Racial Discrimination: A Society Divided by Legal or Moral Injustices?

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Abstract

The devastating consequences of racial inequalities have been highlighted by recent events, with striking evidence showing the disproportionate rates of diagnosis and deaths of ethnic minorities amid the COVID-19 pandemic.[1] Tracing these disparities back to social and economic factors and a lack of opportunities, it is evident that a substantial degree of racism exists in the UK. Still, the Government has yet to provide an adequate plan to tackle such issues and has instead dismissed claims of institutional racism.[2] The data combined with subsequent inaction reflects the harmful attitudes that are still prevalent, placing minorities at a dangerous disadvantage.

This article will determine whether the extent of the racism that we see in the UK today is rooted in a legal or moral fault. This will be done by tracing the history of law and morality to Ancient Greece and by using natural law theory and legal positivism to consider how racial discrimination has gained legal or moral support. Using this understanding, legal developments at national and international level will be traced to demonstrate how both legal and moral attitudes have changed over time, with specific reference being given to the city of Liverpool. Recent racial inequalities will then be examined with police powers and health care receiving the most scrutiny. It will be concluded that there has been little effective change in law and morality since the

[1] Public Health England, 'Disparities in the Risk and Outcomes of COVID-19' (GW-1447, PHE Publications, August 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908434/Disparities_in_the_risk_and_outcomes_of_COVID_August_2020_update.pdf> accessed 17 March 2021.

[2] Commission on Race and Ethnic Disparities, 'Commission on Race and Ethnic Disparities: The Report' (Gov.uk, March 2021) <https://www.gov.uk/government/publications/the-report-of-the-commission-on-race-and-ethnic-disparities> accessed 3 April 2021.

findings of the MacPherson Report[3] which has recently become a topical issue for policing leaders.[4]

Keywords: Jurisprudence; COVID; Racial Inequalities; Morality

1. Introduction

Racism has been defined by as "the state-sanctioned and/or extralegal production and exploitation of group-differentiated vulnerability to premature death".[5] These premature deaths are shown by the fact that "people of Chinese, Indian, Pakistani, Other Asian, Black Caribbean and Other Black ethnicity had between 10 and 50% higher risk of death"[6] than those of White British ethnicity during the COVID-19 pandemic. These findings have highlighted the already existing inequalities that have long been overlooked.

This article begins by exploring debates regarding law and morality to identify how racial discrimination has been a fundamental feature of modern societies. After understanding the theories behind law and morality, examples of racism in the city of Liverpool will be explored. It will be argued that Liverpool's involvement in the transatlantic trade of enslaved people demonstrated a lack of both law and morals that only began to change after the tragedy onboard the Zong slave ship. James Walvin provides an insightful account of the Zong massacre, giving details of the influence that this had on morality and the subsequent growth of the abolitionist campaign.[7] These historic events alone demonstrate the desperate need for the revision of both law and morality.

[3] William MacPherson, 'The Stephen Lawrence Inquiry' (Cm 4262-I, 1999).
[4] Vikram Dodd, 'UK Police Chiefs Consider Public Admission of Institutional Racism' *The Guardian* (12 December 2021) <https://www.theguardian.com/uk-news/2021/dec/12/uk-police-leaders-debate-public-admission-institutional-racism> accessed 5 January 2022.
[5] Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (University of California Press 2002) 247.
[6] Public Health England, 'Disparities in the Risk and Outcomes of COVID-19' (n 1) 39.
[7] James Walvin, *The Zong: A Massacre, the Law and the End of Slavery* (YUP 2011).

The revision of the law regarding equality began with the Universal Declaration of Human Rights (UDHR)[8] and continued until all aspects of the protection of equality were consolidated in the Equality Act 2010,[9] Showing the length of the journey towards legal protection. But as racial inequalities still exist, it will be proposed that a legal fault remains which has been identified by the Joint Committee on Human Rights that has recommended the strengthening of anti-racism laws along with other purposeful reforms in many institutions suggesting that the legal journey to equality is not yet complete.[10]

The effect of this can be seen within police institutions and health care environments. For example, data shows that there is a disproportionate rate of the use of stop and searches with Black people being more likely to be stopped and searched showing how prejudice is being acted on.[11] Another piece of worrying data shows how racism can impact people's health as Black people have a higher risk of susceptibility and death from Covid-19.[12] These pieces of recent data demonstrate the extent of the damage that racism does.

This article considers the ideologies of past philosophers and examples of contemporary racial injustices to provide an analysis of how racist laws and moralities have changed, and at times, how they have failed to change. This will be done by analysing existing literature and by considering recent statistics. The severity of the contemporary racial injustices makes the study of the underpinnings of racism a crucial area to research to understand how the current and future threat of racism can be combatted.

2. Natural Law Theory

[8] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).
[9] Equality Act 2010.
[10] Joint Committee on Human Rights, 'Black People, Racism and Human Rights' (Eleventh Eeport) (HL 165, HC 559) <https://committees.parliament.uk/publications/3376/documents/32359/default/> accessed 14 December 2020.
[11] Gov UK, 'Stop and Search' (19 March 2020) <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest> accessed 16 November 2020.
[12] Public Health England, 'Disparities in the Risk and Outcomes of COVID-19' (n 1).

The origins of natural law theory can be traced back to Ancient Greek philosophers. Although the ideas of each philosopher are unique, there is a common theme, which is the suggestion that the human ability to reason makes a person accountable. This results in the argument that although legal and moral logic are independent, there is an essential connection between them to form a rational society wherein an immoral choice should result in accountability, making the choice contrary to natural law.[13]

The first Greek philosopher to have a significant influence on the development of natural law is Socrates who first introduced the ability to reason. Within his lectures (recorded by his student, Plato)[14] Socrates withheld his own views regarding discrimination so his position cannot be certainly concluded. But Socrates showed enthusiasm whilst arguing against a person gaining rights over another, showing wariness of the notion of superiority. He reasoned that by assuming superiority, nature was being confused with custom, causing many immoral acts to be wrongly justified.[15] Rather than appealing to custom, Socrates' approach was instead heavily focused on exploring justice.

Socrates' was a strong source of influence for the development of Aristotle's philosophy. In Aristotle's work *Politics,*[16] there is also a focus upon justice, but his work strays from Socrates' when he endorses superiority. Unlike Socrates, Aristotle believed that low social status, what he would describe as inferiority, was fixed by nature, suggesting that slavery would have been pre-determined. This is a direct example of confusing custom with nature to appeal to familiar conduct rather than exploring morality. Inferiority and superiority were common themes throughout Aristotle's work showing that equality was not a trait intended to be included within natural law.

Aristotle's philosophy has since been disputed by Jeremy Bentham who noted that there is no evidence of a natural hierarchy, but he also acknowledges how Aristotle was influenced by the prejudice of his time, causing him to see only two species – free men

[13] John Finnis, *Natural Law and Natural Rights* (Oxford 1980).
[14] Plato, *The Dialogues of Plato Translated into English with Analyses and Introductions*, vol 2 (B Jowett (tr), 2nd ed, OUP 1875).
[15] Ibid 365.
[16] Aristotle, *The Politics* (T Sinclair tr, Penguin 1981).

and slaves.[17] Regardless of the era, Aristotle's position reflected morals that are now widely disputed, which is significant when applying his philosophy to modern-day law where equality is considered both valuable and essential.

To make the ideas of the Ancient Greek philosophers – Socrates, Plato, and Aristotle – compatible with a growing Christian population, philosopher Thomas Aquinas further developed the natural law theory in his work *Summa Theologica*.[18] When explaining whether there is a link between law and morality, Aquinas stated that all existing morals are derived from natural reason and therefore belong to the law of nature.[19] However, since slavery is contrary to the law of nature, the only justification for it to become legally acceptable would be if natural reason deemed it to be morally acceptable. To further explain how this could happen, Aquinas described how natural law can be adapted to accept unnatural practices. He suggested that there are first principles of natural law that can never be changed[20] and from these, conclusions are drawn to form secondary principles that can be changed, without ever altering the first principle. Changing a secondary principle can occur in two ways. Firstly, through addition, which involves introducing elements that would bring benefit to human life. Secondly, by subtraction which occurs when previously accepted laws cease to exist once they fail to bring benefits. Directly referring to slavery, Aquinas admits that slavery was not a natural occurrence but was in his opinion acceptable as it was "devised by human reason for the benefit of human life"[21] and so, the secondary principles of natural law were amended by the addition of slavery.

Aquinas also believed in the necessity of good intentions of the lawgiver that must be regulated in accordance with divine justice which is the idea of justice believed to be held by God.[22] Intentions that stray from divine justice and fail to regard universal happiness cannot be considered good law.[23] Although this provides an explanation for

[17] Jeremy Bentham, *The Collected Works of Jeremy Bentham: An Introduction to the Principles of Morals and Legislation* (Burns J and Hart HLA eds, OUP 1970) 245.
[18] Thomas Aquinas, *Summa Theologica* (Fathers of the Dominican Province tr, rev edn, Benziger Brothers 1920).
[19] Ibid I-II, Q.100, a.1.
[20] Ibid I-II, Q.94 a.5.
[21] Ibid I-II, Q.94, a.5, ad 3.
[22] Ibid I-II, Q.92, a.1.
[23] Ibid I-II Q.90 a.2.

why slavery eventually fell from favour in natural law, by justifying slavery, Aquinas largely contradicted his own principles. Slavery was not derived from divine law and does not acknowledge or occur for the purpose of universal happiness and so the addition could have never been considered good law. The justification of slavery under these rules could only be made by excluding enslaved people from the universal concept showing that the theory can easily be manipulated to accommodate popular societal beliefs, conforming to custom rather than nature.

In summary, the natural law theory attempts to encompass morality within the legal system but Aquinas's justification of slavery[24] demonstrates how the theory can be manipulated to suit personal or popular beliefs which is also shown by the endorsement of a natural hierarchy by Aristotle.[25] Applying this philosophy gives little hope to the legal system in the fight against inequality but the alternative of legal positivism also presented issues when enforced in society.

3. Legal Positivism

The theory of positivism is concerned with determining whether a law is legally valid, disregarding the moral value. This theory asserts that there is no necessary connection between law and morality. The ideas of this theory were first compiled by Jeremy Bentham who disputed the natural law theory and instead aimed to combine jurisprudence with utilitarianism.[26] The principle of utilitarianism asserts that "it is the greatest happiness of the greatest number that is the measure of right and wrong",[27] meaning that the happiness of the majority has the potential to overshadow the happiness of minorities when determining lawful acts. Bentham sought to explain the actions of humans in relation to utilitarianism and the law rather than understanding the creation of the law. So, Bentham prioritised obedience over reasoning.

[24] Aquinas (n 18) I-II, Q.94, a.5, ad 3.
[25] Aristotle (n 16).
[26] Bentham, *The Collected Works of Jeremy Bentham* (n 17).
[27] Jeremy Bentham, *A Fragment on Government* (F Montague ed, OUP 1891) 93.

John Austin, following Bentham's approach, explained that laws can be separated into three categories: the laws of God, positive laws made by political superiors, and positive morals which are laws made by non-political superiors (also including opinions).[28] The term "positive" refers to the human sources from which they come and so the distinct sources of law and morality warrants a distinction between the two. Austin expanded on his distinctions by explaining that laws are types of commands that ought to be obeyed, meaning that society should prioritise law over morality.[29]

Although Austin believed there to be no necessary connection between law and morality, he did not deny occasional links between the two. There is an acceptance that laws and morality can coincide, remain parallel, and sometimes conflict.[30] But he was insistent in explaining that even in times of a conflict, the law would always be considered good law, and failure to comply with a "command" should amount to an evil known as "punishment".[31] This position provides an explanation for how morally wrong practices, such as slavery, could be accepted and expected to be obeyed, as disregarding morality gives law makers liberty to create harmful laws for personal benefit.

In contrast, Herbert Hart critiqued Austin's separation of law and morality as he believed it to be superficial and wrong due to the existence of moral influences.[32] He explained how legal rights do not always make way for moral rights and moral rights do not always provide a legal right, showing the lack of harmony.[33] The example used to demonstrate this is a master having rights over a slave; the master would have had legal rights to have a slave but did not necessarily have the moral rights. In the same sense, a slave had a moral right to liberty but not the legal right. The existence and influence of both legal and moral rights is usually evident in the legal system with many legal rights gaining moral appreciation and many moral rights gaining legal enforcement, but this is not acknowledged under positivism. Although this theory is damaging, it provides a

[28] John Austin, *Lectures on Jurisprudence, or the Philosophy of Positive Law* (R Campbell ed, 5th edn, London 1875) 170.
[29] Ibid 100.
[30] Ibid 197.
[31] Ibid 90.
[32] Herbert Hart, 'Positivism and the Separation of Law and Morals' (1958) 71 Harv L Rev 593, 594.
[33] Ibid 606.

better explanation of how slavery was once accepted as there were no moral values to be considered. In Hart's opinion, the lack of moral appreciation for the victims of the slave trade gave them every moral reason to revolt and seek legal change.[34]

As well as acknowledging how positivism played a part in the slave trade, Hart also highlighted the threats of positivism regarding the rise of Nazi Germany,[35] where the serious reality of separating law and morality were exposed through crimes against humanity seen through the Nuremberg Race Laws.[36] As positivism became more popular during the 20th century due to the rise of science contributing to the natural law theory losing credibility, morals became less relevant when creating laws and the obedience of these laws resulted in the loss of millions of lives. Recognising the dangers of disregarding morals resulted in the reunion of law and morality in the shift back towards the natural law theory to combat morally evil laws.

Also contributing to the fall of positivism was the civil rights movement in the 20th century that caused many to question when it would be acceptable to disobey an immoral law.[37] There is never a legal right to disobey the law, but there can at times be a moral right in circumstances that it would achieve a more important goal, or where obeying would result in a greater wrong. To decide whether there is a moral right to disobey the law, there must be a moral evaluation upon the aim of the offence to determine whether disobedience would be justifiable.[38] For example, Martin Luther King Jr disobeyed many laws in the fight for racial equality with one specific offence in 1963 holding high levels of significance. This was when King was arrested for demonstrating without a permit and wrote his open "Letter from Birmingham Jail"[39] to raise support for the disobedience of unjust laws. Even though he was faced with consequences, King used his moral right to continue disobeying as civil unrest was the most productive way

[34] Ibid 624.
[35] Ibid 616.
[36] Nuremberg Race Laws, "Reichsbürgergesetz" and "Gesetz zum Schutze des Deutschen Blutes und der Deutschen Ehre" (in German) 1935.
[37] Joel Feinberg, 'The Right to Disobey' (1989) 87(6) Mich L Rev 1690.
[38] Kent Greenawalt, *Conflicts of Law and Morality* (OUP 1987) 293.
[39] Martin Luther King Jr, *Letter from the Birmingham Jail* (Harper San Francisco 1994).

to gain the attention of majority groups.[40] Breaking the norms of obedience that were instilled in society from positivism meant that the civil rights movement created a culture wherein immorality could not be excused as being legally justified.

Overall, a legal positivist approach to law and morality is significantly more harmful for society than following natural law theory as seen by the application of legal positivism in Nazi Germany where laws such as the Nuremberg Race Laws demonstrated the wide-spread harm that could be caused by immoral rules being enacted by law. From this, it is evident that law and morality should not be separated as both play crucial parts in a functional society where Martin Luther King's legacy continues to inspire people to use their moral views to rid the legal system of oppressive laws.

The next chapter will explore the consequences of the historic lack of racial equality, specifically in Liverpool, beginning with the city's role in the trafficking of enslaved people.

4. Liverpool and the Triangular Trade

Prior to the involvement in the transatlantic trade, Liverpool's ports traded mainly tobacco and sugar in competition with the ports in Bristol and London. Liverpool first became involved in the trafficking of African people early in the 18th century when they joined the triangular trade.[41] The first leg of this journey involved transporting goods to Africa in return for enslaved people. The second leg involved the transportation of these people from Africa to America where they would be sold for money, tobacco, sugar, and other goods. The ships would then return completing the triangular route. Liverpool initially had a minor role due to the competition of other trading ports until the War of Jenkin's Ear (1739-1748) hindered the ports of Bristol and London so much so that they would never regain the loss of trade.[42] However, the geographical location of Liverpool

[40] 'Is It Right to Break the Law?' *The New York Times* (12 Jan 1964) <https://www.nytimes.com/1964/01/12/archives/is-it-right-to-break-the-law-the-question-is-raised-by-recent.html> accessed 19 December 2020.
[41] Ruth Sawh and Alice Scales, 'Middle Passage in the Triangular Slave Trade: The West Indies' (2006) 57(3) NER 115, 116.
[42] Paul Clemens, 'The Rise of Liverpool 1665-1750' (1976) 29(2) Econ Hist Rev 211, 219.

meant that the trade could continue with a conflict free route towards the Atlantic Ocean. This gave Liverpool a 9-year advantage and during this time, Liverpool "had become the greatest slave port in the world".[43]

Holding this title meant that the city witnessed a large economic boom with new opportunities for growth and wealth. This presented a financial interest in continuing in the triangular trade, that prevailed over the moral abhorrence of the trade in enslaved people. As the financial interest continued to grow, the number of ships sailing increased to the point that "one in six or seven Africans who had crossed the Atlantic had done so in a Liverpool-registered ship".[44] On board these ships, captives were treated brutally with no rights protection. The treatment of the enslaved is significant as any physical injury diminished their value. So, rather than having a purpose, the violence on board was institutional – "brutality was basic to the whole system".[45] Fear and control were devices used to maintain the ideology that those captured were inferior, which is an assumption as old as Aristotle.[46]

The extent of the brutality became clear in 1781 when a Liverpool slave ship owner obtained a Dutch ship named the Zong.[47] This ship was smaller than the average ship but carried more people. Through failures on board which lead to an extended journey, water supplies became scarce. To counter this, 132 captives were thrown overboard. The tragedy only came to light when the owners attempted to claim insurance for the loss of property, this being the lives lost. The owners succeeded in arguing necessity over morality by claiming that the killings were a matter of necessity, to save at least some of their property. At the hearing for a retrial, it was found that 38 of the killings occurred a day after it had rained, showing that these killings could no longer be argued to be a matter of necessity.[48]

The hearing was attended by Granville Sharp, an abolitionist campaigner, who had been influenced by another abolitionist and formerly enslaved person, Olaudah

[43] Ibid.
[44] Walvin (n 7) 12.
[45] Ibid 42-43.
[46] Aristotle (n 16).
[47] Walvin (n 7).
[48] *Gregson v Gilbert* (1783) 3 Doug KB 232, 99 ER 629.

Equiano. Aiming to confront the complicity of those benefiting from the trafficking of African people, Sharp argued that the moral responsibility for the Zong massacre lay upon the whole British empire rather than solely those directly involved.[49] This attracted attention, particularly from the Quaker community that became the first religious group to condemn slavery,[50] increasing the following of the abolitionist campaign as people finally began to assess the immorality of slavery. The sudden disapproval of slavery by Christians is a significant turning point in abolitionist history since many of the natural law philosophers had previously accepted the trade as being justifiable by nature.[51]

The Zong massacre tested the conscience of those who became aware of the killings and who were now forced to face the reality of placing wealth before humanity. Doubts upon the legality of the triangular trade were initially expressed by Lord Mansfield in the 1772 Somerset case.[52] This case revolved around the freedom of a formerly enslaved man named James Somerset who had sailed to England with his master and subsequently refused to return to America. The case was decided in favour of Somerset, granting him his freedom. Although Mansfield's decision was considered a victory, it was also "a local, very English affair",[53] having no impact upon the wider transatlantic trade, leaving the trade to continue to thrive.

The right to liberty for the remaining enslaved Africans remained unclear until Parliament began to pass legislation to finally outlaw slavery. The first Act passed in 1806 after initially failing at the House of Lords, outlawing trading with the French colonies.[54] The full abolition of the triangular trade came a year later and prohibited any dealing in the trade and allowed for any slave ships to be seized, ending the legality of the slave trade.[55] Over a century later, legal protection for formerly enslaved people

[49] In Our Time Podcast, 'The Zong Massacre' (26 November 2020) <https://www.bbc.co.uk/programmes/m000pqbz> accessed 15 December 2020.
[50] Anita Rupprecht, ''A Very Uncommon Case': Representations of the *Zong* and the British Campaign to Abolish the Slave Trade' (2007) 28(3) JLH 329.
[51] Aquinas (n 18) I-II, Q.94, a.5, ad 3.
[52] *Somerset v Stewart* (1772) 98 ER 499.
[53] Walvin (n 7) 136.
[54] Foreign Slave Trade Act 1806.
[55] Abolition of the Slave Trade Act 1807.

would follow so that rights would be written and protected by the law.[56] However, as we still see issues today, there is still a lack of respect for these human rights.

5. Human Rights

On the 22 June 1948, the Empire Windrush arrived in Tilbury carrying the first post-war migrants from the Caribbean who had the hopes of living in the UK and helping to rebuild the country after the Second World War.[57] They became known as the Windrush Generation. Political discourses surrounding immigration added to the hostile environment that they became subject to as politicians frequently attempted to draw a distinction between "good immigrants and bad immigrants" with the presumptions not being an accurate representation of the people they referred to.[58] Making this distinction inevitably had the effect of creating tension and unease throughout society which was intensified by the complete lack of legal protection.

Later in 1948, the Universal Declaration of Human Rights (UDHR)[59] was created and acted as the first international legal document to outline the rights that are expected to be available to everyone with specific mention of race in article two.[60] This was accepted by the United Nations General Assembly to address the consequences of the Second World War.[61] The most prominent shortcoming of the UDHR was that it only outlined the moral obligations to grant rights rather than any legal obligations.[62] As a result, the European Convention on Human Rights (ECHR)[63] was signed in 1950 and

[56] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).
[57] Matthew Mead, 'Empire Windrush: The Cultural Memory of an Imaginary Arrival' (2009) 45(2) J Postcolonial Writ 137.
[58] Charlotte Taylor, 'Representing the Windrush Generation: Metaphor in Discourses Then and Now' (2020) 17(1) Crit Discourse Stud 1, 9.
[59] Universal Declaration of Human Rights (n 8).
[60] Ibid art 2.
[61] United Nations, 'History of the Declaration' <https://www.un.org/en/about-us/udhr/history-of-the-declaration> accessed 7 February 2022.
[62] United Nations, 'Declaration on Human Rights Defenders' <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx> accessed 7 February 2022.
[63] ECHR (n 56).

ratified by the UK in 1951 to eventually come into force in 1953 and provide legal protection.[64]

Before formally introducing human rights into UK law, the UK drafted three pieces of legislation directly relating to racial discrimination. The first was the Race Relations Act 1965.[65] The overall effectiveness of this piece of legislation was limited as Parliament only intended to restrict discrimination in public places and so the Act failed to provide an effective course of protection to victims.[66] During the drafting of the second piece of legislation, the Race Relations Act 1968,[67] Enoch Powell gave a speech at the Conservative Political Centre meeting which became known as the "Rivers of Blood" speech.[68] In this, Powell was racially divisive in his criticisms of mass immigration, reflecting much of the hostility faced by migrants in the UK. "Whether he intended to or not, Powell has given mainstream respectability to the kind of racist language and opinions held by the far right",[69] adding to the racial tensions that Parliament had attempted to dismantle. However, the Race Relations Act 1968 passed and outlawed discrimination within employment, advertising, and accommodation. This was an improvement upon previous laws but was still a rather weak source of protection as it had no effect outside of the three target areas. So, to toughen the existing legislation, Parliament passed a third Race Relations Act in 1976 which founded the Commission for Racial Equality and strengthened the law regarding racial discrimination as it extended the definition of discrimination to include indirect discrimination.[70]

Although the enactment of legislation was an improvement, racism continued to exist in the UK. 1981 marked the beginning of the Toxteth riots which erupted to fight against the injustices faced by the Black youth, mainly at the hands of the police. At the time of

[64] Council of Europe, 'Chart of Signatures and Ratifications of Treaty 005' <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=005> accessed 7 February 2022.
[65] Race Relations Act 1965.
[66] Bob Hepple, 'Race Relations Act 1965' (1966) 29(3) MLR 306, 307.
[67] Race Relations Act 1968.
[68] 'Enoch Powell's 'Rivers of Blood' Speech' *The Telegraph* (6 November 2007) <https://www.telegraph.co.uk/news/0/enoch-powells-rivers-blood-speech/> accessed 28 March 2021.
[69] Harry Taylor, ''Rivers of Blood' and Britain's Far Right' (2018) 89(3) Pol Q 385, 386.
[70] Race Relations Act 1976.

the riots, Lord Scarman was conducting an inquiry[71] originally directed at the Brixton uprisings also in 1981 but it became applicable to the riots in Toxteth. The Scarman Report concluded that the violence came from several political, social, and economic factors that resulted in a lack of trust between the police and Black communities. The factors that Scarman believed to have been the source of the violence suggests that there is institutional racism in the police. But the report formerly denied the existence of institutional racism. This could be a result of there being no singular meaning of institutional racism[72] but in essence it involves racist prejudices being implemented in laws and society that immediately place minorities at a disadvantage, like in Toxteth. To amend the discriminatory behaviour of the police force, the Police and Criminal Evidence Act 1984[73] was introduced which contained codes of practice and stated the rights of a suspect. This was an attempt to solve the mistrust that had been voiced by the Brixton and Toxteth riots but did not improve the tension and unease between the public and UK institutions.[74]

Further insufficiencies of the existing legislation were exposed by the racially provoked killing of Stephen Lawrence in 1993[75]. As the investigation into Lawrence's death was criticized for incompetence, the MacPherson Report[76] inquired into the response. The Report recognised that failures by the police were indicative of institutional racism in the police force. It explained how institutional racism allows for individual racism to spread, suggesting that "such attitudes can thrive in a tightly knit community, so that there can be a collective failure to detect and to outlaw this breed of racism. The police canteen can too easily be its breeding ground".[77] Following this, suggested reforms from the MacPherson Report began to be introduced into law, including the Race Relations

[71] Lord Leslie Scarman, 'The Brixton Disorders 10th-12th April 1981' (Cmd 8427, 1981).
[72] MacPherson (n 3) 6.6.
[73] Criminal Evidence Act 1984.
[74] Matthew Connolly, 'Do Riots Show that Tensions of Earlier Decades Still Smoulder?' *The Guardian* (16 August 2011) <https://www.theguardian.com/society/2011/aug/16/riots-tensions-previous-decades-smoulder> accessed 8 February 2022.
[75] Alexandra Heal, 'Stephen Lawrence: Timeline of Key Events' *The Guardian* (19 April 2018) <https://www.theguardian.com/uk-news/2018/apr/19/stephen-lawrence-timeline-of-key-events> accessed 3 February 2022.
[76] MacPherson (n 3).
[77] Ibid 6.17.

(Amendment) Act 2000[78] which placed a positive duty upon public bodies to avoid racial discrimination and to promote equality to act upon the evident institutional racism that resulted in injustices during the Lawrence investigation. Also coming into force in 2000 was the Human Rights Act 1998 which aligned national rights with international rights and made public authorities responsible for failing to comply with international rights.[79] Furthermore, the double jeopardy rule was abolished by the Criminal Justice Act 2003,[80] which came into force in 2005, allowing for the defendants to be retried for the murder, bringing some justice. Added legal protection came from the Equality Act 2010[81] which combined over 116 pieces of legislation to cover all forms of discrimination and to act as a resource available to everyone in Britain.

Although the creation of new laws was a crucial recognition of the previous lack of protection, there is concern that these rights are not universal in practice. For example, a recent survey commissioned by the Parliamentary Joint Committee on Human Rights found that over 75% of Black people in the UK do not believe their human rights are equally protected when compared to White people.[82] This is a modern day example of how the racial inequalities that the Zong represents has seen little change as there is still a lack of respect for rights so although the massacre is an extreme example of racial inequality, the underlying issue of indifference or ignorance towards racial minorities still remains, making the tragedy even more relevant. To counter this, the Joint Committee suggests that there should be reform in multiple areas such as better anti-racism laws, reform of the education system regarding human rights, and purposeful reform and review of the criminal justice system.[83]

[78] Race Relations (Amendment) Act 2000.
[79] Human Rights Act 1998, s 6.
[80] Criminal Justice Act 2003, part 10.
[81] Equality Act (n 9).
[82] ClearView Research, 'The Black Community and Human Rights' (September 2020) <https://www.nhsbmenetwork.org.uk/wp-content/uploads/2020/09/The-Black-Community-Human-Rights-Report.pdf> accessed 14 December 2020.
[83] Joint Committee on Human Rights (n 10) 11.

6. Racism in the Police

The death of George Floyd in 2020 sparked worldwide protests in solidarity with those facing racial discrimination – specifically at the hands of the police.[84] Although this killing occurred in Minneapolis, US, it is important to recognise that racism within police is also a UK problem as the protest chant 'the UK is not innocent' suggests.[85] Understanding racism in the police force comes in two parts; recognising that racial discrimination and prejudice exists, and secondly recognising that there is a link between stereotyping and suspicion.[86] Instances of racial discrimination and prejudice are immediately evident through police data that shows the disproportionate use of stop and search powers.[87] These powers have been described as a "litmus test"[88] to demonstrate bias based on characteristics when deciding who the powers should be used against. The data recorded between April 2018 and March 2019 shows that for every 1,000-White people, 4 were stopped and searched compared to 38 for every 1,000-Black people, meaning that on average, Black people are almost 10 times more likely to be stopped and searched. The difference in statistics suggests these stop and searches are a selection based upon skin colour. The assumption of guilt is unjust treatment of specific races, amounting to discrimination. Therefore, the stop and search statistics undeniably demonstrate that racial discrimination and prejudice exists in the police force.

Next, the link between stereotyping and suspicion should be addressed. The stereotype that a person's race identifies them as being more likely to be involved in crime is what underpins that overuse of stop and searches with no credible reasoning. It is possible that this negative prejudice is a "consequence of long held and institutionally embedded ideas linking race and criminality" showing how there is a connection between a police officer's individual racism and the institution that they are a part of.[89] The worrying

[84] Oliver Holmes and Daniel Boffey, ''Abuse of Power': Global Outrage Grows After Death of George Floyd' *The Guardian* (2 June 2020) <https://www.theguardian.com/us-news/2020/jun/02/abuse-of-power-global-outrage-grows-after-death-of-george-floyd> accessed 3 February 2022.
[85] Remi Joseph-Salisbury, Laura Connelly and Peninah Wangari-Jones, '"The UK is Not Innocent": Black Lives Matter, Policing and Abolition in the UK' (2020) 40(1) EDI 21.
[86] Ben Bowling and Coretta Phillips, 'Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search' (2007) 70(6) MLR 936, 953.
[87] Gov UK (n 11).
[88] Ben Bradford and Matteo Tiratelli, 'Does Stop and Search Reduce Crime?' (2019) 4 CCJS 1.
[89] Joseph-Salisbury, Connelly and Wangari-Jones (n 85).

extent to which the individual beliefs are enabled by the institution gives power to racism and fuels hate crimes, leaving a significant degree of mistrust between ethnic minority communities and the police.

One of these hate crimes is the above-mentioned racially provoked killing of Stephen Lawrence in 1993, and another is the killing of Anthony Walker in 2005.[90] Anthony Walker's death had a striking resemblance to the death of Stephen Lawrence, showing that a mere inquiry has had little effect on a problem that is so deep-rooted. Stephen Lawrence and Anthony Walker are two of many victims who have been failed by the racist ideologies of society that are enforced through UK institutions. Given these racially provoked attacks and the increasing rates of racial profiling, "the assertation that, after MacPherson, such racism has declined, being steadily eradicated by the criminal justice system, is, simply, a lie."[91] Rather, individual racism is being accommodated by institutional racism through the enforcement of prejudicial ideologies meaning that the problem "is not a few bad apples, but a rotten apple cart".[92]

7. COVID-19

Racism also impacts people's lives outside the criminal justice system. Emerging from the COVID-19 pandemic is evidence of how there are socioeconomic inequalities that can put many lives at risk. Disparities that have been recorded in the COVID-19 pandemic group together Black, Asian and minority ethnic (BAME) groups. This umbrella term has since been dropped due to the failure to recognise individual identities.[93] The existing data shows that there are higher rates of susceptibility and mortality for ethnic minority groups.[94] Recognising this, there has been a Government review which acknowledged that the "pandemic exposed and exacerbated longstanding inequalities".[95] Some of the socioeconomic factors that place ethnic groups at a

[90] 'Timeline: Anthony Walker Murder' *The Guardian* (30 November 2005) <https://www.theguardian.com/uk/2005/nov/30/ukcrime.race1> accessed 3 February 2022.
[91] Jon Burnett, 'After Lawrence: Racial Violence and Policing in the UK' (2012) 54(1) IRR 91,97.
[92] Joseph-Salisbury, Connelly and Wangari-Jones (n 85).
[93] Commission on Race and Ethnic Disparities (n 2).
[94] Public Health England, 'Disparities in the Risk and Outcomes of COVID-19' (n 1) 39.
[95] Public Health England, 'Beyond the Data: Understanding the Impact of COVID-19 on BAME Groups' (GW-1307, June 2020)

disadvantage include area deprivation, access to health services, employment, and housing quality. By showing awareness of these inequalities, the Government would be expected to tackle the inequalities faced by ethnic groups, regardless of a pandemic. However, since the review, there appears to be a lack of intent to improve the situation.

To use ethnicity as an indicator in this way to identify health inequalities is beneficial for determining probability and risk based upon fact. This therefore differs from racial profiling as there is no ill-intention or uninformed assumption based upon prejudice. This is an example of formal equality against substantive equality. Formal equality is the conception that "likes should be treated alike",[96] which is derived from the Aristotelian philosophy. For example, providing everyone with a vaccine would suffice formal racial equality, which appears to be the approach currently being taken (in the UK at least). The full meaning of substantive equality is contested, but the approach would entail inequalities being identified and countered[97], with ethnic groups being provided with more support so that everyone could achieve the same outcome. For example, making ethnic groups a priority group to receive the vaccine would reduce their risk of death. As discrimination requires a choice, the UK Government choosing the minimalistic approach that puts ethnic groups at a disadvantage is discriminatory.

Furthermore, enforcing formal equality by simply vaccinating the population will not be effective in fighting the risk of COVID-19 to ethnic groups as the Scientific Advisory Group for Emergencies (SAGE) have reported that there is likely to be lower uptake of the vaccine amongst ethnic groups.[98] This is supported by a survey that found that 72% of Black respondents were unlikely to get the vaccine meaning that formal equality will not protect ethnic groups.[99] Instead, there needs to be an understanding of hesitancy of

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/892376/COVID_stakeholder_engagement_synthesis_beyond_the_data.pdf> accessed 12 November 2020.

[96] Sandra Fredman, 'Substantive Equality Revisited' (2016) 14(3) ICON 712, 716.

[97] ibid 727.

[98] SAGE, '73 Minutes: Coronavirus (COVID-19) Response' (17 December 2020) <https://www.gov.uk/government/publications/sage-73-minutes-coronavirus-covid-19-response-17-december-2020> accessed 28 December 2020.

[99] University of Essex, Institute for Social and Economic Research (2020), 'Understanding Society: COVID-19 Study, 2020' (4th Edn, SN: 8644).

ethnic minorities to get the vaccine which can then be addressed and remedied in the rollout scheme.

The hesitancy towards the vaccine is not surprising given the historic health inequalities in the medical industry. The current problems faced by the pandemic reflect concerns that were raised in 1980 by the "Black Report",[100] which acknowledged that illness and death disproportionally impacts different communities due to the social and economic inequalities. This report was a criticism of the introduction of the National Health Service (NHS) that had failed to bridge the gap between social classes in terms of health which has been proven by social factors resulting in more deaths of ethnic groups from COVID-19. With the same social factors present over 40 years after the Black Report, it is evident that the UK has failed to address the social inequalities that have contributed to thousands of deaths. Persistent failures to amend health inequalities has resulted in mistrust between ethnic communities and the Government demonstrated by the hesitancy to take the COVID-19 vaccine. The pandemic has resulted in indisputable evidence that socioeconomic factors cause more deaths and so previous failures to improve these inequalities should be enough reason to close the social gap to prevent unavoidable future deaths.

8. Conclusion

Racism in the UK is evidently a severe issue within society with dangerous consequences. Gaining legal protection was a long process spanning over half a century before equality legislation was properly provided.[101] Still, there are calls for anti-racism laws to be strengthened,[102] suggesting that there are still shortcomings in the law that enable racism to occur in the UK. Supporting this are the worries expressed directly from Black people who mostly feel unequal in terms of rights.[103] The concerns

[100] Douglas Black, 'Inequalities in Health: Report of a Research Working Group' (Department of Health and Social Security, London 1980).
[101] Equality Act (n 9).
[102] Joint Committee on Human Rights (n 10).
[103] ClearView Research (n 85).

over rights combined with the concerns that anti-racism laws are too weak demonstrates that there is a legal fault in the way that the UK addresses racism.

The response to the current climate and the inequalities that ethnic minorities face has a resemblance to the interpretation of law and morality by the Ancient Greek philosophers who generally accepted inequalities as being natural and not necessarily requiring remedies. Although Aristotle's explanation of this being a natural hierarchy[104] is less likely to be used today, the notion still appears to be relevant as little is being done to remedy the harmful environment that ethnic minorities face. Finding this resemblance between Ancient Greece philosophy and modern law and policies is surprising considering the difference in morality between the two periods of time.

However, this is also a foreseeable outcome of developing the legal system from the philosophy of natural law theorists who embraced inequalities and encouraged practices such as slavery. Although the natural law theory can be seen as being significantly less harmful than the positivist theory, the potential damage should not be ignored. This damage arises when only accepting things that are said to be natural as being lawful whilst simultaneously manipulating the model to justify immoral practices[105] that are contrary to all principles of the theory. This demonstrates how the legal system can acknowledge morality but at a time where there is an ulterior motive, morality can be ignored mirroring the devastating events that took place onboard the Zong.

By finding the legal and moral shortcomings that existed within the philosophy of the Ancient Greeks, together with exploring how allowing these can result in widespread inequalities, allows for the conclusion to be drawn that there is a fault in both law and morality individually but also combined. Failing to address these faults is likely to encourage the spread of racist attitudes that are currently embedded within the largest institutions. By introducing modern issues such as the COVID-19 pandemic and the inconsistent use of police powers, this paper asserts that racism in the UK is a growing problem which will continue to worsen if left unchallenged.

[104] Aristotle (n 16).
[105] Aquinas (n 18) I-II, Q.94, a.5, ad 3.

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