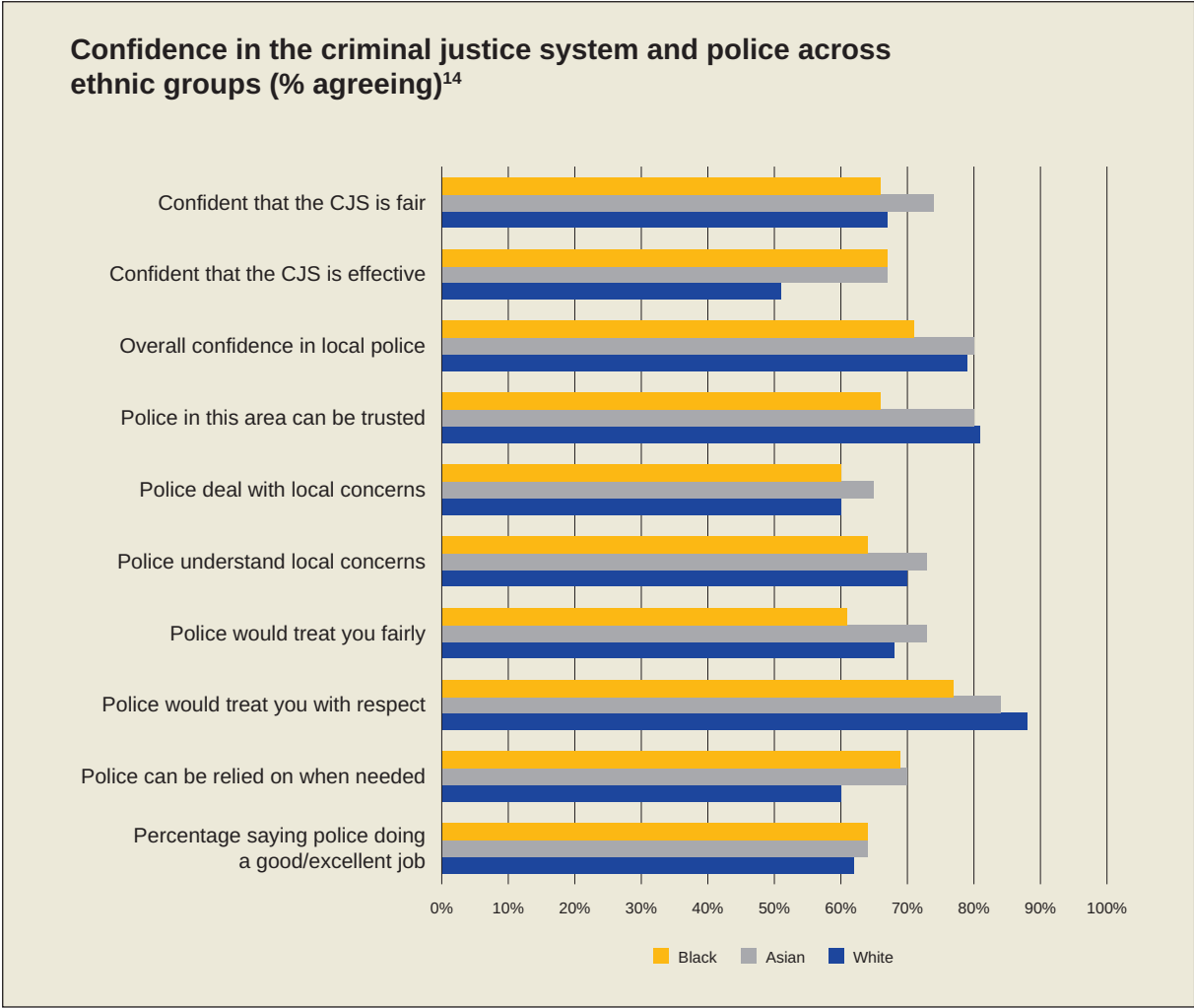
66% of black people and 74% of Asian people consider the criminal justice system to be fair – compared to 67% of white people. Black and Asian people are also more likely to judge the criminal justice system to be effective.

BAME and white people express similar levels of confidence in police across measures ranging from fairness to respect. There is no pattern of distrust in the criminal justice system or police.

¹¹ ‘Lammy Review: final report’, David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.6

¹² ‘Lammy Review: final report’, David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.37

¹³ ‘Lammy Review: final report’, David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p6



Arrest

The review notes that ‘arrest rates are generally higher across minority ethnic groups in comparison to the white group, with the exceptions of Asian women and boys’.¹⁵

The fact that Asian women and boys are exceptions in itself calls into question the idea that racial prejudice is the driving factor of these differences.

The review appears to attribute the difference largely to the ‘disproportionate use of Stop and Search on BAME communities’.¹⁶ The report notes: ‘those from BAME groups were three times as likely to be stopped and searched as those who are White. In particular, those who are Black were over six times more likely to be stopped’.¹⁷

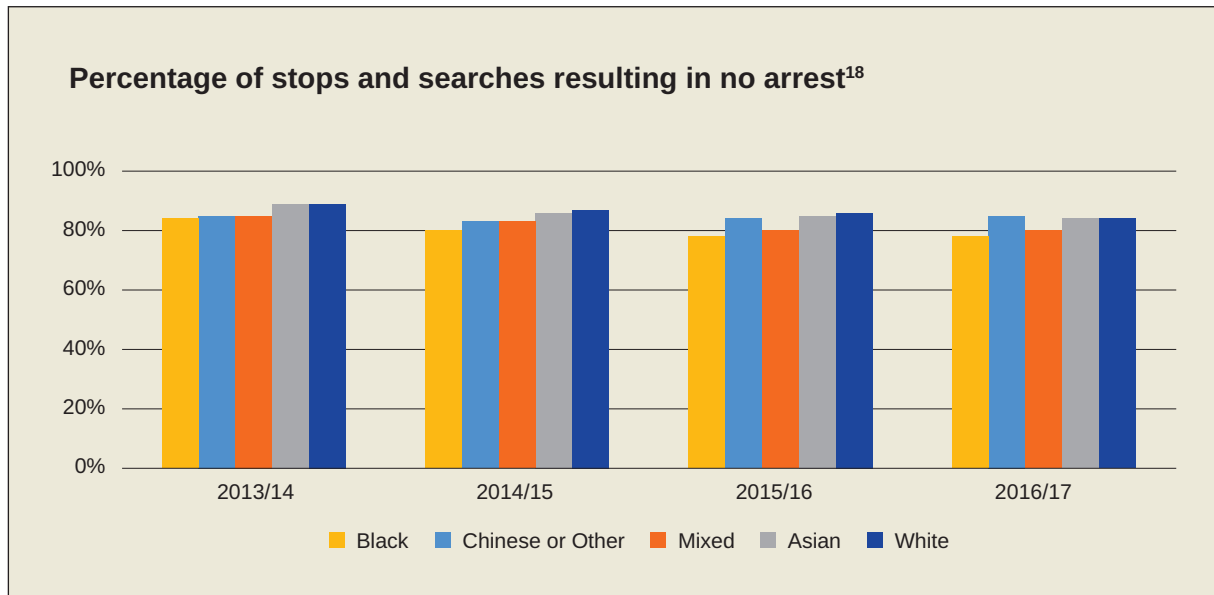
The problem with this argument is that the data show stop and search is used more cautiously when it comes to black people than with other ethnic groups.

¹⁴ Table S2, Table S5 and Table S26, Crime in England and Wales: Annual supplementary tables, Office of National Statistics, 20 July 2017, at <https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwalesannualsupplementarytables/march2017/supplementarytablesyearendingmarch2017.xls>

¹⁵ ‘Lammy Review: final report’, David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.17

¹⁶ ‘Lammy Review: final report’, David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.18

¹⁷ ‘Lammy Review: final report’, David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.18



If police used stop and search casually and disproportionately against black people, it might lead to more arrests in absolute terms. But the percentage of stops and searches resulting in no arrest would be higher for black people than for people who are Chinese, mixed race, Asian or white. Instead, white people are the most likely to be stopped and searched without arrest, and black people least likely.

The Crown Prosecution Service

The CPS takes the decision on whether to charge individuals for the crimes for which they were arrested. The Lammy review is complimentary about the CPS, noting that its charging decisions are 'broadly proportionate':¹⁹

- 'Once arrested, suspects from different ethnic groups are charged at relatively similar rates, with the important exceptions of rape and domestic abuse'²⁰
- 'BAME men and women were both slightly less likely to be charged than White men and women, though neither by a great deal.'²¹

Conviction rates

The Lammy review also rebuts suggestions that Crown Court verdicts are racially biased: 'Successive studies have shown that juries deliver equitable results, regardless of the ethnic make-up of the jury, or of the defendant in question'.²²

¹⁸ SS.10 Proportion of stops and searches resulting in arrests by self-defined ethnicity, 2012/13 and 2013/14, 'Police powers and procedures England and Wales year ending 31 March 2014: data tables', Home Office, 16 April 2015, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421813/ppp-stop-searches-2014-tabs.ods and SS.17: Proportion of stops and searches resulting in arrests by self-defined ethnicity, England and Wales, 2014/15 and 2015/16, 'Police powers and procedures England and Wales year ending 31 March 2016', Home Office, 27 October 2016, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/561975/other-pace-police-powers-procedures-hosb1516-tables.ods

¹⁹ 'Lammy Review: final report', David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.17

²⁰ 'Lammy Review: final report', David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.17

²¹ 'Lammy Review: final report', David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.20

²² 'Lammy Review: final report', David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.6

2016 data shows 63% of all those charged with an indictable offence are found guilty. Whites are actually the most likely to be found guilty, with Asians least likely. This is another example of a racial disparity in the opposite direction.

Offence group ²³	White	Black	Asian	Mixed	Chinese and other	Total
Violence against the person	47%	36%	36%	41%	37%	45%
Sexual offences	34%	27%	31%	29%	32%	33%
Robbery	40%	41%	41%	40%	42%	41%
Theft Offences	78%	70%	71%	72%	75%	77%
Criminal damage and arson	63%	55%	47%	56%	55%	64%
Drug offences	73%	71%	69%	72%	60%	72%
Possession of weapons	60%	58%	53%	58%	54%	61%
Public order offences	71%	64%	61%	66%	60%	65%
Miscellaneous crimes against society	54%	51%	48%	53%	54%	54%
Fraud Offences	61%	56%	52%	59%	58%	61%
Total	65%	58%	55%	60%	58%	63%

Sentencing

Data for 2016 show there are small differences in the likelihood of an offender going to prison, depending on ethnic group, from 17% of South Europeans to 22% of black people.

Ethnic group ²⁴	Number sentenced to prison	Number convicted or cautioned	% receiving custodial a sentence
White – North European	75,150	418,550	18%
White – South European	2,343	14,026	17%
Black	11,986	54,071	22%
Asian	6,357	31,440	20%
Middle Eastern	984	4,851	20%
Chinese or Japanese or SE Asian	327	1,607	20%

However, breaking this down by offence group reveals substantial differences in the offences committed. Most strikingly, black offenders are almost three times as likely as white – North European offenders to have committed robbery, the offence most likely to lead to prison for all ethnic groups.²⁵

²³ Prosecutions and convictions tool, 'Criminal justice system statistics quarterly: December 2016', Ministry of Justice, 18 May 2017, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614420/prosecutions-convictions-tool-2016.xlsx

²⁴ 'Offending History Tool: Sanction statistics', Criminal Justice System statistics quarterly: December 2016, Ministry of Justice, 18 May 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615135/criminal-history-pivot-table-2016-q4.xls

²⁵ 'Offending History Tool: Sanction statistics', Criminal Justice System statistics quarterly: December 2016, Ministry of Justice, 18 May 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615135/criminal-history-pivot-table-2016-q4.xls

Black offenders were also more than twice as likely to have been found guilty of both possession of weapons and of drug offences.²⁶ 88% of drug offences leading to prison were either 'Production, supply and possession with intent to supply' or importing/exporting drugs.²⁷

By contrast, a much higher proportion of white – North European offenders were guilty of crimes with low custody rates for all ethnic groups, such as summary offences and theft offences.²⁸

Accounting for criminal history

There is a disparity in sentencing data when one looks at the previous criminal history of offenders, and the broad category of offence of which they are guilty.

For most offence groups, there are only small differences in the chance of prison for a black person and a white – North European, after accounting for how many previous convictions or cautions they have. For example, black people are slightly less likely to receive a custodial sentence for criminal damage and arson or robbery – and slightly more likely to receive a custodial sentence for violence against the person.²⁹

But there are more substantial differences for four offence groups – drug offences, possession of weapons, miscellaneous crimes against society and summary offences. For these offence categories, a black person is about 40% more likely to go to prison, accounting for the number of previous offences committed.³⁰

It is possible that this reflects racial prejudice in sentencing – although if true this prejudice appears to be highly concentrated within certain offence groups and not others. But it is also possible that it reflects very different crimes being committed within those broad offence groups. Drug offences, for example, can range from possession of a class C drug (for which 6% went to prison) to production, supply and possession with intent to supply a class A drug (for which 77% went to prison).³¹

Would sending fewer criminals to prison help BAME communities?

At no point does the Lammy review seek to argue that innocent people are more likely to be convicted if they are BAME than white. Lammy argues that 'Successive studies have shown that juries deliver equitable results, regardless of the ethnic make-up of the jury, or of the defendant in question'.³²

But perhaps BAME communities suffer disproportionately if more BAME criminals go to prison?

The difficulty with this argument is that BAME people are more likely to be the victims of crime. White people would suffer least if a larger number of criminals were at large.

²⁶ 'Offending History Tool: Sanction statistics', Criminal Justice System statistics quarterly: December 2016, Ministry of Justice, 18 May 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615135/criminal-history-pivot-table-2016-q4.xls

²⁷ 'Who goes to prison? An overview of the prison population of England and Wales', Peter Cuthbertson, Civitas, December 2017, at <http://www.civitas.org.uk/content/files/whogoestoprison.pdf>, p.9

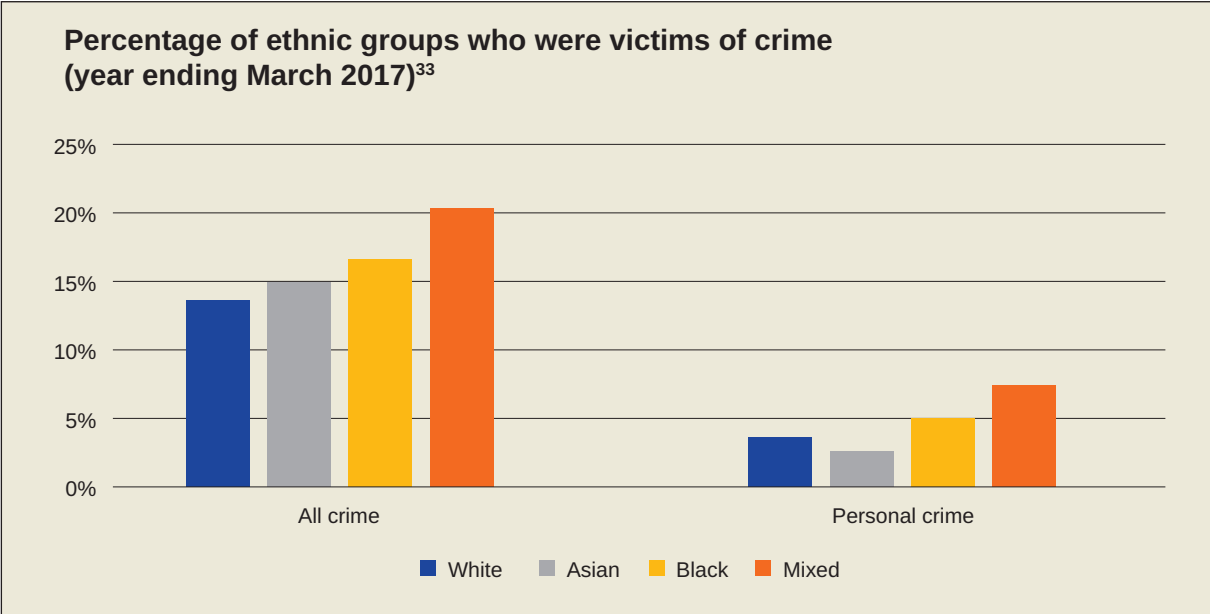
²⁸ 'Offending History Tool: Sanction statistics', Criminal Justice System statistics quarterly: December 2016, Ministry of Justice, 18 May 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615135/criminal-history-pivot-table-2016-q4.xls

²⁹ 'Offending History Tool: Sanction statistics', Criminal Justice System statistics quarterly: December 2016, Ministry of Justice, 18 May 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615135/criminal-history-pivot-table-2016-q4.xls

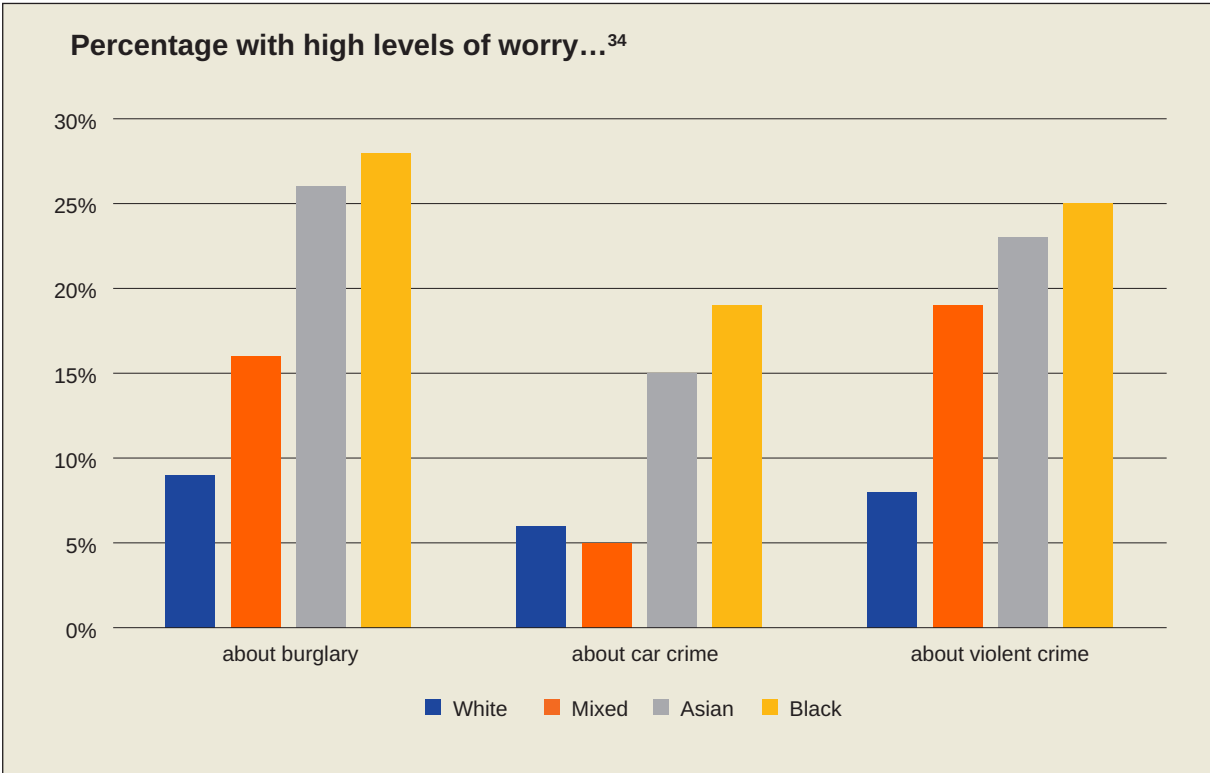
³⁰ 'Offending History Tool: Sanction statistics', Criminal Justice System statistics quarterly: December 2016, Ministry of Justice, 18 May 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615135/criminal-history-pivot-table-2016-q4.xls

³¹ 'Criminal justice statistics outcomes by offence tool', Criminal Justice System statistics quarterly: December 2016, Ministry of Justice, 18 May 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614418/cjs-outcomes-by-offence-tool-2016.xlsx

³² 'Lammy Review: final report', David Lammy, Gov.uk, 8 September 2017 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf, p.6



Fear of being a victim of crime is also disproportionately concentrated on ethnic minorities. Black and Asian people are three times as likely as white people to experience high levels of fear of violent crime.



³³ Table D1: Proportion of adults who were victims of all CSEW crime and personal crime by personal characteristics, year ending March 2017 CSEW, Crime in England and Wales: Annual Trend and Demographic Tables, Office of National Statistics, 20 July 2017, at <https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwalesannualsupplementarytables/march2017/supplementarytablesyearchingmarch2017.xls>

³⁴ Table S33: Worry about crime by personal characteristics, year ending March 2017 CSEW, Crime in England and Wales: Annual supplementary tables, Office of National Statistics, 20 July 2017, at <https://www.ons.gov.uk/file?uri=/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwalesannualsupplementarytables/march2017/supplementarytablesyearchingmarch2017.xls>

It is not only that BAME communities suffer more crime and fear of crime in general. Sending fewer BAME criminals to prison could disproportionately hurt BAME communities in another way.

A significant share of crime is committed against people criminals know, which often reflects their own ethnic group. Because ethnic majority and ethnic minority populations are often concentrated in certain places, criminals are likely to victimise disproportionately people of their own ethnic group. Put simply, white criminals living in disproportionately white areas are likely to have disproportionately white victims – because both the people they know and the strangers near them are disproportionately white. The same is true for BAME criminals and their own ethnic group.

There is limited data that shows the relationship between the ethnic groups of criminals and their victims. But the evidence from homicide data supports the idea that BAME people are disproportionately victimised by criminals from their own ethnic group.

When a black person is killed, the principal suspect is almost six times as likely to be black as to be white, even though the white population is far larger. After controlling for the relative size of the populations, when a homicide victim is black, the suspect is 145 times as likely to be black as white.³⁵

For Asian homicide victims, the suspects are more than twice as likely to be Asian as white before controlling for population size; 26 times as likely afterwards.³⁶

A judge would therefore be acting entirely contrary to the data if he imposed a non-custodial sentence on a BAME criminal, believing that this would help BAME people.

³⁵ Table 3.19, Chapter 3: Victims Tables, Race and the criminal justice system: 2014, Minister of Justice, 26 November 2015, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480072/victims-tables.xls

³⁶ Table 3.19, Chapter 3: Victims Tables, Race and the criminal justice system: 2014, Minister of Justice, 26 November 2015, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480072/victims-tables.xls

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