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Youth Justice and Racialization: Comparative Reflections

This article arises from comparative work between Australia and England and Wales which considered, among other issues, criminalization, racialization and youth justice.[i] The research was particularly interested in understanding how Black and ethnic minority young people in England and Wales, and Indigenous young people in Australia have increasingly become the residual population of incarcerated youth at a time when incarceration rates for young people were generally falling. During 2017-2018 Indigenous young people made up 56 per cent of the Australian youth detention population and were 23 times more likely to be incarcerated then non-Indigenous youth (AIHW, 2019: 9). At August 2019, Black, Asian and minority ethnic children constituted 51 per cent of the imprisoned youth population in England and Wales. Black young people were the largest section of this group, comprising 57 per cent of the total non-White group (Ministry of Justice and Youth Justice Board for England and Wales, 2019: Table 6).

The paper explores both the overt and more subtle forms of racializing and criminalizing young people. These various practices are evident in the way different types of interventions and decision-making processes operate, for example, in stop and searches, gang databases and the use of joint enterprise and consorting legislation. More subtly, the rise of apparently neutral and non-discriminatory justifications for intervention found in evidence-based practice (EBP) and risk assessment also lead to racialized differentiation. These discourses and practices mask race through appeals to neutrality and scientific legitimacy, while at the same time re-inscribing and thus confirming a link between particular social groupings of marginalised young people and a propensity towards dysfunction and criminality. Risk assessment in particular both *masks* race in its practices and *marks* race in its outcomes. Racialized differentiation in youth justice is also gendered. However, the data and research often conceals intersectionality through either reflecting the subject area as gender-neutral, or considering gender and race as separate categories. A similar problem arises with the absence of consideration of class where, for example, questions of educational attainment or access to employment are presented as equal opportunities available to all. These approaches limit our understanding of the extent to which EBP and risk assessment reproduce specific racialized, classed and gendered effects for children and young people.

The article also highlights the necessity for historically and situationally contextualised understandings of identity and race. Such a contextual method is important for analysis of criminalization processes which, while showing similarities across the comparative jurisdictions, also play out differently partly because of contrasting colonial and postcolonial settings. Further, differing administrative classifications of race are also context dependent and solidify what are clearly fluid categories. Finally, different contextual settings also affect the dynamics of resistance and reform.

Comparative Research, Colonialism and the Context of Race

Comparative criminological research in youth justice is complex and an appreciation of context is vital (Goldson, 2019). In understanding the way race 'works' in the youth justice systems of Australia and England and Wales, contextual understanding helps explain some of the striking similarities and differences between the relevant jurisdictions. Despite their differing colonial and postcolonial histories, youth justice systems in both Australia and England and Wales exhibit significant over-representation of racialized and minority ethnic groups of young people. In Australia this is predominantly expressed through the disproportionate criminalization and imprisonment of Indigenous young people. However, young people from Arabic, African and Pacific Islander backgrounds are also overrepresented in youth justice systems. In England and Wales African-Caribbean, African and mixed race children and young people are consistently overrepresented in youth justice, as are other minority ethnic groups, particularly Gypsy, Roma and Traveller children, and, increasingly, so too are young people from various Muslim communities.

However, a distinct difference between England and Wales and Australia is the way the historical legacy of colonialism has played out. The latter's experience of settler colonialism[ii] meant the violent and, at times, genocidal dispossession of Indigenous peoples from their lands, followed by systematic racial discrimination which directly controlled all aspects of Indigenous life for much of the twentieth century, and the ongoing denial of political sovereignty (Behrendt et al., 2019). Youth justice and child welfare systems continue to perform a role in maintaining a colonial order which controls Indigenous families and communities through the large-scale removal and incarceration of children and young people and negates meaningful self-determination (Cunneen, 2016; Libesman, 2016). Although children from various minority ethnic communities are overrepresented in Australian youth

justice, by far the most significant group is Indigenous young people. It has been argued elsewhere that there is a direct relationship between the racially discriminatory and exclusionary policies of settler colonialism and the contemporary overrepresentation of Indigenous young people and adults in the criminal justice system (Blagg, 2016; Cunneen and Tauri, 2016). The different colonial experiences also impact on strategies of resistance and the demands for change – a point returned to later in this article.

In England and Wales understanding colonialism also has a place, albeit in a different context. For example, it has been argued that part of the structural conditions of contemporary overrepresentation of Black youth lies in the longer-term effects of slavery and colonialism (House of Commons Home Affairs Committee, 2007), including contemporary Black understandings of discrimination, racism and crime (Palmer, 2014: 101-105). Further, Britain's imperialist past determined the nature of ethnic diversity, including immigration from former colonies in Africa, Asia and the Caribbean (Phillips and Bowling, 2017: 192). In addition, there has been a long history to the control of Gypsy, Roma and Traveller communities which 'reveals a leitmotif of state-sponsored exclusion and criminalization for more than five centuries' (Phillips 2017: 6).

Talking about race is a complex and political process (Patel and Tyrer, 2011: 2) because race has no objective, inherent or fixed quality (Delgado and Stefancic, 2007). This article utilizes the concept of *racialization,* while acknowledging that there is debate over the term. For some, racialization is considered a term that is overused and something of a cliché (Goldberg, 2005). However, I use the term primarily because it directs attention to the social, political, economic and legal processes through which race is made meaningful in specific contexts (Murji and Solomos 2005: 3). If race has no inherent attributes, then it is imperative to understand the social processes through which the dominant society engages in *racializing* different groups, in making race intelligible and in structuring the field of raced relation(ship)s. It requires an examination of the 'precise circumstances' in which racialization occurs within the criminal justice system (Glynn, 2014: 12) and the production of knowledge about the behaviours and pathologies of the racialized 'other' which justifies exclusionary practices (Collins et al., 2000: 17-18).

Indeed, the relativism and arbitrariness of racial categorisations is shown in the concepts used to describe difference within the criminal justice sphere. Processes of categorisation produce

race and in doing so both delineate some differences, while disguising others. The administrative categories used to mark race 'carry the risk of reifying an essentialist notion of race, as well as obscuring the internal heterogeneity of the groups they are supposed to describe' (Phillips and Bowling, 2017: 192). Criminology has itself tended 'not to venture further than establishing the connections between ethnicity and crime' and has thus reinforced the administrative categories used to identify race (Palmer, 2014: 119). In England and Wales, difference is often expressed through the categories of Black, Asian and Minority Ethnic (BAME) youth or Black and Minority Ethnic (BME) youth. However, in a recent inquiry into Black, Asian and Minority Ethnic people in the criminal justice system, David Lammy argued that complexity was often disguised by these terms and 'within categories such as 'Asian' or 'Black' there is considerable diversity, with some groups thriving while others struggle' (Lammy, 2017: 3). Further, some minority ethnic groups are overlooked completely in official categorisations within youth justice, including Gypsies, Roma and Travellers who are, from unofficial estimates, substantially over-represented in custody (Lammy, 2017: 3).

In Australia broad racial categories are deployed which often disguise the particular experiences of refugee and immigrant youth: for example, the categorisation of 'African' youth in reality usually refers young people who have come to Australia particularly from South Sudan, many as refugees or the children of refugees with more than 35,000 refugees from Sudan settling in Australia (Coventry et al., 2017: 1). Over the last several years, sections of the media and conservative politicians have promoted an association between African youth gangs and violent crime which obscures the specific refugee and resettlement experiences of Sudanese young people (Benier et al., 2018; Coventry et al., 2017). There has been a clear public discourse creating a racialized connection between being African and being criminal. For example, the Federal Minister for Home Affairs, Peter Dutton, unambiguously articulated the link between race and youth gangs:

> The reality is, people are scared to go out to restaurants of a night-time because they're followed home by these gangs…We just need to call it what it is, its African gang violence… Frankly they don't belong in Australian society (Dutton, 2018).

The deployment of the category of 'Asian' youth also means something different in England and Wales where it refers to young people from South Asian backgrounds (and particularly

the ‘threat’ of Muslim youth), compared to Australia where in the context of youth justice it has often referred to Vietnamese young people (and their alleged involvement in drug-related crime). These categories are fluid, eliding fixed determinants except to the extent that they attribute social meanings connected to criminality. Because of these broader social connotations, the racial classification of young people within the criminal justice system means we understand crime and criminality as inherently associated with particular groups of young people, irrespective of whether such monitoring and classification might be seen to have useful public policy outcomes.

The relationship between Indigeneity and race is also complex. In the first instance, Indigenous people do not constitute a diaspora in settler colonial societies. They are on their own land or ‘country’ – whether this is officially recognised by colonial states or not. Being on ‘country’ is foundational to Indigenous cosmologies, laws and cultures and fundamental to a person’s and group’s ontology. The land is inextricably linked to all living creatures and ancestral beings: it is not an inanimate object or commodity but the source of life (Behrendt et al., 2019). Secondly, the various Indigenous nations in Australia were *racialized* by the colonists as ‘Aborigines’ and seen as biologically inferior, lesser human beings. Ideas around race changed during the 18th, 19th and 20th centuries, and competing views about race could be prevalent at the same time. For example, Aborigines at various times were seen as ‘noble savages’ uncorrupted by civilization; as ‘treacherous savages’ incapable of being civilized; as a Darwinian ‘doomed race’ bound for extinction; and as an ‘inferior race’ to be biologically (and from the mid twentieth century, culturally) assimilated into White society (McGregor, 1997). The racialization of Aborigines both facilitated and was constituted through institutionalized and legalized discrimination and intervention, whether designed to eradicate, protect or assimilate the ‘native’ (Cunneen and Tauri, 2016).

On the one hand, there is today a pan-Australian collective identity of being Aboriginal, Torres Strait Islander, Indigenous or ‘First Nations’ – particularly in relation to the assertion of political rights, including the right to self-determination. This collective identity was recently expressed in the *Uluru Statement from the Heart* (2017) which arose from a constitutional convention which brought together 250 Aboriginal and Torres Strait Islander delegates from across Australia. The Statement called for, *inter alia*, the ‘establishment of a First Nations Voice enshrined in the Constitution’ and the establishment of an agreement-making process between governments and Aboriginal and Torres Strait Islander peoples.

However, simultaneously, most Indigenous people also refer to themselves as part of their particular nation or language group (Gamilaroi, Wiradjuri, Yorta Yorta, Ngunawal, Yamatji, Noongar, Ngarinjin or Arrernte to give only a few examples) and often see their sovereignty and connection to land in these terms. In other words, people's cultural and political identities are far more complex than the terms 'Indigenous' or 'Aboriginal' might imply.

Racialization and the Processes of Youth Justice

Goldberg (2015: 11) argues racial ideas are diverse and shift over time, and this 'lack of racial fixity has served the interests of power well by enabling an agile capacity to cement people in place'. The comparative delineation of race between Australia and England and Wales demonstrates the shifting parameters of administrative categories to shape race into certain forms – so to be Asian or Black and young has different associations with crime and criminality in Australia compared to England and Wales. Yet it also begs the question, how is the race/crime link made intelligible through the operation of youth justice?

Racialization occurs in a range of youth justice contexts and there are commonalities in the comparative jurisdictions in the criminalization and penalisation processes among racialized young people. The consolidation of police powers and policing practices (including move-on powers, stop and search powers, strip-searching, use of arrest, and detention in police cells) and the growth in the use of hybrid civil/criminal orders (such as banning and exclusion orders, anti-consorting legislation, and various types of civil injunctions) have negatively impacted on racialized young people (Cunneen et al., 2016, 2017). Indigenous, Black, and minority ethnic children are also overrepresented among other identifiable groups of children – notably, 'looked after' children, and children with mental illness and cognitive impairment – who are also increasingly found in youth prison (Baldry et al., 2017).

A significant outcome of routine police work is the entrenchment of Indigenous, Black and mixed-race children within the more punitive reaches of juvenile justice, from proactive stop and searches (APPGC, 2014a and 2014b; Children's Rights Alliance for England, 2015; Eastwood et al, 2013; HM Inspectorate of Constabularies 2013 and 2015; Keeling 2017; Law Reform Commission of Western Australia, 2006: 206; Sentas and Pandolfini 2017), the lower use of diversionary options (Feilzer and Hood, 2004; May et al., 2010) and the greater likelihood that the young person will be remanded in custody, and prosecuted in the youth

court (Cunneen et al., 2015: 154-159; Shirley 2017: 12).[iii] Higher rates of stop and search inevitably lead to increased rates of arrest, although in both England and Wales and Australia the vast majority of searches are 'unsuccessful' with no further action being taken – thus compounding minoritized young people's feelings of unfairness and targeting (Keeling 2017: 2; Chan and Cunneen 2000: 39).

Irrespective of arguments about whether Indigenous, Black or mixed-race children commit more crime or not than other children (eg Cunneen 2006; Weatherburn et al., 2003; May et al., 2010; Bowling 2008), policing practices effect a particular pattern of decision-making from stop and searches to referral for prosecution which entrench racialized minorities within youth justice. In particular it is worth noting that many of these practices are *proactive* – such as stop and searches and the use of move-on powers in both Australia and England and Wales. These types of interventions are not simply responding to offending behaviour. The policing of crime and disorder becomes a contested space, a 'border' where police practices create racialized spaces of exclusion and criminalization. In this context it is not surprising that particular groups of young people feel harassed, threatened, subjected to violence, lack confidence in police, and have a mistrust of authority (Barrett et al., 2014; Flemington and Kensington Community Legal Centre, 2011; Lammy 2017:18; Sharp and Atherton, 2007; Smith and Reside, 2010).

The targeting of youth gangs adds to the creation of racialized spaces of exclusion. Much of the current public representation of gangs in England and Wales and Australia is racialized (Smithson et al., 2012; Cunneen et al., 2015; Williams, 2015) and has led to changes in legislation and police practices. These have included gang injunctions that limit the association of gang members in public places, anti-consorting legislation in Australia, and joint enterprise offences in England and Wales. Joint enterprise offences (Williams and Clarke 2016) and anti-consorting legislation (NSW Ombudsman 2013) disproportionately impact on young Black and minority ethnic people (in England Wales) and Indigenous young people (in Australia). The development of specialist police gang/firearm units (such as the Gangs Squad and the Middle Eastern Organised Crime Squad within the NSW Police Force) and gang databases such as the London Metropolitan Police's Gang Matrix database, all reveal a focus on Black, Indigenous and other minority ethnic young people. Williams and Clarke (2016: 4), for example, found that 'young black and minority ethnic people end up on gang databases as a result of racialized policing practices, not because of the objective risk they pose'.

The raft of anti-terrorist legislation[iv] introduced in England and Wales and Australia since the early 2000s, including the UK *Counter-Terrorism and Security Act 2015* and the Australian amendments to the *Criminal Code Act 1995* (see Division 104), has given the police and security agencies wider powers of stop and search, of pre-charge preventive detention, the use of control orders and non-association orders, and presumptions against bail (Brown et al., 2015: 312, 1207-11; Hamilton, 2019: 15-47). Counter-terrorism measures and Islamophobia have added a further dynamic to the policing of young people from racialized groups. Following the events of September 11 and the 'war on terror', Muslim communities in England and Wales and Australia have been increasingly viewed as the 'suspect other' (Abbas and Awan, 2015: 24; Poynting, 2002). Events such as the July 2005 London bombings led to young Muslims being subject to 'intensified modes of monitoring, surveillance and intervention by crime and security agencies' (Mythen et al., 2009: 736). Abbas and Awan (2015: 16) have argued that the UK *Counter-Terrorism and Security Act 2015,* which gave police broader controversial preventative powers to expand its counter-terrorism strategy, has created a notion of 'suspect communities' and has alienated young Muslims. The 2015 legislation also expanded the securitisation role of schools, colleges and universities through the requirement to report suspected radicalisation of students (Busher et al., 2017). In Australia various aspects of anti-terrorist legislation apply to young people. For example, control orders can require a person, among other things, to undertake reporting requirements, and to wear a tracking device. [v] In 2016 NSW legislation increased police powers to detain terror suspects as young as 14 years for up to 14 days before being brought before a court.

Indigenous, Black and ethnic minority children are further entrenched in the youth justice system at the point of prosecution and sentencing. In both England and Wales and Australia the proportion of Black and Indigenous children receiving the most severe outcome – a custodial sentence – is significantly higher than for Whites. This outcome is often filtered by the greater use of arrest and pre-trial remand for Black and Indigenous children. Research in both Australia and England and Wales indicates that youth courts are more likely to impose custodial sentences on young people brought before them by way of arrest than by way of an attendance notice or summons, even when offence seriousness and criminal history are controlled for (Allan et al., 2005). Similarly, those defendants who are remanded in custody pre-trial are also more likely to receive a custodial sentence if found guilty, even when

controlling for offence type and criminal history (Kellough and Wortley 2002: 187; Bowling and Phillips 2002:170; May et al., 2010: 82).

Risk Assessment as a Proxy for Racialized Decision-Making

Risk factors, risk assessment, risk prediction and risk management pervade adult and juvenile justice systems in both Australia and England and Wales. Criminal justice classification, program intervention, supervision and indeed imprisonment itself is defined through the measurement and management of risk. Much of the critical literature on risk assessment and criminogenic need has focused on adult offenders (Shaw and Hannah-Moffat, 2013; Maurutto and Hannah-Moffat, 2006; Hudson and Bramhall, 2005; Harcourt, 2010). The efficacy and impact of risk-based paradigms on young people in youth justice has had some attention (Case and Haines, 2015; Johns et al., 2017; Cunneen et al., 2015; Priday, 2006; Goddard and Myers, 2017). However, the effect on Indigenous, Black and ethnic minority young people requires far greater attention. Similarly, the intersectional effect of race and gender in risk assessment for male and female youth has been largely ignored. The omission is particularly salient when studies of majority male populations have underpinned the development of risk assessment (Shaw and Hannah-Moffat 2013). This article focusses on *Youth Level of Service Inventory - Case Management Inventory (YLSI-CMI)* used widely in Australia, and *Asset* and *AssestPlus* in England and Wales. In particular, the *YLSI-CMI* is a variation of the ubiquitous adult assessment tool the *LSI (Level of Service Inventory),* widely used in Australia, Canada and the United States. Prins and Reich (2018: 261), for example, estimate that the LSI is used by 'roughly' 900 corrections agencies in North America.

Alexander (2012) has alerted us to the way the criminal justice system has increasingly become a tool for substituting direct racial discrimination with less overt practices which still have racially discriminatory and exclusionary effects. In this context, an exploration of risk assessment and its connection to EBP shows a disavowal of race and racism (and their intersection with gender, ability and other social factors) with a substitution of various, largely socio-economic and culturally-determined markers of apparent dysfunction (for example, unemployment, educational failure, family structure and parental values). Yet simultaneously the importance of race is reconfirmed because risk assessment asserts an indelible link between particular racialized groups and criminality. It does so through an ostensibly objective and statistically scientific set of administrative tools, which at least on

the surface relieve the decision-maker of any bias or error. These tools might be seen as an example of the technologies of racial governance within the 'postracial' society (Goldberg, 2015: 25), whereby race is removed from the visible techniques of governance, but nevertheless continues to operate silently in producing highly racialized outcomes including state surveillance, supervision and incarceration.

Risk assessment also embodies assumptions about Whiteness – hidden from view – but there none the less in the expectations of what constitutes the law-abiding, socially conforming and economically engaged citizen. Postraciality assumes a social homogeneity which is defined by the values and experiences of Whiteness (Goldberg 2015: 122). Risk assessment is a practice or technology that actively inscribes the 'material and ontological privileges of whiteness' (Earle, 2014: 174), albeit a Whiteness mediated by class, gender and social inequalities. The various dysfunctions named, measured and scored in risk assessment reproduce the broader systems of marginalisation and oppression as a series of individualised traits – a way of 'weeding out' those who fail the test of (White) social conformity. Youth justice risk assessment identifies statistically generated characteristics drawn from aggregate populations of offenders which predict the likelihood of re-offending. These include drug and alcohol problems, school absenteeism, rates of offending and reoffending, living in crime-prone neighbourhoods, single parent families, domestic violence, prior child abuse and neglect, high levels of unemployment, and low levels of formal education. These characteristics are treated as discrete 'facts' devoid of historical and social context. For example, in the Australian context, many of the above characteristics are identified as long-term outcomes of colonial policies including the forced removal of Indigenous children from their families and communities (Human Rights and Equal Opportunity Commission, 1997). Further, the statistical models on which risk assessment are based can conflate prediction and causation and hide the population drivers of crime and criminal justice involvement (Prins and Reich, 2018: 261-262). Specific 'population drivers' for Indigenous and BAME children are particularly important in the context of the long-term effects of the systematic racialized oppression and exploitation inherent to colonial regimes.

Criminogenic risk/needs assessment tools such as the *YLSI-CMI* used widely in Australia, and *Asset* and *AssestPlus* in England and Wales, are based on essentially negative individual attributes and behaviours that are statistically associated with offending. Johns et al. (2017: 5) argue that the risk-based model underpinning *Asset* and *AssestPlus* 'tends to focus on

psychometric and individualized psychosocial factors which can produce an isolated view of a young person and ignore the wider historical, cultural and social structural context of their development'. Risk-based assessments and intervention also feed into a neoconservative correctionalism that targets the perceived deficiencies of individuals and the neoliberal value of responsibilization whereby children are held responsible for their offending behaviour and subsequent desistance (Case and Haines, 2015: 228; also Paly, 2011).

However, there has only been limited discussion of how risk assessment tools impact on Indigenous, Black and ethnic minority young people – despite the fact that the disavowal of historical, cultural and social structural context immediately nullifies the histories and contemporary manifestations of colonialism and racism. In Canada, Shaw and Hannah-Moffat (2013) and Maurutto and Hannah-Moffat (2006) have warned that few risk/needs assessment tools have been examined to determine whether their criteria capture the particular situation of Indigenous people, and that the tools appear not to address the broader socio-cultural context or unique issues facing Indigenous people – a situation also noted for Indigenous young people in Australia (Cunneen and Tauri, 2016: 158-160; Priday, 2006: 418).

Risk Assessment in Action

The *YLSI-CMI* tool usually contains 140 items that assess various domains including prior and current offences, family relationships, substance abuse, peer relations, leisure, education, employment, personality/behaviour and attitudes/beliefs. The tool clearly validates particular family relationships (the nuclear family), irrespective of whether it is as valued or as prevalent in Indigenous and racially minoritized communities. The current guide to those administering the assessment tool require them to assess whether there is inappropriate discipline in the family, whether there is inadequate monitoring or control by the family and the quality of relationships between the child and the parents (for example, Juvenile Justice NSW 2014: 7-8).

Indigenous, Black and minoritized young people are disadvantaged on family relationship risk scores partly because mass incarceration and penal practices contribute to high rates of family disruption and parental imprisonment. Having a parent, family member or relative in prison or with previous convictions elevates risk scores and further compounds the racialized impact of the risk assessment. An NSW survey of young people in detention found that more

than two thirds of Indigenous youth reported having a parent previously incarcerated, which was almost twice the rate of non-Indigenous youth (NSW Health and NSW Juvenile Justice, 2016: 17-18). Risk assessment automatically elevates the risk scores for this group of young people, while disavowing histories of racial discrimination and over-policing. Measuring the 'Anti-Social Values in the Family' is more subjective but equally problematic. Item 2.6 of the YLSI-CMI asks the person administering the assessment to:

> Tick [the box] if another family member has antisocial attitudes or has recently been involved in crime. This includes any relatives the client has been exposed to or has been influenced by (Juvenile Justice NSW 2014: 8).

Such questions fail to acknowledge the well-founded distrust of police and the criminal justice system more generally, evidenced in Indigenous and BAME communities (see for example Lammy, 2017: 18).

Similarly, the leisure, educational and employment domains all involve questions which involve subjective assessment and reduce the wider structural conditions which entrench racialized disadvantage to issues of individual choice. In relation to education, those administering the assessment are required to evaluate whether the young person has problems 'fitting in with other students', has poor relations with their teachers, or is 'disruptive or defiant at school' (Juvenile Justice NSW 2014: 8-9). These questions ignore the structural problems of educational systems which have resulted in low retention rates and high levels of suspensions and expulsions for particular groups of children. In England and Wales the highest rates of school exclusion are in the Black Caribbean and the Gypsy, Roma and Traveller communities (Cromarty, 2017: 42), while in Australia suspension and expulsion rates are higher for Indigenous children compared to other children (Victorian Ombudsman, 2017).

In relation to employment, the *YLSI-CMI* asks the person administering the assessment to:

> Tick [the box] if the client is not working or not preparing for work and should be (i.e. they have finished with school but are not looking for work). **Note**: Preparing for work includes actively seeking work, employment training or work schemes' (Juvenile Justice NSW 2014: 9).

The questions are not neutral. These types of items measure particular social and economic

conditions including structural unemployment, particular social practices such as racial discrimination in employment and housing markets, and criminal justice laws, policies and practices which serve to criminalize and incarcerate racialized communities, rather than 'the innate qualities or characteristics of individual young people' (Goddard and Myers, 2017: 156).

Shaw and Hannah-Moffat (2013: 97-98) have argued that 'the calculative rationality of risk is discretionary and subjective, and it creates only an illusion of objectivity, consistency and efficiency'. Importantly though, the questions are not simply discretionary and subjective. Rather these assessment tools embed dominant White cultural values within a discourse of 'scientific' neutrality. What remains hidden are the opposites of the risk factors: being wealthy, White, living in an exclusive neighbourhood and attending an elite private school. Rather, the questions systematically disadvantage poor, minoritized and Indigenous young people. Further, they entrench the values and social and economic outcomes of neoliberalism as individualised failings. The 'illusion' of scientific objectivity creates a seamless and seemingly irrefutable link between race and propensity for crime. Race is masked in the questions which are asked, but reconfirmed in the negative results generated for particular racialized groups of young people.

For example, in England and Wales, May et al. (2010: 83-85) found that the proportion of boys who had high scores predicting the likelihood of re-offending on the *Asset* scale was larger for those of Black or mixed race than for Whites, and that having a medium or high score compared to a low score further increased the odds of being remanded pre-trial. As noted above, being remanded in custody increases the likelihood of more punitive sentencing outcomes. These results are hardly surprising, when Black children are more likely to live in poverty, to grow up in a lone parent family, to be excluded from school and to be arrested than White children (Lammy, 2017: 4). May et al.'s (2010) results also open the question of intersectionality between race and gender, and the extent to which assessment tools may reproduce ideas about dangerousness and Black or Indigenous masculinities. There has been little analysis of the way that risk assessments are impacted by gender, particularly in the case of young people, although the failure of risk assessment to consider the particular needs of (adult) women and Indigenous women in particular has been noted (Shaw and Hannah-Moffatt, 2013).

Risk/criminogenic needs assessment is well established for young people under various forms

of criminal justice supervision. However, we have also seen the increasing development of risk assessment into decision-making at the pre-court level. These short assessment tools for use by police rely more heavily on 'static' factors to predict re-offending. Static risk factors are defined as those factors which cannot be changed and increase the likelihood of a person's involvement in crime.[vi] The Group Risk Assessment Model (GRAM 2) in NSW specifically identifies 'Indigenous status' as one of 13 static risk factors to predict re-offending (Stavrou and Poyton, 2016: 1). Simply being Indigenous is a potential risk factor for re-offending, akin to alcohol and drug abuse, prior offending history, and so on. Thus, race and Indigeneity become actively defined by and correlated with dysfunction and failure.[vii]

Compounding the Effects of Marginalisation and Exclusion

Many risk indicators are associated with socio-economic marginalization and given that, in particular, Indigenous and Black families, children and young people *as a collective group* are among the most socially and economically marginalized, there is the obvious danger that they will receive more intrusive and punitive interventions based on their 'objective' risk. For youth justice systems, racialized young people become defined through their membership of a risk-defined group. The ascendancy of the risk paradigm goes some way to explaining how Indigenous, Black and ethnic minority young people become the residual group in prison that has seen little change in their incarceration rates despite generally declining youth imprisonment in Australia and England and Wales. Risk thinking reinforces structures of cultural, social and economic exclusion, either explicitly solidifying race as a predictor of criminality or more generally through assessment processes which reinforce deficit discourses surrounding the intersection between race and social and economic marginalization. Risk assessments, in Goddard and Meyer's (2017:151) evocative term, 'launder' racialized inequality – in other words, masking the effects of racialized inequality on what the tools purport to measure. They reconfigure the experiences of discrimination, inequality and a pro-active, interventionist justice system into high risk scores. High risk scores foreshadow greater intervention which itself further compounds discrimination and marginalisation.

Race difference is embedded within risk factors, and the risk scores which characterise Black, Indigenous and other minoritized groups establish and reconfirm a propensity towards crime. As risk-prone individuals, racialized young people become subject to the more punitive processes directed towards those defined as recidivist, 'hard-core' offenders – those who are

not amenable to diversionary programs, or community-based sentencing options. Further, the risk/needs model aligns with neoliberal values of rational choice and personal responsibility - where the onus is on the individual to change their deficit and dysfunctional behaviour (see also Goldberg, 2015: 62-3). The individualized criminogenic programs associated with risk assessment run counter to broader-based community initiatives and localised innovative programs. These latter approaches are precisely what racialized communities are demanding.

Moving Forward: Community Engagement, Indigenous self-determination

A common theme in England and Wales and Australia in discussions on shifting the negative outcomes of racialized processes in youth justice is to relocate the locus of intervention, decision-making and support to racialized communities. In Australia one of the key demands of Indigenous peoples is to recognise the right to self-determination. There have been some limited moves in this direction with the introduction of Indigenous sentencing courts where Indigenous elders are involved in the sentencing of Indigenous young people (for example, the Koori / Murri youth courts in various states). There has also been the development of various justice reinvestment projects such as in Bourke NSW where a partnership between the Aboriginal community, the non-Aboriginal community and government services have developed specific responses to localised Indigenous youth justice issues. However, these changes do not go far enough in terms of realising Indigenous self-determination or developing shared jurisdiction between Indigenous peoples and settler colonial states.

In England and Wales, the Lammy Review (2017) recommended effective engagement with community members and organisations. The Review noted that the current youth justice system 'has a very limited conception of what involving communities in youth justice looks like' (Lammy, 2017: 41). Youth offender panels are inadequate at involving community members and are not community 'events'. By way of contrast, the Review recommended the establishment of local justice panels where parents and the local community with direct responsibility for the child's education, health and welfare would participate in developing sentencing plans (Lammy, 2017: 43). In fact, in this regard the Review was influenced by examples of engagement provided by the justice reinvestment project in Bourke and the Rangatahi Youth Court in New Zealand (which has some similarities with the Koori / Murri youth courts in Australia) (Lammy, 2017: 43, 61).

To some extent the different experiences of colonialism impact on the nature of current political demands for change. Indigenous peoples argue for transformation of criminal justice within the context of the collective right to self-determination – this is not a demand for the reform of justice but for its reconceptualization (Behrendt et al., 2019; Blagg 2016). To date though, the demands for change both within Australia and England and Wales have been largely captured within a model of 'community engagement'. Whether this is sufficient to challenge the entrenched and ubiquitous nature of racialization within youth justice and its associated institutions is arguable. More specifically, the asymmetrical power relations embedded in criminal justice institutions like the police and corrections, and the weight of institutional discourses of risk thinking mean that multiple penal rationalities (including community engagement) can co-exist without effecting significant change for racialized young people.

Conclusion

At its centre, racialization is about the exercise of power. One realm through which this power is exercised is the justice system. This only takes us so far however. It is the rationalities, practices and discourses of youth justice through which racialization occurs which is of interest in this article, including how race itself becomes solidified as category in which people, in many cases, from heterogeneous backgrounds, can be captured and named. There are various ways that institutional processes of policing and youth justice criminalize and racialize particular groups of young people. These are 'the policies and practices within the criminal justice system [that] systematically target and disadvantage ethnic minorities' (Sveinsson, 2012: 4). They include a raft of interventions from forms of control in public places (such as move on powers and stop and search), to various definitions of and responses to racialized gangs (such as gang injunctions and consorting provisions), to the use of anti-terrorist measures. Underpinning these types of interventions are the day-to-day decisions which ensure that racialized groups are less likely to be diverted out of the youth justice system, are more likely to be formally prosecuted, more likely to be remanded in custody and more likely to be imprisoned.

Risk assessment is one part of this broader configuration. In an era of colorblindness and postraciality, race is reconstituted through a range of social, cultural and economic deficits. Using risk-based tools to demonstrate that Black, Indigenous and other minoritized groups are criminogenically 'high risk' is not only acceptable but entrenched in many criminal justice practices. Risk assessment is one way in which White cultural norms are silently embedded

within the structures of policy and practice. Understanding both the Whiteness of these values and their measurement of overlapping inequalities also allows us to consider how 'new potential Others' are accommodated (Phillips and Webster, 2014: 3-4) and provides for more nuanced approaches to the constructions of race. Risk assessment in particular both masks race through its apparently scientific neutrality while simultaneously marking and reconfirming the linkage between race and crime.

Underlying the deficit discourse constructed through risk assessment is the need for recognition of the socio-economic marginalisation of Indigenous, Black and minority ethnic groups. Bowling and Phillips (2002) have argued that the basis to the social and economic inequality of Black communities in Britain is to be found in a history of discrimination which has been sustained over time and that today those communities are concentrated in particular areas where social exclusion is greatest. Similarly, Indigenous peoples are the most socially and economically disadvantaged group in Australian society and their contemporary position reflects a history of violent dispossession and entrenched racial discrimination (Cunneen 2001). I am not positing here a simple argument that disadvantage causes crime, rather I am concerned with the way contemporary youth justice forms part of the larger processes that entrench and reproduce racialized marginalisation. In other words, the risk/criminogenic needs paradigm actively leads to greater criminalization of socio-economic disadvantage, and social and cultural disruption, further exacerbating the very conditions which gave rise to negative assessments in the first place.

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[i] See the Comparative Youth Penality Project at <https://www.cypp.unsw.edu.au/node/128>. For some publications deriving from the Project see Baldry, Briggs, Goldson and Russell (2017); Brown, Cunneen and Russell (2017); Cunneen, Goldson and Russell (2016, 2017).

[ii] Settler colonialism is distinct as a process of invasion, settlement and nation-building which changed the lives of those original peoples and tribal nations living in the occupied territories. It was a particular type of colonialism where the primary economic objective was securing permanent access to and control of the land, and where imperial sovereignty was asserted usually on the basis of 'discovery' and justified by the primitiveness of Indigenous peoples and their failure to 'productively' utilize the land. The assertion of settler sovereignty was premised on the denial of Indigenous sovereignty. As Wolfe (2006) has argued, settler colonialism demanded that Indigenous peoples had to be either eliminated, or contained and controlled in order to make land available as private property for the settlers who had come to stay.

[iii] The low minimum age of criminal responsibility in England and Wales and Australia further compounds these problems. The Australian evidence shows Indigenous children comprise 73 per cent of all children in detention and 74 per cent of all children on community-based supervision in the 10-12 year old age bracket (inclusive) (AIHW, 2017: Tables S78b and S40b). In England and Wales there is also evidence that BAME children enter the youth justice system at a younger age than their white counterparts (Lammy, 2017: 60).

[iv] For example, the Australian federal parliament passed 82 anti-terrorism related laws between 2001-2019 (McGarrity and Blackbourn, 2019). This does not include state or territory legislation.

[v] A control order is issued by a court (at the request of police) to allow obligations, prohibitions and restrictions to be imposed on a person, for the purpose of protecting the public from a terrorist act. See Division 104 of the *Criminal Code Act 1995*.

[vi] For example, the New Zealand Youth Offender Risk Screening Tool prepared for the police has 14 identified factors, including age of offending, prior offending, peers known to police, educational history, child welfare history, alcohol and drug use, family violence history, socio-economic status of residential location, concerns with living situation, and family members with offending history (Mossman, 2011).

[vii] One issue not discussed in this article is the rise of algorithms to predict risk and which are increasingly impacting on policing, bail and sentencing. The use of algorithms can be understood as distinct from the risk assessment tools developed within the psychology-based risk/criminogenic needs paradigm (see Ugwudike, this volume; Hannah-Moffat 2018).