

When it comes to race and justice, 'colour-blindness' is not good enough

Written by Selda Dagistanli, Senior Lecturer in Criminology, Western Sydney University

This piece is part of a series on race and racism in Australia. The series examines this complex and incendiary topic, and the role it plays in contemporary Australia. You can read the rest of the series [here](#).

During a family holiday in the United States this year, I took my children to the [Rosa Parks Museum](#) in Montgomery, Alabama. I tried to explain that Rosa Parks broke the laws of the day to protest Black oppression and segregation, and this was a catalyst for the civil rights movement.

As we stood there, a Black American woman walked by with her husband and smiled at my daughter's awestruck silence. She said:

We love Rosa Parks too, honey! If it weren't for her, I wouldn't be able to sit next to you on a bus.

Bewildered, my daughter turned to me and asked why people who had darker skin couldn't sit next to people who had lighter skin. Why were the people who made those rules so "mean and rude"? Why indeed.

Read more: [**Who was Rosa Parks, and what did she do in the fight for racial equality?**](#)

Racism: not just 'mean and rude' but systemic

Try explaining to a seven-year-old that racism and segregation go beyond individuals being

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“mean” and “rude”? That it is a social, structural and systemic issue that has largely been normalised and individualised under premises of colour-blindness, formal equality and justice for all, with whiteness at the helm as a privileged site of moral neutrality.

How would I explain that while we don't have official segregation or slavery – [Jim Crow Laws](#) – in the present day, racism and racial segregation thrive in other complex ways? This is especially so in the criminal justice system, as [Michelle Alexander](#) tells us.

Australian society certainly has its own version of racial segregation. This can be seen in the Australian government's treatment of Aboriginal peoples, immigrants and asylum seekers. As [Frantz Fanon argues](#), in societies built on colonial violence, race and economic infrastructures are co-constitutive:

You are rich because you are white, you are white because you are rich.

Aboriginal Australians, like Black Americans, are overwhelmingly poorer, have less access to education and health care, [lower life expectancy](#) and are more likely to be targeted by police, incarcerated and [ill-treated in detention](#), even if they're just kids. We only need to look at the appalling and degrading treatment of Aboriginal youth in the [Don Dale Juvenile Detention Centre](#), recommended for closure by the [Royal Commission into the Protection and Detention of Children in the Northern Territory](#). Commissioners Margaret White and Mick Gooda said of the distressing treatment of children and young people: [“These things happened on our watch, in our country, to our children.”](#)

Perhaps it comes as no surprise then, that Aboriginal [incarceration rates](#) in Australia are the [highest in the world](#), followed by rates of [Black incarceration](#) in the USA. This further perpetuates the cycle of [disadvantage](#)

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Aside from this, Australians are telling non-white people that they can't live in "our country" and intercepting asylum seekers at the border to be sent to uninhabitable offshore detention centres. Tellingly, US President Donald Trump applauds this as [a good idea](#).

Read more: [**FactCheck Q&A: are Indigenous Australians the most incarcerated people on Earth?**](#)

Dark-skinned immigrants who do manage to come here, such as the Sudanese communities in Melbourne, are [constructed as threatening](#). Some have committed crimes. But then they are all seen as complicit in the crimes of a few.

Now, apparently all dark-skinned immigrants [instil fear in white Melburnians](#). Even if the [crime statistics](#) show otherwise. There are plans under way to [deport](#) any Sudanese person who has committed a crime, even children. Luckily, however, the majority of Melbournians repudiate such views, as the recent Victorian election results [show](#).

Yet the fact remains that the bodies of all Sudanese people have been implicated in the armed robberies of a handful of Sudanese youth.

"It's exhausting," [says one young, Sudanese-background man](#) describing his lived experience in Melbourne.

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You feel like you're representing your skin colour for everyone that's just like you. So you have to be an extra nice person, extra smart ... You just have to have a smile on, because if you don't, you look scary.

This is something white people never have to experience because they are, after all, the morally neutral norm. Race is the burden of racial subjects.

Sheer luck has made you white and middle class, I tell my daughter. Part of the privileged class. You know life could be different for you. Even though she has more than "a drop" of immigrant blood from her maternal grandparents.

Whose justice? Colour-blindness and the myth of white neutrality

A trickier thing to explain to a child was why norms and rules enshrined by the law were sometimes unfair or unjust, and why Rosa Parks' resistance to Jim Crow laws was the right thing to do.

In societies built on colonial invasion, such as the USA and Australia, being white is a privilege, because those societies were built on the premise that whiteness is superior and therefore white people are entitled to have access to a better life.

In those societies, Black American women such as Rosa Parks, because of who they are and how the rest of society sees them, have to fight for equality rather than take it for granted. Fighting for equality means sometimes breaking the law in protest.

My daughter and I walked on and saw summaries of American civil rights legal cases. One struck me in particular, pertaining to the Louisiana case of [Plessy v Ferguson \(1896\)](#). Homer A. Plessy, who was one-eighth black, was arrested for sitting in a white-only coach on a train. Eventually, the Supreme Court [held](#) that laws requiring "separate but equal" accommodations for blacks and whites were not unconstitutional, that prejudicial social customs could not be overcome by law but by the voluntary consent of individuals. Only Justice Harlan of the Supreme Court dissented by maintaining:

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Our Constitution is color-blind and neither knows nor tolerates classes among its citizens.

While Justice Harlan dissented, he premised his dissent on the argument of colour-blindness, which leaves unquestioned the normative white baseline – the site of privilege and moral neutrality from which “coloured” people are judged.

The rest of the Supreme Court subscribed to the idea of racism as the preserve of individuals, rather than as a systemic issue perpetuated, reproduced and protected by the law.

Unfortunately, not enough has changed since the Plessey case. As Eduardo Bonilla-Silva [argues](#), colour-blindness reinforces the perpetuation of racism through denial in a “post-race” era. He argues that colour-blind racism is more insidious than overt racism, because most white people insist they “don’t see any colour, just people”.

These myths of colour-blind neutrality sit in apparent tension with the racially inequitable markers of the criminal justice system. White people and their institutions don’t “see colour” and they certainly [don’t see their own privilege](#). We all have a social responsibility to own our white privilege as the authors and beneficiaries of a colonial system built on racist violence.

There have been Australian legal examples acknowledging Aboriginal disadvantage (for example, [Bugmy](#) 2013), but our criminal justice systems do [not go far enough](#) in acknowledging the normative colonial frameworks on which they were built. Hence we are complicit in the enduring shame of racial inequality.

In the end we are all answerable. And we need to be able to answer a seven-year-old’s mystified question: Why were people separated based on colour when they are people, just like you and me? Why, despite the subjugation and violence embedded in their colonial histories, do white people see themselves as better and as more entitled to social privilege? Why indeed.

Selda Dagistanli does not work for, consult, own shares in or receive funding from any company or organization that would benefit from this article, and has disclosed no relevant affiliations

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beyond their academic appointment.

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