

TRANSCRIPT

Understanding Institutional Racism: A Response to the Sewell Report (with Shreya Atrey)

Seun Matiluko (0:10): You're listening to Rights Up, a podcast from the Oxford Human Rights Hub. I'm Seun Matiluko, a journalist and a current BCL student at Oxford Law Faculty. In today's episode, we talk to Dr Shreya Atrey, an Associate Professor in International Human Rights Law at Oxford's Department for Continuing Education and Faculty of Law, about a recent report from the UK Government's newly formed Commission for Race and Ethnic Disparities.

(0:51) In the summer of 2020, there were protests worldwide in response to the death of George Floyd, a black man who died in Minneapolis, USA after a police officer kneeled on his neck for up to nine minutes. After several days of protests in the UK, with many holding placards saying, "The UK is not innocent" and calling attention to police brutality and State racism in this country, Prime Minister Boris Johnson announced in an article for the Telegraph that he would be forming a commission to look at "all aspects of inequality in employment, in health outcomes, in academic and all other walks of life".¹

(1:20) Many questioned the need for a new commission given the fact that there have been numerous reports, reviews and inquiries about racism in Britain, whose recommendations have yet to be fully implemented. These include the Macpherson Report from 1999,² the Angiolini Review from 2017,³ the Lammy Review also from 2017,⁴ and the Windrush Lessons Learned Review from 2018.⁵ Criticism of the new Commission grew when it was announced that political advisor, Munira Mirza, who had in the past questioned the existence of institutional racism, would be selecting the members of the Commission.

(1:26) By July 2020, the members of the Commission had been selected, including scientist Dr Maggie Aderin-Pocock MBE, former Director of the Runnymede Trust Samir Shah CBE, and educationalist Tony Sewell CBE. The Commission's Report on race and ethnic disparities in Britain was due to be published in late 2020, but after numerous delays it was finally

¹ Boris Johnson. "Comment: Rather than tear some people down we should build others up." *The Telegraph* (14 June 2020) <https://www.telegraph.co.uk/politics/2020/06/14/rather-tear-people-should-build-others/> (Note: Access restricted to subscription only)

² Sir William Macpherson. "The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny" (February 1999), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf

³ Rt. Hon. Dame Elish Angiolini DBE QC. "Report of the Independent Review of Deaths and Serious Incidents in Police Custody" (January 2017), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf

⁴ Rt. Hon. David Lammy MP. "The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System" (September 2017), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

⁵ Wendy Williams. "Windrush Lessons Learned Review" (March 2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874022/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf

published on the 31st of March 2021.⁶ While some applauded the Commission's recommendations — which included, for example, a recommendation for the Government to stop using the term "BAME", or Black, Asian and Minority Ethnic, when discussing race and ethnic disparities — many critiqued the substance of the Commission's Report, which included the finding that there was no evidence of systemic or institutional racism in Britain.

(2:31) Thank you so much for joining me today.

Dr Shreya Atrey (2:34): Thanks Seun. Thanks for having me, and thanks for having this important conversation.

Seun Matiluko (2:39): I know you've taken a look at the Report, and I was wondering, just so that our listeners get an understanding of what exactly the Report was about— I was wondering whether you could help us define exactly what "racism" is in terms of individual racism, institutional racism, and structural racism, because I know that those phrases have been bandied about quite a bit by the Report and those commenting on it.

Dr Shreya Atrey (3:02): So you ask in particular about individual, institutional and structural racism. So let me say that the two things we should be looking for in any understanding of racism, which help us understand whether racism is individual, institutional or structural, right... Let me begin with the classical understanding of racism, which is, say, the biological superiority of one race over the other. That's the understanding which is sort of at the heart of how racism came to be developed — that's the origins, right. So we're looking for two things in that kind of an understanding. One is you thinking about the *belief system* of the person who's holding that belief, right? So it's a certain kind of attitude that you're looking for— you're looking for a bias, bigotry of some kind. And then you're looking for whether that belief is being held by an individual, or whether it is something that comes about in the way things operate.

(4:09) When you think of individual, institutional and structural racism, in individual racism you're necessarily thinking of a single, individual holding that belief. On the other hand, for institutional racism— Institutional racism, for Macpherson's definition from his Report in 1999, was necessarily about institutions holding a belief. So it was the unwitting belief, or the culture, or the attitudes of people within that institution. And at the structural level it goes a bit further. So you're looking at going from micro, meso, to macro level when you're thinking of structural level. Here, you're not necessarily looking for biases or individual bigotry. You're looking for the way in which "State" is imagined or the political structures in a society are ideated, imagined, and regulated in how they bring about the effects of racism.

Seun Matiluko (5:11): So you're able to have racial discrimination without people necessarily holding racist beliefs?

Dr Shreya Atrey (5:18): That's absolutely correct. And that's the view of race discrimination law. So the race discrimination law, which started with the Race Relations Act 1965, even back

⁶ "Commission on Race and Ethnic Disparities: The Report" (March 2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/974507/20210331_-_CRED_Report_-_FINAL_-_Web_Accessible.pdf

then it was very clear that the proof of intention was not necessary to be proving race discrimination — i.e. that you didn't require race discrimination to be based on a racist view. It was enough to show that a decision was taken "because of" race. For example, say a pub owner may decline to employ a black woman as a waitress because he may think that he doesn't like black women — that's an overtly racist view. But that doesn't need to be the case. If he doesn't employ black women because he thinks that black women will be harassed by his clientele, or the clientele will not like the black waitress, those two are problematic under race discrimination law. So intentions are not relevant to the proof of race discrimination.

(6:25) But you're right to ask, in one sense, what then is the link between race discrimination and racism? And I think, even though there is no proof required of intention in race discrimination, if we imagine racism as a spectrum, as a continuum, which goes from intention to thinking about structures, and the effects and the impact of racism, I think racism is still relevant to thinking about race discrimination. But you're absolutely correct. On the one end of the spectrum, where intention matters, race discrimination law says you don't necessarily need to establish intention to be able to prove race discrimination, even though the intention was racist.

Seun Matiluko (7:13): And so do you think, then, that the Commission's Report accurately determined the link between racism and race discrimination law, for example, because a lot of times in the Report they suggest that there's no evidence of ill intent towards minority groups in various institutions in the UK, and therefore it's unlikely that racism is involved in the inequalities that these groups face? So I wonder, do you think that the Report has understood this distinction between racism and race discrimination correctly, as well?

Dr Shreya Atrey (7:42): So I think two things are happening here. One is that I think the central motif of the Report is that they understand racism in this very, very limited way, that it's limited to this individual bigotry, as an attitudinal thing. And I think that in itself is problematic, that I think if you understand racism in this limited sense, rather than as a sense which sort of maps the spectrum of racism, it really limits what you're trying to understand about racism, right? So that's one.

(8:19) The second thing which you rightly ask is the link of racism with race discrimination. I think that link is largely undeveloped in the Report. So at no place do you see the Report actually engage with "race discrimination", the concept of race discrimination. So there is very little link made between racism and how it is actually addressed in what I would think is the most obvious site for its redressal. So race discrimination law, one would imagine, is probably the most obvious thing you think of when you think, "Oh, we need to address racism". But how racism is addressed in race discrimination law, that conversation is nearly absent. So clear analysis of provisions of the Equality Act 2010, where race is a prohibited category of discrimination — so you cannot discriminate on the basis of race, ethnicity— that is not something which is analysed at all. So the link between racism and race discrimination is rather tenuous. I wish it was examined to be able to see exactly what are the ways in which racism is actually tackled in law. But to me, I don't see much happening at that end at all, other than the first part of the Report, which actually talks about EHRC⁷ getting more funding

⁷ Referring to the Equality and Human Rights Commission.

to be able to bring more race discrimination claims. I think that that's a good recommendation, but I don't think it's based on why exactly that's important in tackling racism. So I think the assumption behind that is that the way you tackle racism in law is through race discrimination law, and funding EHRC will help there, but I think it would have been useful for them to develop this link to be able to say exactly how racism features in cases— in separate cases of race discrimination.

Seun Matiluko (10:16): So I was hoping to get back to something you said earlier, because when we were talking about institutional racism earlier, and you helpfully helped us see the differences between individual, institutional and structural racism, you referenced the Macpherson Report published in 1999, and the Commission as well— the Commission on Race and Ethnic Disparities also makes reference to the Macpherson Report when talking about institutional racism. And I wonder if it might be worth quoting the definition of institutional racism found in the Macpherson report, which says that institutional racism is "the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour, which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people". And I wonder, do you think that this is a good definition of institutional racism?

Dr Shreya Atrey (11:10): So I think the Macpherson definition has been a subject of so much debate in the decades since it was proposed. The definition is helpful in the sense that it explains one kind of racism. But I think the moment you think of Macpherson's definition as subsuming all racism is where I think it is conceptually open to being attacked. The limitations are twofold here. One is that it is still very much an individualised mode of thinking about racism as inhering in the minds of individuals within the organisation. So even if it's [a] collective failure of doing anything about those individuals, it's still very much coming down to how individuals within an organisation work. So although you're looking for a response from the institution, you're really looking at what did the people within that institution do?

(12:09) The Macpherson definition is unable to imagine that racism can be structural in terms of coming about in the way things are imagined, in how the socio-economic, political and cultural relationships between people are shaped by the State and the politics and the media. So it just doesn't go at that level to be able to think in big broad terms, because it's to do with prejudice, ignorance at an individual level.

(12:38) So both of these— I think Macpherson's definition is limited. But I think it's helpful in the sense that it does speak the truth of a kind of racism. But it's not *the* definition of racism. And I think most scholars who work on ideas of racism and anti-racism will say that this is one of the many ways in which we should be thinking about racism, because racism is not something which can just be bracketed into one small definition. I think this may have made sense for the context in which Macpherson was deliberating, but it's certainly not a template for thinking about racism wholly or per se.

Seun Matiluko (13:23): Perhaps linked to the limitations of Macpherson then, it's interesting that the Commission said that they didn't find any evidence of institutional racism in any of

the sectors they looked at in the UK. And in particular, it was interesting that they said that some activists were perhaps misusing the term "institutional racism". They said that institutional racism should not be used as a "general catch-all phrase for any micro-aggression". And so whilst the Commission appreciated that many, many black people and many brown people had a strength of feeling that they had experienced institutional racism in the UK, that perhaps was not evidence of the fact that institutional racism was present in the UK, and that perhaps we're suggesting that lots of lots of things, like micro-aggressions, for example, or other things, are racism, institutional racism, when they in fact are not truly forms of institutional racism. And I wonder how would you respond to that?

Dr Shreya Atrey (14:18): So I think the Commission is confused here. On the one hand, the Commission has said that institutional racism is different from individual racism, in the sense that it wants to be clear about the different tags we use before racism. So it has given on one page five different definitions, and one of which is institutional racism, which it wants to be able to be able to say that it— that we should be very clear to not conflate one kind of racism with another. But then it seems to be thinking of institutional racism in terms of micro-aggressions, and saying that when looking for institutional racism we have to be **proving** some deep-seated racism, and you have to be able to show where that is coming from.

(15:16) I think this is problematic, because then it's going back to the definition of individual bigotry and deep-seated racism, which I think that by that they are meaning that this is something which is about holding bad views about certain groups of people, right, to simplify this. I don't think that that kind of intention is necessary, but I think that's where the Commission seems to be going, in terms of demanding actual proof of state of mind. So I think first, it rejects that we should not be conflating this, because a lot of institutions are not having that state of mind, but then it says, "Well, if you still want to bring a claim of institutional racism, then you should be showing that state of mind". I think you can only say one or the other. But I think the Commission is confused in actually saying both.

Seun Matiluko (16:08): But I wonder, then, because I'm just thinking about the Equality Act ... Is it straightforward to bring up a claim of institutional discrimination or institutional race discrimination, for example, or is it just one of many arguments that a lawyer might put forward in a case, for instance?

Dr Shreya Atrey (16:25): I think it's a conceptual frame for understanding what happens in an individual case. So it's not a ready-made category under the Equality Act 2010, where you can say that I'm bringing this case under a provision which prohibits institutional racism. So nothing like that exists — the Equality Act doesn't say, "We prohibit racial institutional racism". But it does prohibit race discrimination in two forms: direct or indirect discrimination. So direct discrimination is that which is based on a protected characteristic, right? The protected characteristic is invoked in the reasoning or in the way in which a decision is reached, versus indirect discrimination, which is about the disproportionate effects or impact of a neutral provision, criterion or practice, which is faced by a particularly disadvantaged group, which is defined by a protected category. So these are the two broad categories of discrimination under which you can then bring in claims which understand racism, whether it in an individualised way, whether in a particularly racist frame where somebody held a bad view, or in a frame where somebody did not hold a bad view, but just

took a decision based on race, or in terms of a collective failure of an organisation to address racism, or in terms of the structure of places. So these other conceptual ways of understanding racism have to be fed in through direct and indirect racism, but they're not— they're not ready-made categories for thinking through racism and race discrimination law, if you know what I mean.

Seun Matiluko (18:15): So there are some people on the political right who allege that the people criticising this report, they just want a negative, fatalistic perspective about racism in Britain, but the statistics suggest that Britain is one of the least racist countries in Europe. So I wonder— In particular, in the Commission Report, they quote that there is a deep mistrust amongst ethnic minority communities because of this sort of narrative that racism is a prevailing feature of life in Britain. And so I wonder, how would you respond to that? Is there an issue with them presenting the fight against racism in Britain as a success story? Is there an issue with that? Or is it— is it more complicated than that— than the rebuttal would see it?

Dr Shreya Atrey (18:58): I would just be wary of putting racism and anti-racist efforts in this quantitative scalar mode of— give marks out of 10, or give grades A, B, C, or how racist are we, 73%, 50%. I think none of this is helpful. But I think what is even more unhelpful in the conversation is to be talking about this in terms of binaries. Are we racist or not? Is this a success story or not? Have we done well or not? I think these binaries – where the only responses are yes or no – are extremely misguided. They're not just— they're not just getting the answer wrong, but they're getting the question wrong.

Seun Matiluko (19:05): As the rapper Dave said at the BRIT Awards, I think quite recently, the least racist are still racist, and I think that links to what you're saying. But moving swiftly on to the recommendations of the Report though. The Commission in total makes 24 recommendations, "designed to remove obstacles for everyone rather than specific groups", and so I wonder what you think of these recommendations generally, and whether you agree that we should move away from race-based recommendations and more to neutral, race blind policies, particularly from your perspective as a discrimination lawyer?

Dr Shreya Atrey (20:33): So think in terms of the recommendation about targeting anti-racist work to everyone rather than racial and ethnic minorities, I think that's based on a misplaced view of what fighting racism or racial injustice means. So from a discrimination law perspective, I think it's completely legitimate to be thinking about specific racial groups, especially groups which possess a certain protected characteristic and those who do not — this is something mandated by the Equality Act. So section 149 of the Equality Act, on [the] public sector equality duty, does not in fact talk in terms of targeting everyone. It is quite particular in thinking about, say, if you have to advance equality of opportunity, it says that you have to think about equality of opportunity between persons who share a relevant protected characteristic and persons who do not. It's the same with the duty to foster good relations between people, and that duty applies between persons who share a relevant protected category and those who do not. So thinking in comparative terms is critical in thinking about the nature of discrimination, because it is essentially competitive in nature; like, it's relative in nature — somebody is better off than those who have a protected characteristic than those who do not. That's the basic understanding of race discrimination.

It's the basic understanding of discrimination. So I think doing away with that link is problematic.

Seun Matiluko (22:22): Okay, because I think if a Commissioner were sitting here talking to you, they might say, for example, that, as they say in their Report, that "geography, family influence, socio-economic background, culture, and religion have more significant impacts on life chances than the existence of racism", and so if that is the case, isn't it right, then, that we should move away from race-based policies, because it seems that racism is not the underlying factor for many of the inequalities that we have in Britain?

Dr Shreya Atrey (22:51): That's a good question. That would depend on being able to causally prove that that is true, and I don't think the Commission has provided that proof. And I can only answer this from a conceptual standpoint as to why the proof will be problematic. It will be problematic because it is very hard to delineate factors or to isolate factors such as race from class, and so much of work in social science has shown that it is quite impossible to think of racism, or sexism, or classism, or ableism, or any kind of identity which disadvantages people as a monolith, right? It's not one thing. The fact that different kinds of disadvantages interact with one another makes it difficult to isolate exactly what is the reason why people are actually disadvantaged.

(23:52) So the classic case of intersectionality is the case of black women, where racism and sexism is colliding. But it's not colliding in a sense that racism and sexism is sort of added up together, or multiplied, and becomes a different category. What's happening is that racism and sexism is interacting in a way such that it's constituting one another — racism is making sexism and sexism is making racism. And that's the experience that you can't isolate. So if you have to be able to say that policies targeting black women have nothing to do with race, it's only got to do with gender, or their class, or it's all poverty, that neither race nor sex have any role to play in uplifting black women, then I think you will have to be doing some heavy, rather impossible work in disentangling these categories. So I think it's [the Commission's] understanding of racism as existing in isolation of these other categories of disadvantages is thoroughly flawed.

Seun Matiluko (25:01): Rights Up is brought to you by the Oxford Human Rights Hub. The Executive Producer is Kira Allmann. This episode was produced by Gauri Pillai, edited by Christy Callaway-Gale and hosted by Seun Matiluko. Music for this series is by Rosemary Allmann. Show notes for this episode have been written by Sarah Dobbie. Thanks to our production team members – Sandra Fredman and Meghan Campbell — for their valuable feedback in putting this episode together. Subscribe to this podcast wherever you like to listen to your favourite podcast.