

Criminal Justice v. Racial Justice

Minority ethnic overrepresentation in
the criminal justice system

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Foreword

The conviction of some of the perpetrators of the murder of Stephen Lawrence at the start of 2012 has led to a renewed focus on the institutional racism in our criminal justice system; institutional racism that meant that the Lawrence family had to wait over 18 years for any form of justice. Media comment has focused on the headline grabbing disparities in the use of stop and search, recruitment and retention in the police service, and access to justice for victims of racist violence. These are crucial issues that are addressed in this volume. Solving these disparities is an essential step in improving the lives of people from minority ethnic communities in our society by enabling them to be confident in our justice system. These are necessary steps, but not sufficient ones in reaching solutions to the ongoing and persistent racial inequalities related to crime, policing, prisons and resettlement.

As Kjartan Sveinsson notes in his introduction, there are three young African Caribbean men in prison for every one at a Russell Group university. Shocking statistics like this put into perspective the scale of the challenge that we face in addressing racial inequality in our society. When we commissioned these papers at the end of 2010, we wanted to address the scope of racial inequality in the criminal justice system by encouraging contributors to think about the range of solutions available to us. These solutions range from improved monitoring and accountability for decisions, and enabling cultural change within policing, to moving beyond rhetoric in developing human rights approaches in criminal justice, and reducing economic inequality. Steps that have seen little progress (and retrenchment in some cases) over the past two years.

Addressing the ongoing disproportionalities in our criminal justice system will take a relentless focus on discrimination – both personal and institutional – and the damage that it does to the system’s effectiveness at protecting victims and dealing with criminals. It will also take a broader effort to reduce inequality in our society. As Danny Dorling (Chapter 3) reminds us “greater equality does not cure racism. . . what greater equality does do is reduce the racism endemic within a society, and the crime committed and suffered by those who are a part that society”.

The debate about racism in our criminal justice system needs to include a way of addressing the broader structural inequalities that delineate the opportunity structure for crime. Inequalities in education, employment, health, housing and voice form a backdrop to the way in which ‘race’ influences criminal justice. If we are to change the pattern of racial inequalities in criminal justice, we also have to be alive to the broader patterns of inequality (racial, gender and class-based) in which they are situated, and build the necessary coalitions and partnerships that it will take to address them.

The Lawrence family have been at pains in recent weeks to note that achieving some justice for their family does not mean that efforts to tackle racism should end. These papers remind us that addressing the racial injustice evident in criminal justice will take significant work both within and beyond the narrow confines of the criminal justice system.

Rob Berkeley
Director
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January 2012

1. Introduction

Kjartan Páll Sviensson

On 4 August 2011, a young black man was shot dead by police officers in the north London area of Tottenham. The shooting of Mark Duggan, as well as the way in which it was handled by the Metropolitan Police and Independent Police Complaints Commission, triggered a series of riots that spread like wildfire across the cities of England. As with the disturbances in the northern English towns in 2001 and 2005, the underlying causes of the riots are likely to become the topic of heated debates for years to come. And as with the events of 2001 and 2005, these debates are unlikely to yield a consensus. One thing, however, is clear: the immediate response in Tottenham to Mark Duggan's death is the clearest possible indicator that the relationship between many black and minority ethnic (BME) communities and the criminal justice system is as fraught and agitated as ever.

The submissions to this volume were written before the riots took place, but they all demonstrate why the initial reaction of Tottenham residents to Mark Duggan's death was so fierce. It has now been 12 years since the Stephen Lawrence Inquiry highlighted the differential treatment of BME groups in the criminal justice system. Twelve years of debate and government initiatives, however, have not been successful in narrowing the gap. Minority ethnic people remain over-surveilled and under-protected within all stages of our criminal justice system. In England and Wales, black people are stopped and searched at seven times the rate of white people, and Asian people at twice the rate; 30 per cent of all Black men living in Britain are on the DNA database, whereas 10 per cent of White men are; and though accounting for 2.2 per cent of the British population, Black people make up 15 per cent of the prison population – beating even the United States in terms of disproportionality (EHRC, 2010a: 172). More alarming still, for every one African Caribbean male undergraduate at a Russell Group university, there are three African Caribbean males aged 18–24 in prison. Put differently, African Caribbean men comprise 7 per cent of 18–24 year old prisoners, but 0.1 per cent of Russell Group undergraduates.¹

The debate on why BME groups are so grossly overrepresented in the criminal justice system

has produced three main lines of arguments. First is a theory which takes for granted that ethnic minorities are overrepresented because they commit more crime. This state of affairs is attributed to 'cultural' deficits of BME 'communities'. For instance, black people commit more street crime because of criminogenic black 'culture' that glamorizes violence, typified by Jamaican yardies and American street gangs, and Asian people are prone to terrorism because of their 'cultural' Jihadism. This view has become increasingly popular with left leaning public figures as well as right wingers, so much so that Runnymede saw reason to conduct a comprehensive analysis of how journalists and media commentators have a particular understanding of 'culture' which has replaced overtly racist tropes in the dominant discourses on race and crime. In our report *A Tale of Two Englands: 'Race' and Violent Crime in the Press* we argued:

...following the decline of racial determinism as a paradigm, 'culture' has re-introduced racism through the back door, where wider structural factors – such as discrimination, disadvantage and inequality – are ignored as contributors to crime trends and patterns. Stating that 'black people have a criminal nature' is not politically acceptable. Stating that 'black culture glorifies crime' is. Yet both statements are saying the same thing: crime is endemic within the black population, and is unrelated to the structure of British society and the experience of black people within it. (Sveinsson, 2008: 6–7)

The powerful simplicity of this discourse, according to anthropologist Gerd Baumann, reduces 'all social complexities, both within communities and across whole plural societies, to an astonishingly simple equation: "Culture = community = ethnic identity = nature = culture" ' (Baumann, 1996: 17). In other words, every ethnic community has its own distinct culture, and conversely, every culture corresponds to a bounded ethnic community. This understanding of 'culture' and crime forms a central part in the conceptualization of 'suspect communities', described by Mary J. Hickman in Chapter 6.

Second, and dominant within the race equality

sector since the Stephen Lawrence inquiry, is the position that overrepresentation is caused by an institutionally racist criminal justice system. This approach maintains that unequal outcomes in the criminal justice system result from practice 'which, covertly or overtly, resides in the policies, procedures, operations and culture of public or private institutions – reinforcing individual prejudices and being reinforced by them in turn' (Institute of Race Relations, 1998). Although the concept of institutional racism has been extensively critiqued – and recently declared no longer relevant to police practice by Trevor Phillips, chair of the Equality and Human Rights Commission (Casciani, 2009) – there is still clear evidence that a number of policies and practices within the criminal justice system systematically target and disadvantage ethnic minorities. The clearest example of this is stop and search, which serves as a prominent entry point into the criminal justice system. The police have at their disposal various types of stop and search powers under a number of different forms of legislation. The most common is Section 1 of the Police and Criminal Evidence Act 1984, which requires officers to have reasonable suspicion that the person they are stopping and searching has committed an offence. Under this power, black people are stopped and searched at seven times the rate of white people, and Asian people at twice the rate, which indicates that race is a factor when police officers make a decision on who to stop and search. However, although most discussion on stop and search relates to Section 1, the police are increasingly using other forms of legislation that give them greater power and reduced mechanism of accountability. One of these powers is Section 60 of the Criminal Justice and Public Order Act 1994, which allows police to stop and search individuals without reasonable suspicion. Section 60 powers have been described as giving rise to 'arbitrariness, abuse, lack of monitoring and safeguards, and a disproportionate impact on ethnic minorities' (StopWatch, 2010a). As Ben Bowling has pointed out:

Wherever officers have the broadest discretion is where you find the greatest disproportionality and discrimination. Under Section 60, police have the widest discretion, using their own beliefs about who is involved in crime, using their own stereotypes about who's worth stopping, that's where the problems in police culture affect the decisions that are taken. (Dodd, 2003)

The statistics support Bowling's analysis: the rate of Section 60 stop and search is 26.6 times the rate for white people, and for Asian people the rate is 6.3 times (StopWatch, 2010b). In their defence, the government points out that 76 per cent of all Section 60 stop and search takes place in London, which has a far higher rate of black people than the rest of the country. When the analysis is narrowed down to look only at London, the disproportionality figure is significantly reduced (TheyWorkForYou, 2010). However, given that between 2005/6 and 2008/9, Section 60 stop and search of black people increased by 650 per cent, the question is no longer about the decisions police officers make in terms of who they stop and search under these powers, but why these have become the law enforcement techniques of choice where policing black communities is concerned. In other words, the institutional racism of policing is not only an operational issue, but equally a question of policy.

On a practical level, however, it is not clear how much the policy recommendations of the Stephen Lawrence Inquiry – with its focal point of institutional racism – have achieved in reversing overrepresentation in the criminal justice system (see Rollock, 2009) for an extended analysis). Whereas recommendations on race awareness and cultural diversity training, as well as disciplinary procedures and complaints have produced some positive results, recommendations on stop and search procedures have been unsuccessful in reversing the year on year rise in disproportionality of stop and search figures. Moreover, as Manny Barot and Kelly Jussab discuss in Chapter 5, recommendations on the recruitment and retention of BME staff have neither improved the experiences of ethnic minorities working in the criminal justice system, nor done much to tackle institutional racism.

The focus on institutional racism, although both useful and valid, has been somewhat domineering in the discussion on overrepresentation. This has been to the detriment to the third approach to overrepresentation, which looks at deprivation and inequality. The concept of institutional racism in the criminal justice system focuses exclusively on policy and practice of criminal justice institutions, but leaves out of the equation wider social and economic structures. In this volume, we want to bring these factors into the debate on overrepresentation. The idea that crime is influenced by socio-economic factors is, of course, not new. For instance, Walker et al. (1989) demonstrated how geographical and

environmental determinants can override or level other factors, such as race or ethnicity. The obvious link here, of course, is disadvantage. Social exclusion and disadvantage is not confined to area (in a theoretical sense), but can in many ways be said to be confined by area (in a physical sense). As Jefferson points out:

... if blacks are disproportionately involved in known offending behaviour, they also have much higher rates of social disadvantage, being more likely to live in poorer housing in deprived areas, attend worse-off schools and, in the job market, to find manual (rather than non-manual) jobs or be unemployed. (Jefferson, 1991: 181)

Thus, those growing up in a deprived area are more likely to be exposed to other kinds of disadvantage and social exclusion as well. If it is the case that 'the traditional link between disadvantage and crime' (Jefferson, 1991: 181) holds, then this has implications for theories based on 'cultural' differences, in popular discourse as well as policy making. The argument that differing crime rates can be explained by referring to the different cultures of ethnic groups does not hold. Feelings of exasperation, resentment and insecurity of life on the margins cut across cultural and ethnic boundaries. It would therefore appear that the overrepresentation of ethnic minorities in the criminal justice system has structural, economical, and historical reasons, rather than cultural.

Although the connection between crime and social structure has been theorized for many years, these debates have not sufficiently reached policy circles, which have tended to oscillate between arguments about 'cultural' deficits on the one hand and institutional racism on the other. In Chapter 3, Danny Dorling suggests that 'We now know enough about crime and about race to begin to say some things about how the two are related. It has only been possible to realize some of these things in very recent years'. Similarly, Colin Webster finds in Chapter 2 that a particular 'problem has been that studies have not controlled for socio-demographic factors to ensure that proper individual and group comparisons are made when seeking influences on, and outcomes of, practices and decisions'.

In terms of policy, then, where do we now stand? The short answer to this question is that we do not know, but faint signs on the policy horizon are not very promising. The development of this volume

tells its own story. In 2010, when Runnymede first started to think about what an edited volume on overrepresentation in the criminal justice system should look like, our ambition was to produce an explicitly solution oriented publication, drawing on the expertise and experience of academics, policy makers and the voluntary sector to explore ways to reverse current trends. The volume we ended up producing turned out to be quite different, and the reasons for this shift are in themselves telling. Firstly, despite the best intentions of policy makers at the Fairness and Confidence Unit at the Criminal Justice Reform Directorate (CJRD), who were enthusiastic about submitting an article on the government's race equality strategy in criminal justice policy, they were unable to do so because they had no ministerial steer on this issue. In other words, as late as March 2011, the government had nothing to say about race equality and criminal justice. In Chapter 4, Simon Holdaway and Karim Murji discuss this lack of attention paid by the current government to consider overrepresentation, as well as some of the policy changes that *have* been made but are likely to *add* to the problem. Secondly, a number of voluntary sector practitioners working in the field of race and the criminal justice system had agreed to submit papers to outline a grass roots view of what would be needed to end overrepresentation. One by one, they informed us that they were no longer able to contribute to this volume. The reasons they gave was that massive reductions in funding were either placing enormous pressure on their organizations, or forcing them to close shop altogether. This leaves us with a government which has not given race equality in criminal justice much thought, and a voluntary sector with a vastly reduced capacity to act. In many ways, this is a depressing reminder that our work is reduced to fire-fighting and crisis management. Rather than having a debate on how to *end* overrepresentation in the criminal justice system, we find ourselves forced to make the case that overrepresentation is an affliction on our democracy and that urgent action is needed. At the same time, however, we must continue to seek solutions. In Chapter 7, Theo Gavrielides outlines how we can employ the Human Rights Act 1998 and the Equality Act 2010 to this end.

Although it is widely acknowledged that the 2011 disturbances were not 'race riots' dominated by one ethnic group, it is nonetheless interesting to note the language adopted by those in power. The riots, government ministers told us, were about criminality, pure and simple. The cause of this criminality, they further maintained, was not about

poverty, deprivation or inequality, but 'culture'. The most extreme – but also, perhaps, the most honest – example of the racial undertones of this way of thinking came from historian David Starkey, who claimed on *Newsnight* that 'the whites have become black' because 'a particular sort of violent, destructive, nihilistic, gangster culture has become the fashion, (BBC News, 2011). Yet there were alarming echoes of this logic when David Cameron offered his analysis of the deeper problems:

This is not about poverty, it's about culture. A culture that glorifies violence, shows disrespect to authority, and says everything about rights but nothing about responsibilities. ... At the heart of all the violence sits the issue of the street gangs. Territorial, hierarchical and incredibly violent, they are mostly composed of young boys, mainly from dysfunctional homes. (Cameron, 2011)

In this context, we should remember Tony Jefferson's observation that 'police racism is *not* primarily about discriminating against young black males but rather about the production of a criminal Other in which, currently, young black males figure prominently' (Jefferson, 1992: 31; original emphasis). This appears to be as true now as it was 20 years ago. Indeed, the responses to the 2011 riots show the importance of considering the complex relationship between race and class as factors influencing life trajectories towards criminal behaviour – hence our comparison between the number of African Caribbean young men in prison to those studying at our most prestigious universities.

2. Different Forms of Discrimination in the Criminal Justice System

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Focusing on discretion by the police, criminal justice practitioners and the courts at different stages in the criminal justice process, this chapter explores whether their judgements and decisions contribute to the overrepresentation of those from black, minority ethnic and lower social status backgrounds in the criminal justice system. The chapter asks whether overrepresentation is due to alleged discrimination or reflects typical patterns of offending, and the policy implications.

The structure of the chapter is first to present the most recent official data about overrepresentation taking note of recent trends. Contrasting this data with self-reported offending data shows that the overrepresentation of some ethnic groups in the criminal justice system is not a true picture of their actual offending. Second, I argue that an exclusive focus on ethnicity ignores social determinants such as socio-economic status and in any case the ethnic categories used to compare criminal justice outcomes are too crude. Third, I argue that residual discrimination by the police and the courts varies between and within jurisdictions and neighbourhoods, and by their ethnic and social

class makeup. Fourth, because discretion is least visible and discrimination most likely at the police stage of criminal justice, police stop and searches are examined. Fifth, the conclusions examine police reform since the Lawrence Inquiry before broadening the discussion to wider structural issues of policy and reform.

Overrepresentation: Continuities and Change

It is undeniable that some black and minority ethnic groups are significantly overrepresented in the criminal justice system and whites are underrepresented compared to their numbers in the population (Table 1). It is also frustratingly difficult to establish definitive answers as to why this occurs, as studies over many years have been too distant from, and have been unable to discover, the interpretations and attitudes of police officers and criminal justice officials when deciding who to stop and search, whether to arrest and what sentence to give. Another problem has been that studies have not controlled for socio-demographic

Table 1. Percentage at different stages of the Criminal Justice System compared with ethnic breakdown of general population, England and Wales, 2008/09

	White	Black	Asian	Mixed	Chinese or other	Not stated / Unknown	Total
Population aged 10 and over, 2007	89.4	2.6	5.2	1.3	1.5	0.0	100
Stops and searches	67.0	14.8	8.8	2.8	1.3	5.4	100
Arrests	80.6	7.6	5.4	2.8	1.4	2.2	100
Cautions	82.6	6.7	4.9	1.5	4.3		100
Court ordered supervision by probation service	82.0	6.0	4.7	2.7	1.2	3.4	100
Prison populations (All including Foreign Nationals)	72.8	14.4	7.2	3.4	1.7	0.5	100

Source: Ministry of Justice (2010: 8)

factors to ensure that proper individual and group comparisons are made when seeking influences on, and outcomes of, practices and decisions.

As Table 1 shows, black and mixed-race people are overrepresented at all stages of the criminal justice process from stop and search to imprisonment, while Asians are overrepresented in stop and search and in prisons and are underrepresented at other stages (Ministry of Justice, 2010). There has not been significant change in these patterns over 30 years, and they are as marked among young people as they are among the adult population (Ministry of Justice, 2010; Phillips and Bowling, 2007). In the recent period mixed race and Asians have newly emerged and grown as overrepresented groups. Another recent concern is the striking growth in stop and searches of black people and Asians compared to whites. Between 2004/5 and 2008/9 the number of white people being stopped and searched increased by around 30 per cent, while the number of black and Asian people being stopped and searched increased by over 70 per cent. (Ministry of Justice, 2010: 10, see Table 2). Contrast this with the relative stability of the large ethnic differences in arrests, although arrests did significantly increase for Asians and continued to be highest for black compared to other groups. Ethnic differences and disproportion in cautioning, prosecutions, sentencing, supervision and custody remained relatively stable over this period for all ethnic groups (Ministry of Justice, 2010).

Disproportion: Disparities between Offending and Representation?

Self-report offending studies have consistently shown over many years that white and black rates

and patterns of offending were and remain very similar, although offending rates reported by Asians were substantially lower. Indeed, these sorts of studies in which individuals of different ethnicities report their own offending, tend to suggest that whites offend more than any other group. In other words, the overrepresentation of some groups in the criminal justice system is not explained by differences between these group's offending rates.

Neither is it explained by significant differences in patterns or types of offending between groups, except in relation to robbery where two per cent of black young people reported having ever committed such an offence compared to half a percent of white young people. These relatively small differences between black and other groups in self-reported robbery offences hardly explain the extent of overrepresentation of black young people for this offence found in the youth justice system where black young people made up 27 per cent of robbery offences dealt with by the Youth Justice Service in 2004, but were only 3 per cent of the 10-17 year old population, and whites were severely under-represented.

This key issue will be returned to later. Similarly, despite young white males reporting significantly higher drug use than young black males, whites were under-represented for drugs offences whereas the black group was substantially overrepresented in the youth justice system (Feiltzer and Hood, 2004; Flood-Page et al., 2000; Graham and Bowling, 1995; Sharp and Budd, 2005; Webster, 2007). Simply on the basis of this sort of evidence it would seem that a *prima facie* case can be made that there is different or discriminatory treatment of black and Asian groups by the police and criminal justice system. If studies paid sufficient care in delineating socio-economic status as well as ethnicity then the case would be even clearer.

Table 2. Police stop and searches per 1000 population, by ethnic group, England and Wales, 2007-08 and 2008-2009

	2007-08		2008-09	
	Rate per 1000	Proportionality ratio	Rate per 1000	Proportionality ratio
White	16.5	0.76	17.9	0.75
Black	108.5	5.01	135.0	5.65
Asian	33.5	1.54	40.1	1.68
Mixed	42.5	1.96	51.7	2.16
Chinese / other	17.7	0.82	20.2	0.84
Total	21.7	1.00	23.9	1.00

Source: Ministry of Justice (2010)

Interpreting the Data: Justice by Geography, Ethnicity and Class?

Some problems and issues continue to haunt understandings of discrimination in the criminal justice system. The ethnic categories used confuse race and ethnicity and do not sufficiently capture social and ethnic variation within and between categories. This is a particular problem when significant new migration to the UK is taken into account, considerably complicating Britain's white and visible minority ethnic makeup. White ethnicity has been ignored, although Mooney and Young (1999) found that foot stops of Irish men in North London were higher than for any other group because the police focus on groups that are disproportionately working class and/or male as well as visible ethnic groups. Waddington et al.'s (2004) study of stop and search in Reading and Slough found that white urban lower class men who were available to be stopped suffered disproportionate stop and search regardless of visible ethnicity.

Ethnic and certain socio-economic and demographic factors increase the risk of individuals becoming involved in the sorts of crime which may bring them to the attention of the police. The police in turn disproportionately target young males whose profile tends to be of lower class background, living in lone parent families, that have often been in care, lack education and/or are unemployed, who live in urban areas of high crime and social deprivation, who have an active street life and who consequently form a core component of the population available for policing. Once having come to the attention of the police, young people are sucked into a spiral of amplified contact and conflict. Although more likely to be present among British mixed white/Caribbean and British Caribbean compared to the general white British population and other visible minorities, these risks are also present within marginalized white groups (FitzGerald, 2009; McAra and McVie, 2005).

The culturally supported values and beliefs of police officers and criminal justice officials are an important element in explaining their practices towards marginal white, black and minority victims, suspects and offenders. Values and beliefs vary within and between organizations and jurisdictions so that, for example, London seems in some respects quite different to many provincial cities in respect of the policing and court disposals of

minority and marginalized groups (Jefferson et al., 2008; Newburn and Reiner, 2007; Walker, 1988). Local studies controlling for social and economic factors which might explain overrepresentation, have shown that different forms of discrimination by the police and the courts may be closely tied with variation in the social class and ethnic makeup within and between neighbourhoods and jurisdictions. This make-up in turn influences local police and court values and beliefs. Crudely put, some areas suffer discrimination more than others, according to local police and court cultures and the make-up of local populations.

This variation of justice by geography and class can be shown within and across jurisdictions and neighbourhoods. An early study of the court disposal of young males in London, by ethnicity, concluded that since the police tended to deal with people of lower social class, and black people also tend to be of lower social class, it is to be expected that black people are overrepresented in the criminal justice system compared to the general population of London (Walker, 1988).

A study in Leeds of differences in treatment of blacks, Asians and whites at different stages in the criminal justice system attempted to overcome negligence of the influence of class on race found in other studies (Jefferson et al., 2008). They compared stop and search and arrest rates, and arrest outcomes of those of different ethnicity living in the same (small) areas which broadly shared similar social and economic environments. Overall, they found that black males had a higher stop and search and arrest rate than comparable whites and Asians, but whites living in 'blacker' areas had a higher stop and search arrest rate than blacks and blacks living in 'whiter' areas had higher rates than whites. Consistent with studies since, proportionately more blacks were tried in the Crown Court and were acquitted but sentencing in the magistrates' courts and Crown Courts did not differ between ethnic groups. Arrest rates were related to areas of residence, disadvantage and deprivation, the transience of the white population and housing tenure. The police had more difficulty operating in black areas and whiter areas were more 'out of bounds' to blacks, and 'being out of place' seemed more important in Leeds than in London.

Geographic variation in policing and justice may be particularly pronounced regarding police deployment and targeting, particularly in relation to robbery offences (although rare and involving

a small number of offenders but most often popularly associated with black young people). MVA and Miller (2000), in a study of stops and searches, found higher police deployment in at least one of the areas they studied. The area had predominantly larger black populations but concomitant crime levels at the aggregate level did not appear to justify this greater police attention. We have already seen that black young people are disproportionately present in the Youth Justice System for robbery offences at a level unsupported by their self-reported offending. An alternative way of looking at this is through incidents where the victim could say something about the offender. On this basis, approaching a third of all 'muggings' was committed by black offenders and only half by white in 1999 (Clancy et al., 2001: Table 2.3). According to the British Crime Survey (BCS) a third of 'muggings' and 43 per cent of police recorded robberies were in London and over half of those arrested for robbery in London were judged by officers to be black (Clancy et al., 2001). This is twice the rate for *all* police recorded crime and violent offences in London and approaching three times the rate of BCS recorded incidents of 'mugging' elsewhere in the country.

This astonishing geographical concentration of robbery in London – according to police records and victims' reports – requires interpretation and explanation. Of course, close to half the adult black and Asian population live in London but what is of most significance is that in predominantly black areas like Lambeth 86 per cent of suspects are identified as black. To a lesser extent this geographic concentration is repeated in other areas outside London with significant black populations such as Birmingham (64%) and Bristol (58%) city centres. In predominantly white places like Stockport, Preston and Blackpool – according to victim reports and police records – black and Asian suspects are negligible as suspects are overwhelmingly white (Smith, 2003). A number of things might be happening here. First, there are more opportunities for personal robbery in London compared to elsewhere, carried out disproportionately by young black men in predominantly black areas. Second, despite the relative rarity of robbery and its small core of practitioners (even in London; see Hallsworth, 2005), compared to say, assault, vehicle theft or burglary, in which young black men seem underrepresented compared to whites, it generates a good deal of police activity in London compared to other places (judging by police records). Third, this targeting is disproportionate

to the scale of robbery incidents, the numbers of offenders involved, and is concentrated in black areas. Once again, the question arises why this particular offence is not given the same attention in Newcastle as it is in London?

Hood's (1992) examination of sentencing patterns in Crown Courts in the West Midlands found significant residual racial discrimination in one court but not another, with easily foreseen cumulative consequences of rises in the black prison rate (Phillips and Bowling, 2007). Similarly, Feiltzer and Hood (2004) examining decisions relating to minority ethnic groups at all the various stages of the youth justice process found large differences or discriminatory treatment of minority ethnic young people between eight Youth Offending Team areas. Other studies have shown that black suspects are less likely to admit offences because they are more likely to be arrested when innocent, or have less faith in the fairness of the police and the courts than white people. A particularly consistent finding of such studies has been that black people and Asians were more likely than white people to be arrested and charged when there was not sufficient evidence to proceed with a prosecution against them (Phillips and Brown, 1998).

Stop and Search: Available Populations?

It is a legal obligation that use of police legal powers are fair and just, and that officers do not adopt stereotypes or make unfounded generalizations on the basis of a person's membership of a racial group (or other social ascriptions). It is already noted that the police are not a monolithic organization and there are cultural, operational and tactical variations between forces in, for example, their interpretations and uses of 'reasonable suspicion' as grounds for stop and search. Since the Lawrence Inquiry report (Macpherson of Cluny, 1999), local studies of stop and search have disagreed that discrimination continues to take place on grounds of race (MVA and Miller, 2000; Waddington et al., 2004). When group rates of stop and search are compared, not with the profile of the local resident population as previous studies had done, but with those in public places and, therefore, 'available' for stop and search, ethnic differences tend to reduce or disappear entirely (Waddington et al., 2004). On this argument, the disproportional stop and search experiences by young men of all racial and ethnic groups may simply attest to their greater availability

for being stopped and searched, rather than any particular selectivity on the part of the police.

These findings were criticized by Bowling and Phillips (2007) arguing that experiences of stop and searches revealed by the self-report (British Crime Survey) and police stop and search data are still the best measures of whether disproportionate and discriminatory treatment by the police is taking place. They concluded from this data that the use of police powers against black people continued to be disproportionate and that this is 'an indication of unlawful racial discrimination.' In any case the concept of 'available populations' as a criterion against which to compare the rate at which groups are stopped and searched is not a neutral concept but is highly socially determined. The extent to which a social group is available to be stopped and searched in public places at vulnerable times depends on structural factors of unemployment, employment in occupations that involve evening and night work, exclusion from school and homelessness, all of which are known to be associated with ethnic origin (Bowling and Phillips 2007). Those stopped and searched are most likely to be drawn from the population of young people not in education, employment or training, to which we now turn.

Discussion and Policy Implications: 'Reform or "Business as Usual"?'

Figures show that the number of 16- to 24-year olds not in education, employment or training (NEET) was at a record high at the end of 2010. Some 938,000 young people in this age group were 'Neets' and this is likely to rise over the next five years (Shepherd, 2011). Research has shown that it is from this group that offenders are most likely drawn and are most likely to be 'available' to be stopped and searched by the police. Their core are some of the most marginalised, socially excluded young people who lack trust in the police and accrue a surfeit of 'risk factors' associated with severe deprivation and sometimes, criminality. Their members disproportionately belong to white, black and minority ethnic groups from lower socio-economic backgrounds (House of Commons, 2007). The accruing of experiences more likely to lead to antisocial and delinquent behaviour has been intergenerational. We have been here before and policy makers forget this at their peril as the long-term, intergenerational effects and costs on social cohesion and justice are well documented

and very considerable indeed (Ferri et al., 2003; Webster, 2007).

We have seen how police powers to stop and search continue to be a particular area for concern in regards to discrimination in the criminal justice system. It might be considered whether the 'hit rate' (percentage of searches resulting in an arrest) – which is identical at 10 per cent for black and white populations – justifies the sense of discrimination, disaffection and distrust engendered by this tactic, or whether stop and search should be curtailed or disbanded. Police powers of stop and search have been greatly increased through the 'back door' of the Terrorism Acts. Despite this enlargement under counter terrorism powers, in 2009/10 of the 101,248 people stopped and searched under these powers, none of them were arrested for terrorism-related offences and only 0.5 per cent was arrested for any offence, compared with a 10 per cent arrest rate for street searches under normal police powers (EHRC, 2010).²

Data collected nationally about race and the criminal justice system needs to refine the ethnic categories used and take more account of the socio-economic backgrounds of those finding themselves stopped, arrested and sentenced so as to capture a wider range of experiences, discretion and discrimination. To take one simple example, while the disproportionate stop rate for Asians has remained the same at twice the rate whites are stopped, this underestimates the number of Muslims stopped as the statistics usually conflate Muslims with 'Asians' (Bowling and Phillips, 2007). Alongside these aggregate data more attention needs to be given to local variation of practices across and within neighbourhoods and jurisdictions, and variations within the police and criminal justice agencies. Policing and justice by geography has created a patchwork of inconsistent treatment in which the likelihood of discrimination is greater in some places than others.

In respect of reforming stop and search as a tactic the police have continued to resist reforms and there has been no improvement. However, this overall finding varies between forces and is heavily influenced by London and, to a lesser extent, Greater Manchester and the West Midlands, which are out of step with most of the rest of the country. The average force showed reductions in disproportionality associated with the reforms since the Lawrence Inquiry, although it did not see improvements in arrest rates of searches (Miller, 2010; Shiner, 2010). This is

partly accounted for by popular local media concerns about serious street crime – especially robbery in London – and the Metropolitan Polices' disproportionate responsibility for the majority of s44 Terrorism Act searches, which do not require grounds (Ministry of Justice, 2010). The police have been as defensive and implacable as ever in defending their 'patch' and 'organizational ego' since the Lawrence Inquiry, insisting on their autonomy and consistently resisting demands for greater accountability. Despite Lawrence – and because the best intentioned reforms tend to be overtaken by events – they have maintained and enhanced their powers rather than reforming. Despite very substantial reductions across the range of offending since the early to mid-1990s, any return to disenfranchising and marginalizing another generation of young people, accompanied by concomitant heightening of policing, criminal justice and penal responses, begs the question *Plus ça change, plus c'est la même chose?*

3. Disadvantage and Social Structure

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In this short chapter I want to suggest that we now know enough about crime and about race to begin to say some things about how the two are related. It has only been possible to realize some of these things in very recent years. This is because it has only been in very recent years that our social structures have changed themselves to reveal their workings. Now that we are rich enough, if we averaged out our wealth, to meet all our needs, and now that even the poor mostly no longer go hungry, people no longer steal to buy food. Today there are wide variations between levels of activity deemed criminal in different affluent countries because of the varying social inequalities in those rich countries (Wilkinson and Pickett, 2009).

What has been viewed as a crime has always depended on what has been seen as criminal at different times and in different places and what action it is then deemed appropriate to take. How different activity has come to be viewed as criminal in Britain in very recent centuries and what is then done to those said to be criminals has changed in a way that can only be described as staggering when viewed dispassionately (Throness, 2008).

It is vital to step back and try to dismiss a little of the passion you might feel about contemporary criminal activity to better understand why we have the criminal justice system we currently have; why there is overrepresentation of certain groups within it, especially older boys and young men; and why disadvantage and the social structure are so key in determining which of those people are most criminalized.

We know that the level of crime we experience is, in the majority of cases, the product of the way in which the society within which we live is organized. I'll give a practical example: When I was a teenager, in the early 1980s, there were many burglaries. Many of these were to steal video recorders, and in some cases newer kinds of television. These and other expensive goods had recently become mass consumer items. They could be sold in pubs and elsewhere, 'second-hand'. They were valuable, but because some people in the early-1980s had recently become much more affluent, while others had not, brand new TVs and videos were out of the financial reach

of many families. Back then many people still rented a TV – I remember renting one as a student. It was normal to rent; owning a large TV was then a sign of affluence. Social norms really do change very quickly.

In my parents' day, when they were young in the 1960s, the distribution of incomes in Britain between households was far more equal. Most people had a radio, few had a television, and no video recorders existed. Crime levels were much lower, burglary was far rarer. Even the murder rate was half what it is today (Figure 1). Perhaps people were better behaved? Perhaps standards have been slipping since the war ended and so the 1980s were just much worse than the 1960s because of that?

In the 1990s and early 2000s, although the violent crime and murder rate rose, the burglary rate fell again. Nobody wanted to burgle video tape players any more, they were becoming museum pieces. TVs became so large and so cheap it was far more effort than it was worth to steal them. You could soon buy a brand new DVD player from a supermarket for just under £20. Why risk buying one 'second hand' that had no guarantee?

Inequalities in income were just as high in the first decade of the current century as they were in the 1980s, if not higher, but what we had in our homes had changed, the structure of our society had changed in a way which made some kinds of crime less sensible to commit. Instead it became much more sensible to shop lift, which is why CDs are electronically tagged or don't have the disc in the package today, and why coffee is to be found behind the counter in some shops. We don't worry so much about the CD player in our homes.

People do not change much. Instead the circumstances they are born into change rapidly generation on generation. In those countries in which inequalities in income and wealth are low, and in which temptation is not endlessly paraded – goods are not advertised as 'essentials' and position is not lauded as success – here, crime rates tend to be lower (Figure 2 on page 14). It is much harder to become dangerously drunk and violent in a place where the alcohol is very

expensive. It is much easier to feel violent towards others living in a place where many people are ranked widely apart and you are not supposed to look other men in the eye for fear that your glance is interpreted as a challenge.

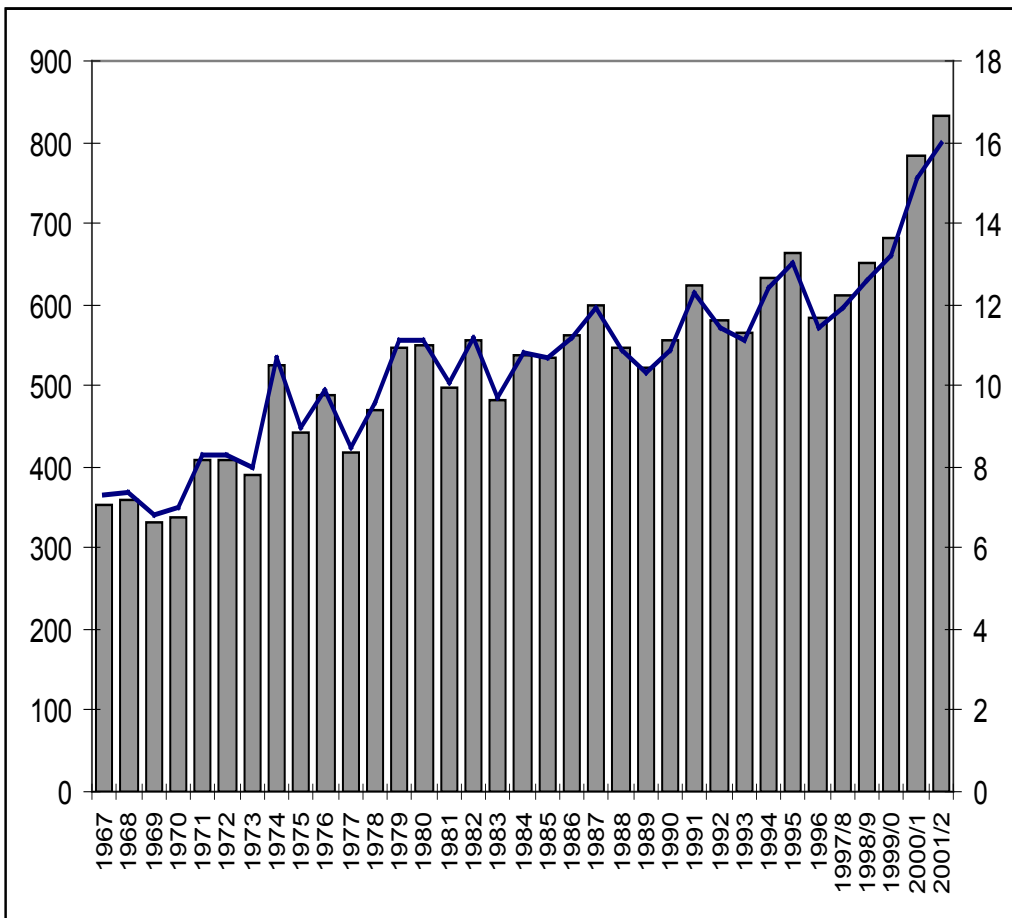
Many crimes are only possible because of the place you live in. Not many years ago the most common crime that resulted, eventually, in women in Britain being imprisoned was non-payment of TV licenses, being rewarded with a fine, which was itself often not paid and so a prison sentence was imposed. If we did not have a flat "poll tax" TV licence in Britain this criminalization would not be possible. If the BBC were paid from taxation no one would be in prison for not paying their TV licence. We have recently learnt, as the BBC has grovelled to the new coalition in fear of being further privatized, that the licence fee is no protection from political interference. It is simply a way to make the poor pay a far high proportion of their meagre

incomes and benefits for what has become a universal expectation: television.

A huge number of activities which were legal when I was a child have now been reclassified as crimes. In particular what is now often termed 'anti-social behaviour' has been criminalized which results in far more young people becoming criminals, gaining a conviction, a 'record', and then having much less to lose from carrying on behaving badly, often almost being expected to. In more sensible societies in more sensible times far fewer things are labelled a crime to be dealt with by the formal criminal justice system.

In Nordic countries the equivalent of the Home Secretaries of Britain sign for all of the handful of children who are kept imprisoned each week. In Japan they have the fewest prison places of anywhere in the rich world, much more than ten times less than in Britain. What Japan and the Nordic

Figure 1. Offences recorded as homicide in England and Wales 1967-2001



Notes: Number of homicides per year as bars, scale on the left hand axis; rate per million people as line, scale on the right.

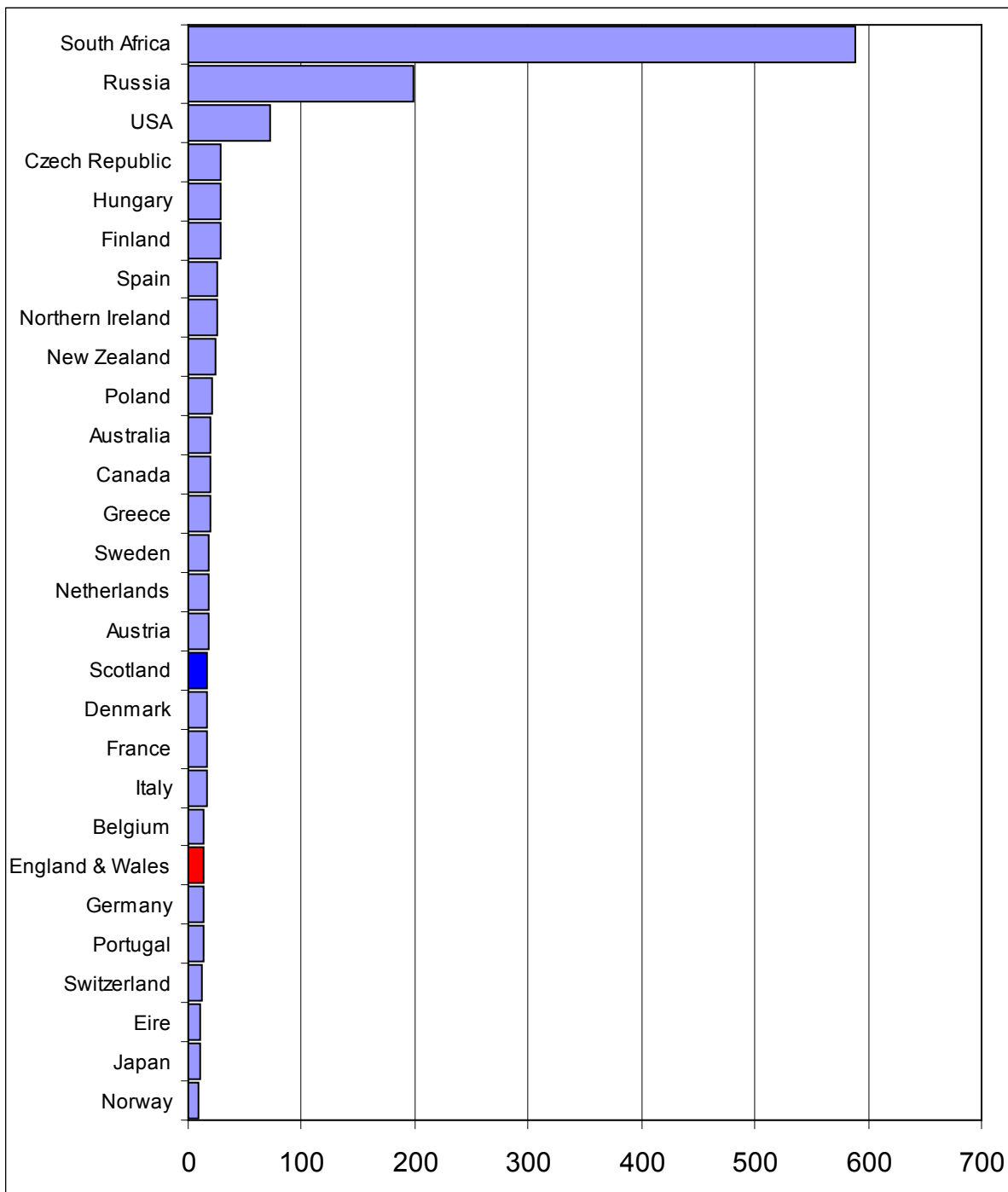
Source: Table 1.01 in Flood-Page and Taylor (2003)

countries have most in common is low inequalities in income and wealth between households.

In the UK we have the most prisoners per head of anywhere in Europe and tens of thousands of older teenagers are locked up, including more children being imprisoned than anywhere else in Europe. As I write (in November 2010) we still detain children for the crime of having been born

to someone whose immigration papers are not in order. The only large rich country with a worse criminal justice system than Britain's is the USA. In the USA more people are incarcerated than anywhere else in the world apart from the figures recently for Rwanda just after the genocide, and Rwanda surpassed the USA only when all those suspected of being involved and being held on remand were included.

Figure 2. Homicides rates per million, 1997



Source: Richards (1999)

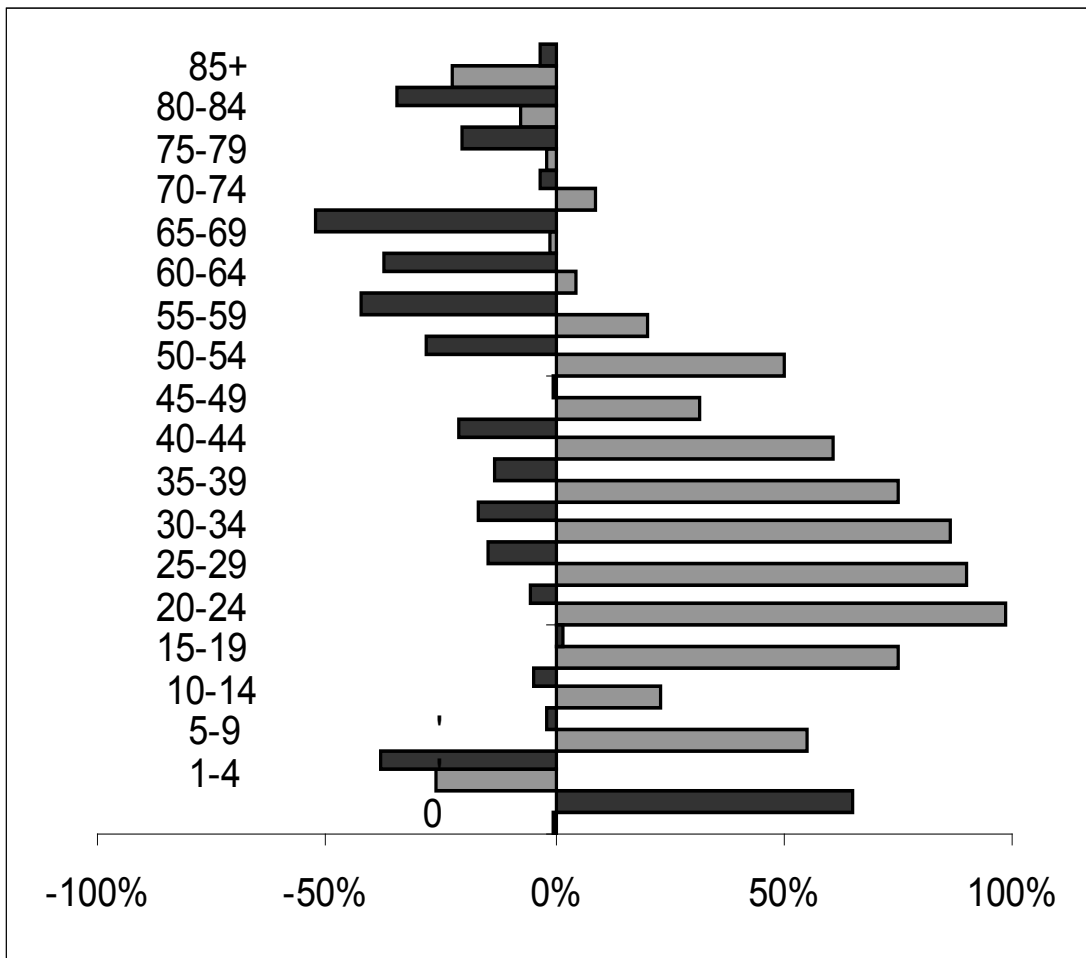
We choose how much crime we suffer. The USA can only afford to lock so many people up because it is such a wealthy country. Locking human beings up is expensive. Living with a high rate of crime is very expensive, but it is the price you have to pay if you choose to allow some people to be much wealthier than others and they in turn much wealthier than those below them and expect all to obey the same laws. Few people choose to become criminals. For common crimes, for most people in the world who have been given a criminal conviction, a key determinant of their likelihood of carrying out the act in the first place was when and where they were born, then their age and gender, and only then their own decisions.

Even for the most uncommon crime of all, murder, wider circumstances are crucial. Although the murder rate of people in Britain doubled over the period 1960 to the year 2000, it simultaneously halved for one group in the population: women (see Figure 3). Women began in growing numbers

to walk out of relationships that had become violent. They did not just do this because women in general had become more confident and aware; they did it because there was an increasing number of places, jobs, houses, and a greater air of acceptance to walk out to. The social structure had changed, not least because some groups of women had changed it.

The overall murder rate doubled despite the rate for women halving because the rate had always been much higher for young men being victims and because for them rates rose so quickly over this same period. However, for most men in most areas rates of murder also fell (see Table 1 on page 16). Young men growing up in particular areas were born into a situation in 1980 that was so unlike that which their parents had been born into in 1960 that their chances of being a victim of murder rose extremely quickly. The key date to avoid being born after was 1965 (if you had the power of forethought as a foetus) and the key

Figure 3. Change in murder rate by age and sex in Britain, 1981–1985 to 1996–2000



Notes: Light grey bars are for men, dark grey for women
 Source: Shaw et al., 2005

Table 1. Standardized Mortality Ratios (SMR) for murder by area by poverty in Britain

Breadline Britain poverty decile	1981-85	1986-90	1991-95	1996-2000	Change in SMR 1981-85 to 1996-2000	% Change in SMR 1981-1985
1 - Least poor	54	59	55	50	-4	-7.4
2	67	65	67	60	-7	-10.4
3	62	69	68	66	+4	+6.5
4	74	85	72	81	+7	+9.5
5	79	77	83	88	+9	+11.4
6	95	95	95	103	+8	+8.4
7	112	122	125	130	+18	+16.1
8	119	130	148	147	+28	+23.5
9	151	166	191	185	+34	+22.5
10 - poorest	243	261	271	282	+39	+16.0
Ratio 10:1	4.50	4.42	4.89	5.68		

Note: Expected values are based on 1981-85 national rates

Source: Shaw et al., 2005

place not to be born then was in an inner city, and then, and mainly then, the key things was not to be born male, and then, finally, not to be born black. Similar, but more extreme patterns occurred in the United States. The dramatic version of these statistical truisms is the HBO TV series *The Wire*.

We know that the way in which we are treated by race is, in the majority of cases, the product of the way in which the society in which we live is organized. At different times in different places, people who are otherwise the same are treated very differently simply because of the race they are said to belong to. In the year in which my parents were born millions of Jewish people were exterminated in Europe. Being Jewish became a crime.

When I was young, in the 1980s, much crime was blamed on people who were then called 'West Indian' and whose children are now often called of 'Afro-Caribbean descent'. The parents of the young West Indian adults had, in many cases, arrived in the 1960s from the West Indies and were amongst the most law-abiding of British citizens. It only took a generation for their position to reverse because of the places into which they arrived and how the times were allowed to change those places in Britain.

Perhaps the most striking conclusion is the persistence of substantial ethnic penalties for migrants and their descendants, both men and women, of Black African, Black Caribbean,

Pakistani and Bangladeshi ancestry. In contrast the White Irish, White Other and Chinese groups experienced little in the way of ethnic penalties (and little change over time). The Indians fell in between, although generally with rather modest disadvantages compared to their White British peers. It is particularly noticeable that, for the three main disadvantaged groups, there was no sign whatsoever of inter-generational improvement nor of any progress across historical time. In the case of life-cycle processes we even found rather surprising but compelling evidence of 'falling behind' rather than catching up for the first generation men. (Heath and Li, 2008: 301)

In different situations a person of the same race becomes very differently treated. On a university campus, where someone of South Asian heritage is at least six times more likely to be studying medicine than someone who is white, what might matter most is that two people are students, but a lecturer might make the assumption that an Asian student is more likely to be a 'medic' than a white student. A mile away, in the Crown Court complex of the city in which the university sits, the majority of the ten occupied docks may hold an accused who is Asian, while all 120 jurors are white. This is what I recently saw in the city I live in.

In Sheffield, your chances of being accused of a crime depend mostly on where you live, then being young and male and then on your race. People across all of South Yorkshire commit a huge

number of crimes everyday. The most common of these are also among the most potentially deadly – speeding – but these are the least prosecuted crimes of all. To be accused, charged, and end up in the dock and then convicted of a crime is much harder for someone who is white in Sheffield than it is for someone who is black or Asian. The differences in the probabilities are so extreme that you come to expect to see a young male non-white adult in the dock in most criminal cases today around where I live, despite the county of South Yorkshire being predominantly white.

In contrast to how the accused are selected from such a narrow band of society, jurors are selected at random from across most of south Yorkshire to sit in judgement at Sheffield Crown court. Although a third of babies now born in Sheffield are not white, South Yorkshire can be seen to be largely white either by consulting the census or by looking at who sits in jury boxes. The majority that are on the electoral roll and so in the jury lottery are even more likely to be white than are most adults, and so one race tends to sit in judgement on another, while receiving medical treatment often from another. All this is very different from two decades ago and will be very different age in two decades time, but in some ways it can be very similar.

Over time which groups are seen as minority and who is included in the majority alters to keep the majority a majority and keep the minority small enough to be considered a minority. However, at different times and in different places, society is more inclusive while at other times and in other parts of the world it is more exclusive. When we chose and fought for our society to be more inclusive we then tended to label fewer people as criminal, we labelled fewer activities as criminal and fewer people were driven to crime for the reasons they are driven to it today, and also we then tended not to so keenly assign people to racial groups.

To know whether people are being assigned keenly to racial groups and whether such an assignment is having a detrimental effect on them, the simplest statistical test is to compare the life expectancies of different racial groups living in an area. If those life expectancies differ then biological and social 'insults' have to have been occurring at the group level in a manner systematic enough to result in that outcome.

A recent definition of racism proposed by geographer Ruthie Gilmore is that 'racism is any

act that ultimately results in the premature deaths of groups of others'. This definition causes some consternation when it is proposed, but it is a useful definition because it makes it so hard to excuse an act that it is aimed at harming a particular social group of people as not being in some way racist.

All kinds of acts result in the premature deaths of others but when there is something systematic in how a group is overrepresented in their selection for such insults then you know that a particular group has been selected as a racial group. Being imprisoned is harmful to your health. If some racial groups are more likely than others to be imprisoned then that act of imprisonment, because it will hasten the premature deaths of people from some racial groups as a whole, is racist.

Where there is no or little difference between the life expectancy of different groups, then those groups are likely not to be very different, and racism is far rarer. Areas of Britain with widely varying life expectancies tend to include people of widely different social groups who are treated very differently as groups because of to whom they were born. Many who suffer most badly are white and poor, but a very high proportion of people from particular racial groups in Britain live in areas and belong to social classes where they are likely to live much shorter lives than others.

In countries which have very low inequalities in health, and in all these cases also in wealth, there are always far fewer distinctions made between racial groups. Should you look closely enough and feel the inclination to delineate, you will find racial groups everywhere, but what inclination would you have to delineate where there were fewer differences in the distribution of resources to worry about in the first place? It is gross inequalities in income and wealth that keep particular castes and races important markers of disadvantage for far longer in some places than others.

When groups of people live together for some time under conditions of greater social equality they stop seeing racial differences between them and may even come to view themselves as a homogeneous race and then can view outsiders as quite different.

Outsiders from more unequal nations tend to be different regardless of their race. This homogeneity does not result in greater equality; it is a result of it. In all the cases that we know of, from recently aristocratic Japan, to formally Celtic slave-holding

Iceland, not too long ago the people with almost identical genes to those there today lived in different racial groups. These may have been called different 'households' or 'families'.

In Britain, as inequalities between neighbourhoods and social classes grew in the late 1970s, 1980s and 1990s, racism rose again. Most obviously initially in the burst of anger that came with the National Front, and then in the far nastier and more widely brutal racism of Mrs Thatcher's beliefs of the needs of the 'British people':

... people are really rather afraid that this country might be rather swamped by people with a different culture and, you know, the British character has done so much for democracy, for law and done so much throughout the world that if there is any fear that it might be swamped people are going to react and be rather hostile to those coming in.... we must hold out the clear prospect of an end to immigration because at the moment it is about between 45,000 and 50,000 people coming in a year. Now, I was brought up in a small town, 25,000. That would be two new towns a year and that is quite a lot. So, we do have to hold out the prospect of an end to immigration except, of course, for compassionate cases. (Thatcher, 1978)

In the 1980s there were riots that involved a majority of white youths in most cases, fighting the white police. These were labelled race riots because a high proportion of the young people in the inner city areas which rioted were black. In the 1990s racism became more institutionalized, systematic and in many ways was uncommented upon as social divisions resulted in racial divisions by occupation – seen now in terms of who most often provides 'security' at the doors of buildings in London, cleans those buildings at night and runs the trains to get mostly white folk to those buildings in the morning. In the last decade this kind of hidden systematized institutionalized racism began to be questioned again, but when social inequalities rise in general other divisions cannot at all easily be reduced.

Growing social inequality makes people look for differences with strangers. It makes appearing physically different to others more important. Far more assumptions are likely to be made about someone from the colour of their skin in a society with wide and widening income and wealth inequalities. Fear of others grows and more people are labelled as being different. What's more - people more often say stupid and rude things as

inequalities rise, such as 'Rudeness is just as bad as racism' (David Cameron, 2007).

Almost no one likes to be called a racist any more in Britain, but any number of fine words about how we came to construct crime and reinforce race is of little comfort when some lads of another group (to you) ask you the time and when you look down at your watch the next thing you see is a fist in your face. It is easier to steal from people who you think see you as different, and who often do see you in that way. It is easier to blame people who you see as different, and often they are because you make them different. It is much harder to sustain high levels of crime and to see others as being of very different racial groups in those societies and at those times in which the economic difference between ourselves are so much less.

Along the street where I live today almost every home has a burglar alarm. Most of these are defunct. From their appearance it can be seen that they were put up in the 1980s, during that last period when inequalities rose abruptly, society dislocated, swastikas were a common part of the graffiti and property crime soared.

Not far from the street where I live today people are being newly impoverished. The local council which is the main employer in many poorer areas is laying off huge numbers of staff, mostly the lower paid council workers. Other employers are following suit. With even more harmful effect very large numbers of youngsters leaving school or collage are no longer being taken on for work. Lord Young, a former Conservative Minister, said on 19 November 2010 that the effects of the cuts would be minimal because many people leaving the public sector would be retiring (Parry, 2010). He appeared to have no idea when he said this that by not replacing those leaving, youngsters would not gain their jobs, and would then also not provide the services. Benefits are about to be cut, and it is being said that people will be forced to work for their dole, rather like the Youth Training Scheme (which did not work in the 1980s). People are getting rightly angry at the stupidity of the rich.

All this is happening because we have chosen not to make cuts in other ways, not to take from those with most of the national wealth to pay the national debt. We should not be surprised to see crime rise again in the near future, nor to see racial divisions increase, nor to see the two again being linked. And we should also not be surprised to see others say that all this is to be expected if we don't adopt

the most obvious of solutions and instigate social changes that reduce the economic gaps between us, especially in a time of austerity. And we should not be surprised to find other people like Lord Young arguing against such sensible suggestions because they are so ill-informed and estranged from normal society.

Greater equality does not cure racism. Fear of others, of 'outsiders', is higher in more equitable countries. Fear in general is higher in more unequal countries. This might well explain why far-right parties have won so many more votes in parts of mainland Europe as compared to Britain, although in Britain some of the Conservative party have soaked up those votes at certain times. What greater equality does do is reduce the racism endemic within a society, and the crime committed and suffered by those who are part of that society. How can you agree upon a set of laws to equally apply to all if you start off so unequal? How can you see each other as the same if some are so much poorer than others?

4. Understandings of Police Race Relations

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Introduction

Discussions about police discrimination often focus upon the overrepresentation of ethnic minorities in the criminal justice system. The pattern is diverse for different minority groups but stop and search statistics and the profile of the prison population, for example, provide evidence of overrepresentation at just two points of the criminal justice system (Bowling and Phillips, 2002; Webster, 2007). Many more examples could be cited. The other side of the coin is the under-representation of ethnic minorities. The extent to which, for example, racial harassment is under-recorded in police statistics, or whether there are particular cultural factors or constraints that make some minorities less likely to offend and to therefore be underrepresented in official statistics are long-standing questions. When we turn to the numbers of ethnic minorities employed within criminal justice agencies we again find under-representation (Bowling and Phillips, 2002). Both higher and lower levels of minority ethnic representation at different points of and in different places within the criminal justice system therefore need analysis and explanation.

These aspects of the over- and under-representation of minority ethnic groups within the criminal justice system are now under the direction of the coalition government and the new political context that it has set. A diminished significance of race in politics, which harmonizes with the policies of the last Labour government, especially their 2010 Equality Act, and the new coalition government's express desire to move away from what it sees as the excessive 'bureaucratic accountability' of the 1997–2010 Labour governments are two key notes of its approach to them.

The Diminished Recognition of Race

The diminished recognition of race in politics has been shaped by the passing of the Equality Act 2010, legislation initiated by the previous Labour

government. Here, ethnicity is placed alongside and given parity with the major social divisions of gender, age, religion and sexual orientation. Further, diversity, with a focus upon the differences between groups rather than the sameness of inequality experienced by all groups, has been defined as central to debate and public policy. Each ethnic group therefore engages in the political sphere, making its own, particular case when discrimination is experienced. This marks a move from a focus upon race as central to inequalities experienced by all ethnic groups.

The Stephen Lawrence Inquiry was probably the key and final point at which race became of central concern to the politics of the last Labour government (Macpherson, 1999). There was no implicit or explicit mention of diversity within the Lawrence report itself or in parliamentary debates following it. All black and minority ethnic (BME) groups were unified when, for example, the inquiry recommended that all police constabularies should be given government defined targets for their recruitment. Annual reports from the Home Office assessed progress against these national targets but they were scrapped in 2009 and replaced by locally agreed ones, to be determined between the police and their local police authority.³ The coalition government has now scrapped all targets.

Targets for the recruitment, retention and promotion of BME police officers (and staff) have been very helpful in the business of ensuring that chief police officers remain focused upon addressing the inequalities of under-representation that have been documented. There are many difficulties with the setting of targets and they are certainly not a panacea to addressing the under-representation of BMEs within the police. They are, however, an important means to a clearly stated, publicly expressed objective; they do not allow constabularies to place BME recruitment in a secondary position; they provide a momentum for police action; they are a stated benchmark against which a constabulary can be held accountable; and, when not achieved, they provide an opportunity for a constabulary to

demonstrate publicly what it has done to realize a target, thereby explaining its commitment to BME recruitment and, reasonably, factors it cannot influence that mitigate against its objectives. Without targets for BME recruitment and related subjects we create a more uncertain context for policy development, implementation and monitoring.

As we have said, targets are not a panacea. They can, for example, lead constabularies to do little more than chase a number of new recruits, irrespective of strategy, fail to foster any commitment to equality and, through the massaging of data, manipulate progress or not towards a target. They can lead to perception of beneficial positive discrimination for ethnic minorities and the lowering of recruitment standards. And, crucially, they can grow like topsy, losing their credibility and that of the civil servants and politicians who allow their proliferation. These and other important matters need attention.

A key question now, however, is whether or not the government's removal of all police targets, including those for the recruitment of ethnic minorities, will create a situation within which, for no clear or good reason other than the purposes of political rhetoric, government and police concern for race equality will be further diluted, progress left to the priorities of each chief constable and, since police authorities are to be abolished, elected police and crime commissioners who will have virtual, sole responsibility for police accountability in each constabulary area.

There is one further aspect of policy for ethnic minority police recruitment that should be mentioned. This is the obvious one of public sector budgetary constraints on the police in coming years. Without targets it seems entirely possible that, within the context described, ethnic minority recruitment and other aspects of police race relations will not be seen as a priority, to the detriment of policing in the UK.

A further, related problem is associated with the structure of the Equality Act and the manner in which it will be implemented. The Act is inclusive, bringing all identified inequalities within the scope of one statute, with one organization – the Equality and Human Rights Commission – having responsibility for its effective implementation and continued working. Different bases of discrimination and inequality are recognized within the Act, racial discrimination being one

alongside age, gender and physical disability. At first sight this might seem a sensible rationalization of subjects that are closely related and an appropriate legal basis for the Equality and Human Rights Commission's work. One organization will henceforth monitor and advocate for appropriate action when discrimination related to membership of one of the statutorily defined groups is identified.

Our view is that we need to look more closely at this arrangement, asking if it weakens the specific attention that should be given to racial inequalities. The potential difficulty is that race could be given less attention than required when it is placed alongside gender, physical disability and other bases of discrimination. Each of these, in some ways different, bases of inequality will vie for attention within the one organization. The extent to which each basis of inequality relevant to one disadvantaged group is promoted could weaken the continued attention that needs to be given to race (and other inequalities for that matter), which we know is not a fleeting subject but one demonstrating continuing, deep fault lines of inequality.

One consequence of this situation is that Black Police Associations (BPAs), formal groups of officers found in the majority of the UK's constabularies, may be an important source of internal pressure for the police to achieve better BME representation. The strength and activity of these associations varies enormously between forces and previous research by one of us has shown that their strong focus on the criterion of race discrimination (taken in the main to refer to people of African, Caribbean and South Asian origins) has left them somewhat out of touch with the widening scope of the equalities and diversity agenda as it has developed in the past decade (Holdaway, 2009).

Current cuts in the police budget have led constabularies to place a freeze on recruitment at a time when they have formal commitments to increasing the number of BME officers in their ranks. Within this context, BPAs will need to ensure that their chief officers do not let race slip off the agenda and, maybe, ensure that the Equalities and Human Rights Commission does not meld it into a rather bland concoction.

Signs of the Future

Some readers of this article might suggest that we should wait a while to see if the lack of government

attention to the matters we have discussed materializes. That point has some validity. It is nevertheless increasingly clear that more recent government activity strongly suggests that the coalition is content to further erode what many would regard as fundamental safeguards against race discrimination by the police.

A cross-party committee of MPs is currently debating proposed changes to the Police and Criminal Evidence Act 1984 (PACE), Code of Practice A. On 2 February 2011 they discussed with Nick Herbert, the Home Office Policing Minister, a proposed change to the requirement for police officers to record information about people who are stopped by an officer and asked to account for their actions, and those who are stopped and searched (Hansard – Commons, 2011). The government has since removed the requirement for police officers to record in any way information about people they stop and ask to account for their actions and reduced the information recorded when a person is stopped and searched, including their name.

Anyone who has paused for a second to reflect upon police race relations in the UK will clearly understand that the implementation of police stop and search powers has for many years been a cause of tension between minority ethnic people and the police (Bowling and Phillips, 2002). It remains a conduit to a sense of fairness and justice amongst minority ethnic groups; to their confidence in and satisfaction with police action; and to a wider community assurance that the police are aware of and sensitive to public accountability for their actions. Why, then, would a government want to change basic rules of police practice that, so the evidence suggests, will damage these very important aspects of police race relations?

The ostensible answer is the cutting of bureaucracy within constabularies. The Policing Minister places a priority on the reduction of time taken by officers when recording information about people who are stopped over and above that of the real possibility of eroding minority ethnic groups' trust and confidence in the police. There are all manner of things he could recommend to lessen the time taken to complete forms: their electronic completion, for example. There are all sorts of other measures the Minister could recommend to cut the eye-watering proliferation of bureaucracy within constabularies. Such changes would surely be welcomed. What is surely highly questionable, not least after a consultation period of just four

weeks, is the clear erosion of police accountability related to the stop and search provisions.

Although the extent of the disproportionate stopping of minority ethnic groups by police officers is of course a subject of dispute, there is general agreement that minority ethnic groups, especially young black men and, in respect of different legal provisions related to terrorism, Asian and Muslim men, are stopped at a disproportionately high rate. That means that the vast majority of the people who are stopped and asked to account for their action and/or searched by a police officer are negatives as far as the detection of crime and/or disorder are concerned.

If this point is reasonable – and the Policing Minister's own official statistics tell him that it is – it would be equally rational for him to err, to put it mildly, on the side of caution or, in political terms, to act pragmatically to retain ethnic minorities' confidence. Or, to speak more plainly, to reverse the stupidity of a decision to reduce the monitoring of a police power that for many years has led to tension and conflict between police and minority ethnic groups. The changes to recording have made it considerably more difficult for senior police officers, government officials, the Minister, or even the local Police and Crime Commissioner – for anyone – to document police discrimination against any minority ethnic group. It is no longer possible to monitor whether or not particular individuals are picked-out as targets of needless, repeated stop and search tactics. And it is no longer possible to monitor whether or not officers are wasting their time, more time than that presently alleged to be taken by form filling, by stopping minority ethnic people needlessly. Stops asking people to account for their actions have been rendered invisible and stop and searches are far less transparent. Fairness and justice is threatened.

These indications of the government's approach to police race relations do not foster confidence. They suggest a lack of consultation and understanding about historic and present relationships between minority ethnic people and the police. They suggest a knee-jerk reaction to justify changes of legislation and policy. 'Bureaucracy' cannot and should not trump 'fairness', 'justice' and 'accountability'

5. Policing and Fairness

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Context of this Paper

Two individuals who have worked for the police service have written this article. Kelly worked as a police staff member for some three years within the field of equality and diversity. She was the vice chairperson of her local branch of the Black Police Association and left the service in 2007. Kelly continues to work in the field of equality and diversity which often brings her back into direct contact with the police service. Manny, on the other hand, served as a police officer from 1993 through to 2007 and thereafter continues to work on an advice-giving basis for various constabularies. He received a Lifetime Award for his contribution in supporting minority ethnic officers from the National Black Police Association.

Neither author claims that their understandings are anything but partial. As Bell and Opie point out, however, one person's fair and unbiased point of view may well be judged to be prejudice by another (Bell and Opie, 2002: 232). Nevertheless, through constant and critical analysis of their experiences of policing and racism and as trained and qualified individuals with significant social research skills, they felt that they had something worthwhile to say in relation to their experiences, as both insiders and researchers on policing and fairness. The words of psychologist Victor Frankl, a holocaust survivor writing about his experiences as both a captive and a researcher in a concentration camp in Auschwitz, very much encapsulates their reasoning for writing this article:

To attempt a methodological presentation of the subject is very difficult.... But does a man who makes his observations while he himself is a prisoner possess the necessary detachment? Such detachment is granted to the outsider, but he is too far removed to make any statement of real value. Only the man inside knows. His judgement may not be objective; his evaluation may be out of proportion. This is inevitable. (Frankl, 2004: 20)

Having formally left the police service, neither Manny nor Kelly are any longer 'sworn to the crown' and confined to the terms of reference

of the police service – especially the unwritten rule about 'not airing your dirty linen in public'. Moreover, no longer being insiders means that they are more freely and without organizational restrictions able to lay bare crucially important issues such as fairness that continue to influence policing.

Police and Fairness

The Equality and Human Rights Commission (EHRC) report into how fair Britain is (EHRC, 2010a) demonstrates that inequalities remain entrenched, including within the working environment. This article is set within the context of the criminal justice system and specifically the police service. Indeed, the EHRC report states that Britain is largely a 'tolerant and open-minded society and one that has become more socially liberal within recent times' and gives the example that 'working for an ethnic minority manager is now less problematic than in the past'.

As recent members of the police service and as double insiders (i.e. minority ethnic police officer and police civilian staff), the authors wish to throw light on some of the challenges that remain and are in general not publicly recognized. It is, as documented in academia, 'important to take full account of black officers' shared and yet distinctive experiences of police employment' (Holdaway, 1996: 199). We hope that this article may well do precisely that and, in doing so, uncover questions that need much greater depth of analysis, so that a more 'relatable' acknowledgement of fairness within this aspect of the criminal justice system can be captured.

The experiences of minority ethnic officers in the police service have in recent times been explored (Cashmore, 1999; Graef, 1989; Holdaway, 2010; Holdaway and Barron, 1997). Interestingly, very little has been examined in relation to ethnic minority police civilian staff. Nevertheless, the conclusion has been that such groups disproportionately experience racial discrimination within employment. Moreover, significant reports that have examined aspects of police racism, such

as the Scarman Report in 1981 (see Benyon, 1984) as well as the Stephen Lawrence Inquiry (see Cathcart, 2000), have all mentioned the important issue of ethnic minority representation as a means of getting the police service to become more tolerant and open minded.

However, based on our insider experiences, we suggest that not only do ethnic minority staff experience discrimination directly from both police officers and police civilian staff, i.e. those white staff in back office jobs, but also that ethnic minority police personnel turn a blind eye to police discrimination and at regular times take part in racist behaviours too. Stout suggests that these behaviours are 'unspoken conventions' (Stout, 2010: 20) and to an outsider, such as those conducting research for outside bodies, all may well appear socially liberal and fair. We need to seriously ask ourselves, do we really believe that black and minority ethnic (BME) staff are innocent and incapable of replicating the discrimination found in organizations such as the police service?

Moreover, are we equally to believe that, in some seven years or so, the images captured in *The Secret Policeman* television programme (BBC, 2003), that showed how the racist words and actions of police recruits at a district training centre were also replicated in the operational context, can be systematically removed from an organization as large as the police service?

As past insiders we can, in the main, say that modest change has in fact occurred since the Stephen Lawrence murder investigation. Nevertheless, we believe that incentives to encourage officers and police staff to support a new performance-driven culture, stemming from various enquiries (BBC, 2003; Macpherson, 1999; Lord Lamming, 2004) are at times themselves a further cause of acts of racial discrimination.

Cashmore concluded over a decade ago that racism in the police service was reinforced by a performance culture and this pressure inclined officers to target minority ethnic groups in socially deprived areas (Cashmore, 1999). The changes as suggested by Lord Winsor would then make no constructive difference in relation to such unfair practices.

The question then is – with ever more demands being placed on police personnel who will continue to be comparatively well compensated for actions that they may know are often wrong – can we

realistically expect them to remain anything but steadfast to the organization when asked about fairness in the work place or working for a black manager? After all, loyalty, especially during difficult times, in a service that all the time relies on it, more often than not results in staff stating that things are OK. The removal of allowances will not have any momentous impact on established racist behaviours and attitudes. We suspect, in fact, that matters will rather get worse.

Indeed, it was only recently that the Equality and Human Rights Commission said that neither Thames Valley Police nor Leicestershire Constabulary – both with significant numbers of minority ethnic staff in relation to residential population (Rowe, 2004: 35) – could justify their stop and search tactics (but as we can almost guarantee, the respective service will always attempt do so!).

The EHRC review found 'persistent race differences' in the forces' use of stop and search. It showed that black people were six times as likely to be stopped and searched as white people, with Asian people twice as likely to be stopped as white people. So what are our serving black and Asian officers and police staff doing to address these issues? Indeed, is it their sole responsibility to address such concerns or do they, in the main, act similarly to those other white officers carrying out the searches and white back office staff collating and justifying the same figures? And of course we are now led to believe that the only fair way of addressing these unfair statistics is to do what members of our current coalition government suggests, which is to stop collating the figures in the first instance!

Interestingly, the last five years have seen a shift towards measuring public sector organizations' practices in 'mainstreaming' equality and diversity both in employment and service delivery, through the use of equality frameworks. The police service has been no stranger to this and the National Police Improvement Agency (NPIA) recently introduced an Equality Standard for the police service in an attempt to increase the confidence in the workforce and the communities accessing its services.

Our trepidation, now as practitioners working in the field of equality and diversity, is that these standards are process-driven and fail to be outcome focused. In saying this, through first-hand experiences, seems very often that equality

frameworks are devised on the need to fulfil aspects of legal compliance and more often than not to adopt a business case for a diversity approach in which self-interest is a key driver (see Dickens, 1999).

For example, we habitually saw this in the police services' attempt to attract recruits from a BME background in a somewhat dismal effort to apparently improve organizational performance, in particular service delivery statistics. Such approaches ignore the wider measures needed to improve the position of BME staff in the police service and also the wider criminal justice system. No employee, irrespective of their ethnicity, should be expected to replicate the unfair culture of discrimination that flourishes and is hidden behind the glossy reports and glossed-over statistics, let alone state that everything is OK, when it clearly is not.

In short, Britain's criminal justice system, particularly the police service, remains worryingly unfair and, with the proposed government cuts, ethnic minority communities will disproportionately continue to bear the brunt of the consequences. Some things hardly ever change. We believe that the people who can improve this situation, mainly members of the service themselves, for the most part do not wish to see this change. By comparison, theirs is a 'happy lot', for the most part if you are fair, in colour that is!

6. 'Suspect Populations': Irish Communities, Muslim Communities and the British Criminal Justice System

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There have been a variety of 'suspect' populations down the years. There is a long history of attributing suspicion of criminality more readily to working class than middle class people, and in the 1970s young African-Caribbean men were subject to the use of the SUS laws in a discriminatory way. Although these laws lapsed in use the overrepresentation of African-Caribbean men in criminal statistics has persisted (both these issues are dealt with elsewhere in this volume). Here what I discuss is the practice of conceiving of groups within civil society as 'communities' and how this meshes with conceptualizations of certain populations as 'suspect'. What distinguishes the notion of suspectness in relation to Irish communities and Muslim communities is that they have been suspected of engendering, or of harbouring, individuals who might engage in political violence. They have been the object of specific forms of policing and processes within the legal system under the Prevention of Terrorism Act (PTA) and the Terrorism Act (TA). What is also apparent is that both Muslims and Irish Catholics are overrepresented in the criminal justice system as revealed by the prison population statistics.

There may well be a two-way traffic of notions of suspectness between the counter-terrorism infrastructure and the criminal justice system reinforced by the minority ethnic and class positioning of these two populations. Most people arrested under the PTA or latterly under the TA, are not charged under this legislation. If they are not released without charge, however, they are charged under sections of the wider criminal law.

There has been much written about minority ethnic groups and the criminal justice system and this publication results from the fact of their continuing disproportionate representation in that system. Although the Irish are usually ignored in the context of these studies the evidence that there might be discrimination towards the Irish lies in two areas: the proportion of Roman Catholics incarcerated and the evidence about foreign nationals in prison. Historically the Catholic population in Britain is

predominantly the result of Irish immigration as its regional distribution reveals. In the past ten years this has been supplemented by immigration from Poland and Latin America. However, in 1991, before the recent mass global immigration to Britain, the first National Prison Survey was undertaken in England and Wales. It recorded that 19.4 per cent of prisoners were Catholics at a time when Catholics accounted for eight per cent of the population in England and Wales.

The Offender Management Statistics Quarterly Bulletin now provides data on religion (see extracts in Berman, 2010). It records that in 2009 those categorized as Muslim made up 11.9 per cent of the prison population and Roman Catholics made up 17 per cent. Respectively these two religious groups made up 3.1 per cent and 8.1 per cent of the total population at the time of the 2001 Census. Between them they therefore comprised nearly 29 per cent of the prison population, while making up 11.2 per cent of the total population. The figures reveal that Muslims are more disproportionately incarcerated than any other religious group and that the historically disproportional representation of Catholics as part of the prison population persists.

If alternatively we examine the prison population in terms of nationality and ethnic background we find that in September 2010 there were 11,062 foreign nationals in prisons in England and Wales and that Jamaica, Ireland and Nigeria are the countries with the most nationals in prison establishments (Berman, 2010). It is impossible to use the ethnicity data to trace how many Irish are in prison because all the statistics are presented with 'white' as a homogenous category. What the ethnicity figures do confirm is that the most disproportionately represented group in prison are those categorized as black or black British, with Asian and Asian-British the next most disproportionately represented (Berman, 2010).

Irish community groups since the 1990s have argued that there is widespread resistance to

discussing issues about the Irish and the criminal justice system despite evidence of discriminatory treatment in, for example, stop and search and in magistrates' courts (Hickman and Walter, 1997; Young, 1994). Undoubtedly some of the resistance was explained by the over determination of all issues connected with the Irish by 'The Troubles' in Northern Ireland and the operation of the Prevention of Terrorism Act. However, given the suggestive evidence that exists of possible discrimination towards Irish Catholics in the criminal justice system it is a serious omission that the 'white' category is not disaggregated in the published prison population statistics. Also, even a small proportion of Irish people among the 'white' category will lead to an underestimate of the real difference between the treatment of black and Asian groups and the majority ethnic group.

Both Irish communities and Muslim communities are the result of post-war migrations into Britain in the 1950s and 1960s, plus their children and grandchildren. There have also been significant immigrations since the 1980s of both Irish and Muslims. This common history of immigration is a contextualizing similarity. Both Muslims and Irish people form part of the complex and vibrant multiculturalism that characterizes Britain's urban spaces and the complex intermingling that this ensures (Gilroy, 2005; Hickman et al., 2008). A similarity exists, therefore, in the extent of their integration into Britain; members of both Irish communities and Muslim communities live and work as normal Britons (Sharma and Sharma, 2003). This, it is arguable, has been their most disturbing aspect. Both members of Irish communities and Muslim communities are seen as living and working as normal Britons while lacking a core 'Britishness'.

Recent comparative research shows the two sets of communities are set against Britishness in different ways in, for example, the press. In the 1970s to 1990s, a comparatively localized suspect community was framed in terms of its homogenized national characteristic ('the Irish', with a proclivity to violence). This characterization masked different religious identities and national allegiances. In the 1990s and 2000s another suspect population was framed in terms of an apparently homogenized religious identity (Muslim, non-Western), which masks a wide range of ethnic, national and denominational identifications. While terrorism tends to be more frequently associated directly with the IRA than with the Irish as a whole in newspaper headlines, Muslim communities as

a whole tended to be associated more directly with terrorism and extremism (Nickels et al., 2010). However, in a critical discourse analysis of newspaper articles between 1974 and 2007 we found that despite differences identified in headlines, both Irish and Muslim communities are constructed as 'suspect' through the frequent implicit and explicit juxtaposition of the terms 'law-abiding majority' and 'extremist minority' when discussing both sets of communities. The construction of (members of) these communities as 'suspect' occurs mainly in the ambiguity of much news discourse and in the permeability of the boundaries between 'moderate'/'innocent' and 'extremist'/'threatening'. This is exemplified in frequent implicit and explicit mentions in the press of 'the innocent Irish' and 'moderate Muslims' and their correlates 'threatening Irish' and 'extremist Muslims'.

Despite the protests of policy makers and politicians that they always distinguish between moderate Muslims and Irish and extremists, discourses have been in regular circulation that attach being responsible for political violence to 'being Muslim' or 'being Irish'. Labelling something or someone as 'terrorist' or rendering communities 'suspect' of harbouring terrorists has the impact of excluding other possible narratives. In the process of achieving this 'terrorism' de-legitimizes those who are so labelled and simultaneously provides legitimacy for the policies and practices brought to bear on them. As recent attacks, like those of 7 July 2005 in London, were conducted by individuals claiming to act in the name of Islam, and since the majority of Muslims living in Britain are of immigrant descent (many with Asian, Arab or African origins), minorities matching any of these ethnic or religious characteristics have been targeted by public stereotyping and counter-terrorism measures (Blick et al., 2006; Spalek and Intoual, 2007).

Key informants in our research were asked to compare the contemporary period with the period when the Irish were a 'suspect' community'. The similarities mentioned more than any others were that both Irish communities and Muslim communities were associated with terrorism and similar measures had been implemented in both eras. Key informants argued that the response to bombings was to associate terrorism directly with specific groups of people, namely Irish or Muslims, and this extended suspicion to anyone thought to be Irish or Muslim. The similarity was drawn in terms of the marginalization of Irish and Muslims

as perceived endorsers of political violence and as potential traitors. Implicitly both were positioned outside of Britishness and the values its citizens are expected to share. Key informants made connections between the two eras and described processes whereby whole communities come to be perceived as networks of 'risk' because they may share characteristics of the presumed 'typical terrorist' (Hickman et al., 2011).

A key hallmark of the British state's response to 'The Troubles' was to criminalize the IRA and Irish republican violence generally. This policy was aimed at marginalizing the profile and impact of political violence and was a central element of a 'containment' counter-insurgency strategy. This criminalizing discourse was part of a conscious strategy of psychological warfare operating in tandem with the representation of political violence as the result of irrationality and psychopathic tendencies (see Miller, 1994; Schlesinger et al., 1983). A noticeable intensification of security and policing measures marks the transition between what are sometimes referred to as the 'Irish' and the 'Muslim' eras. A major difference underlying these policies is the rationale that the government develops in order to justify its ever stricter and more expansive measures. The post-2000 security and counter-terrorism policies are justified with reference to ideology and dissent that are reminiscent of the Cold War era (see Pantazis and Pemberton, 2009). The positioning of Muslim communities is similar yet different to that of Irish communities in the previous era of political violence. They are both rendered 'suspect' by harsh security measures but in the more recent period a number of factors and dynamics are in play that make the positioning of Muslim people different from that of the Irish. The specificity of the response and discourse of the political establishment in relation to Muslim communities with its emphasis on religion was absent in the period characterized by Irish republican political violence, especially in relation to its implementation in Britain rather than Northern Ireland.

The representations and treatment of the Irish in the past have set a precedent for the treatment of Muslims in the current period. Despite anti-discrimination legislation, Muslim communities today are subjected to similar processes of construction as 'suspect' in the media as Irish communities in the previous era. Although there are differences, in that Irish communities were represented as a threat to the British state and Muslim communities as a threat to perceived

British values and culture, nevertheless the process of representing 'suspect communities' in relation to political violence is similar in both eras. This is effected through the circulation of ambivalent discourses and in the porous boundaries between representations as 'moderate'/'innocent' and 'extremist'/'threatening'. A panoply of counter-terrorism measures for the past four decades have been justified in this way and those laws have subjected particular populations of immigrants and their descendants to draconian measures resulting in injustices and a wide array of other impacts on both individual lives and on communities. These 'suspect' populations are also overrepresented in the criminal justice system, suggesting that threaded through its operations is a process of being more suspicious of –and consequently more readily arresting, prosecuting and imprisoning – people who belong to certain perceived categories. There is a need for more research and evidence about the intersection of ethnicity, religion and class in the operations of the criminal justice system.

7. Using the Human Rights Framework to Drive Criminal Justice Public Services: Addressing the Issue of Overrepresentation

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Until such a time as the number of young black people in the criminal justice system begins to mirror that of the population as a whole, we urge government to review, revise and redouble its efforts to address overrepresentation and its causes. A great deal depends on its success in doing so. (House of Commons, 2007: 78)

Introduction

Human rights as a post-World War II discourse were introduced to regulate the relationship between the powerful, authoritative state and individuals independently of their citizenship status. By virtue of our humanity everyone is entitled to basic rights and freedoms, all referred to as 'human rights'. And yet, despite the many years of international and national regulation of human rights related affairs, we are yet to see public authorities, and criminal justice agencies in particular, using them as a framework for decision making and service delivery. I have argued elsewhere that human rights can provide a measurable model that could drive significant improvements across public services (Gavrielides, 2008). It is not my intention to repeat that argument. In the limited space provided for this chapter, it is also impossible to provide a detailed account and statistical information on overrepresentation. These are matters covered in other parts of the report.

This chapter will focus on the potential of human rights values and legislation in improving criminal justice public services and subsequently helping to ameliorate the issue of overrepresentation. Particular attention will be given to youth because of the expertise which IARS has as a youth-led policy thinktank. The word 'public' in criminal justice services has to be highlighted for at least three reasons.

First, the human rights discourse falls within the public law arena and therefore has regulatory limitations for private affairs (i.e. conflicts between individuals or private organizations). Secondly,

although attempts have been made to introduce the so-called 'horizontal effect' of human rights, its impact is still debatable (Harvey, 2005). Thirdly, and arguably most disappointingly, although the latest equality legislation, the Equality Act 2010, promised to address gaps that were created under the Human Rights Act (e.g. definition of a public authority), it failed to do so and thus no changes have been made that are worth commenting on.

Further, on the above third point, through the positive obligation doctrine (Human Rights Act 1998) and the new public equality duty (Equality Act 2010), civic society organizations had hoped that equality standards would be introduced, strengthened and extended, putting them in a higher place in the ranking order of performance measurement targets and public sector cuts. However, both Acts narrowly defined 'public authorities' without extending protection from actions of voluntary and private sector providers. In fact, in the Equality Bill, the police was originally excluded from the listed public authorities. This could have amounted to a regression from the Race Relations (Amendment) Act 2000.

After five leading cases (Poplar Housing v Donoghue (2001), Heather v Leonard Cheshire Foundation (2002), Hampshire v Beer (2003), Aston Cantlow (2003) and YL v Birmingham (2007)), a proposed Private Members Bill, pressure from the Parliamentary Joint Committee on Human Rights (JCHR) and several promises by government that the legislative confusion and misinterpretation of Section 6(1) of the HRA would be addressed, the Equality Act 2010 failed to do so. As pointed out by the JCHR, the test being applied by the courts was 'highly problematic' as in many cases it resulted in an organization 'standing in the shoes of the State', but without the State's legal responsibilities under the HRA. That had led to a 'serious gap' in the protection that the Act was intended to offer. Cases such as YL v Birmingham (2007) suggest that some of the most vulnerable sections of British society remain unprotected.

Procurement was not used as a tool to bridge this

gap either. The increasing need to cut costs and procure criminal justice services to bidders who promise more for less, in the absence of human rights and equality legislation that can cover non-public sector providers, has led to some serious questions being posed. If the law chooses to be silent on the matter while the political and economic environments point towards a new way of delivering public services, how can the value and ethics underlying the universal standard of freedom be mainstreamed amongst criminal justice service providers? The published manifestos and the emergent government thinking seem to suggest that the new UK coalition government is likely to accelerate the process of civilianization (e.g. Big Society policy) and privatization that have already significantly changed the shape of police forces. In combination with statutory requirements (Crime and Disorder Act 1998) for partnership working with voluntary and private organizations, it is expected that the emergent policy may well break down the divisions between the public, police and other agencies of social control and providers of security. These matters fall outside the remit of this paper.

By focusing solely on criminal justice public services this chapter will first explore the idea of human rights while briefly providing a descriptive account of the issue of overrepresentation. The second section will describe how the human rights framework can be used to drive criminal justice public services and through this help address institutional racism and discrimination. Finally, the third section will conclude with some recommendations for policy and practice.

Conceptualizing Human Rights and the Issue of Overrepresentation

The issue of overrepresentation: Painting the picture

In criminal justice, the concept of disproportionality refers to circumstances in which particular groups of people are represented at lower or higher levels relative to their representation in the general population. Disproportionality is therefore best understood as an indicator of anomalies that merit investigation of policies, procedures and practices.

Recent figures show that Black and minority ethnic (BME) groups account for 24 per cent of the male and 28 per cent of the female prison population, even though they constitute only about 9 per cent of the overall population in England and Wales (Home Office, 2005). Similar patterns of disproportionality are apparent at all stages of the criminal justice process. Statistics and research verify that black people are six times more likely (and Asian people twice as likely) as white people to be stopped and searched. People from BME groups are also more likely than white counterparts to be arrested, less likely to be cautioned, more likely to be prosecuted on weaker evidence, less likely to get bail and more likely to receive longer prison sentences.

The 2007 Home Affairs Select Committee (HASC) inquiry went to some length to investigate the conspicuous overrepresentation of young black people in the criminal justice system. Disproportionality in London, home to 69 per cent of black people in England and Wales, appears very high. Although young black Londoners under 18 constitute 15 per cent of the population they 'represent 37 per cent of those stopped and searched, 31 per cent of those accused of committing a crime, 26 per cent of pre-court decisions, 49 per cent of remand decisions, 43 per cent of custodial decisions and 30 per cent of those dealt with by Youth Offending Teams' (House of Commons, 2007: 14). Evidence given to the inquiry also indicates that black people in London are ten times more likely to be victims of racist attack, seven times more likely to be homicide victims and 2.6 times more likely to suffer violent crime compared to white people. Overrepresentation of young black men in gun crime figures for London was referred to as a 'specific crisis in black communities' (House of Commons, 2007: 20).

Youth justice statistics also show a disproportionate number of young black people entering the youth justice system, receiving longer custodial sentences and being under-represented in relation to unconditional bail decisions and pre-court disposals (Nacro, 2006). This suggests that patterns of differential outcomes begin at the point of arrest into the system and potentially amplify disadvantage for certain BME groups at subsequent stages of sentencing, prison, probation and resettlement. In prison, patterns of disadvantage only persist. Moreover, a thematic review of race relations in prisons highlighted that Asian prisoners feel less safe in prison and

that black prisoners feel disrespected by prison staff (HM Inspectorate of Prisons, 2005). Similar patterns of disproportionality are evident in other areas such as mental health where admission rates of black people into the mental health system are three or more times higher than for all other groups. Young black men usually enter the psychiatric system via referrals made by prison establishments. Negative experiences and inequalities for BME groups continue in decisions about treatment, medication and restriction (Nacro, 2007).

The idea of human rights

Traditionally, human rights have been divided into three generations. The rationale behind this categorization lies mainly in the work of academics (e.g. Karel Vasak), and also follows the three watchwords of the French Revolution: Liberté, Egalité, Fraternité.

The first generation of human rights encompasses civil and political rights. Their main purpose is to protect the individual from excesses of the state and they are preventative in nature (e.g. freedom of speech, rights to a fair trial). The second generation of human rights is social, economic and cultural rights. These are related to equality and, in social terms, they are meant to ensure all citizens receive equal conditions and treatment. They are mostly positive in nature, representing things that the state is required to provide to people under its jurisdiction (e.g. the right to work and to be employed). The third generation of human rights covers environmental rights and other group/collective rights that focus essentially on fraternity and solidarity.

All three generations of human rights are reflected in the UDHR which gave birth to the modern understanding of 'human rights'. For the purposes of this paper, the UDHR definition of human rights is adopted: 'Human rights refer to the basic rights and freedoms to which all humans are entitled', or as Article 1 states: 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'.

According to this understanding of human rights, everyone is entitled to these minimum guarantees simply because of their humanity. They are not attached to concepts such as citizenship or nationality, but exist to provide minimum protection against state action.

This does not mean that human rights do not have practical significance. As Gavrielides argued, human rights 'are not abstract ideals, but concrete principles underlying the HRA. They are also defined through the jurisprudence of the European Court of Human Rights and the domestic courts' (Gavrielides, 2008: 193). For instance, fairness can relate to how proceedings are conducted and can be seen in Article 5 of the Convention, the right to a fair trial. It can also refer to just and proportionate outcomes, for example in certain cases the court must examine whether the level of interference by the State with the right of an individual is in proportion to the needs of society. Respect is implicit throughout the whole of human rights law, but also explicit in a number of articles. For example, under Article 8 a person has the right to have his or her private life respected. Equality is given importance in the Convention through Article 14, which says that the rights in the convention are available to everyone without discrimination. Dignity is present in a number of the rights contained in the convention, most notably Article 3, the right to freedom from inhuman and degrading treatment, and Article 8, which has also been interpreted to mean the right to personal autonomy.

Human Rights in Criminal Justice Public Services

Hopes and aspirations

The HRA was introduced in the hope of gradually contributing to the development of a new framework where individuals' human rights are better protected and respected. During the Bill's passage through Parliament, the Parliamentary under-secretary of State for the Home Department said that one of the results of the new Act 'will be the beginning of the strong development of a human rights culture' (O'Brien, 1998). This pledge was renewed a few years later through the words of the Secretary of State for the Home Department: 'The HRA will help us rediscover and renew the basic common values that hold us all together. And those are also the values which inform the duties of the good citizen. I believe that, in time, the HRA will help bring about a culture of rights and responsibilities across the UK' (Straw, 1999).

In 1999, the then Home Secretary Jack Straw said: 'Culture is one of those words that gets used to mean a whole of different things – and sometimes nothing at all. What do we mean when we talk of building a culture of rights and responsibilities in

the UK? These aren't empty words or mere jargon. It's what we want the whole public services in this country to move towards' (Straw, 2000). He then explained that 'culture' encompasses the habits of mind, the intellectual reflexes and the professional sensibilities, which are historically ingrained and typical of the behaviour of a particular group of people.

The JCHR went a step further by identifying the elements, which they believe comprise a culture of human rights. They said that this culture has two dimensions – institutional and ethical. 'So far as the former is concerned, it requires that human rights should shape the goals, structures, and practices of our public bodies. In their decision making and their service delivery, schools, hospitals, workplaces and other organs and agencies of the state should ensure full respect for the rights of those involved.... Achieving that requires public authorities to understand their obligations not only to avoid violating the rights of those in their care, or whom they serve, but also to have regard to their wider and more positive duty to secure everyone the rights and freedoms which the HRA and the other instruments define' (JCHR, 2002/3).

Human rights status quo in criminal justice public services

The JCHR said: 'Too often human rights are looked upon as something from which the state needs to defend itself, rather than to promote as its core ethical values. There is a failure to recognize the part that they could play in promoting social justice and social inclusion and in the drive to improve public services. We have found widespread evidence of a lack of respect for the rights of those who use public services, especially the rights of those who are most vulnerable and in need of protection' (JCHR, 2002/3).

Arguably, one of the most thorough inspections carried out on the human rights compliance of public services was the 2003 Audit Commission report Human Rights: Improving Public Service Delivery. A large proportion of the 175 audited organizations were criminal justice agencies. The study concluded that: 'The HRA can help to improve public services, as it seeks to ensure the delivery of quality services that meet the needs of individual service users ... [However] three years on, the impact of the Act is in danger of stalling ...' (Audit Commission, 2003: 3). In particular, the study showed:

- Fifty-eight per cent of public bodies surveyed still had not adopted a strategy or a corporate approach to human rights. In many local authorities, the Act had not left the desks of the lawyers. Most local authorities continued to review policies and practices on a piecemeal basis and to respond to case law.
- In the criminal justice sector the initial flurry of activity has stopped.
- The biggest risk to public bodies was their lack of arrangements for ensuring that their contractors and partners were taking reasonable steps to comply with the Act. Sixty-one per cent of public bodies had failed to act.

Organizations were reluctant to promote human rights with citizens and their communities because they feared an increase in the number of complaints raising human rights issues. The report concluded: 'Most [public authorities] failed to see the benefits of using human rights as a vehicle for service improvement by making the principles of dignity and respect central to their policy agenda, which would place service users at the heart of what they do' (Audit Commission, 2003: 10).

According to the JCHR: 'Spreading knowledge and awareness of the law [HRA] is an essential part of building a culture. But if it is left only to the courts, the original visions that the HRA should bring about a cultural change will not be realized. Litigation is an essential last resort in protecting the rights of the individual or groups, but it is not the most effective means of developing a culture of human rights' (JCHR, 2002/3).

And yet no consistent or hard effort has been made to increase human rights awareness, skills and competence amongst criminal justice professionals and indeed the system's users. In the words of the JCHR: 'We have not found evidence of the rapid development of awareness of a culture of respect for human rights and its implications throughout society, and what awareness there is often appears partial or ill-informed. We fear that the highwater mark has been passed, and that awareness of human rights is ebbing, both within public authorities and within the public at large' (JCHR, 2002/3).

The extant literature also suggests that in addition to the problem of public human rights awareness, there is also misinformation/misunderstanding and even hostility towards human rights and the HRA (Gavrielides, 2005; 2008; Ministry of Justice, 2008).

Misunderstandings and hostility in relation to the HRA occurs among criminal justice service providers as well as the general public. In relation to providers, they have demonstrated confusion and misunderstanding of the HRA. This includes public authorities as well as the voluntary and private sector. In terms of the general public, misunderstanding is mainly due to misleading media coverage particularly by the tabloid press and television. 'Some sections of the Press have characterized the HRA as a "criminal charter" and the last refuge for unmeritorious defences'. 'If the government promote the Act they risk unleashing "Eurochaos" scare stories which ministers fear will provide officials with excuses for not exercising powers that are commonplace in other states which have incorporated the ECHR into local law' (Klug, 2000).

The second level of confusion concerns the meaning and significance of human rights more generally. Various studies have suggested that:

- Human rights are often conceived by the public to be used only for either extreme cases of torture and inhumane treatment⁴ – or as a hindrance in the war against terrorism.
- Human rights also tend to be seen as luxury entitlements used by celebrities, travellers or even convicted criminals who want to avoid punishment or claim compensation for trivial reasons.
- Human rights are also often associated with political correctness or conceived in narrow legalistic terms and largely of interest to lawyers.
- Few people immediately associate human rights with their everyday encounters with public services while only on rare occasions are civil rights perceived to be about the individual rather than the community.⁵

Human rights are also believed to encourage a 'compensation culture', 'a name, blame, shame and claim culture, the American Model that we all wish to avoid' (HRH The Prince of Wales to the Lord Chancellor, quoted by the *Daily Telegraph*, 2002).

Francesca Klug argued that:

'Given the absence, to date, of human rights education in schools, most people glean their understandings of bills of rights from American

movies and news reports that gun control cannot be introduced into the US as a result of this albatross. There is confusion between human rights, bills of rights and international or regional human rights treaties. This general lack of clarity tends to result in one of two repeated misconceptions. First, that all bills of rights are presumed to be in the image of the liberal, American model with its Supreme Court that can overturn all legislation. Second, that every time the European Court of Human Rights makes an adverse judgement against the UK, it is assumed that this is part of a plot hatched in Brussels to undermine British sovereignty. In fact, of course, the ECHR has nothing whatsoever to do with the European Union....' (Klug, 2000)

Realising a human rights culture in criminal justice services

A question that follows from the above analysis is what are the strategic steps that will help to create a human rights culture in the criminal justice system? In 2003, the government said '...It is incredibly important that [we] promote a human rights culture right through Government and beyond. There are four things I can identify that indicate a strategic approach. The first... is the setting up of a commission.... I think that is a very important signal, that the Government cannot do it alone; [Second] it is making Government review how it is mainstreaming human rights; [third] it is making connections with outside bodies [e.g. Audit Commission]; and [fourth] it is making sure that the review of our obligations under various international instruments comes to an end as quickly as possible' (Lord Falconer, 2003).

Seven years later and the results are not encouraging. After fierce political battles and behind the scenes negotiations, the Equality and Human Rights Commission (EHRC) was established with arguably the broadest human rights and equality remit that has ever been given to any single body. This is noted in a negative tone as the Commission itself acknowledged its lack of human rights expertise and resources (EHRC, 2009).

The carrying out of a special Human Rights Inquiry left everyone wondering 'what next?', and yet the tangible results are yet to be seen while the press and public opinion are increasingly becoming more negative towards the newly established body. In relation to the second and third 'strategic

step', as argued above, opportunities such as the Equality Act and projects such as the Human Rights Insight Project were missed while the named bodies, regulators and inspectorates are now being dismantled due to financial cuts.

The JCHR said, to make a culture of human rights a reality, individuals need 'to understand what their rights are, and [be] able to seek advice, assistance, redress and protection if they believe that their rights have been violated or are threatened with violation. It also requires that they understand their responsibilities for upholding those rights in their dealings with others'. So far as the moral or personal dimension is concerned, a culture of human rights could be characterized as having three components:

- First, a sense of entitlement. Citizens enjoy certain rights as an affirmation of their equal dignity and worth, and not as a contingent gift of the state.
- Second, a sense of personal responsibility. The rights of one person can easily impinge on the rights of another and each must therefore exercise his or her rights with care.
- Third, a sense of social obligation. The rights of one person can require positive obligations on the part of another and, in addition, a fair balance will frequently have to be struck between individual rights and the needs of a democratic society and the wider public interest (JCHR, 2002/3).

So, how would we know when a human rights culture has been successfully created in the criminal justice system? Maybe when there will be a:

... widely-shared sense of entitlement to these rights, of personal responsibility and of respect for the rights of others, and when this influences all our institutional policies and practices. This would help create a more humane society, a more responsive government and better public services, and could help to deepen and widen democracy by increasing the sense amongst individual men and women that they have a stake in the way in which they are governed. (JCHR, 2002/3)

A culture of respect for human rights can be created and successfully enjoyed through the parallel engagement of the following three mechanisms:

- the letter of the law as this appears in the clauses of the HRA and other domestic and international human rights and Equality Acts/treaties;
- the jurisprudence of both the European Court of Human Rights and domestic courts. It is through their case law that the principles enshrined by the Convention/Act are interpreted in practical terms;
- a pattern of a human rights friendly behaviour that is created not on a piecemeal basis or because of fears caused by past litigation, but through an automatic triggering of ethical standards that reflect the principles and spirit of the Act. Professor Francesca Klug sees this as a framework 'which emphasizes tolerance, privacy and autonomy on the one hand, and concern for the rights of others and the needs of the wider community on the other' (Klug, 2000).

Making it Happen: An IARS Case Study

Clearly to create a human rights culture in the criminal justice system and help address the issue of discrimination, institutional racism and overrepresentation, human rights awareness is needed in terms of the principles underlying the HRA and, more importantly, in relation to what human rights mean more broadly for criminal justice service providers and the public.

In light of the recent legislative, policy and institutional changes, IARS⁶ looked at the value Human Rights Education (HRE) can add, and its impact on young people's attitudes, perceptions but also aspirations about their lives, the society in which they live and the relationship they wish to have with their peers particularly if they belong to a different racial, cultural or economic background.

IARS set off to examine this bearing in mind that the current curriculum aims to teach about human rights, i.e. learning about the historical development of human rights, key human rights documents (mainly international statutes and UN conventions), mechanisms of protection and basic conceptions of human rights. However, what IARS thought could add value is promoting HRE in a way that is not just about human rights, but also for and in human rights. Put another way, promoting

understanding and embracing the principles underlying the concept of human rights. It is also about improving individuals' lives through the use of these principles.

Through face-to-face training, online material and peer mentoring and support, we use HRE as a tool to empower young people to understand and better manage their relationships within the criminal justice system. This includes those who have been involved with the system either as offenders or victims. The course is flexible and equips the young people with the language and principles of human rights, with a focus on how the HRA works. This is then put into context by examining case studies that are relevant to their interest, e.g. how a policeman has conducted a stop and search exercise. The course is not approached in an academic way, but rather focuses on the day-to-day issues that young people face. It also brings criminal justice professionals (e.g. police officers, police managers, prosecutors, and probation staff) together with young people. This helps to initiate a debate, ask questions, and increase awareness about their respective realities and ways of looking at the world. Ultimately, this interaction helps break down stereotypes while the youth-led model of our organization keeps young people engaged, interested and inspired by the possibilities of their new knowledge and skills.

Arguably, advocates of HRE are willing to utilize the smallest opportunity to their advantage, by developing a range of materials which, if they cannot be used in the citizenship curriculum, will piggyback on other curriculum areas in order to increase young people's exposure to human rights ideas. Research by organizations such as the National Foundation for Education Research demonstrates that, by and large, teachers of other subjects, which do not deal substantively with social, moral and political issues, find it difficult or unappealing to become side-tracked by HRE. Pressure on curriculum time, the need to cover the syllabus, achieve targets, be accountable, all mitigate against the success of HRE.

Any concept of rights, and this is especially true of human rights, has to be closely allied to the concept of responsibilities. Individuals are entitled to demand their own rights from duty bearers, but they also have to respect the rights of others. However, this does not mean that the young people who participate in our programme need to become experts in human rights. Put another way, to behave in a manner commensurate with the

letter and the spirit of the HRA should not require expert, or even any, knowledge of the Act or its principles. Rather the aim of the HRA is to create a virtuous circle of human rights behaviour in which service providers fulfil their positive duties under the Act and consumers are able to encourage this behaviour on two fronts:

- by expecting service providers to achieve this standard of provision; and
- by themselves displaying 'human rights friendly' behaviour.

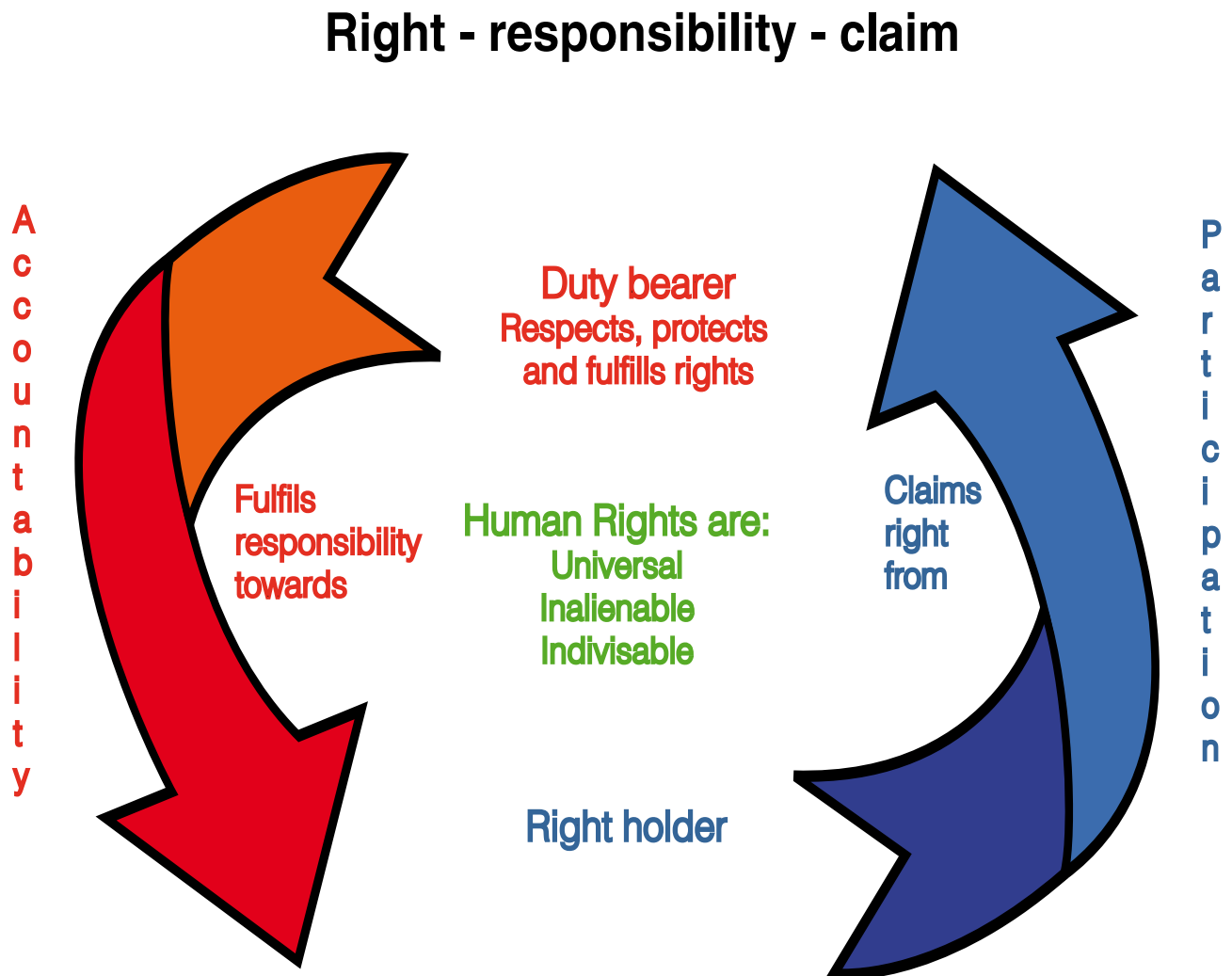
This virtuous circle of human rights and responsibilities is illustrated by Figure 1.

There have been studies which may prove helpful in considering how best this balance may be achieved. For example, a survey conducted by the Prime Minister's Strategy Unit suggested that when reforming any public services to achieve the greatest public value⁷ possible: 'There is clearly a balance to be struck between involving the public sufficiently to ensure that government actions reflect their preferences and are legitimate, and on the other hand overburdening the public with questions and forms of involvement that are properly the concern of elected representatives and officials' (Prime Minister's Strategy Unit, 2002). Although the study's focus was not human rights, its analysis, conclusions and recommendations can be used in the context of this report.

The Strategy Unit concluded that when the right balance is struck and the consumer is involved appropriately, many benefits accrue. In particular, it suggested the following steps:

- identify the issues on which the public will want to be involved, to obtain citizen views where important but not to be over-demanding;
- provide forums in which citizens/groups can learn about issues, express views, explore scenarios and seek to reach accommodations that can inform policy;
- recognize the limits of 'revealed preferences' and explore the potential of 'stated preference' approaches that focus on policy trade-offs;
- recognize that as well as listening to the public, we might also develop techniques that

Figure 1. The virtuous circle of human rights and responsibilities



delegate (at least in part) decision making responsibility to the public.

To conclude, the virtuous circle of human rights and responsibilities inspired and targeted by the HRA is dependent upon a successful engagement of the public and criminal justice service providers. This involves a process of empowerment that can be achieved by providing a level of service that consumers come to expect on the one hand and by providing enough knowledge to enable them to challenge the system when the service is poor. While seeking ways to engage and empower consumers, the following criteria need to be kept in mind at all times:

- the ultimate goal should be the improvement of the delivery of criminal justice services and the better protection and respect of individuals' rights;
- this process should not over-burden individuals; while
- direct consultation should be sought to identify the best methodologies in using the principles underlying the HRA to improve the delivery of services to vulnerable groups which might indeed not be able to participate in this process at all. As a youth-led organization at IARS we used our youth-led methodologies of project design, project delivery and project evaluation. The model is replicable.

Concluding Remarks

Despite numerous reforms, the criminal justice system continues to fail BME groups on a number of issues. According to the British Crime Survey, BME groups account for about 25 per cent of the male prison population and 61 per cent of adult black offenders are serving custodial sentence of four years or more, compared with 47 per cent of white prisoners (Home Office, 2005). Even more worryingly, these numbers increase when it comes to young people:

There is some evidence to support allegations of direct or indirect discrimination in policing and the youth justice system. (House of Commons, 2007)

Lack of confidence in the criminal justice system may mean that some young black people take the law into their own hands or carry weapons in an attempt to distribute justice and ensure their own personal safety. Despite the legislative changes that followed the Stephen Lawrence Inquiry, the perception, as well as the reality, of discrimination continues to promote involvement of young BME people with the criminal justice system. Of course, this is not a cause for justification. The causes of young BAME people's overrepresentation are complex, reaching down into the very foundations of our society. Social exclusion and inequality is recorded as the primary cause for this failure. Young BME people are disproportionately subject to socio-economic disadvantage, while educational underachievement is a symptom and cause of disadvantage. This often leads to school exclusion and lack of positive role models to which to aspire. There is no single solution to the issue of overrepresentation, institutional racism and discrimination within the criminal justice system. This paper has argued one possible model; the human rights way.

Notes

1. The university figures were extracted from the 2009/10 HESA Student Record, which reveal that in 2009/10, there were 400 male 'Black or Black British – Caribbean' students studying at undergraduate level in Russell Group universities. The prison figures were extracted from 2005 section 95 statistics. Although the actual number of African Caribbean males aged 18-24 is not given, our number (1214) was calculated by assuming that the proportion of African Caribbean males to the total Black British male prison population (57%) also applies to the 18-24 age group, and that the proportion of males to the total prison population (93%) applies as well – see tables 9.1 and 9.2 of Home Office (2006).

2. Since the 9/11 attacks, 1834 people have been arrested in Britain in connection with terrorism-related incidents, of which 422 were charged with terrorism-related offences. So far, 237 of those charged with terrorism-related offences have been convicted. There are 14 outstanding trials yet to be completed (Travis, 2010).

3. As it happens, both authors of this article are academics who have been involved in policy advice, research and other forms of work informing the setting of targets. Further, both are current and former members of police authorities and statutorily responsible, therefore, for how our respective constabularies turn targets into tangible numbers of recruited officers. We are concerned with strategy to realize targets; with community engagement to encourage and give confidence within communities and to thereby enhance recruitment; and to ensure that 'ethnicity' remains a subject of police policies and practices.

4. In a live discussion on Radio 5, Late Night Live, on 2 October 2002, an Asian man who fled to Britain 30 years ago phoned in to tell to the radio audience: 'I came here because Britain is a free country. We don't need a Bill of Rights'.

5. In 2002, in a series of letters to the Lord Chancellor, the Prince of Wales wrote: 'Human rights legislation is only about the rights of individuals' (*Daily Telegraph*, 26 September 2002). However, according to the latest report of Mr Alvaro Gil-Robles, the Council of Europe's Commissioner for Human Rights, the Council was concerned with the frequency with which calls for the need to rebalance rights protection were heard. These calls, the Commissioner said, argue that human rights have shifted too far in favour of the individual to the detriment of the community. However, the Commission said: '... It is perhaps worth emphasizing that human rights are not a pick and mix assortment of luxury entitlements, but the very foundation of democratic societies. As such, their violation affects not just the individual concerned, but society as a whole; we exclude one person from their enjoyment at the risk of excluding all of us' (Council of Europe, 2005).

6. IARS is a youth-led, social policy thinktank that was set up in 2001 to empower young people so that they can influence policy, practice and the law, and acquire a voice that will enable them to democratically engage in society as equal citizens. Through volunteering, youth-led work, training, skills-development programmes and research, young people at IARS aim to improve practices that affect them and as role models participate in society and support their peers and youth-led organizations and groups in creating a tolerant and equal society where young people are respected and valued. IARS is unique in its structure and the only youth-led social policy thinktank in the UK.

7. Public Value refers to the value created by government through services, laws, regulations and other actions.

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