INTRA VIRES

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ISSUE 8.2

The University of Toronto Pre-Law Society
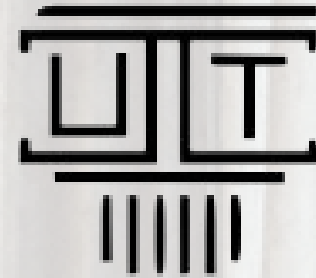
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LETTER FROM THE EDITORS-IN-CHIEF

Dear Readers,

As the Editors-in-Chief of *Intra Vires* for the 2023-2024 school year, we are pleased to introduce *Issue 8.2*! Over the summer, our editorial team and authors have worked very hard to revise and refine the selected pieces being published. This issue is a small but mighty iteration of Intra Vires, featuring two notable submissions concentrating on the inequalities and biases perpetuated throughout the justice system. The undergraduate law journal stands as a voice for all undergraduate students to express their views and perspectives on the law and the role it plays in our lives. We are very proud of the work our editorial team and authors have dedicated to the journal.

To open *Issue 8.2*, Rory Banfalvi in her piece "Putting the Partial in Impartiality; The Necessity of Embodied Adjudication," points out the Canadian judiciary's raced, gendered, and classed origins to show how hegemonic beliefs about impartiality invisibilize discrimination perpetuated by white justices. By looking at cases *R. v. R.D.S.*, 1995 NSCA 201 and *R. v. Le*, 2019 SCC. 34, [2019] 2 SCR. 692, Banfalvi problematizes whether a judge's identity should affect how they adjudicate. The second piece, "Punishing Poverty and Awarding Wealth: Socioeconomic Class in the Justice System," written by Garyn Rickwood, investigates the ways in which the justice system favours the wealthy over the poor. Rickwood illustrates that this favouritism is facilitated through practices regarding access to justice, administration of justice, and crime reporting.

This year brings exciting changes for the journal's social outreach in the broader UTPLS community. For one, we are thrilled to bring back the Launch Party & Social at Hart House to celebrate the publication of *Issue 8.2*. At this event, students can network and learn more about how to get involved with Intra Vires. This event also features a guest speaker from the University of Toronto Faculty of Law Review so students can learn more about legal writing opportunities following their undergraduate studies.

In addition, we hosted an essay contest this year with a $100 prize. Participants submitted essays answering the following prompt: Identify one legal area that you think will need to change or adapt to the needs of the contemporary era/future. Why? Propose one way that this change can be implemented. We are excited to announce that Arnav Bandekar, with his paper titled, "May I speak to your manager?: Expanding the jurisdiction of administrative law through *West Toronto United Football Club v Ontario Soccer Association*," is the winner of our competition this year!

Finally, we would like to thank everyone who contributed to this issue. Thank you to Rory Banfalvi and Garyn Rickwood for sharing your invaluable research with the U of T community and allowing us to become more informed and critical of the adversarial system.

EDITORS-IN-CHIEF

We would also like to thank our outstanding editorial team, James Jiang, Grace Bogdani, Hannah Cluroe, Catherine Wu and Gloria Son for collaborating closely to ensure the quality of legal scholarship presented in this issue. Academic writing and editing is a lengthy and challenging process, and we are proud to present all the hard work that went into this issue.

We hope you enjoy *Issue 8.2*!

Sincerely,

Sommer Pesikan and Rachel Brouwer
Editors-in-Chief, 2023-2024

Sommer Pesikan (right) (she/her) is a fourth-year student at the University of Toronto, pursuing a double major in Ethics, Society, & Law, and Political Science, with a minor in French Language. She is interested in Indigenous politics and going forward, hopes to help improve issues related to access to justice. Outside of Intra Vires, Sommer is President of the Ethics, Society, & Law Student Association. In her free time, she likes discovering new libraries, watching movies, and spending time with her dog. Sommer's objective this year is to increase the social aspect of the journal and its visibility.

Rachel Brouwer (left) (she/her) is a fourth-year student at the University of Toronto, majoring in Political Science and double minoring in African Studies and History. Rachel's research is published in the Canadian Law Review, she is the President of The Purification Project– an organization she founded, and Co-President of The Coalition Fund. She is interested in pursuing a career in public international law and improving multinational corporate behaviour with respect to human rights abuses through the law. In her free time, she enjoys reading books, trying new cafés and taking care of her houseplants. She believes that Intra Vires creates an invaluable opportunity for students to discover their passion for legal research and express their perspectives in a collaborative environment.

EDITORS

James Jiang (he/him) is a fourth-year student pursuing a Political Science specialist. Apart from Intra Vires, he is the editor-in-chief of the POLIS Undergraduate Journal of Political Science and is interested in the intersections between law and technology.


Grace Bogdani (she/her) is a third-year student in the Rotman Commerce program, specializing in Management with focuses in Data Science and Marketing. Outside of editing for Intra Vires, Grace has competed with the Canadian Mock Trial team and is currently Co-Director of Marketing for the Rotman Commerce Law Association. In her spare time, she enjoys running scenic routes and finding new books to read.

Hannah Cluroe (she/her) is currently a second-year student at the University of Toronto, double majoring in International Relations and East Asian Studies. Her legal areas of interest include international and constitutional law.
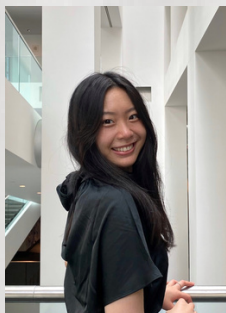
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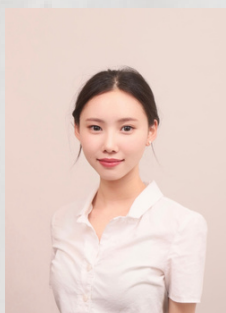
Hayoung (Gloria) Son (she/her) is a third-year student at the University of Toronto, Trinity College, pursuing a major in Ethic, Society & Law, and double minors in History and Philosophy of Science and Technology, and Science, Technology & Society. Aspiring to attend law school, she is passionately exploring the dynamic intersection of law and technology, with a particular focus on Artificial Intelligence. Her academic journey reflects a dedication to understanding the ethical and societal implications of emerging technologies and their impact on legal frameworks.

AUTHORS

Rory Banfalvi (she/her) is a third-year student at the University of Toronto double majoring in Ethics, Society & Law and Women & Gender Studies. She has a passion for the law and social justice, and her academic research interests lie at the intersections of law, gender, race, and sexuality. She is particularly interested in dismantling the systemic inequalities latent in the law, as well as the gendered, racialized and classed nature of emotional labour around the world. Outside of academia, Rory has been participating in oral trial advocacy competitions since she was in 10th grade. She also runs a summer program for youth to teach them trial advocacy skills, where she collaborates with like minded students and lawyers from across North America.

Garyn Rickwood (she/her) is a third-year student at the University of Toronto, pursuing a double major in Ethics, Society & Law and Criminology & Sociolegal Studies. She is passionate about social justice, and the role that socioeconomic class plays in our legal system. Her research interests in the law include human rights, plea bargains, white collar crime, and artificial intelligence.

Putting the Partial in Impartiality; The Necessity of Embodied Adjudication

Take off the blindfold

By: Rory Banfalvi

Editors: Catherine Wu & Grace Bogdani

Judicial impartiality is a legal principle that purportedly lies at the core of Canada's legal system. This principle dictates that one's social location should never impact how one administers justice (Brooks 1976, 103). However, the form of judicial impartiality operationalized in Canada is a false form of impartiality. As Justice Markya Omatsu suggests, this concept of impartiality is a fiction (Omatsu 1997, 2). It is a façade applied to our judiciary to manufacture public acceptance for the dominant model of adjudication (Brooks 1976, 103). In this paper, I draw attention to our judiciary's raced, gendered, and classed origins to show how hegemonic beliefs about impartiality invisibilize discrimination among white justices. Using the cases *R. v. R.D.S.*, 1995 NSCA 201 [*R. v. R.D.S.*] and *R. v. Le*, 2019 SCC 34, [2019] 2 SCR. 692 [*R. v. Le*], I problematize the question of whether a judge's personal identity should affect the way they adjudicate. I further argue that, supplemented by judicial diversification, we must encourage judges to use embodied knowledge — knowledge that flows from the social location and lived experiences of the knower themself (Pohlhaus 2002, 285) — in their decision-making processes to destabilize current norms of objectivity that continue to disadvantage marginalized communities.

Principles of fairness and equality underlie Canada's policy decisions, economic order, and social relations. They are no less applicable to the judiciary. The "acceptability of adjudication" (Brooks 1976, 97) in adversarial systems is mainly contingent on the "appearance of impartiality" (Brooks 1976, 103). While the law demands respect and obedience, the extent of its political legitimacy and public respect depends on it "meeting the criteria that people expect of their decision-making process" (Brooks 1976, 97; Omatsu 1997, 5). For instance, parties faced with an openly partial judge would be unlikely to accept the outcome of that judge's decision. The principle of impartiality forms a core pillar of the legal system of Canada today. However, the judiciary's persistent adherence to values of impartiality has resulted in standards of objectivity with a manifestly masculine, white, and wealthy character (MacKinnon 1989, 263). This character becomes visible when we examine the historical origins of Canada's judiciary, and the exclusion of certain groups from the formation of its principles (Omatsu 1997, 6).

Prior to 1989, Canadian judges were selected via political appointment after having been a lawyer for several years (Omatsu 1997, 2). Given the historical discrimination minority groups have faced regarding access to education, it is unsurprising that in 1997, women made up 10.5% of the bench, and visible minorities made up only 2% (Omatsu 1997, 4). The vast majority of the bench (87%) was white, middle-class, and male (Omatsu 1997, 1). This created the "white bubble" (Backhouse 2021, 195) — more accurately, the *elite bubble* — of the judiciary, a "one-sided homogeneity" (Omatsu 1997, 16) that results in the unchecked proliferation of unconscious and systemic biases (Backhouse 2021, 195).

A judiciary caught in the elite bubble, with decisions informed by common law standards of objectivity, has a significantly minimized potential to divest the law of discriminatory assumptions at its core. The consequences of such a strict reliance on ideals of impartiality were on full display in the *R. v. R.D.S.*. In this case, Justice Sparks, a Black female judge, was adjudicating an instance of an alleged assault of a police officer by a Black teenage boy (Backhouse 2021, 181). After giving oral commentary at the close of the case, she was subsequently accused of an apprehension of bias for her comment that white police officers tend to overreact when dealing with racialized youth (Backhouse 2021, 181). When Justice Sparks used the relationship between racialized youth and police, a relationship not assessed during the trial, in her decision-making, she acted partially. The question remains, *was Justice Sparks's behaviour pernicious or was it exemplary of the kind of embodied adjudication our judiciary requires?*

The lived experiences of the bulk of the judiciary have become naturalized by dint of their identity as white, male, wealthy experiences. Their experiences are positioned as the default which has invisibilized the unconscious biases in their decision making (Backhouse 2021, 202). On the other hand, the partiality of "outsider" judges (Backhouse 2021, 200), like Justice Sparks, is identified and scrutinized because it destabilizes the dominant and prevailing system. Judges whose biases do not coincide with the biases of the rest of the bench become highly visible for their difference (Omatsu 1997, 15).

When Justice Sparks pointed out the systemic racism within the police force, she threatened a "common law status quo" (MacKinnon 1989, 267) that affords the police a significant level of deference and characterizes them as infallible truth-tellers (Backhouse 2021, 205).

The judiciary's continued employment of a system that benefits them creates a false notion that they are capable of true impartiality (DiAngelo 2018, 100). However, unconscious bias is inherent in humanity, and the parading of judges as impartial administrators of justice only shifts accountability away from the judiciary and onto supposedly objective standards entrenched in common law. However, such standards are a product of this strict reliance on a false notion of impartiality. Blind Lady Justice is a helpful metaphor but must remain just that, for her impairment results in gender, class, and race-based blindness.

In the *RDS* case, Justice Sparks implied, though the belief was not welcomed by the SCC at the time, that it was necessary to apply a critical race lens to the case to understand the behaviour of the accused (Backhouse 2021). While she was admonished quite inappropriately and harshly for this, the failures of a racially homogenous bench are not always malicious. Sometimes these knee-jerk accusations of bias result from a lack of lived experience and exposure to individuals with different positionalities (Backhouse 2021, 195), a problem with a clear remedy: judicial diversification.

Today, we are beginning to see a transition away from these problematic notions of objectivity which is facilitated by appointing more diverse judges with different lived experiences to the bench. In the precedent-setting case *R v. Le*, the Supreme Court embraced the notion that "[c]ourts must appreciate that individuals in some communities may have different experiences and relationships with police," and this may impact their perception of police conduct (p. 696). This decision highlights the necessity against race-blind interpretations of the "reasonable person" standard (p. 696). This standard is an objective test used to evaluate the reasonableness of conduct that finds its origins in the "man on the Clapham omnibus," a hypothetical personification of reason that is "by implication white, male, able-bodied, and middle-class" (Stern 2022, 4).

However, despite its raced, gendered and classed nature, this standard has existed as a normative benchmark for behaviour regardless of social location. In *R v. Le*, the court recognized that in order for justice to be served, the "reasonable person" must be "imbued with the experiences that accompany the accused's particular circumstances" (p. 696). Without the diversification of the judiciary, biases latent in similarly pervasive and objective standards would go unnoticed by a myopic and ignorant bench. For this reason, it is necessary for judges to use their own lived experiences to inform how they approach the cases brought before them.

Some traditionalists may object to this paper with the claim I began with, that *parties faced with an openly partial judge would be unlikely to accept the outcome of that judge's decision*. To this point, I agree. If the judiciary adopts a more embodied approach to adjudication, there may be growing pains and increased accusations of apprehensions of bias. However, I argue that in the broader social context, society would be more accepting of judicial decisions that produce accurate reflections of society (Omatsu 1997, 5) rather than ones stuck in a white, male, and classed history.

Justice Sparks' use of her own lived experience as a Black woman in the 1980s (Backhouse 2021, 181) allowed her to have a more profound, accurate, and humanist understanding of the relationship between racialized youth and police, and ultimately provided a more equitable administration of justice. Increasing diversity on the bench but forcing these justices to conform to hegemonic standards of impartiality will ameliorate nothing. Diversification alone only results in accusations of bias based on the "very characteristics [these judges] are said to bring to the bench" (Omatsu 1997, 2). Diversity is necessary but only in tandem with a shift away from current norms of impartiality and towards an embodied mode of adjudication.

Canada is at a crossroads. The continued advertising of Canada as a cultural mosaic is evidence enough that the current norms of impartiality — being white, male, able-bodied, and upper-class — will continue to fail us when it comes to the judiciary. If Canada intends to remain committed to the aforementioned principles of fairness and equality, we must continue to diversify the judiciary.

However, if we continue to bind the hands of the judiciary when it comes to matters of equity and sensitivity to difference, with the shackles of impartiality, we will only achieve the most marginal degree of change. Not only should judges be permitted to use embodied knowledge, but they must.

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Punishing Poverty and Awarding Wealth: Socioeconomic Class in the Justice System

By: Garyn Rickwood

Editors: James Jiang & Hannah Cluroe

Introduction

Equality under the law is one of the founding principles of the adversarial system of justice, which serves common law countries such as Canada and the United States. However, further investigation reveals that this principle is not upheld to the degree one might hope. Indigenous peoples, for example, represent 4.1% of the Canadian population, but account for 30% of the national incarcerated population (Statistics Canada 2023). This community, additionally, experiences the highest levels of poverty in Canada: one in four Indigenous peoples live in poverty (Canadian Poverty Institution, n.d.).

Moreover, up to 60% of admissions to provincial and territorial prisons are related to the non-payment of court-related fines (Clark 2019, 38). Despite such startling statistics, inequality and discrimination in the justice system have yet to be addressed, thereby harming all members of society (Wortley et al. 2021). More attention must be paid to this critical area of research so that policies can begin to address the following questions: Does the justice system favour the rich over the poor? Why or why not? The purpose of this paper is to answer these inquiries.

Using data from the United States and Canada, I argue that the justice system favours the wealthy over the poor through practices regarding access to justice, administration of justice, and crime reporting. This argument will unfold in three sections. First, the many barriers to justice will be identified, including legal illiteracy, the inaccessibility of legal aid, and the prevalence of self-representation in courts. Second, the pre-trial, prosecution, and sentencing outcomes of the wealthy and the poor will be compared. Lastly, the issue of white-collar crime underreporting will be explored. Ultimately, I recommend that police agencies and governments reform their approach to the collection of crime data. Specifically, crime databases must be updated to include statistics on white-collar crimes, and be independently collected or reviewed.

(In)access to Justice: The Problem with the Adversarial Model of Adjudication

Inequality and discrimination in Canada and the United States originates from the structure and operation of the legal system. Both countries use the adversarial model of adjudication to settle disputes, where financial ability determines the majority of outcomes. The adversarial adjudication model includes a neutral, passive role for the judge, an active, critical role for legal counsel, and party autonomy and prosecution (Brooks 2010, 93). Party autonomy and prosecution refer to the fact that legal action does not begin until the parties bring the case forward, and are able to participate in the rest of the process.

Lawyers have become indispensable in this system, as the court relies on them to gather facts, present arguments, and question witnesses (Brooks 2010, 94). This creates a significant disparity between litigants who can afford legal counsel and those who cannot. The average legal fee in Ontario Canada, for instance, ranges from $300 to $600 per hour (Bruineman 2018). Litigants therefore have three choices: do not litigate; hire a lawyer and incur significant debt; or self-represent in court. Those who pursue the second option may be at an automatic disadvantage because they cannot afford quality representation (Galanter 1974, 98). Poor criminal offenders, for example, are represented by public defenders who encourage them to accept a plea bargain instead of going to trial and proving their innocence (Goff 2019).

This disparity worsens when litigants are suing a corporation or vice versa. Generally, there are two classes of legal participants: one-shotters and repeat-players (Galanter 1974, 98). One-shotters are individuals or small groups with low resources, high stakes, and a vested interest in disrupting the legal status quo (Galanter 1974, 98). A spouse in a divorce case would be a one-shotter, for example. Repeat-players, on the other hand, are large corporations or businesses with substantial resources, low stakes, and a vested interest in preserving the legal status quo (Galanter 1974, 98). The prosecutor, or a finance company, are examples of repeat-players. Repeat-players possess several advantages over one-shotters, such as access to high-quality legal services, institutional relationships with firms and judges, and the ability to pressure one-shotters toward out-of-court settlement (Galanter 1974, 98-103). Thus, the justice system favours repeat-players over one-shotters.

The adversarial system's dependence on the role of the lawyer also forces litigants to pursue the third option and self-represent in court.

There are not only mental barriers to self-representation but also the barrier of legal literacy, which includes the ability to understand legal concepts, procedures, cases, and language (Zariski 2014, 61). The adversarial model contains complex legal processes and jargon, which are difficult to understand without professional legal training and repeat experience (Zariski 2014, 62). In a study conducted by American legal scholars Ronald Staudt and Paula Hannaford, 193 hidden civil law functions were identified that must be carried out in lawsuits, such as interpreting the law (Zariski 2014, 62). This barrier is concerning, given that almost 80% of family litigants are self-represented in urban centers (NSRLP 2023). What's even more concerning is the fact that 75% of self-represented litigants lose at trial (NSRLP 2016). Clearly, the adversarial system of justice benefits the wealthy.

Legal Aid

Legal aid, which provides free legal advice or representation to those who cannot afford it, exists to decrease this financial disparity (The Canadian Bar Association, n.d.). However, it is largely inaccessible to the general public. To qualify for the services, one's earnings must fall below the social poverty line. In Ontario Canada, for example, the financial threshold for legal aid for a single applicant is approximately $19,000 annually (Legal Aid Ontario 2020). The average Ontarian, however, makes approximately $67,000 a year (Statistics Canada 2022). Thus, only the most socioeconomically disadvantaged can receive legal aid, leaving the average Canadian to their own resources. There are some exceptions made, however, such as for those who face jail time. For the purposes of this paper, such exceptions will not be discussed further.

Another issue with legal aid is that it is underfunded and subject to annual budget cuts (Buckley 2017, 40). For instance, the Ontario Government cut the budget of Legal Aid Ontario by 30% in 2019, which translates to a $70 million loss (Spratt 2020). Because of these cuts, the majority of funding was allocated to criminal rather than civil cases (Buckley 2017, 40). Moreover, even if a citizen is eligible for assistance, they are likely to experience "referral fatigue," in which the individual is constantly pushed from advisor to advisor and becomes increasingly hesitant to continue the process and obtain the advice they originally desired (Buckley 2017, 40). Legal aid underfunding also results in less funding for translators. This leads to a significant language barrier for immigrants and Indigenous peoples in the legal system (Buckley 2017, 41).

Given these factors, the justice system favours the wealthy over the poor even before the legal process begins. Because the adversarial system relies so heavily on the role of lawyers, access to justice is not a fundamental right but instead a privilege that only the rich can afford. Common law countries–such as Canada and the United States–are beginning to see more non-lawyers than lawyers in civil courts, plea bargains in criminal cases, and overburdened legal aid lawyers (Buckley 2017, 42). One potential solution to these barriers to justice in the civil sphere is to afford judges with a more active, fact-finding role so that self-represented litigants are not at such a disadvantage. Moreover, a solution to the barriers to justice in all spheres of law is for more lawyers to take on cases pro bono.

Administration of Justice

As an individual formally enters the justice system, the impact of the wealth gap grows. This section will employ data pertaining to police detection and arrest practices, and pre-trial, prosecution, and sentencing outcomes, to illustrate this point. These findings will demonstrate that economic discrimination in the justice system is an intersectional issue that also stems from racism.

Police Detection and Arrest Practices

Since the Nixon administration in the 1970s, the American prison population has grown from 357,292 to 2,306,200 in 2014: an increase of over 545% (DuVernay 2016). This is due to the implementation of a number of tough-on-crime policies, such as "three strikes you're out," the war on drugs, and law and order ideologies (DuVernay 2016). Regardless of these policies, the police disproportionately surveil and arrest socioeconomically disadvantaged Americans (Reiman 1999, 110). A study on police surveillance discovered that boys who live in poorer parts of town are apprehended by police four to five times more than boys who commit the same crimes in wealthier parts of town (Reiman 1999, 110). African Americans from lower socioeconomic classes are at even higher risk than their white counterparts to be street-checked, arrested, and incarcerated (Reiman 1999, 111). Furthermore, police were discovered to handle higher-status offenders' arrests informally without referring them to court (Reiman 1999, 116). According to a 1962 study, for instance, police were more likely to refer lower class youth to juvenile court than affluent youth arrested for equally serious offences, and with similar offence histories (Reiman 1999, 116).

In Canada, police detection and arrest practices also discriminate against the poor, disproportionately impacting people of colour. According to the "Canadian Report on Black Youth and the Criminal Justice System," Canadian police have adopted a "proactive" policing approach. However, this approach has resulted in heavy police presence in economically marginalized neighbourhoods, racial profiling, stop and searches, and discretionary policing (Owusu-Bempah & Jeffers 2021, 15). Police over-surveil these neighbourhoods because they consider them "at-risk areas" with highly concentrated crime and disorder (Owusu-Bempah & Jeffers 2021, 15). Such "at-risk areas" are typically racialized communities (Owusu-Bempah & Jeffers 2021, 15). This results in a higher rate of arrest for low-level offences among young socioeconomically disadvantaged Black Canadians, while the same level of criminal action goes unnoticed outside of "at-risk" neighbourhoods (Owusu-Bempah & Jeffers 2021, 15).

Pre-trial Outcomes: Bail, Plea Bargains, and Prosecution Decisions

Bail, or the temporary release of someone charged with a crime prior to trial or sentencing, discriminates against those from lower socioeconomic classes. Bail fees are determined based on the category of an offence, and do not take the defendant's ability to pay into account (Council of Economic Advisers 2015, 1). The average bail fee for possession of drugs in the United States, for example, can cost up to approximately $2,500 for a first-time offence (Amistad Bail and Immigration Bonds 2023). This has serious consequences for the economically disadvantaged because those who post bail are more likely to be acquitted (Reiman 1999, 125).

In fact, unemployed defendants are 3.2 times more likely than employed defendants to be incarcerated before trial (Reiman 1999, 125). Canadians awaiting trial face a similar reality: 60% of incarcerated Canadians in provincial or territorial prisons were jailed as a result of failing to pay court-related fines (Clark 2019, 38). Bail is inequitable (Friedland 2012, 316).

Plea bargains are another form of pre-trial discrimination against the poor. A plea bargain occurs when a defendant pleads guilty in order to receive a lesser charge or sentence. It should be noted, however, that some defendants may enter plea bargains for other reasons, such as to admit guilt. In the United States, 97% of incarcerated people have entered into plea-bargains; in Canada, that number stands at 90% (DuVernay, 2016; Government of Canada 2021). These statistics point to a violation of the constitutional right to a trial, guaranteed by both the Canadian Charter of Rights and Freedoms (Section 11) and the Constitution of the United States (Sixth Amendment). The decision to initiate or respond to a plea bargain depends on the nature or quality of one's legal counsel. It is not surprising, then, that the economically disadvantaged are more likely than the wealthy to accept a plea bargain (Goff 2019). Legal aid lawyers, for example, are often so overworked that they encourage the majority of their clients facing criminal charges to plea bargain (Buckley 2017, 42). Public defenders and private attorneys are paid by the court or government, and their salaries are significantly lower than what they would charge their regular clients (Reiman 1999, 126). As a result, they are motivated to resolve their cases as soon as possible by negotiating a guilty plea (Reiman 1999, 126). These attorneys generally meet with their clients for 10 to 15 minutes, focusing on the possibility of a guilty plea rather than the details of the crime, mitigating circumstances, or the defendant's motive or background (Reiman 1999, 126). Wealthy defendants, on the other hand, can afford quality legal representation and can therefore exercise their right to a trial. Wealth, not culpability, shapes legal outcomes (DuVernay, 2016).

Sentencing Outcomes

The trend continues in criminal sentencing. To illustrate this point, a 1985 research study discovered that poor offenders received longer sentences for violent crimes (e.g., manslaughter)

and that when parole was granted, more-educated offenders received longer probation and shorter prison sentences (Reiman 1999, 129). Furthermore, defendants represented by public defenders received longer prison sentences than those who could afford private lawyers (Reiman 1999, 129). When compared to recent data, these findings still hold true: a 2018 study discovered that poor minority defendants are more likely to face longer sentences of incarceration due to a higher likelihood of pleading guilty and an inability to post bail (Donnelly & MacDonald 2018).

Data from Canada also reveals that poor people face discrimination in criminal sentencing. A 2015 federal report that reviewed and analyzed changes in the Canadian criminal justice system since 2005 raised the issue of mandatory minimum sentencing (Government of Canada 2005). The implementation of mandatory minimum penalties was found to reduce judicial discretion that would, for instance, consider a defendant's socioeconomic background. One survey respondent described losing his public housing after receiving a mandatory 30-day jail sentence for a minor offence (Government of Canada 2015). Moreover, house arrest for wealthy offenders is likely to be a more pleasant experience than for poor offenders.

Overall, the justice system favours the wealthy over the poor through police detection and arrest practices, pre-trial outcomes and prosecution decisions, and criminal sentencing. One explanation for this phenomenon is that the justice system contains systemic classism and racism, which would explain why marginalized groups are discriminated against at all stages and by all institutions of the legal process. Another explanation is that the poor are arrested at a higher rate because they commit more street crimes, which are easier to detect than crimes committed behind closed doors (Reiman 1999, 118). In the context of the second explanation, a critical question arises: are the crimes of the wealthy underreported and unpunished? The following section will investigate this possibility.

White-Collar Crime

In 2018, there were 37,854 incarcerated offenders in Canada (Malakieh 2020), and 2.1 million in the United States (DuVernay 2016).

Surprisingly, most of the criminals who produce the most public financial harm are not within those ranks. White-collar crimes are financial crimes committed by the wealthy and powerful that violate public trust (Siegel & McCormick 2020, 336). Examples of this type of crime include fraud, embezzlement, money laundering, false advertising, and environmental violations (Siegel & McCormick 2020, 336). As will be further demonstrated below, the Canadian and American justice systems favour the wealthy over the poor because white-collar crime is largely underreported, undetected, and under-prosecuted.

The Costs of White-Collar Crime

A 1999 study stated that white-collar crime takes "far more money from our pockets than all of the FBI Index crimes combined," with the estimated cost at approximately $200 billion per year (Reiman 1999, 121). Today, the U.S. Department of Justice estimates that annual losses from white-collar crime range from $426 billion to $1.7 trillion (Helmkamp et al. 2021). The costs of these crimes far outweigh the costs of common crimes by a ratio as high as 32 to 1 (Ivancevich et al. 2003). The negative impacts of white-collar crimes are felt by a broad range of socioeconomic groups, costing people jobs, savings, and pensions (Ivancevich et al. 2003). These crimes also cause a number of indirect costs, including higher taxes, increased costs of goods, and higher insurance rates (Ivancevich et al. 2003).

In 2015, an accounting firm survey indicated that one-third of the nation's businesses are hit by white-collar crime (Siegel & McCormick 2020, 386). Financial organizations are the most likely to commit these crimes: one in ten reported losing more than $5 million to such crimes (Siegel & McCormick 2020, 337). One high-profile case involving Canadian white-collar crime occurred when three former high-level Nortel Network executives were charged with fraud for causing the worst stock scandal in Canadian history, which lost $300 billion of investors' funds (Snider 1993). American criminologist Gilbert Geis highlights other avenues of white-collar crime: property damage, loss of human life, environmental pollution, and industrial accidents caused by negligence (Geis 1984). Evidently, white-collar crime is both more socially and economically damaging than

crimes typically associated with those that occupy a lower socioeconomic class.

Accountability?

The justice system favours the wealthy by punishing common offences more frequently and harshly than white-collar offences. In comparison to non-white-collar criminals, white-collar criminals face low monetary fines and shorter sentences (Siegel & McCormick 2020, 337). An analysis of 477 corporations, for example, revealed that only 1 in 10 serious and 1 in 20 moderate violations resulted in sanctions (Yeagar 1987, 330). Plus, even if fines are imposed, they have little impact on corporate revenue. Exxon Mobil, for instance, was found guilty of causing wildlife and land damage and was ordered to pay $5 billion in punitive damages to the victims (Siegel & McCormick 2020, 400). In 2008, the United States Supreme Court reduced that amount to $507.5 million, barely a day's revenue for the company (Siegel & McCormick 2020, 400).

In the event that white-collar criminals receive a criminal sentence, they will likely serve only a fraction of that sentence (Bureau of Justice Statistics 1987). They also have a higher probability of being put on probation or fined (Bureau of Justice Statistics 1987). This becomes evident in a 1985 study on 10,733 defendants convicted of white-collar crimes (Bureau of Justice Statistics 1987). Only 55% of these defendants had criminal charges filed against them, and only 40% of those defendants were imprisoned (Bureau of Justice Statistics 1987). When compared to other criminals, they received shorter and more lenient sentences and were more likely to be over 40 and have a college education (Bureau of Justice Statistics 1987). Similarly, a Canadian businessman convicted on three counts of fraud had his five-year sentence reduced to two years because the judge believed he was an "honest" and "respectable" man (De Haas 2021, 208).

Reporting Practices

The fact that white-collar crime so frequently goes unpunished is linked to how society, police, and the media perceive and report this type of crime. Most people do not view white-collar crime as negatively as the violent crimes typically associated with lower

socioeconomic classes, such as burglary (Goff 2019). This may be due to the fact that financial crimes are less prosecuted, sending the message to the public that white-collar crimes are acceptable and not as harmful. For example, most white-collar criminals face civil rather than criminal trials for damages (Ivancevich 2003, et al). Thus, white-collar criminals are not what most people think of when they think of criminals.

This notion is further reflected through media crime reporting practices. Canadian criminologists identified key trends in media reporting, finding that crimes which are violent in nature, like murder, are most likely to be reported (Roberts & Grossman 2019). The media overemphasizes crimes committed by gangs, and those committed by children and youth offenders (Roberts & Grossman 2019). As a result, people believe crime is higher than it is, creating support for tough-on-crime approaches for offenders (Roberts & Grossman 2019). Meanwhile, white-collar crime is often absent from the news, giving the impression that it is a less serious and less criminal problem. By default, non-wealthy offenders are blamed for the "rise" of crime depicted by the media (Reiman 1999, 118).

Lastly, white-collar crime is significantly under-detected and underreported as a result of law-enforcement crime reporting techniques. One issue is that white-collar crime law enforcement is typically left to business organizations, as governments and police focus time and resources on crimes that they consider more serious–violent crimes (Siegel & McCormick 2020, 404). Internal auditing can lead to bias because whistle-blowing strategies can make employees hesitant to report coworkers or bosses (Siegel & McCormick 2020, 404). Whistle-blowing refers to the individual reporting of wrongdoing in an organization, such as reporting to a line manager, or reporting financial misconduct (Integrity Line 2023). Another issue involves official crime reporting databases used by police. For example, the Uniform Crime Reporting Survey (UCR) used by Canadian police services does not report statistics on financial, corporate, or environmental crime (Siegel & McCormick 2020, 56). On the other hand, crimes committed by low-class youth are overreported in these records (Reiman 2019, 115).

The fact that there are so few strategies and avenues for reporting crimes committed by wealthy individuals demonstrates that the justice system is biased in their favour. The societal perception that white-collar crime is less serious than other crimes, which are over-reported in the media, also contributes to economic inequality under the law. One important factor to consider is that news organizations are businesses that report the news that what they believe will generate the most revenue, resulting in the overreporting of violent crimes. While the omittance of white-collar crime reporting may not be intentional or even in the best interest of media companies, it still perpetuates existing power structures (Siegel & McCormick 2020, 59). As a result, police and governments are less likely to report and prosecute white-collar crime as the public does not consider it a top priority.

Conclusion

In conclusion, the adversarial justice system favours the wealthy over the poor through access to justice, administration of justice, and crime-reporting practices. Economically disadvantaged individuals cannot afford quality legal representation, resulting in unsatisfactory legal outcomes. Poor, racialized people in particular are over-surveilled by police and arrested at higher rates than their white, wealthy counterparts. The former are subject to discriminatory fees such as bail and denied due process since they are almost always encouraged to accept plea bargains. Poor, racialized people receive longer, harsher sentences and are portrayed in the media as the common criminal.

While their crimes are over-detected and over-reported by police, white-collar crimes are not. Considering these findings, my primary recommendation for resolving this issue is to collect independent, up-to-date data that is more expansive and not limited to crimes committed by those of lower socioeconomic classes. In the absence of this information, the justice system will continue to reward wealth and punish poverty.

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