

# How Far Have We Come?

Lessons from the 1965  
Race Relations Act

## Runnymede: Intelligence for a Multi-ethnic Britain

Runnymede is the UK's leading independent thinktank on race equality and race relations. Through high-quality research and thought leadership, we:

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# Introduction: Can Commemorations Guide Us Towards the Future for Race Equality

Omar Khan

Historical milestones make us reflect on who we are - or perhaps rather, how we were. This volume focuses on the 50th anniversary of the first Race Relations Act in Britain, and how this connects to the 800th anniversary of the Magna Carta. Its guiding question: how should we best realize equal rights for Black and minority ethnic people in the 21st century, reflecting both on the origin of those rights in Magna Carta, and their first articulation in the 1965 Race Relations Act?

We ask this question because commemorative anniversaries are typically celebrated to guide us towards lessons for the present, especially when more recent legislation or events better capture our current national values and identity. This year Britain reflected on various anniversaries - 600 years since Agincourt, 200 since Waterloo and 70 since the end of World War II. Those dates are not only emblematic national events, but are also tied to international battles, identifying as much with what we are *against* as what we are *for*.

The grandest commemoration of 2015 was the 800th anniversary of Magna Carta, which is the keystone in the narrative arc of history that identifies British (or English) identity with individual liberty and the rule of law, in contrast to despotic monarchical rule. According to recent governments (and affirmed by private, public and voluntary organizations), equality and respect for diversity should now be added to the foundational values defining what Britain is 'for' in the 21st century. What, then, can we learn about Britain's previous attempts to make these values a reality for disadvantaged groups, especially Black and minority ethnic people, and particularly the 1965 Race Relations Act?

The chapters in this volume reproduce a conference Runnymede held on [29 July](#) asking this very question. The structure of that day suggested three themes connecting Magna Carta and the Race Relations Act, namely (i.) the importance of principles and legislation, but (ii.) the need for policy to implement those principles, and finally (iii.) the role of pressure from below, or democratic demands in achieving equal rights in Britain.

[Sir Rabinder Singh's](#) first chapter reproduces his keynote speech and provides an excellent insight

into the legal history of the Race Relations Act, and its putative connection to Magna Carta. Just as valuable as his legal insight is the High Court judge's incisive discussion of the social context of the Race Relations Act - and indeed of racial inequalities today. As he points out, a major aim of the Race Relations Act was as much attitudinal as it was about legal protection and redress. The government was sending a signal to the wider population that racial discrimination was wrong, and it expected both institutions and individuals to address it.

[Sir Geoffrey Bindman](#) provides more detailed background to the 1965 Act, its content and consequences. As someone actively involved with the development and implementation of the act, his chapter would be insightful on historical grounds alone. But Bindman goes further, reflecting on the consequences of the act, its relative weakness and also the continued evidence of racial inequality cited by Prime Minister David Cameron earlier this year. His conclusion is hard to resist: if we are to see an effective remedy to the racial inequalities that persist despite the passage of various acts since 1965, we will need much greater application and enforcement of those measures. We will need to actually hold both individuals and government to account.

Emerging out of these two pieces by eminent legal minds is a clear recognition of the importance of the law, but also its limits. We return to this important theme below, but two more historic pieces suggest another theme: that the dominant British historical narrative is in need of serious revision.

As various contributors note - especially [Rabinder Singh](#) and [Will Pettigrew](#) - the dominant narrative of English or British history that starts with the Magna Carta as the foundation of steady progress towards liberty and democracy was an invention of Sir Edward Coke's in the seventeenth century. This became the dominant Whig interpretation of history (incorporating the 1688-89 'Glorious Revolution' as analogous to the baronial claims against King John at Runnymede) by the eighteenth century.

Although this volume does not look back to the thirteenth century, two contributions address an older history of equal rights in Britain and how these relate

to Magna Carta. While commending Runnymede's reclamation of the Magna Carta from nativist English interpretations and universalizing the extension of rights to all, [Will Pettigrew](#) argues this is 'bad history'. The Magna Carta was in fact used to deny the universality of human rights - indeed it was invoked by those arguing for Britain to extend the African slave trade with the founding of the Royal African Company in 1672. This was just two decades before the Glorious Revolution's apparent endorsement of the fundamental value of liberty. As Pettigrew shows, the Magna Carta was invoked to defend 'free' slave traders. In the *Nightingale v. Bridges* case, Sir Bartholomew Shower referenced the Magna Carta tradition to explain how the English law freed men to be able to trade in slaves. "English Common Law," Shower contended, "distinguishes between bondmen, whose estates are at their lord's will and pleasure, and freemen, whose property none can invade, charge, or take away, but by their own consent."

Pettigrew's chapter is a salutary reminder of the deep roots of racial inequality in British history – but not only that of slavery and Empire. Our forebears saw the enslavement of Africans as an appropriate expression of the rights of free Englishmen, a claim argued to have democratic support. As [Omar Khan](#) notes in his contribution, Enoch Powell and other critics updated this argument for the 20th century when they objected to the 1968 Act on the grounds that it infringed on ancient English liberties sealed at Runnymede. In other words, arguments invoking the Magna Carta from the 1680s to the 1960s provide a *moral defence* of racial discrimination, implying that rights are not 'human' after all, but only for white English people (or just property-owning white English men).

In a contribution that highlights the ethnically diverse leadership of the Chartists, [Malcolm Chase](#) indicates how this 19th century social movement sought to further democratize Britain. In a fascinating overview that recognizes the failure of the Chartist's demands, Chase offers us a tantalizing glimpse into the forgotten ethnic minority and female leaders of this relatively inclusive democratic movement.

In his conclusion, Chase explicitly links his argument to the need for civil society organizations or 'pressure from below' to inform British democracy. This message is further sharpened in a third thematic challenge: legal and anti-racist activists, including of course Black people, were at the forefront of pressure on the government to do something to respond to the daily racism affecting Black and minority ethnic people in housing, employment and access to public services.

This argument is further addressed in chapters by [Gus John](#) and [Jenny Bourne](#), who identifies the contribution of activists such as Frances Ezzreco, Claudia Jones and Vishnu Sharma to the wider background that made the 1965 and later Race Relations Acts possible. They make a wider point: without a wider social movement it is hard to understand what progress we have seen on racial equality, and harder still to see it improved upon in future.

[John's piece](#) reminds us of the Pan African Congresses of 1900 and 1945 that predate the social activism leading to the 1965 Act. Here again we can contrast the long-standing contribution of Black and minority ethnic people to Britain's history, and the failure of our history books to relate that history. John reminds us that while BME people have never acquiesced to their marginalization, policymakers and decision-makers have yet to respond to the ethnic penalties that persist in Britain today. Bourne's critical assessment of the 1965 Act and the train of legislation and policy it engendered reaches a similar conclusion: the 1965 Act's relative failure actually to realize equal rights for BME people has been sadly replicated over the intervening five decades.

[Omar Khan's](#) piece was an introduction to the Runnymede conference and provides a bridge to the fourth and final theme in the volume: that in addition to legislation and democratic pressure, we need political leadership and effective policy to achieve racial equality in 21st century Britain.

In his chapter, [Callton Young](#) provides a personal and insightful account of the challenge of advancing race equality through public policy. Appointed to lead on the 2000 Race Relations (Amendment) Bill, he found colleagues questioned his credentials on policy matters, despite his adept handling of such a critical bill. Worryingly, he relates how this relative success was quickly eroded, with a lack of commitment to and understanding of race equality across government. Fifteen years on from the Race Relations (Amendment) Act and 50 years on from the 1965 legislation, the senior civil service has remarkably few Black and minority ethnic members. Young appears pessimistic that this will change without stronger political leadership, effective monitoring and enforcement (including of the public sector equality duty) and greater democratic pressure.

Anthony Lester, the architect of the more robust 1976 Race Relations Act, might respond that his legislation gave the newly-established Commission for Racial Equality powers to scrutinize and sanction

organizations that fell foul of the Act. But as Lester and Bindman agree, these measures have rarely been implemented effectively. Bourne suggests in her piece that only under the leadership of Herman Ouseley was the CRE willing to take on formal investigations without fear, fund public awareness campaigns or to challenge public bodies and employers.

After attending the conference, [Heidi Mirza](#) wrote a typically critical and cogent chapter on the inequalities that Black and minority ethnic women experience. As she notes, neither research, policy or activism have responded to the experiences and needs of BME women. Mirza's chapter combines theoretical reimagining and practical recommendations. First, we must enhance our analysis of inequality to explicitly include BME women in such areas of democratic representation and pay and conditions at work. Second we should adopt a more holistic understanding of identity to respond better to issues including domestic violence and sexual exploitation. And third, we must improve women's access to justice, dignity and fair treatment, to ensure our seemingly progressive legislation actually responds to the disadvantages Black and minority ethnic women continue to face.

In bringing together this volume, we aim to improve our historic understanding of the 1965 Race Relations Act and of Magna Carta, but also learn lessons for making further progress in the present and future. The dominant British historical narrative typically ignores the existence of racial inequality or recognizes it only as a minor tributary. It certainly does not reflect on the uses and abuses of 'English liberties'. This is indeed bad history. And it is compounded by the absence of the contributions of people of colour to British history since Roman times – and not only after the totemic arrival of Windrush in 1948.

But despite all its inadequacies, we should acknowledge the significance of the 1965 Act. It was the first time the British state explicitly recognized its obligations to non-white people, and legal and anti-racist activists were crucial in making this happen. The 1965 Act is also seen as the first step in a process that has led to some attitudinal improvements, by sending the signal that racial discrimination was wrong (a signal, however, not approved by the Opposition of the day).

Finally, we must revisit the perennial question of how we make our lofty values and legal principles a reality for *everyone*. We are in danger of learning the wrong lessons and of history repeating itself; of loud

proclamations about the values we hold dear, without doing much to make those values a reality for Black and minority ethnic people. Readers of this volume will learn much about how Britain navigated these questions in the past, of the varied contributions of many heroes (and some villains), and will come to their own conclusions about the way to achieve race equality in the 21st century.

# SECTION I: THE 1965 RACE RELATIONS ACT AND ITS SOCIO-LEGAL CONTEXT

## 1. What Magna Carta and the 1965 Race Relations Act Mean to Us Today

Sir Rabinder Singh

I am honoured to have been invited to address you today. The Runnymede Trust is the leading organisation in this country dedicated to the promotion of racial equality. When it was founded in 1968 by Jim Rose and Anthony Lester, it took its name from the meadow by the Thames where the first Magna Carta was sealed in 1215. I am particularly pleased that, among the understandable and widespread commemorations of the 800th anniversary of Magna Carta, the opportunity has not been lost to remember that this is the 50th Anniversary of the first Race Relations Act in this country.

At first sight it is not obvious that there is any link between the two. It is well-known that Magna Carta was sealed as part of a power struggle between King John and the Barons. They would hardly have been interested in creating an equal society. Furthermore, many of the references in Magna Carta itself are based on distinctions between people depending on their status: the reference to 'all free men' clearly excluded those who were villeins. The institution of serfdom was very much alive at that time.

And there were provisions in the 1215 version of Magna Carta which, on their face, discriminated against Jews.

Lord Sumption, who is not only a Justice of the Supreme Court but a distinguished historian, has described the sentiments which surround Magna Carta as 'high minded tosh' (Lord Sumption, 2015: 4).

Although it is correct to question whether modern readings of Magna Carta have any basis in historical fact, it is also important to recall that the mythology surrounding such documents can itself have continuing impact on a society. As another historian, Professor Linda Colley, has observed, there is a 'cult and mode of memory' which rests on bad history and includes Magna Carta as the most important text in stories of liberty (Colley, 2014: 35-36).

The fact is that the phrase Magna Carta still has resonance for ordinary people in this country. They want to know, as Tony Hancock famously asked in 1957: 'Did she die in vain?'

This is true not only in this country, but around the world. Surely this is why, when Eleanor Roosevelt unveiled the Universal Declaration of Human Rights in 1948, she said it might well become an international Magna Carta for all humanity everywhere.

As Article 1 of the Universal Declaration proudly proclaims, all human beings are born free and equal in dignity and rights. Last year I gave a lecture on the development of human rights thought from Magna Carta to the Universal Declaration (Singh, 2015).

I suggested then that we have come a long way since the explicit inequality which was embedded in the original Magna Carta - but nevertheless, the lineage of modern human rights thought can be traced back to then.

The respected scholar of human rights Francesca Klug recently put the point as follows:

*Whilst it would therefore be wildly historically inaccurate to bestow universal intentions on the multiple authors of the Charter, the principles established in the few clauses that remain on the statute book were nevertheless loosely enough phrased to allow for increasingly generous interpretations in the centuries that followed. Today a phrase such as 'to no one will we deny justice' has come to be understood as the very foundation of our modern, inclusive justice system (Klug, 2015: 7).*

Nevertheless, it is important to be realistic about the limitations of Magna Carta, even making allowance for its mythical status. To quote Francesca Klug again:

*This is no doubt in part because its legal remedies have been superseded by a range of statutes and*

*case law that address modern concerns for equality and justice which a medieval document could not be expected to even conceive of. The disputes between a King and his English Barons on a field outside Windsor 800 years ago seem very remote from the struggles of a modern, diverse democracy (currently) composed of four nations and citizens who stem from all parts of the world. The Magna Carta would seem to have nothing to offer if you are disproportionately more likely to be stopped and searched by the police because of the colour of your skin or religious affiliation (Klug, 2015: 9)*

This brings me on to the Race Relations Act. At common law it was not unlawful to discriminate against a person on racial grounds, for example their colour. In the Britain of the 1960s it was commonplace for employers, estate agents and landlords to discriminate against people on such grounds. Some progress had been made by the common law, for example the decision of Birkett J in *Constantine v Imperial Hotels Ltd.*<sup>1</sup>

The famous West Indian cricketer Sir Learie Constantine had been discriminated against by a hotel, whose white customers objected to his staying there. In that case the Court was able to find in his favour by relying on the common law duty of innkeepers to serve anyone who came to stay at a hotel unless it was for just cause. Nevertheless, it was not racial discrimination as such which was the legal basis of the cause of action in that case. There was no duty at common law not to discriminate against a person on racial grounds when it came to employment, education or housing.

It was against that background, and also in the international context of the civil rights movement, that the Race Relations Act was born in 1965. Just the year before, the US Congress had passed its Civil Rights Act. However, the Race Relations Act in this country was a weaker piece of legislation – and much weaker than what was to follow. The 1965 Act was limited in its scope; limited as to who could take action under it; and limited in respect of the remedies which could be granted by the courts.

The Race Relations Act 1965 prohibited discrimination on the grounds of colour, race, or ethnic or national origins. At that time it did not cover nationality. Subsequent case law confirmed that ‘national origins’ did not include the concept of nationality.<sup>2</sup>

Furthermore, the 1965 Act did not cover areas now familiar to us, such as housing or employment. Although the Act applied to ‘places of public resort’,

including hotels and restaurants, it did not apply to private boarding houses. It did not even apply to shops. The prohibited acts of discrimination included refusing to serve a person, unreasonable delay in serving them or overcharging.

The Race Relations Board was set up to monitor the work of local conciliation committees. In cases where discrimination continued, the matter was to be referred to the Law Officers, who could apply for an injunction from the court. It was made clear no criminal liability was created under the Act.

The 1965 Act was passed against the background of the Bristol Bus Boycott. In 1955 the Transport and General Workers Union (TGWU) in Bristol had voted against having black and Asian workers at the Bristol Omnibus Company, which operated a colour bar until 1963. The bar only came to an end as result of the Bristol Bus Boycott. One of the organisers of the boycott, Paul Stephenson, is reported to have said on its 50th anniversary: “Fifty years has taught me that racism never dies – it simply slumbers.” (Bristol Post, 2014). In 2013 the modern successor to the TGWU, Unite, issued an apology for what had happened.

The Race Relations Act was strengthened in 1968 and substantially extended in 1976. By then, nationality was included as a prohibited ground of discrimination. The scope of the act included employment, education and goods and services. It extended the concept of discrimination to include indirect discrimination. It created individual rights and a range of remedies, which could be enforced either in the County Court or in what is now called the Employment Tribunal.

The Race Relations Act 1976 was perhaps one of the strongest pieces of legislation of its kind in the world and certainly in Europe. It predated legislation against racial discrimination in EU law, which did not come until the early part of this century.

However, the act still did not cover discrimination by public authorities in the exercise of their public functions. Following the report by Sir William MacPherson into the investigation by the Metropolitan Police of the murder of Stephen Lawrence, Parliament enacted the Race Relations (Amendment) Act 2000. One of the main legislative responses to the Stephen Lawrence Inquiry Report was to create a strengthened public sector equality duty, then in section 71 of the 1976 Act. The amended act also prohibited racial discrimination by public authorities in the performance of their public functions.

At around the same time, the Human Rights Act 1998 came into force in October 2000. This gives effect in domestic law to the main rights in the European Convention on Human Rights, including the right to equal treatment in the enjoyment of other Convention rights, set out in Article 14. By this route we now have a system of law in which even primary legislation can be tested against the standards of the Convention and, in appropriate cases, a declaration of incompatibility can be issued by the higher courts. This is what happened in the so-called 'Belmarsh' case, when the House of Lords held that Part 4 of the Anti-terrorism, Crime and Security Act 2001 was incompatible with the Convention rights.<sup>3</sup>

This was in part because it discriminated on the ground of nationality, since the power given to the Secretary of State to authorise the detention of suspected international terrorists applied only to those who were foreign nationals.

As the Runnymede Trust knows better perhaps than any organisation in this country, it is one thing for the law to prohibit racial discrimination; it is another for society to achieve equality. The social and economic data are well known.

In the last quarter of 2014 the unemployment rate for all people aged 16 plus in the UK was 5.6%. For people of black ethnic background it was 13.9%. Although for all ethnic groups the unemployment rate was higher among young people aged 16-24, the youth unemployment rate was 16% for white people; 25% for people of Asian ethnic background and 32% for people of black ethnic background (McGuinness, 2015).

The 2011 census shows that in England and Wales, the percentage of the population describing themselves as Asian or Asian British was 5.87%. The percentage describing themselves as Black or Black British was just 2.81%. Contrast that with the figures for the prison population.

The prison population, according to research by the Prison Reform Trust, contains a large proportion of prisoners from a minority ethnic background. 10% of the prison population are black and 6% are Asian. According to the Equality and Human Rights Commission, there is now a greater disproportionality in the number of black people in prison in the UK than in the United States.

Then consider police powers to stop and search. According to the Equality and Human Rights Commission, if you are a black person you are at

least six times as likely to be stopped and searched by police in England and Wales as a white person. If you are Asian, you are around twice as likely to be stopped and searched.

What about those who exercise the power of the state on behalf of the public? Although there had been members of Parliament from minority ethnic backgrounds going back to the 19th century, in the post war period they only started to become elected to Parliament in 1987, when four MPs were elected. That represented 0.6% of the membership of the House of Commons. That figure has increased to 42 MPs in the House of Commons elected in May this year, representing 6.6%.

When it comes to judicial appointments, the picture is mixed. The proportion of BAME judges at lower levels of the judiciary and amongst fee paid judges, for example Deputy District Judges and Tribunal Members, is much closer to the proportion of BAME communities in the population than at more senior levels of the judiciary.

Does any of this matter? On one level not, because judges put aside their backgrounds and opinions when they come to a case, and decide it on the facts and the law. Yet on another level, according to a 2012 report (Paterson and Paterson, 2012), it does matter, particularly in the perception society has of its judges.

The authors of that report suggest that 'the concept that the institutional legitimacy of the judiciary as a branch of government is in some way linked to a reflection of the society it serves'. They suggest that the judiciary from the High Court and above might loosely be described as the 'politically significant judiciary – the judges involved in the day to day review of government decision-making'. (Paterson and Paterson, 2012: 34).

That is a reference to the important role played by judicial review of administrative action, although that role is now increasingly played by the Upper Tribunal and not only the High Court. It is also worth noting in this context that the power to make a declaration of incompatibility under Section 4 of the Human Rights Act is confined to the High Court and above.

Even at the time when I started at the Bar in 1989, it was in theory possible for barristers' chambers and their clerks to discriminate, both in the recruitment of members of chambers and in the allocation of work. This is because the Race Relations Act at that time did not extend to barristers. This was changed by the Courts and Legal Services Act 1990.

Changing the law does not make society automatically fair and does not make all parts of life more diverse. That has more to do with structural features of our society, in particular social and economic factors. The prohibition of racial discrimination does not necessarily lead to diversity in all parts of life, for example in certain professions and occupations. Change can appear to be very slow.

I would suggest that, to understand the nature of our society today, it can be important to recall what was happening 20 years ago or more. Many of the people appointed to judicial office today, in particular at the more senior levels, were born more than half a century ago. They were at school in the 1960s and 1970s, when our education system was completely different from what it is now. For example, hardly anyone today would know what a 'direct grant' school was. Yet that is the kind of school I attended 40 years ago.

Many of those who are judges now, like me, were appointed to various offices such as Junior Counsel to the Crown when we were in practice. In 1998 the Attorney General introduced the modern system for such appointments, in which there is an annual open competition in which every advocate can make an application.

When it comes to judicial appointments themselves the Judicial Appointments Commission was created by the Constitutional Reform Act 2005. It started to run competitions for the High Court bench in 2007. Again all such appointments are made on merit.

So I would suggest that what we are doing as a society now will have an impact on shaping the nature and character of our society for decades to come. For example the person who will be Lord Chief Justice of England and Wales in another 50 years time is probably a student now. It is unlikely that we can change things radically overnight. However, what we can do as a society is to take constructive steps now which will have a beneficial effect in years and decades to come in the future.

It is well-known that the Race Relations Act was never intended to have exclusively legal effect. Such legislation has a symbolic impact and is designed to educate the public in certain fundamental values of our society. The message was clearly sent out by Parliament that racial discrimination would not be countenanced in this country and that the principle of equality fundamental to our society.

As will become apparent at this conference, the Race Relations Act 1965 was a weak and imperfect piece of legislation. Nevertheless, as is often the case in history, what is important about the 1965 Act is that it was the first step on an important journey. That journey has not yet finished.

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## Notes

1. [1944] KB 693.
2. Ealing LBC v Race Relations Board [1972] AC 342.
3. A v Secretary of State for the Home Department [2005] 2 AC 68.

## 2. Race Relations After 50 Years

Sir Geoffrey Bindman QC

This year marks the 50th anniversary of the statute which originated equality legislation in Britain: the Race Relations Act 1965. In the last 50 years, anti-discrimination law has proliferated. The Equality Act 2010 consolidated laws which now extend to eight protected characteristics: age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexuality. The act of 2010 combines the effect of nine statutes and over 100 statutory instruments.

Few would now question the role of the law in promoting equal treatment. Yet the original statute was novel not only in its subject matter but also its approach to enforcement, which had no earlier parallel in Britain. The Labour government which introduced the Race Relations Bill in 1964 had initially provided for criminal penalties on those found guilty of what was to be the crime of racial discrimination. After the Bill was introduced in the House of Commons, however, Roy Jenkins became Home Secretary. He was receptive to a different approach, putting conciliation rather than punishment in the forefront, and with civil rather than criminal sanctions if conciliation could not be achieved.

This approach had been adopted in the USA. In Britain the Campaign against Racial Discrimination ('CARD') and a sub-committee of the Society of Labour Lawyers had examined the long history of anti-discrimination strategies in that country. After the anti-slavery states of the north won the civil war in the 1860s, legislation was introduced to criminalise not only slavery itself but a wider range of discriminatory treatment based on supposed racial difference. But criminal sanctions did not work: white juries declined to convict other white people for conduct which they regarded as justified.

So the law against discrimination became a dead letter and remained so for nearly a century. After 1945, a few US states, such as New York and Massachusetts, established administrative agencies to investigate complaints of discrimination. Their primary aim was conciliation, but they could seek judicial sanctions against perpetrators who failed to provide adequate redress or take action to eliminate discriminatory practices.

Roy Jenkins accepted this model for Britain, but with narrow scope and weak sanctions. The Act empowered a new Race Relations Board to investigate complaints through a network of voluntary 'conciliation committees', but the prohibition of discrimination on grounds of 'colour, race or ethnic or national origins' was restricted to 'places of public resort' – hotels, pubs, libraries, public transport and the like. Timidity and compromise with fierce political opposition denied its application to employment and housing, where discrimination was much more widespread and damaging. Enforcement was weak to the point of non-existent. If conciliation failed the Race Relations Board's only power was to refer the matter to the Attorney General, who could do no more than seek a County Court injunction to restrain future discrimination. In the life of the 1965 Act not a single injunction was even sought, let alone granted.

The one saving grace of the 1965 Act was a requirement on the board to monitor the effect of the new law and report its findings to the Home Secretary. To assist in this task, two reports were commissioned.

One was a practical survey of the experience of minorities seeking employment, housing and other services carried out by PEP (Political and Economic Planning). Three researchers, one native white British, one white of Eastern European origin, and one black from the Caribbean, applied for advertised vacancies claiming equivalent qualifications. The results were recorded and tabulated, demonstrating massively higher rejection rates for the black applicant and higher rejection rates for the non-native white applicant.

The other report was by a committee of three lawyers under the chairmanship of Professor Harry Street of Manchester University. Geoffrey Howe QC (later Lord Howe of Aberavon) and I were the other members. Our main recommendations were predictable: to extend the scope of the law to employment, housing and other services, and to strengthen enforcement powers.

These recommendations were broadly accepted and enacted in the Race Relations Act 1968. The scope of the law was duly extended. The conciliation

system was retained, but if conciliation failed the board was empowered to seek redress in the County Court. This could include awards of damages as well as injunctions to restrain future discrimination.

Over the next eight years the board brought a number of County Court cases, mostly successful but with trivial awards of damages as low as £5. Several of the cases led to protracted litigation with companies and public authorities who were unwilling to accept adverse findings. Yet the legislation continued to have serious weaknesses.

The absence of effective enforcement encouraged the committees to accept virtually meaningless gestures as amounting to conciliation. In some cases they accepted such feeble wording as “we deny having discriminated and we promise not to do so in the future”.

In employment cases the position was even more pathetic. Conciliation had to be carried out not by the board’s committees but by “industry machinery” – joint committees of employer and union representatives. There was no enthusiasm for the process among employers or trade union leaders and it had little practical effect. I cannot recall a single meaningful remedy for any victim of employment discrimination under the 1968 Act.

Only after the Sex Discrimination Act (SDA) reached the statute book in 1975 did the impetus arise for an effective Race Relations Act. The SDA expanded the definition of discrimination to include indirect discrimination, the cumbersome conciliation process was abandoned and individuals were given the right to take their own cases to courts and tribunals. A start was made to impose positive duties on public authorities to act against discrimination. These early efforts to attack discrimination through law remain the basis of our current system.

The legal framework was complicated and in several respects strengthened by the development of European law and by the extension of the prohibition of discrimination to gender, disability, religion and other fields. The creation of new boards and commissions for some of these fields led to pressure to consolidate – hence the Equality Act and the supposedly comprehensive Equality and Human Rights Commission. Sadly, as so often, consolidation means cuts and the withdrawal of necessary powers and resources. The EHRC has been decimated and can no longer pursue the legal paths which lie at the heart of the legislation.

David Cameron recently commented on the fact that “people with white sounding names are nearly twice as likely to get call-backs for jobs than people with ethnic sounding names”. Was he aware that that this almost exactly repeats the finding of the PEP report of 1967? “I want to end discrimination and finish the fight for real equality in our country today,” he went on. If so, he must restore the funding of the EHRC and the ability of victims of discrimination to assert their legal right to equal treatment.

## SECTION II: RACE AND MAGNA CARTA IN THE 17<sup>TH</sup>-19<sup>TH</sup> CENTURIES

### 3. Civil Liberties and the Genesis of Racial Inequality: Freeing the Trade in Enslaved Africans

William A Pettigrew

Combining celebrations of the eight hundredth anniversary of the sealing of Magna Carta and the fiftieth anniversary of the first Race Relations Act invokes the Whig theory of British history. This was a nationalist depiction of the history of the British Isles in which progress unfolds as a series of incremental, peaceful constitutional improvements leading inexorably towards the secure property rights of the modern liberal state. Starting with Magna Carta itself, subsequent steps in this narrative include the 'Glorious Revolution' of 1688/9, the Reform Acts (1832, 1867, 1884) and more recent legislative enactments like the 1998 Human Rights Act, perceived by flag-wavers of the Whig view to enshrine and actualise civil liberties.

In using the 'Runnymede' brand in its name, as Omar Khan has explained, the Trust cleverly co-opted this nationalist constitutionalist tradition to disconnect Magna Carta from its nativist connotations and to universalise the charter's provision of civil liberties for all peoples of the world, regardless of nationality and race. While this was certainly shrewd politics – to accommodate powerful nationalist narratives for humanitarian ends – it is bad history. This view of history, which portrays civil liberties as the automatic defenders of human progress, is profoundly misleading. The truth is that civil liberties have often played a critical part in the development of racial inequality.

Does this matter? What importance does the strange and perverse history of civil liberties have for the pressing concern to rid Britain of racial inequality? The history matters profoundly. Although alive and kicking, racial inequality has deep historical roots. The painful, contemporary realities of racial discrimination are unfathomable without a full and frank realisation of the long history of that discrimination, and the specific historic contexts in which people willed these injustices into being. Confrontations and reconciliations with this past are central to any attempt to dissolve racial barriers in the present.

In what follows, I focus on perhaps the most notorious example of human rights abuse in British history; one that did much to inaugurate racial inequality and one which owed much to the civil liberties traditions so often associated with Magna Carta: the transatlantic trade in enslaved Africans that Britain perfected from the early seventeenth century to the early nineteenth. It is a story that weaves together today's three routes to progress on racial inequality: legislative action, activism and public policy. Often dismissed as simply the outcome of naked human greed or callous national interest, Britain's enormous contribution to the slave trade derived from legislative activity (without statute). It was pushed by a broad phalanx of activists in the courts, Parliament and the public sphere who shaped a public policy that associated the rapid development of Britain's transatlantic slave trade with the natural constitutional birth rights of Englishmen, popular will and broad-based consent. These lobbyists for slave trade development – the Runnymede barons of slaving – derived much of their legitimacy and their political opportunity from one of the other crucial chapters in the Whig story of Britain, the so-called Glorious Revolution of 1689.

The Magna Carta as we know it – as the birthstone of civil liberties – is really the product of the early seventeenth century and especially the jurist who did more than anyone in that period to establish the Whig history narrative: Chief Justice of the Court of King's Bench, Sir Edward Coke. Coke's Magna Carta was, above all, a statement of the power of the law to constrain the freedom of movement of the monarchy. It was therefore at the centre of an invented constitutional tradition, which became crucial as a secular resistance theory against the energetic and innovating monarchies of the Stuart Kings.

England's concerted efforts to transport enslaved Africans to her American colonies also date from the first few decades of the seventeenth century. These efforts received new impetus in 1660 when King

Charles II used the sort of prerogative fiat that Coke objected to by establishing a monopolistic joint stock trading corporation, renamed as the Royal African Company in 1672. The King John of slave trading, this entity received unprecedented constitutional powers to enforce its monopoly: including the right to establish civil law 'vice admiralty' courts on the West African coast to imprison those who contravened its monopoly. These courts did not use juries. In so doing, the Company thwarted Magna Carta's famous clause that men could only be tried by the judgement of their peers. This kind of constitutional power gave to the Company the means to prosecute an effective trade. During the 1670s and 1680s, the Company returned impressive profits to its investors – including the famous Whig, John Locke – and became the single most prolific human trafficking organisation in the history of the slave trade, shipping more than 150,000 enslaved Africans largely to the English Caribbean (a figure that represents slightly less than 50 per cent of all the enslaved Africans shipped to what is now the United States).

During 1688 and 1689, when James II (the Company's chief executive) abandoned the English throne, and his successor William of Orange approved the Bill of Rights, the constitutional mood music changed. Now favoured were those merchants who had long sought access to the trade in Africans, but had been excluded by the Royal African Company's pernicious monopoly and the constitutional provisions that enforced it. In the *Nightingale v. Bridges* case a decision by another protagonist in the Whig history, the famous liberal judge Sir John Holt (a successor to Sir Edward Coke), undermined the company's enforcement power. Prosecuting on behalf of the 'free' slave traders was Sir Bartholomew Shower who referenced the Magna Carta tradition (and especially the medieval jurist who wished to codify the Common Law implications of the Great Charter, Henry of Bracton) when explaining how the English law freed men to be able to trade in other men, women, and children. English Common Law, so Shower contended, "distinguishes between bondmen, whose estates are at their lord's will and pleasure, and freemen, whose property none can invade, charge, or take away, but by their own consent." In this way, activists for slave trade escalation and the racial violence it entailed over many generations deployed the Magna Carta brand.

This landmark case forced the Royal African Company to seek statutory support for its monopoly. In so doing, the company became engulfed by a broad lobby of slave trading activists

who petitioned and pamphleteered to block it in Parliament. The constitutional changes around the Glorious Revolution had made Parliament more powerful within the state's regulatory apparatus. This brought a new style of lobbying to Westminster – more deliberative, more public, more national in its orientation - that suited the architects of Britain's slave trading supremacy. The company's opponents formed a highly effective lobby that marshaled petitions and developed an appealing ideology celebrating the role of the public's consent in deregulating the slave trade. These slave trade 'escalationists' used the recently unregulated press to gather the support of public opinion in their quest for a nationally constituted slave trade. They celebrated the right of the provincial 'outport' towns throughout Britain to participate in the slave trade to prevent the Royal African Company from engrossing slave trading in London. They looked forward to a time when all social classes could enjoy the benefits of slave trading and not just the privileged plutocrats of the company. Their slogan was that of the Whig tradition of civil rights (though plenty of them were Tories): they celebrated what they portrayed as the inherently English right to trade in slaves and argued a broad-based slave trade would be a better route to national greatness and wealth. They mixed discussions of constitutional freedoms alongside the development of racial language.

Their principle rallying cries were civil rights - what they called the 'liberties of the subject' - and freedom as means to justify and secure what would be the largest forced intercontinental migration in human history. One wrote: "Freedoms of trade ... [are] the fundamental point of English liberty."

Independent slave traders depicted monopolies like that of the Royal African Company as stains on the national character. One pamphlet in the dispute asserted that monopolies are "the Badges of a slavish People. ... If this so beneficial a Trade was but freed from...the African Company, and Industry left at liberty farther to improve it, the Nation would quickly be convinced that nothing hitherto but an English Freedom has been wanting to extend the Trade."

Convincing the nation proved straightforward. This deregulated 'free' trade in the enslaved increased the capacity of Britain's slave trade by about 300%. It shifted the centre of gravity for English slave trading away from a capital dominated by the chartered companies like the Royal African Company and towards the provincial ports like Bristol and then Liverpool. It also provided an adequate supply of slaves to the mainland American colonies like Virginia

and the Carolinas for the first time and shifted the embarkation points for the enslaved further West from the Gold Coast to Senegambia and further south, to Angola. Few lobbies examined and used the connections between these various expressions of freedom at the beginning of the eighteenth century more than the independent slave traders. Fewer still deployed such arguments for freedom and civil rights with such persistence to achieve an enlargement of unfreedom on this scale.

What relevance does this history have for our present discussions about the surest route to achieving racial equality in Britain in the twenty-first century? Three extrapolations from the story of the escalation of the English slave trade can be made: first, this story demonstrates how racial inequality emerged indirectly out of a public policy bent – first and foremost – on escalating the slave trade. The legislative processes involved a complex interaction between courtroom agitation and public and parliamentary deliberation. Slave trade escalation (and its most durable legacy, racial inequality) did not derive straightforwardly from a parliamentary statute. Something more diffuse and more intractable than that underpinned Britain's slave trade and the assumptions of racial inferiority that guided it – public opinion intertwined with national economic interest. These interactions provide further dramatic evidence of the complex combinations of legislative deliberation, courtroom compromise, public consent and economic interests that conspired to develop and perpetuate racial inequality – and will need to be confronted to defeat it.

Second, such was its political currency that the great historical nemesis of the free traders in slaves – the abolitionists – also co-opted the Whig narrative for their purposes. Their courtroom mastermind, Granville Sharp, documented how English Common Law was naturally antagonistic to slavery. Such was the abolitionists' skill in co-opting this nationalist narrative that modern-day constitutional jingoists – including the current Prime Minister – restrict the historic relationship between Britishness and slavery to the abolitionists and neglect to mention the parts played by civil liberties in developing the slave trade. This distortion of the past illustrates how the Whig narrative of English history inhibits racially inclusive accounts of the past. Reconciliation with the sins of the past involves full public confrontation with the seeds of racial inequality – even if that involves challenging nationalist narratives fixated with civil rights and constitutional freedoms. In this way, truth telling about the causes and legacies of slavery and therefore racial inequality can become reparative and a foundation for racial equality.

Third, the study of the past is about establishing connections through time from Magna Carta to Race Relations legislation. But history is also about understanding change over time. Surely for all the inadequacies of the 1965 Race Relations Act, we in 2015 should be celebrating its departure from Magna Carta rather than its debt to it. If placed in the historical perspective I offer here, the act's desire to universalise the civil rights tradition is surely the historic achievement we should be lauding most in 2015.

## 4. The Chartists: Activists for Civil Rights

### Malcolm Chase

*By outlining the racially inclusive nature of the Chartists and their leaders, Malcolm Chase shows how the movement might be seen as an important link between the unfulfilled promises of the Magna Carta and our modern quest for equality and democracy for all. This suggests a wider corrective to the dominant view of British history, both in terms of a focus on history from below and the place of people of colour as part of this.*

The People's Charter, one of the landmark texts in British political history, was launched in 1838. There was nothing in it that was novel except crucially the punchy title. Magna Carta was seen as the foundation stone of English liberties and the People's Charter was intended to complete the edifice by establishing universal male suffrage and the secret ballot; paying MPs and abolishing the property qualification to become an MP; introducing equal sized constituencies and annual parliaments.

These were the famous 'six points of the Charter' and they inspired the first truly national mass workers' movement in history, sustained by a national newspaper, by annual delegate conferences elected from Britain's regions, and from 1840 by the centrally organised National Charter Association. Chartism's focal points were huge petitioning campaigns in 1839, 1842 and 1848. The greatest, in 1842, marshalled 3.3 million signatures (around a third of Britain's adult population and four times larger than the combined British and Irish electorate). This remains the single largest petition ever presented to Parliament: a third of a ton of paper was heaped up on the floor of the Commons. All 3,000 words of the petitioners' case then had to be read out. It was a deeply satisfying piece of political theatre.

But theatre is all it was. Parliament did not yield to the Chartists' demands in 1842, any more than it had done in 1839 or would do in 1848. By the early 1850s Chartism had morphed into an earnest but minority pressure group, agitating for 'the Charter and something more'. That 'more' included complete freedom of religious expression; free education for all; universal old age pensions and state support for those either unable to work or to find work. None of those demands were implemented before the twentieth century and it took until 1918 for the Chartists' main demands for parliamentary reform to become law.

Chartism is a movement that failed in its lifetime. Why then should we care about it, beyond pausing to admire the Chartists' dedication? It is important to register and celebrate those who have gone before us in campaigning to make our society a better place. We can also use their experiences as a tool to think with. Though it failed to secure any of the six points, Chartism made a profound and enduring difference. Textbooks narrate Chartism as a movement that failed, but this was actually a movement characterized by many small victories.

I want to reject head-on the notion that demanding annual parliaments, that is holding a general election every year, means the Chartists lived in cloud cuckoo land. The Charter was about much more than remedying the yawning democratic deficit left by earlier attempts to reform parliament. At issue was not only a fundamentally contrasting concept of democratic procedure, but also the extent to which electors could trust the MPs that they sent to Westminster.

Annual parliaments were about creating a democratically elected assembly to govern in accordance with the popular will. Every twelve months MPs would be called to account for their actions – or inaction. The internal governance of the Chartist movement itself underlines the strength of this conviction: officers and committees were elected for only three months at a time and mandated by, and required to report back to, those who had elected them.

Public debate was deeply embedded in the culture of even the smallest places. Victorian Britain was a society where people kept listening to each other, arguing with each other, talking to each other. Democracy meant participation: it had to be fought for and once won, it would need to be maintained and monitored by mass activism.

But why did Chartism seek the vote for men alone? It was not inherently antagonistic to female suffrage, but the prevailing view was pragmatic. The preface to *The People's Charter* candidly conceded that against the "reasonable proposition" of female suffrage, "we have no just argument". The fear was that if votes for women were added to its demands, the Charter would be greeted with even greater hostility. Once

universal male suffrage was won, many assumed votes for women would eventually follow.

Women were involved across Chartism, in the main Chartist groups and in women-only ones. They signed the national petitions in large numbers – as many as 20% of the 1839 petitioners were women. In 1848, by contrast, a parliamentary committee (with no incentive to underestimate the figure because it believed women's signatures discredited Chartism) calculated the proportion to be eight percent.

This contrast between the 1839 and 1848 petitions tells the story of a gradual transition from a movement genuinely rooted in the community to one that increasingly voiced male ideas about politics and respectability and closed-off opportunities for women's participation. The Chartists were most politically potent in the movement's early years, not just because they were ready to agitate forcefully to achieve what they believed in, but because of a moral authority rooted in the astonishing extent to which Chartism mobilized whole communities.

Few Britons at this time were not touched by this remarkable movement and it is inconceivable that any had never heard of it: Chartist localities could be found from west Cornwall right up to the Orkneys. Support for the Charter was close to the norm among working men and women in the industrial regions of Britain.

In the words of one Yorkshire workman, "I had always been a Chartist since I knew what politics meant".

The result was that the Chartists constituted a massive cross-section of society, overwhelmingly but not exclusively working-class.

Almost all Britain's ethnic communities were represented. One Chartist of national significance, Londoner William Cuffay [Kofi] was the son of a man born into slavery on St Kitts. William would be my candidate for Trafalgar Square's famously empty fourth plinth. An impoverished tailor and described as 'of mild demeanour and quiet manners', he was a passionate activist for civil rights. Often elected to committees at national and local level, he also advised sympathetic MPs on the reform of employment law and helped mastermind Chartist efforts to get such MPs elected. He was transported to Australia for his part in a Chartist rising in 1848 which had been a desperate response to a government crackdown on freedom of speech and assembly following the third national petition.

Two other Londoners arrested after disturbances in 1848, David Duffy and Ben Prophett, were described as 'men of colour'. Arrested with them – and transported for his part in breaking into a pawnbrokers to cries of "Hurrah for Liberty" – was Charles Lee. Charles was of Romani heritage and proud to relate how he had been born in a tent in the New Forest. And the Scottish Chartist John Taylor was Anglo-Indian: his mesmerising good looks were ascribed to his Indian grandmother, Shanie Chanim from Sandila in Uttar Pradesh.

And one of the many organisations affiliated to Chartism, the Fraternal Democrats - founded to promote international understanding - included among its members Czechs, Dutch, French, Germans, Hungarians, Italians, Poles and Scandinavians. Even the Moslem world was involved, for a 'Turkish democrat' from Silistra in the north-east of present-day Bulgaria was among those who contributing to a fund-raising concert in 1845.

The decline of Chartism was not solely the consequence of official repression, although the transportation to Australia of men like William Cuffay certainly took its toll. To a considerable extent, Chartism was predicated upon the unreformed Parliament never legislating in favour of anybody's economic interest except that of the social classes represented there. The validity of this assumption was to some extent eroded by reforms passed in the 1840s, such as the first ever Public Health Act and measures that lightened the burden of taxation on the poorest in society. But it is debateable whether these would have been enacted without the dramatic shift that Chartism forced on the context within which Parliament operated.

Too often, the decline of Chartism and its complex causes have been allowed to obscure the movement's true significance. Long after the 1848 petition, long even after the very last Chartist national convention in 1858, the People's Charter remained a tool to think with for those who sought to promote democracy in Britain. Its emotional charge was considerable. Chartism was "ever-present to the progressive mind" and almost a century later the former suffragette leader Sylvia Pankhurst was criticising the Labour Party for lacking "the sturdy democratic fibre of the Chartists".

Why, then, is Chartism's legacy for us as political activists important? Four areas stand out:

- First, Chartism increased ordinary people's 'social capital'. It was an important provider

of educational opportunities and also created space to develop confidence, assertiveness and organizational and public speaking skills.

- Second, it increased awareness among working people of what they had in common – despite the widely contrasting experiences of gender, geographical regions, ethnicity and different occupational groups.
- Third, Chartism was one of the key forces in persuading Westminster to legislate against the prevailing interests of those who made up Parliament, and to bring forward instead social and economic measures to improve life for the people as a whole. Such reforms as were achieved in the 1840s would not have happened without the hot breath of Chartism at Parliament's shoulder.
- Fourth, Chartism began the process by which local government was opened up to working people, both as voters and as elected representatives. Chartism was a crucible for active citizenship. To get working class councillors, it was necessary to organize closely and canvass thoroughly – so Chartism encouraged political awareness and habits of civic participation. The involvement of ex-Chartists in local politics was commonplace even into the 1880s. It was a natural consequence of Chartists continuing to be politically active in their communities, once Chartism itself as a national movement dwindled to nothing. They made alliances and, yes, to some extent they had to compromise. But although they had failed to change the constitution nationally, in the spirit of 'dig where you stand' they continued to act locally. Eventually a few ex-Chartists were also elected as MPs after reforms to parliament in the 1860s.

I am not suggesting Chartism was perfect. There were blatant careerists, rogues and racists in the movement. And wherever one looks, women's involvement was thinner – both numerically and in intellectual substance – from the mid-1840s. There is an important lesson here for those who care about democracy and civil rights. Chartism was at its most potent as a political force when it was socially most inclusive. Furthermore in the 18 year history of the National Charter Association, you can see a process of professionalization raising walls between 'grassroots' supporters and leaders, between elected and the electors.

Reflecting on present times in the light of Chartism, one ventures to suggest that there are processes at

work within political organizations that are leading to the same end. It is important to reiterate how central annual Parliaments were to the Chartists' vision of democracy. Few of us would want an annual general election now. However, it is worth recalling the intentions behind it as we ponder declining election turnouts, the diminishing base of unpaid party activists, and the distance that remains between the parliamentary system and those to whom elected representatives are ultimately accountable.

Local community groups and NGOs like Runnymede have to be our equivalent to annual Parliaments, places where activists listen to each other, not always agreeing, but never turning their backs on each other. They can be places that strive not only for a better society but also to hold parliamentarians of all parties to account, just as the Chartists fought to do. Parliamentary politics is too important to be left to the politicians.

## SECTION III: ACTIVISM AND RACE EQUALITY FROM THE 1960s TO TODAY

### 5. Up Against the State: Activism, Legislation and the Struggle for Racial Justice in Britain

Gus John

On 8th December 2015, 50 years will have passed since the first Race Relations Act. 2015 is also the 800th anniversary of Magna Carta. 2007 marked the bicentenary of the Abolition of Slavery Act. 2008 was 60 years since the iconic Empire Windrush deposited 492 Caribbean migrants at Tilbury Docks.

Anniversaries are strange things and the quality and purpose of reflections upon the event being marked depends hugely on who is doing the reflecting and what they want to achieve by it. To put it somewhat crudely, reflections could therefore be on what has been achieved since the event, how meaningful and timely, or conversely how wrongheaded and misplaced the event was in the first place. And having lived with it and its consequences, what relevance it has for the future.

The Windrush migrants, those of the African and Asian Diaspora who constituted the 'black presence' in pre-and post-war Britain and all their descendants could comment extensively on the relevance of the anniversaries listed above to the state of Britain and to the British state that they are up against today.

In 1945, three years before Windrush, an impressive body of current and future leaders of the colonised world gathered in Manchester for the 5th Pan African Congress (PAC). The first was held in London in 1900 and concerned itself (as in 1945) with the ravages of Empire and the role Britain as an imperialist nation was playing in the world and especially in its colonies. Two world wars later, the African diaspora in the USA, the Caribbean and Europe were joined in Manchester by leaders from Africa itself. They were reminding Britain not only of the responsibility its imperialist history placed upon it, but of the human sacrifice its colonial subjects had made for King and Country on the battlefields of Europe and of its duty to guarantee them equal rights and the protection of the Crown as His Majesty's loyal subjects. The 5th PAC resolutions had as much to do with Pan-Africa on the continent and in the colonies as with

the African diaspora facing racial discrimination and denial of civil liberties and fundamental human rights in Britain.

In 1900 as in 1945, African leaders spoke to the issues confronting Africa and its diaspora, especially the diaspora in Europe, out of a consciousness of how marginal our rights were to the majority of the British population and how widespread and visceral British racism was, both at home and abroad.

But post-enslavement and post-imperialist Britain did not have its own brand of a 'Truth and Reconciliation Committee'. There was no forum in which it could acknowledge the barbarism and genocide that were such a feature of its imperialist past and that defined its victims in a manner that was supposed to make their widespread annihilation and subjugation justifiable. There was no forum in which those in the Monarchy, the establishment, the Aristocracy, the Established Church and the military who were set up for life to the nth generation as a result of the spoils of enslavement could own up to the human atrocities that had won them their fortunes. There was no forum in which the descendants of enslaved Africans could call for reparation and for the confiscation of 'the proceeds of crimes against humanity' as restitution in however small a measure.

Instead, the inheritors of eye-watering amounts of blood money and land and gilded buildings continued to enjoy a status in society that enabled them to subjugate and exploit a local working class and one that was socialised to know their place and stay in it, while identifying with the jingoism of Empire and the 'othering' of those whose forbears were once enslaved.

Thick lines were therefore drawn deep in the sand. On one side were the descendants of enslaved Africans claiming their right to be numbered among 'the British' and claim citizenship and the same rights as the rest of the population. On the other, the

white majority objecting to the growing presence of 'dark strangers' with equally 'dark' habits and mores that in time could be expected to destabilise Britain. What is more, that white majority insisted on their inalienable right to discriminate against those 'darkies' and 'coloureds' and shunt them on to the margins of the society. By the time the 1962 Commonwealth Immigrants Act was passed, ethnic colonies for the ethnic minorities were already becoming a reality in conurbations such as Greater London, Greater Manchester, West Yorkshire, West Midlands, and so on.

With the state's emphasis on controlling the entry of migrants from the colonies, the 'West Indies' in particular, where there had been a pool of surplus labour Britain could draw upon to come and rebuild itself after two devastating world wars, the British people were able to tap the rich seam of racist stereotypes that had been an integral part of their socialisation and their schooling and treat the 'dark strangers', the 'coloured immigrants' as undesirable and bad for business. Discrimination in housing, employment, transport and the provision of goods and services was widespread, no less than discrimination by the police and courts, by schools and in the health service.

The 1960s especially was a time when many children were coming from the West Indies to join parents or other family members already here. Indeed, in the run up to 1962 and the passing of the act, migrant workers from across the region busied themselves to beat the impending ban. So, whereas in 1960, some 58,300 migrants from the New Commonwealth (black countries as distinct from 'Old' Commonwealth, i.e., Australia & New Zealand) entered Britain, in 1961, 125,400 arrived. A good number of those left children behind with a view to saving and sending money so they could come and join them later.

The Commonwealth Immigrants Act (1962) removed the automatic right of citizens of British Commonwealth countries to migrate to the United Kingdom, prompting Hugh Gaitskell, the leader of the Labour Opposition, to call the act 'cruel and anti-colour legislation'.

So it was that by the middle to late 1960s, the population of children joining British schools who had had their early years/primary education in the Caribbean had more than doubled. White parents harboured concerns about the likely damage to their children's education that could result from large numbers of African heritage children in any one school.

In addition to sharing that concern, government was anxious that schools with more than 30% of African or Asian heritage children could become ghettoised to the disadvantage of the majority white children, who were deemed to have the right to a good school in their local community. The government therefore permitted local education authorities to bus African and Asian heritage children to schools outside their areas once their number in their local schools reached the 30% mark. Organised campaigns against busing, especially in London, led LEAs to abandon the practice and stop making racist assumptions about the educational capability of African heritage children, especially since schools failed to acknowledge that Caribbean children were bilingual and spoke home languages that were not 'broken or bad English', as well as so-called standard English.

Simultaneously, African communities struggled against the intelligence testing of their children by school staff and educational psychologists who typically used tests that were culturally and racially biased. Many of those tests emanated from the work of eugenicists such as Cyril Burt, Hans Eksenck, Arthur Jensen and others who propounded theories of race and intelligence. Their basic thesis was that higher scores of whites relative to blacks in aptitude tests were explained by genetically determined differences in intelligence and ability. The result of such testing was that a disproportionate number of African heritage children were sent to schools for the 'educationally subnormal'.

While the white working class continued its tradition of workers' struggles in respect of wages and working conditions, denying for the most part the racism black workers were experiencing, the African diaspora typically had two sites of struggle. It was necessary to struggle in the workplace, to win rights and to assist the labour movement in confronting its own racism. But it was equally necessary to struggle in the community in relation to police treatment of African people, 'Stop and Search', racism in the criminal justice system; schooling and education, racist attacks, bigotry, denial of equal employment opportunity and discrimination in the provision of goods and services.

The majority of migrants of the African and Asian diaspora lived in areas where the white working class had long been forgotten. These were places where it suited politicians of all parties to encourage the view that immigration was associated with race – and race signalled problems and inter-ethnic conflict, not least because the immigrants were projected as robbing white people of their birth right.

This blatant process of racializing immigration was to continue well into this millennium, with the conflation of immigration and race relations and the argument that in order to promote and sustain good race relations, government needed to be 'tough on immigration'. It was epitomised by the statement from Labour Home Secretary Roy Hattersley in 1965 that: "Without integration, limitation is inexcusable: without limitation, integration is impossible." But it has also been implicit in the electoral discourse of all the main parties.

Scapegoating immigrant workers is an age-old practice in Britain. It was prevalent in the late 19th/early 20th century; it was principally the rationale for the 1914 Aliens Restrictions Act and especially for the 1919 Aliens Act, the foundations on which immigration legislation was built until 1971. It could be detected too in racist responses to Irish immigration in the early and middle 20th century, the racialisation of immigration since the early 20th century and especially between 1962 and the present. Conflating immigration control and good race relations is another feature of immigration debate by both the Labour and Conservative governments.

Against this onslaught by the state, African diaspora immigrants needed to draw upon their experience of struggles against colonialism and capitalist exploitation and for 'bread, justice and freedom'. They were dealing with the structural racism of the state, the institutional racism in its apparatuses such as the police and criminal justice system, the cultural racism of the media and educational institutions, and the rabid racism of individuals and neo-fascist organisations.

Fifty years after the Race Relations Act 1965, the very presence of the African and Asian diaspora in Britain is still being projected as 'the problem'. Consequently, perennial disproportionality in its representation in school exclusions, youth custody, young mental health disorders, prisons, stop and searches, youth unemployment, graduate unemployment. Long term unemployment and under employment, deaths in custody and serious youth violence is seen as having to do with the ethnicity of the subjects. Structural arrangements and institutional practices that perpetuate such malaise are not addressed.

Ever since the Campaign Against Racial Discrimination provided empirical evidence of the

extent of discrimination in employment, housing and the provision of goods and services to strengthen the case for more robust legislation, targeted communities have been demanding legislation that safeguards the fundamental rights of the African and Asian diaspora. This is distinct from proving to the white ethnic majority that government could be tough on immigration and allay their fears about the changing profile of 'their country'. The abiding fault line in the social and legislative structure, however, is a lack of acknowledgement for the legacy of Empire and its implications for white Britain, not least in terms of displacing a culture of whiteness and notions of ethnic and cultural supremacy through legislation, schooling and education, media and culture. The state operates as if there is only so much one can demand of 'the British public' and keep their trust as far as dealing with the actual and potential black presence is concerned. Hence the decision to establish a single Equality Act even in the face of a lack of evidence that public bodies were in compliance with the requirements of the Race Relations (Amendment) Act 2000.

Although the government knew full well that the level of non-compliance with the RRAA 2000 was exacerbated by the lack of resources for the watchdog, the Commission for Racial Equality, to identify and impose sanctions upon those ignoring the legislation, it nevertheless amputated the Equality and Human Rights Commission at both knees no sooner than it was established. Its budget was reduced by 75% between 2010 when the entity was set up and now. And that at a time when more and more public services are being outsourced to private companies that have no accountability in the public sphere and are being encouraged to see the requirements of the legislation as 'red tape'.

Meanwhile, the descendants of the Windrush arrivants and of those who constituted 'the black presence' in Britain when the Abolition of Slavery Act was being debated in 1806/7 are still being regarded as 'ethnic minorities', with the profile of 'migrants' on the margins, rather than as future leaders of Britain and its institutions. The history of civil unrest in Britain (England especially) in the last four decades is a sober reminder of what can happen in societies that push sections of their population on to the margins and leave them there as some semi self-governing ethnic colony where just about everyone carries an ethnic penalty.

## 6. How Should We Evaluate the Race Relations Acts Fifty Years On?

Jenny Bourne

On 8th December 1965, race discrimination was outlawed in Britain from clubs and pubs. Fifty years on, black women are mounting a campaign against DSTRKT club for allegedly barring their entry on grounds that they are 'too fat' and 'too dark'. So has nothing changed? Actually, plenty has. But for good or ill?

### Linking race and immigration

It is fashionable now to insist in political circles that race and immigration are not linked. But this was not the case historically. In fact black critics used to argue that every race relations act presaged a new immigration control act. The government of the day could on the one hand appear to be non-discriminatory when bringing in immigration controls, by emphasising its willingness to work for the integration of those already here, while on the other hand ignoring the fact that those same immigration controls, directed specifically at New Commonwealth immigrants (i.e. 'darker' people), were enshrining discrimination in statute.

That immigration controls and anti-discrimination legislation were linked in the government mind was quite clearly set out in the announcement on 9th March 1965 by Prime Minister Harold Wilson. It had three prongs: intensified immigration controls, proposals for central coordination of integrative activities and equal treatment for Commonwealth immigrants once in Britain. The 1965 White Paper on Immigration cut down on the issuing of employment vouchers (established in the 1962 Commonwealth Immigrants Act) and extended checks and controls on dependants. The Race Relations Bill, published in April 1965 was "to prohibit discrimination on racial grounds in places of public resort; to prevent enforcement or imposition on racial grounds of restrictions on the transfer of tenancies; to penalise incitement to racial hatred; and to amend section 5 of the Public Order Act 1936."

### Leading up to the 1965 Act

The Race Relations legislation had been announced in the 1964 Labour manifesto. But party thinking dated back to 1952, when the Commonwealth sub-committee of the National Executive Committee asked for advice from a former solicitor general and

an anthropologist Professor Kenneth Little (author of one of the first books on race in Britain). The latter was keen on the type of machinery such as the Fair Employment Practices Commission in the USA. From 1950, private members had pressed for anti-discrimination legislation, and in 1956 radical anti-colonialist Fenner Brockway introduced the first of nine annual bills. All failed.

Brockway (later Lord Brockway) himself was influenced by the community-based lobby against what was then termed a 'colour bar' in Britain. It was spearheaded by people like Frances Ezzreco who, with Claudia Jones, led a deputation of black organisations to lobby Conservative home secretary Rab Butler about racism after the killing of Kelso Cochrane in 1959. Claudia Jones, in November 1961, was to write a lead article in the *West Indian Gazette* denouncing the impending 1962 Immigration Act as a colour bar, i.e. discriminatory - as it would be applied to black people, not white. Prophetic indeed!

In 1964, when Labour started drafting the Race Relations Bill, incitement was seen as the main subject and stern penalties were suggested as well as making discrimination in public places a criminal offence. Meanwhile a minority group within the Society of Labour Lawyers, led by Anthony Lester, called for civil laws to cover all areas of discrimination, drawing on the US and Canadian experiences. These suggestions were also adopted by the Campaign Against Racial Discrimination (CARD) the main lobby group. But instead of imposing stringent criminal penalties, the act brought in a Race Relations Board to act as a *conciliatory* body without full investigative powers and enforcement powers remaining with the Attorney-General. The scope of the law was not enlarged to cover crucial areas of discrimination in housing and employment. Effectively by restricting the scope of the act to public places, it gave the green light to discrimination in all other areas.

### Effect of the Act

Of 309 complaints received between the implementing of the Act and 31 March 1967, only 85 fell within its scope, the rest relating to employment, housing or financial services (Patterson, 1969: 96-7). The result was an

immediate campaign by the newly-created Race Relations Board and groups like CARD to strengthen the act and extend its scope. CARD created a Complaints and Testing Committee in 1966 to increase complaints to the board and used black and white students in a summer project to provide proof of discrimination via how a white and a black person were treated at factory gates and in housing provision.

The Race Relations Act was derided by activists, for whom it was a great let-down. Many people like IWA organiser Vishnu Sharma – who had lobbied through CARD – described it as toothless. Sivanandan in an interview called it not just toothless, but gumless.

## Strengthening race legislation

But it was not until 1968 that race legislation changed, this time as a sop to the notoriously racist 1968 Commonwealth Immigrants' Act. It was passed in a record seven days by a Labour government to prohibit British passport-holding Asians expelled from Kenya as the country became 'Africanised' from coming to the UK, on the grounds that they were non-patrial (ie did not have a father or grandfather born here). This raised the question as to when a British citizen was not a British citizen. Caught in a cleft stick, the government passed the 1968 Race Relations Act, extending the scope of the 1965 Act by making it illegal to refuse housing, employment, or public services to a person on the grounds of colour, race, ethnic or national origins. It also created the Community Relations Commission (CRC) to promote 'harmonious community relations'. Note that it was the second reading of the 1968 Bill on 23rd April that occasioned Powell to make his 'Rivers of Blood' speech, in which he cited a constituent who worried that "the black man" would now "have the whip hand over the white man". (See: [The beatification of Enoch Powell.](#))

Sections of the Labour Party and their affiliates, including black organisations, had lobbied for extending race legislation. But with the passing of what became termed the Kenyan Asian Act, many anti-racists despaired of Labour. And in the years to come, pressure to strengthen anti-discrimination legislation was by and large to come from within the quasi-governmental set-up of the CRC and Race Relations Board. The Race Relations Act brought in in 1976 outlawed indirect (as well as direct) discrimination, and combined the functions of the board and CRC into the Commission for Racial Equality (CRE). And the 2000 Amendment

Act (brought in as a result of the Macpherson Report which found institutional racism in the police) extended the outlawing of race discrimination to public authorities, until then excluded from the scope of anti-discrimination laws, placing on them a general duty to promote race equality.

## The downward path

That was the heyday of legislation and its enforcement, especially when Herman Ouseley was chair and chief executive of the CRE from 1993 to 2000.

He told Institute of Race Relations News: "During my stint at the CRE, we were not afraid to use the 1976 act in a very elastic way to support individuals in the tribunals and courts, to challenge employers and public bodies, to undertake formal investigations fearlessly into bodies such as the MoD and generate support to fund public awareness advertising campaigns focused on the effects of racism."

The big shift came around 2004/5, with Tony Blair's new-found enthusiasm for 'light touch regulation'. By then, Ouseley says, the government felt "they had discharged their responsibilities for implementing the measures arising from the Macpherson report into the killing of Stephen Lawrence" and wanted "to demolish the CRE and absorb it into the Equality and Human Rights Commission ... a symbolic edifice for equalities' high-level blue-sky waffling".

Now that one organisation is there to act (or not, its budget fell from £70 million in 2009/10 to £17 million in 2014/15) over a whole host of discriminations – age, disability, gender, gender realignment, sexual orientation, religion and race – the specificity of each is lost in the general and the fight against racism undermined.

According to Lord Ouseley: "There is no relationship with local BME communities or support for individuals."

What support there is consists of a helpline which does not provide legal advice subcontracted by the EHRC to the Equality Advisory Support Service, itself run by the private company Sitel. This is a telemarketing and outsourcing business headquartered in Nashville, USA. (Fairness is now a global commodity.)

Ouseley describes “the deathbed Equality Act of 2010” as “a Labour legacy of lost opportunities, light touch regulatory activity and a deficient framework for tackling discrimination across all the equality characteristics”. It provided, he feels, the basis for the Coalition and present governments to do what they like without challenge, rolling back the gains made in tackling discrimination in the workplace. Ouseley said: “Employees now find it almost impossible to challenge discriminatory behaviour by an employer through the tribunal process without attrition and desperation, unless they have a lot of money and time to fight for justice - or are not afraid to be bankrupted in pursuit of justice!”

The fees imposed by the Coalition government to bring a tribunal case are well over a thousand pounds – £250 when submitting a form and £950 for a hearing.

## Changing the climate

But as Sivanandan had pointed out, anti-discrimination laws were not so much “to chastise the wicked or to effect justice for the blacks” as to change public attitudes and thus pave the way to integration. The 1968 act, he wrote, “was not act but attitude” (Sivanandan, 1976). In that sense of attitude, the defeat of a strong race body and lobby by 2010 allowed for the establishment’s turn away from multiculturalism. And the defanging of the CRE took place on the watch of Trevor Phillips, head of the organisation from 2003. His position was perhaps summed up in his controversial 2005 ‘sleepwalking into segregation’ speech in which he seemed to place much of the blame on some BME communities for their self-segregation, rather than institutions for their discriminatory practices. The mood music had changed, providing Prime Minister Cameron the opportunity in 2011, during a speech on security in Munich, to publicly attack “the doctrine of state multiculturalism” and stress the need for “British values”. It may not have had the crudity of the “black whip hand over the white man”, but it smacked nonetheless of the cultural whip hand.

The changed cultural whip hand – and the unchanging obsession with appearance in the seeking of profit – are arguably exactly why a chic London nightclub might pick and choose its clientele in 2015.

Where are we then, 50 years from the first Race Relations Act? Without doubt the educative function of race laws has worked: generally speaking, the

threshold of what is tolerable in a liberal society has risen. But at the same time, and as liberal society gives way to market values, there is an insidious creep of the idea that we are now in a post-racial world. There is a largely unspoken view from politicians and opinion-formers that we have done our bit, in fact we may have gone too far in allowing *them* their rights. Now *their* demands risk changing society as *we* want to see it.

Meanwhile – and make no mistake about this – in areas where racism and poverty intersect, discrimination is still palpable. In March 2015, 5% of white working-age people were unemployed. Meanwhile 13% of black working-age people, 9% of Asian and 10% of those from other ethnic backgrounds were unemployed (McGuinness, 2015: 4). In March 2015, the proportion of 16-24 year olds from BAME communities unemployed for over a year had increased by almost 50% since the Coalition government was formed. For their white counterparts, there had been a decrease of 2% (Taylor, 2015). In 2015 the ethnic group least likely to be paid below the minimum wage was white males (15.7%); that which was most likely was Bangladeshi males (57.2%). Some 38.7% of Pakistani males were paid below the minimum wage, 37% of Pakistani women and 36.5% of Bangladeshi women (Brynin and Longhi, 2015). On 30 June 2013, 26% of the prison population was from a minority ethnic group, though they comprise around 14% of the general population. Muslim prisoners accounted for 13.4% of the prison population, while they represented 4.2% in the 2011 Census. There are proportionately many more young BAME male prisoners than older ones, with BAME representation in the 15-17 age group the highest at 43.7% (Prison Reform Trust, 2015; Clinks website).

David Cameron’s recent answer to such deep inequality is name-blind application forms. The fight for racial justice that the Claudia Joneses, Frances Ezzreco and Vishnu Sharmas began some 60 years back goes on – but now in a context where the dominant discourse makes it that much harder to argue for equality, justice and an acceptance of difference. Back to the future.

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## SECTION IV: IMPLEMENTING RACE EQUALITY IN THE 21<sup>ST</sup> CENTURY

### 7. Equal Rights for All: the Limits of Magna Carta and the 1965 Race Relations Act

Omar Khan

The various commemorations of the Magna Carta emphasize its importance in Britain's development as a liberal democratic society. The main idea is that the Magna Carta established key principles that we – and indeed other countries – continue to build on even as the various articles of the document have been superseded.

That most of the Magna Carta's articles have been superseded suggests a further point: that lofty principles require further elaboration to become a social reality, including in legislation, policy implementation, and indeed social attitudes. Runnymede recently [hosted an event](#) to jointly commemorate the 800th anniversary of the Magna Carta and the 50th anniversary of the Race Relations Act to remind us of the importance of liberal democratic ideals, but also the inability to deliver on those ideals for Black and minority ethnic people in Britain. We reflected on the historical importance and lessons of these commemorations, but asked what more is needed to make equal rights a reality for Black and minority ethnic people – whether in terms of legislation, policy, or social change and activism.

The [Runnymede Trust](#) was so named in 1968 to characterize the extension of rights and equality to BME people as a natural or perhaps inevitable development of the principles first sealed in Magna Carta. This naming is a challenge to those who read the Magna Carta in nativist terms as a document expressing the unique genius of the English people, and the first in a line of acts passed by enlightened white male legislators in the development of English (and latterly, British) liberal democracy and culture. So while at Runnymede we continue to assert the fundamental centrality of BME people within Britain's national story, and seek to ensure they are equal participants in British democracy and society, our current focus should be on how we best implement these ideals so that racial inequalities are eliminated in Britain in the 21st century.

By jointly commemorating the Magna Carta and the 50th anniversary of the Race Relations Act, we remind ourselves that neither the Magna Carta nor indeed the Bill of Rights, [Somerset's Case](#) (outlawing chattel slavery in England and Wales) or any other Act of Parliament prevented egregious discrimination and inequality against Black and minority ethnic people in Britain during the 1950s and 1960s. Indeed, some legislators – most notably Enoch Powell – affirmed that the values of Magna Carta required people to be *allowed* the freedom to discriminate. Powell's argument was that ancient English liberties were being threatened by culturally dissimilar foreigners who were not steeped in the tradition of Runnymede and Magna Carta. If these liberties resulted in discrimination against non-white people, well, that was the price of liberty.

In this context it is clear enough why Runnymede founders wished to reclaim the legacy of Magna Carta. But it is equally obvious why they did not focus on historical or philosophical debates, and turned their attention to legislation. This was all the more pressing given the fundamental weaknesses in the 1965 Act, which continued to allow discrimination in the provision in goods and services and in housing. One of the most shocking aspects of the 'no Black, no dogs, no Irish' signs was not only their explicit racism, but that they remained legal in Britain despite the many Acts of Parliament over the years – including the 1965 Race Relations Act.

The subsequent passage of the 1968 and in particular the 1976 Race Relations Act fundamentally improved British legislation. They extended protection against discrimination across goods and services and housing, developed the concept of indirect discrimination and established the Commission for Racial Equality (CRE) to monitor and enforce the legislation. This moves us from the first theme of the conference – legislation – to the second, namely policy or the implementation of legislation. One

response to how we achieve equal rights in Britain is that we need clearer or additional legislation – a written constitution perhaps, or legislative backing for affirmative action or other measures. A second response is to say that with the passage of the Equality Act and the Human Rights Act, we now do have adequate legislation to reflect the values implicit in liberal democracy, but that this legislation is being inadequately implemented, a problem that emerged immediately following the establishment and weakening of the CRE. As Runnymede argued in the case of the [2015 summer budget](#), policymakers today not only fail to adequately assess the impact of legislation on ethnic minorities, but they do not positively support measures that might actually reduce racial inequalities. One reason appears to be their unfamiliarity with the ongoing evidence of racial inequalities. But another is lack of leadership, or of public or political pressure to do anything about that evidence.

This leads to the third and final theme, namely the role of activism or ‘pressure from below’ in realizing liberal democratic principles, including equality. With the centenary of women’s suffrage on the horizon, we are reminded of the role of ordinary people and of public opinion and social pressure to deepen the quality of our democracy. The demand for rights from below should be seen as a fundamental aspect of democratic progress in Britain, whether those demanding their rights were barons in Runnymede, Chartists, Suffragettes or anti-racist campaigners in the 1960s and 1970s.

Here it’s worth remembering the social context for the 1965 Act: the 1958 Notting Hill riots and the Black community’s response to physical violence and security, the 1964 racist election in Smethwick, and the visit of [Martin Luther King Jr to London](#) in December 1964 on his way to receive his Nobel Peace Prize for his struggle for justice on behalf of black people in the United States. In the 1970s and 1980s the anti-racist movement was crucial for ensuring that politicians and policymakers at least considered the issue of race, though it was unable fully to challenge Britain’s historic role in exploiting non-white people, nor to realize equal rights for their descendants living across the UK.

Reflecting on these twin commemorations, we must reform what is often a teleological Whiggish story of enlightened liberal men (or perhaps not-so-liberal in the case of [Michael Gove’s intent](#) to teach all schoolchildren the virtues of the ‘[unstable sociopath](#)’ Clive of India) inevitably deepening democracy through legislative acts. Instead we must educate all

our children properly by recognizing the wider array of voices that led the change for equal rights in the face of antidemocratic, illiberal and racist resistance among the powerful.

But commemorations should not only look backward. Thinking more positively towards the future, a final question is whether we need further legislation, better policy implementation or indeed a wider social movement to ensure those in power do address racial inequality, so that Black and minority ethnic people finally experience fairness and equality in Britain.

## 8. Public Policy Development: How Can It Better Realise Rights for Black and Minority Ethnic People

Callton Young OBE

I was a civil servant for about 35 years and spent half of that time in the senior civil service. Early in my career I was a Private Secretary to a Minister of State. When leaving private office, I asked ministers where I could make a difference. I was told that our department was at the bottom of a Whitehall league table on deregulation. It was organised for me to head the Deregulation Unit. Once there, it quickly became clear where the problem lay. It was not lack of policy direction from ministers, nor a lack of staff resources or ideas for deregulation. Rather it was a problem of attitude and behaviour. By the next report to the Cabinet Office my department moved from the bottom of Whitehall's league table to joint top. In my view, race equality across the public sector suffers from the same inertia.

My second anecdote comes from my time working at the Home Office following the Stephen Lawrence Inquiry. Sadly, the very Whitehall department with lead policy responsibility for race equality policy did not have a single BME Senior Civil Servant to help with the policy development being demanded by Ministers. The call went out across Whitehall for a BME policy maker, and I was seconded to do so.

Suffice to say, I was not welcomed with open arms by all Home Office officials. Indeed it took a lot of effort to convince some that I genuinely had policy making credentials. Many thought I was merely the black face of 'respectability' brought in to front their policy ideas. Even junior managers spoke openly in those terms. Surely until BME senior civil servants become the rule rather than the exception, such attitudes will not change and policy development for our diverse communities will be the poorer.

It would be naive to think the mono-cultural position in which the Home Office found itself had occurred by accident. The system really does have a way of reproducing itself in its own image, even in teams responsible for race equality policy. This clearly has to change. Certainly the nature and dynamics of the discussions changed given my presence on the Home Office team, and ministers openly welcomed the improvement. In fact I was repeatedly reminded by one minister of the phrase, 'one man can make a difference'.

While at the Home Office, I was asked by ministers to prepare an outline White Paper on race equality. After much research, my policy advice was surprisingly simple. Change the date on the cover of 1976 Race Relations White Paper to 2000, because the policy direction set in it 24 years earlier was clear and largely remained current. In my view the problem was not lack of policy direction but poor attitudes and behaviour by public bodies towards race equality. Therefore placing an enforceable public duty on them to encourage behavioural change would be more impactful than rewriting policy. Requiring them to develop race equality plans, to publish race equality data and report on progress against their plans would be better than continuing to appeal to a sense of fairness or morality. Furthermore, the Commission for Race Equality should be given enforcement powers to compel such action if necessary. I worked closely with Barbara Cohen on this when she was at the CRE and was particularly pleased to see her at the Runnymede conference.

Gaining agreement for the duty at official level was not without struggle across Whitehall. Strong political leadership and support from Jack Straw and the late Mo Mowlam was crucial. In the end, a new public sector duty to promote race equality was eventually delivered with cross-party support. It was a significant addition to the Race Relations Amendment Bill recommended by the Stephen Lawrence Inquiry to extend anti-discrimination provisions to the police. This wider Bill paved the way for the Equality Act 2010.

For a few years immediately after the new public sector duty was enacted, there was a noticeable improvement in race equality around Whitehall and beyond. I began to meet other visible ethnic minorities at senior levels in Whitehall for the first time in my career. A few even worked on policy rather than in the so-called 'back office'. Equality impact assessments were being published to inform policy making and public consultations. Progress was being made. However, sadly, gains started to be eroded in the run up to the 2010 General Election and anecdotally things appear to have worsened since. Without top down political pressure, momentum slows.

So going forward, what would I recommend in order to better realise the rights of BME people? We must face up to three realities. The first is that left to their own devices, public bodies are adept at kicking race equality into the long grass. This practice often escapes attention because it is cleverly cloaked in a veil of vigorous activity involving new staff surveys, new diversity action plans and new delivery teams - none of which stay in place long enough to deliver sustainable outcomes. This process-driven cycle then starts over again, producing the same sorry result each time. But sometimes the solutions are staring us in the face. For example, challengers to inequitable job selection and promotion systems have been calling for diverse recruitment panels for many years, but resistance has been unwavering despite the inequality to which it gives rise. Instead effort and resources are ploughed into unconscious bias training, almost saying to all-white panels that 'all is forgiven for you know not what you do'. Are we really then surprised when a senior public servant privately says it will be another hundred years before a BME person is appointed to his department's board?

The second reality BME people must face up to is that the only time significant progress has been made is when politicians have made it a political priority. It therefore follows that if BME people are to better realise our rights in our lifetimes that we ought to utilise our political capital better. Our political support for a party should be made conditional on politicians making race equality their political priority. Moreover, BME people should not leave it entirely to others to speak on our behalf. We should be doing more to put ourselves forward for political office. BME people feature large in the photographs of leaflets produced by majority ethnic politicians seeking election, but do not have the same level of prominence when it comes to being selected for political office ourselves, even in predominantly BME areas.

Where are the Bernie Grants, the Paul Boatengs, the Herman Ouseleys of the current generation? The grass root firebrand politicians and leaders who speak up of the injustices that so many BME people feel and experience in our day-to-day lives? And how did that generation not ensure they were followed by a new generation of BME politicians capable of filling their shoes to continue the fight against injustice? Croydon Central, a diverse south London constituency, was won at this year's General Election by a margin of 165 votes. The power to better realise rights for BME people may lie in such tight political margins. BME votes really do count and must be given the political weight they deserve.

The third reality BME people must face up to is that public bodies will always endeavour to present themselves in a good light, and that includes when they publish data and reports about their performance on race equality. Therefore good quality and truly independent research is essential, not least by professional bodies like the Runnymede Trust, which can develop a robust evidence base to better inform the political debate. An independent BME press can play a bigger role too, by exposing race inequality issues in public bodies through good quality investigative journalism.

My personal experience of public policy development suggests some wider conclusions. I was plucked from one department and seconded to the Home Office to help develop race equality policy because it had no BME policy makers of its own. By creating diversity in the policy making team, ministers changed the dynamics of the policy discussion and, in so doing, were better able to help realise the rights of BME people. I was challenged to be 'one man that made a difference'. The result was an enforceable public sector duty to promote race equality that formed the template for the broader equality duty, now enshrined in the Equality Act 2010. However, the early progress that followed enactment of the duty seemed to stall as other political priorities took over.

Without strong political leadership, BME people will have a very long wait to better realise their rights. The reality is that left to their own devices, public bodies gravitate towards undertaking lots of process-driven activity which gives the appearance of them taking race equality seriously but, in practice, leads to little change in the realisation of rights for BME people. The only time significant progress is made on race equality across the public sector is when politicians have made it a political priority.

Knowing this, BME people should strongly support the need for a robust evidence base on the realisation of rights for BME people and an independent press that is interested in investigating and reporting on those rights. Moreover, BME people should make their political capital count more than at present. Our political support for a party should be conditional on politicians making race equality a political priority. Furthermore, we should be doing more to put ourselves forward for political office as, after all, we are our own best advocates, our best ambassadors and ultimately the best defenders of our rights. Only as a significant part of the political establishment will we be in a position to ensure that our rights are realised in our lifetime.

## 9. Mind the Gap: Black and Minority Ethnic Women and the Intersection of Race and Gender Equality

Heidi Safia Mirza

It has been 50 years since the landmark Race Relations Act which signalled the need for legal redress of the endemic racism that plagued post war Britain. We now enjoy far-reaching anti-discrimination legislation that recognises the common core to the multiple inequalities many marginalised and discriminated groups still endure. The 2010 Equalities Act harmonises previous equalities legislation and brings together under one umbrella, age, disability, race, religion and belief, sex and sexual orientation, gender reassignment, pregnancy and maternity, being married or in a civil partnership. Yet such extensive protection needs to be *accessible* to the most marginal and excluded in society if it is to be credible. The covert nature of the process of exclusion experienced by black and ethnic minority women challenges the context of these legal mechanisms for redressing inequality.

My argument here is that black and minority ethnic women occupy a 'blind spot' in mainstream policy and research and slip through the cracks of everyday policy and politics. In the 1970s an African American women's chant summed this up: "All the women are white, all the blacks are men, but some of us are brave." This saying seems to still hold true – gender is still seen as a white women's issue, while it is taken for granted that race is a black male issue. Black and ethnic minority women still fall through the cracks between the two.

### Mapping the race and gender equality cracks

It is important to recognise that racial equality is a deeply gendered issue, and there are many racialized barriers preventing the equitable inclusion of black and ethnic minority women in the work force. For example, public campaigns such as those on 'work-life balance' which aim to better the working conditions of women are predicated on the notion of a generic un-raced and un-classed woman. However for black and ethnic minority women, pay and conditions at work are still deeply racialized. Success in education is not proving to be a guarantee of wider job opportunities or higher earnings for third and fourth generation Pakistani, Bangladeshi and Black Caribbean young women. Young minority ethnic women are more than twice as likely to be

unemployed as white women, with Pakistani female graduates over four times more likely than white female graduates to be unemployed. Over one in five young Pakistani, Bangladeshi or Black Caribbean women have had to take a job below the level of their qualifications because no one would employ them at the level they were qualified for, compared to only one in twenty young white women employees. Overall, despite their high educational achievements and positive aspirations, ethnic minority women disproportionately face lower pay and fewer prospects for promotion. They are more likely to be found in a narrow range of jobs and segmented in certain sectors of the economy such as health, social care and retail (APPG 2012; Nandi and Platt 2011).

However such distinctive differences and disadvantages are not integrated into mainstream British labour market reforms for women. They are dealt with as special case scenarios, in separately commissioned studies on Muslim or black and ethnic minority women. The soft remedial policy implications of these non-mainstream studies are often aimed at educating and informing the employers about cultural attitudes that lead to unconscious biases or non-statutory compliance measures such as targets, monitoring and benchmarking as solutions. While institutional and personal discrimination importantly remain the focus of the government's equality strategy, the more fundamental issue of segmented labour markets underscored by economic structural racism and sexism remains intact. Thus the root cause of the inequality which determines why black and minority ethnic women are locked into in certain gendered and raced sectors of the labour market - such as homeworking, cleaning or caring - remains secondary to the analysis.

There is a great deal of rhetoric in the public sector about a commitment to racial equality through meeting recruitment targets, being flexible and working in partnership with different groups. However the tools of the race equality trade such as audit and evaluation - the key mechanisms of organisational change - are often race/gender neutral and compliment a masculine approach to social change in a still largely male working environment. Equality action plans will rarely include the specific recognition of the gendered predicament of the different cultural

contexts of different childcare needs. Furthermore, they tend not to include the gendered context of racial discrimination and sexual harassment. For black and Asian women to get into any level (yet alone senior levels) in the public and private sector organisations requires recognition of their particular needs as mothers and carers. Pakistani, Bangladeshi and black Caribbean women have their first child on average earlier than white women, and Pakistani and Bangladeshi women are likely to have a larger number of children. Meanwhile black and Caribbean women are more likely to be lone parents (Nandi and Platt 2011). These family patterns mean the availability of childcare and flexible working have a big impact on the women's employment options as release from family commitments is a real issue for all ethnic minority women who want to work.

It is clear that racism, sexism and discrimination are part of the everyday experience of black and ethnic minority women, who are up to three times more likely to be asked about their plans for marriage, children, and family at job interview than white women. This is ironic seeing that Pakistani and Bangladeshi young women fly in the face of stereotyped expectations by expressing higher aspirations and commitment to higher education and the labour market than their white counterparts. They are more likely to want to pursue self-employment and professional careers and also show no more desire to get married than any other group. Nevertheless, ethnic minority women are very likely to experience racist or sexist comments at work, and Pakistani and Bangladeshi women overwhelmingly report negative attitudes because of religious dress, sometimes having to remove their hijab to get a job (APPG 2012).

## Equality, intersectionality and black feminism

Black, postcolonial and anti-racist feminists have long called for an understanding of the value of an intersectional analysis which aims to reveal the importance of the multiple identities of black and minority ethnic women. (Mirza 2015). Intersectionality not only centralises the complex multiple social positions that characterize lived social reality, it also seeks to explain the way in which power, ideology and identity intersect to maintain patterns and processes of inequality and discrimination which both structure and are reflected in ethnic minority women's lives. Women, who are collectively defined as 'minority ethnic', have different multiple experiences in terms of their age, sexuality, disability, religion or culture. Thus it is argued racism, patriarchy, social class and

other systems of oppression simultaneously structure the relative position of these women at any one time, creating specific and varied patterns of inequality and discrimination. It is the cultural and historical specificity of inequality that black, postcolonial and anti-racist feminists stress as important in developing a more holistic approach to mainstream feminist analysis of women's social disadvantage.

Despite our progressive equality legislation, it has been demonstrated that black and ethnic minority women are still categorised in unmeaningful ways in the *application* of the legislation. Ethnic minority women are often simplistically defined in universal terms, using preconceived political and social categories which underpin social policy and equalities thinking. For example women's life experiences of poverty, neglect, marginalisation and discrimination are often disaggregated (and hence disappear) in official equalities documentation and statistics, as they are classified in terms of being either women, hence 'gendered', or ethnic minorities, and hence 'raced'. Similarly, the official equalities terminology divides and cuts across women's natural multiple identities in terms of the intersection of their age, sexuality, disability, religious, class and cultural differences. For example, an older working class South Asian widowed woman who has worked in the family business and may have no pension will have a very different identity and face different equality issues compared with a younger gay professional South Asian female doctor in an NHS hospital who may have to deal with domestic violence issues in the family. Just as their experiences are different, so too have multiple definitions of themselves evolved in terms of everyday lived experience of gendered and racialised social relations. However the 'intersectionality' which characterises these women's lives is not reflected in the equality discourse which artificially dichotomises racial, gendered and other identities when, in effect, each one is experienced through the other.

## Future proofing gender and race equality: An intersectional framework

What can the lives of black and ethnic minority women tell us about the intersectional dynamics of inequality and discrimination? Why do they slip through the cracks of mainstream analysis on race and gender equality? What can policies and legislation based on an intersectional analysis look like? These crucial questions must frame our understanding of the continued marginality of black and ethnic minority women. While the key to moving

forward lies in an analysis that places at its core the intrinsic value and contribution of these women, 'future proofing' gender and race equality is about understanding the fundamental challenge that these women bring to the equality table. It is only by shifting the terms of debate to an understanding of how the intersectionality of patriarchy and power operates to maintain disadvantage and mask privilege can we begin to get to the root causes of the persistent multiple discrimination they suffer.

From a black feminist standpoint, we need to ask what is it about intersectional positioning and multiple discrimination that remains so elusive and resistant to remedy. To shed light on the endemic nature of intersectional race/gender inequality, I suggest the following strategies:

1. Any analysis of inequality should include a complex understanding of the sites of 'elite' racism and male discrimination, where class power, privilege and patriarchy intersect to disadvantage women and ethnic minorities. This would mean a determined and resolute commitment to target the lack of mainstream economic and political will for reform in areas that would empower black and minority ethnic women, such as democratic representation and pay and conditions in the work place.
2. There needs to be an *honest* incorporation of a holistic understanding of identity that can flexibly respond to new and emerging situations leading to gendered and raced inequality and disadvantage. This means being vigilant in areas in which women are vulnerable in relation to the law, such as women at risk of domestic violence and sexual exploitation. Such a strategy would be able to link their situation to other factors such as immigration status and poor access to services. It would also include the cultural context of women as carers and the relationship this has with disability, income, and age-related issues.
3. Third, we would need to be absolutely resolute about facilitating women's access to justice, dignity and fair treatment. There is no point in having legislation if it is not accessible to the most marginal and the powers of enforcement are weak and open to institutional box ticking. Black and ethnic minority women are still one of the most disadvantaged in society across all levels of work, education, and health. Inequality gaps are growing and our progressive equalities legislation has not turned this fact around in terms of embedding any true social change.

## Conclusion: A feminist vision for a multicultural future

We have reached a critical point in the equality arena. Some 50 years on from the Race Relations Act and five years on from the Equality Act, inequality for black and minority ethnic women still remains entrenched. Legislation has not been enough to shift the material inequalities reproduced by endemic structural race and gender discrimination. Now more than ever, we need to raise our level of analysis and understanding to an intersectional one. We need to move beyond the construction of gendered and racial stereotypes which still inform our common-sense understanding of black and minority ethnic women. This means seeing them not simply as problematic subjects who suffer multiple discrimination and who pose a remedial challenge to policy and legislative inclusion. Rather it means appreciating the significance of black and minority ethnic women's intersectional identity and valuing their position as critical citizens. For over 50 years black and minority ethnic women in Britain have shaped their communities and changed the face of British society. Through their determined activism and social commitment they have showed us what a feminised vision for an inclusive multicultural future could really look like. If we are truly committed to equality, it is a vision of the future that we should all wholeheartedly embrace.

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## Biographical Notes on Contributors

**Sir Geoffrey Bindman QC** founded Bindmans LLP in 1974 and throughout his long and distinguished legal career has specialised in civil liberty and human rights issues. From 1966-1976, he was legal adviser to the Race Relations Board and thereafter until 1983 to the Commission for Racial Equality. He is a Visiting Professor of Law at University College London and at London South Bank University, an Honorary Fellow in Civil Legal Process at the University of Kent, and a Fellow of the Society of Advanced Legal Studies. In 1982 he was Visiting Professor of Law at the University of California at Los Angeles. In July 2000 he received an honorary doctorate from De Montfort University. He also has an honorary doctorate from Kingston University, and has been chair of the Board of Trustees at the British Institute of Human Rights. He was knighted in January 2007 for services to human rights and in March 2011 appointed honorary Queen's Counsel.

**Jenny Bourne**, who edits the Institute of Race Relations quarterly journal, *Race & Class*, has written extensively on issues relating to aspects of British racism and the history of anti-racist struggle.

**Malcolm Chase** is Professor of History at the University of Leeds, where he teaches modern British history, including the history of trade unionism, environmentalism and of autobiographical writing. His books include *Chartism: A New History* (2007; French edition 2013) and most recently a collection of essays, *The Chartists: Perspectives and Legacies* (2015). He has advised the Parliamentary Art Collection on the commemoration of Chartism at Westminster, and in 2013 he was invited to give a lecture at Parliament to mark the 175th anniversary of the People's Charter. Before joining the Leeds School of History, Malcolm had worked for over twenty years in adult education, initially running an adult education centre on Teesside, and later as the head of the University's School of Continuing Education. He is a former chair of the UK Social History Society and the Vice-President of the Society for the Study of Labour History.

**Professor Gus John** was born in Grenada, eastern Caribbean, in 1945. He has lived in the UK since 1964. He is a life-long campaigner for racial equality and social justice. Gus is associate professor and honorary fellow of the Institute of Education, University of London, director of *Gus John Consultancy Limited*, and author of *The Case for a Learner's Charter for Schools*. He is a member of the

African Union's Technical Committee of Experts and a co-founder/director of All Africa Advisors. He has worked internationally as an executive coach and a management and social investment consultant since the 1990s.

**Dr Omar Khan** is the director of the Runnymede Trust, the UK's leading independent race equality think tank. Omar sits on the Department for Work and Pensions' Ethnic Minority Employment Stakeholder Group, on the board of governors at the University of East London and is a 2012 Clore Social Leadership Fellow. Omar's other advisory positions include chair of Olmec, chair of the Ethnicity Strand Advisory Group to Understanding Society, chair of the advisory group of the Centre on Dynamics of Ethnicity at the University of Manchester, Commissioner on the Financial Inclusion Commission, and a member of the 2014 REF assessment.

**Heidi Safia Mirza** is Professor of Race, Faith and Culture at Goldsmith's College, University of London. She is known for her pioneering research on race, gender and identity in education and has an international reputation for championing equality and human rights for women and young people through educational reform. As one of the first female professors of colour in UK, she was awarded the prestigious # EightWomen of Colour Awards in 2014. She is author of several best-selling books including, *Young Female and Black*, which was voted in the BERA top 40 most influential educational studies in Britain. Her other publications include *Black British Feminism*, and *Race Gender and Educational Desire: Why black women succeed and fail*, and most recently, *Respecting Difference: Race, Faith, and Culture for Teacher Educators*.

**William A Pettigrew**. Educated at Oxford and Yale, Will joined the School of History at Kent in September 2009. Before that he was Junior Research Fellow at Corpus Christi College, Oxford. He has written on the history of the transatlantic slave trade and on the history of trading companies. His 2013 monograph history of the Royal African Company, *Freedom's Debt* won the Jamestown Prize. He is the lead investigator on a five-year Leverhulme Trust project that focusses on trading corporations as constitutional bridges between cultures. He is director of the Centre for the Political Economies of International Commerce, which he founded in Kent in 2013.

**Sir Rabinder Singh** is a Justice of the High Court, assigned to the Queen's Bench Division. He was appointed in 2011 and is currently one of the Presiding Judges of the South Eastern Circuit. After his legal studies in Britain and the USA, he was a lecturer in law at the University of Nottingham from 1986 to 1988. He was called to the Bar in 1989 and became a QC in 2002. He was a Deputy High Court Judge from 2003 and a Recorder of the Crown Court from 2004. He has held visiting posts at Queen Mary University of London and the London School of Economics. He is currently an honorary professor at the University of Nottingham. His publications include *The Future of Human Rights in the UK* (1997) and (as co-author with Sir Jack Beatson and others) *Human Rights: Judicial Enforcement in the UK* (2008).

**Callton Young OBE**, is a former senior civil servant. He has an honours degree in politics. During a 35 year career, he undertook a wide variety of roles ranging from Private Secretary to Minister of State Baroness Trumpington, to being a member of the Cabinet Ad-Hoc Group on BSE. In particular, Callton headed the Parliamentary Bill Team at the Home Office tasked with amending the Race Relations Act 1976 to apply anti-discrimination laws to policing as recommended by the Stephen Lawrence Inquiry. He was instrumental in the bill going much further than envisaged, not least through its enforceable duty on public bodies to promote race equality and avoid discrimination. Jack Straw in his memoirs *Last Man Standing* described the resultant legislation as the "most far-reaching measures better to secure racial equality, and sanction racial discrimination, anywhere in the western world". Callton is currently chairman of Croydon African Caribbean Family Organisation UK and became the first African director of Education and Leisure Services in Britain in 1989.

## **Runnymede Perspectives**

Runnymede Perspectives seek to challenge conventional thinking about race in public and policy debates. Perspectives bring the latest research to a wider audience and consider how that research can contribute to a successful multi-ethnic Britain.

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