

The quality of (in)justice in London's magistrates' courts

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In 2011, riots occurred in 10 British cities following the killing of Mark Duggan, a black man, by the Metropolitan Police. In the wake of the riots, there were reviews into the treatment of black, Asian and ethnic minority (BAME) individuals in the criminal justice system (Lammy 2017) and into how the police dealt with rioters (HMIC 2011; NatCen 2011). However, no significant changes to the criminal justice system (CJS) were made.¹

In May 2020, the death of George Floyd during an arrest in Minneapolis, Minnesota, USA, reignited demands concerning racial injustice in the US which have shone a harsh light on the work of the police, leading to demands to 'defund' and demilitarize policing. Unlike the riots in Britain, however, public demands to address institutional racism in US policing have ignited an international debate regarding structural racism and policing.

Because the work of the police, the courts and prisons are interlinked in the UK, critical questions need to be asked of the entire CJS, not just the police (regardless of discriminatory 'stop and search' policies in the UK, where the latest government statistics show that there were four stop and searches for every 1,000 white people, compared to 38 for every 1,000 black people – see UK Government 2020).² 'Justice', says Nader (2009), is a highly ambiguous word. It serves both as an ideology that promotes equality and also takes its character from wider society: an unjust and iniquitous society necessarily gives rise to controlling legal processes, which reinforces injustice and inequality and sustains the status quo. Nader urges us to examine the nature and experience of 'injustice' to identify common ground to better the human condition.

In London, a large percentage of the population exist precariously – which is to say that there are growing numbers of people whose lives are affected by 'unstable labor, low and unstable incomes and loss of citizenship rights' (Standing 2018: 2). This growing social class is characterized by poverty and homelessness and, while a large percentage come from BAME groups, it also includes sizeable numbers of white people. This socially heterogeneous class is the new 'dangerous class' and has been created by neoliberal reforms (Wacquant 2012), the crisis in the welfare state (Koch 2018; Taylor-Goodby 2013), de-industrialization and the creation of a global economy. It is this class of people who bear the brunt of policing.

The purpose of magistrates' courts is to provide 'fast and effective' 'summary justice' with the objective of producing 'the best justice at a reasonable cost and within an acceptable timescale' (Gibson & Gordon 2008: 14). A different way of putting it is that magistrates' courts dispense relatively quick and cheap justice for offenders who do not have the right to a trial, compared to Crown courts which deal with serious offences and adopt greater procedural safeguards to ensure that 'justice' is done (Carlen 1976).

Anthropologists have done very little research on summary justice/magistrates' courts in the UK or on the intersection between race, socio-economic precarity and justice. In 2016-2017, I undertook ethnographic research in 13 magistrates' courts across metropolitan London, with the intention of understanding how magistrates' courts – which process 94 per cent of all criminal offences – deal with 'minor' offences (See Fig. 1).

Magistrates' courts hear indictable and either-way offences – the former are serious offences which should normally be referred to a Crown court for trial, whereas the latter can be tried by magistrates – and a range of 'sum-

Fig. 1. Criminal Offences

Indictable only

Murder, manslaughter, rape, robbery and serious fraud cases can only be heard at a Crown court.

Triable either way

These can be dealt with either by magistrates or before a judge and jury at the Crown court. These offences include theft, handling stolen goods, fraud, drug offences, domestic violence, sexual assaults on a minor, carrying a concealed/bladed weapon, assault on a police officer, GBH (grievous bodily harm) etc. A defendant can insist on their right to trial in the Crown court. Magistrates can also decide that a case is so serious that it should be dealt with in the Crown court – which can impose tougher sentences if the defendant is found guilty. The maximum punishment for a single summary offence is six months in prison and/or a fine of up to £5,000.

Summary non-motoring

Minor assaults, theft, shoplifting, possession of drugs, public order offences, drink driving, threatening and abusive behaviour, racially aggravated assault, travelling on public transport without a ticket, begging, breach of bail, indecent exposure, fleeing arrest etc.

Summary motoring

Motoring offences: causing injury, causing death, dangerous driving, driving under the influence, failing to supply the identity of the driver, other motoring offences, vehicle insurance offences, speed limit offences (not theft of vehicles).

mary' offences, including public order offences, domestic violence, drug and fraud offences and motoring offences.

Official statistics reveal the reach and impact of these courts. In 2019, approximately 1.34 million offences were tried in magistrates' courts across England and Wales. Approximately 84 per cent of defendants in magistrates' courts and 84 per cent in Crown courts were found guilty and convicted.³ Between 2012 and 2016, magistrates in London heard on average 222,000 offences a year, of which just under 2 per cent were for indictable-only offences, 21 per cent were for triable either-way offences, 43 per cent were for summary non-motoring offences and 33 per cent were for summary motoring offences.⁴ 'Summary justice' – hearings that are conducted in proceedings which are carried out rapidly by omitting legal formalities required by the common law – offers defendants a limited opportunity to defend themselves: about 70 per cent of defendants plead guilty and are immediately sentenced without going to trial, and 85 per cent of individuals who plead 'not guilty' and elect to be tried by magistrates are convicted.

While there are many questions which should be raised about summary justice – including why most defendants plead guilty and what the contribution of legal counsel is in proceedings where the majority of defendants are found guilty (see Campbell, in press) – in this article, I look at some of the key aspects of injustice experienced by adults (I did not have access to juvenile courts). Before discussing my research findings, it is important to note that I observed 238 remand hearings and 23 criminal trials. In addition to making an ethnographic record of each hearing/trial to record case details, I also studied the work of the police, Crown prosecutors, magistrates and district judges, legal

1. See: Dodd (2013). See also the articles in volume 24(3) 2020 of *Theoretical Criminology* which attempt to rethink the importance of race in British criminological studies.

2. As Lerman and Weaver (2014) have argued, in the USA, one-third of American citizens have been arrested and convicted of a crime and have a criminal record.

3. See: <https://www.statista.com/statistics/1100769/conviction-rate-in-england-and-wales/>.

4. Source: Remand magistrates' pivot tool at <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2016>.

5. A vacated trial occurs when a trial that has been given a hearing date – whether a preliminary hearing, or plea or a case management hearing – is taken out of the list before the trial date. This may arise from a request by the Crown Prosecution Service (CPS) or the defence and may reflect a failure by the CPS to disclose evidence, difficulties confronted by the defence or a conflict in scheduling a case caused by the court itself.

6. In 2018, an investigation by *Channel 4 News* reported that nationally, 'nearly a million crimes were not being investigated fully' and that 'many offences are logged and reported but never passed to an officer for investigation'. The percentage of crimes that were dropped varied by type of crime and by police force from 27 per cent to 40 per cent of all offences. See: <https://www.channel4.com/press/news/lawless-britain-where-are-police-channel-4-dispatches-0>.

7. 'Cautions', which are one type of 'out of court disposal' of offences, are given to anyone aged 10 or over

for minor crimes. You have to admit an offence and agree to be cautioned. You can be arrested and charged if you don't agree. A caution is not a criminal conviction, but it could be used as evidence of bad character if you go to court for another crime. The number of 'out of court disposals' has declined from nearly 600,000 a year in 2008 to just over 200,000 in 2018 (Ministry of Justice 2019: 11).

8. For an overview of how the police are supposed to investigate offences, see the training manual used by the College of Policing at: <https://www.app.college.police.uk/app-content/investigations/investigation-process/>. However, as my book (in press) documents, the police fail to follow these steps when they investigate domestic violence and other types of crime.

9. Reply to FOI Request 7679 dated 30 April 2018 from the CPS.

10. The population census, which asks individuals how they self-identify, provides a more detailed picture of ethnicity in London than I am able to provide regarding the ethnicity of defendants. I have data on the ethnicity of defendants in 172 of the 238 remand hearings I observed.

11. This includes individuals of indeterminate ethnicity who would probably self-identify as 'White', e.g. Scottish, Welsh, Romani, Irish and Italian (the same category was used in the 2011 UK Census).

12. For a good overview of the situation, see: <https://www.instituteforgovernment.org.uk/publication/performance-tracker-2019/criminal-courts>.

13. In May 2019, the government began to 'renationalize the supervision of criminals after a botched part-privatization programme was found to be putting the public at risk. The Transforming Rehabilitation programme aimed to reduce reoffending and save money, but the government was forced to bail out failing companies and cancel contracts early in moves expected to cost taxpayers more than £467m'. The transformation was due to be complete by May 2021 (See Dearden 2019).

Campbell, J.R. in press. *Entanglements of life with the law: Precarity and justice in London's magistrates' courts*. Newcastle upon Tyne: Cambridge Scholars Publishing Ltd..

Carlen, P. 1976. *Magistrates' justice*. London: Martin Robertson.

Dearden, L. 2019. Government renationalizes supervision of criminals in major U-turn after Chris Grayling's probation failure. *The Independent*, 16 May.

Dodd, V. 2013. 2011 riots inquiry recommendations ignored by government, Lammy says. *The Guardian*, 29 March.

advisers, defence lawyers and the probation officers who appeared in court. From my observations, I created a quantitative database which recorded data on 58 elements of each hearing/trial. The database included information on the sex, gender, age and race of defendants, details of the alleged crime, the evidence relied upon, the magistrate's decision, whether a defendant was found 'guilty' or 'not guilty' (and if guilty, whether s/he was imprisoned, fined, subjected to an order or a ban etc.), evidence on the mental health and 'poverty' of defendants, whether defendants were legally represented and whether they pleaded guilty without their case going to trial.

I found that the majority of remand hearings were concluded in less than 20 minutes (hearings varied from 4 to 45 minutes). Criminal trials were concluded between 50 minutes to three hours; surprisingly, of the 23 trials I observed, in only seven cases was the defendant found guilty. For the remaining cases: in two, the defendants were found not guilty; four trials were 'vacated';⁵ three were adjourned, two were transformed into case management meetings; three individuals were convicted in their absence and two cases were adjourned when the Crown Prosecution Service (CPS) failed to disclose its evidence. In short, the majority of trials I observed did not result in a conviction.

A speedy hearing is required by law and is expedited by a number of factors. First, while the police may charge the majority of suspects with an offence, they fail to investigate a large percentage of offences⁶ and they may issue a 'caution',⁷ which diverts many suspects out of the criminal justice system.⁸ Indeed, it is rare for independent evidence of a crime to be submitted to the court. Furthermore, the police appear to focus their efforts on cases which are easy to prove, e.g. via an admission of guilt or because the defendant was arrested in possession of drugs (often as a result of 'stop and search' operations).

Second, the CPS prosecutes the cases which the police want prosecuted in part because it lacks the power to investigate cases. As Sanders (2016: 3) has argued, 'the case files sent by police to prosecutors are not neutral compilations of relevant facts, but constructions that aim to secure convictions'. Given the imbalance in power between the police and the CPS, it is little wonder that prosecutors rarely drop cases that may be evidentially weak. Indeed, a Freedom of Information request to the CPS⁹ revealed that it consistently fails to prosecute a large number of offences (see Fig. 2).

Third, magistrates – who receive little formal training – and district judges are not representative of the communities they serve: over half of all magistrates are women; about 12 per cent declared themselves as BAME; about 5 per cent were under 40 years old, whereas 52 per cent were 60 or over (Lord Chief Justice 2019). Furthermore, the judiciary rarely challenge police evidence and they rely on procedural rules and convoluted statutory 'legal language' – which the majority of appellants do not understand – to speedily hear a case.

The effect of the above factors means that in 46 per cent of the cases I observed, defendants pleaded 'guilty' when they were initially arraigned and were immediately sentenced (in 46 per cent of cases defendants pleaded 'not guilty' and their case went to trial, and in 9 per cent of cases there was another outcome). While it is clear that many defendants had committed a crime, it was also the case that other factors influenced their pleas. For instance, in a legal system where government legal aid is available to pay lawyers to represent defendants, it was noticeable that in 28 per cent of the remand cases I observed, the defendant was not legally represented. This situation raises serious problems given the speed of the proceedings, the court's reliance on legal language and the inability of unrepresented defend-

Fig. 2. Discontinued and dropped prosecutions by the CPS in magistrates' courts, youth courts and Crown courts, 2014 to 2017

	London		England & Wales	
	Dis-continued	Dropped	Dis-continued	Dropped
2014	3,673	13,307	25,378	71,612
2015	3,979	13,690	21,891	66,830
2016	4,533	14,366	17,942	58,644
2017	4,136	12,154	15,552	50,296

ants to challenge police evidence. Furthermore, lawyers paid by legal aid often did little more than assist the court by providing information about their clients; they did not appear to have adequately prepared their cases, they failed to challenge police evidence and overall, they provided a poor defence for their clients.

For a variety of reasons, it is not possible to know whether there is a causal link between a conviction and the absence of legal representation because there are too many factors which may affect the outcome of a hearing, including the type and nature of evidence relied upon by the police and possible admissions and/or pressures placed on offenders by the police in 'pre-trial procedures' (e.g. during interrogation, solicitor-client interviews and in plea or charge bargaining – see Sanders et al. 2020).

Nevertheless, a number of conclusions clearly emerge from my research. Individuals from BAME communities form a disproportionately high percentage of the defendants in the CJS compared to their proportion in the general population as Fig. 3 shows.¹⁰

Furthermore, it is not the case, as some have suggested, that individuals from BAME communities plead 'guilty' because they lack legal advice/representation. My data indicates that individuals of all ethnicities had equal access to a lawyer (roughly 82 per cent of black people, 85 per cent of Asians and 81 per cent of whites were legally represented). The problem at this stage of the CJS is not a lack of legal representation, but its ineffectiveness. In the cases I observed, lawyers, especially those paid by legal aid, appeared to do little more than process their clients through the CJS.

In addition, few steps are taken by the police, the court or lawyers to protect the rights of potentially 'vulnerable' defendants. My observations were clear: individuals with mental health problems and who were illiterate were not helped to understand the consequences of a guilty plea; such individuals were required to plead and were usually convicted. For instance, in at least 11 per cent of remand hearings, the defendant was mentally ill – they exhibited aberrant behaviour and/or were held in mental health facilities – yet legal proceedings continued, often in their absence. There are, therefore, serious questions about whether many defendants were competent to stand trial ('vulnerable' defendants should have had their cases diverted out of the court).

To return to the intersection between race and criminal justice, 50 per cent of the defendants I observed came from BAME communities, 24 per cent were under the age of 21 and 48 per cent of defendants were 'poor' (defined in terms of being homeless/sleeping rough, owing the court money for previous convictions or because court fines were deducted from the defendant's state benefits).

Fig. 4 Westminster Magistrates' Court.
Fig. 5. City of London Magistrates' Court.

Gibson, B. & W. Gordon 2008. *Introduction to the magistrates' court*. London: Waterside Press.

HMIC (Her Majesty's Inspectorate of Constabulary) 2011. *The rules of engagement: A review of the August 2011 disorders*. London: HMIC.

House of Commons 2007/8. *Policing in the 21st century*. Home Affairs Committee – Seventh Report, 30 October. London: Home Affairs Committee.

Kock, I. 2018. *Personalising the state. An anthropology of law, politics, and welfare in austerity Britain*. Oxford University Press: Oxford.

Lammy, D. 2017. *The Lammy Review 2017. An independent review into the treatment of, and outcomes for, black, Asian and minority ethnic individuals in the Criminal Justice System*. London.

Lerman, A. & V. Weaver 2014. *Arresting citizenship: The democratic consequences of America's crime control*. Chicago: University of Chicago.

Lord Chief Justice of England and Wales 2019. *Judicial diversity statistics*. London: Ministry of Justice.

Ministry of Justice 2019. *Criminal justice statistics quarterly: England and Wales, year ending December 2018*.

Nader, L. 2009. *The words we use: Justice, human rights, and the sense of injustice*. In K. Clarke & M. Goodale (eds) *Mirrors of justice*, 310-331. New York: Cambridge University Press.

NatCen (National Centre for Social Research) 2011. *The August riots in England*. London: NatCen.

Sanders, A. 2016. *The CPS – 30 years on. Criminal Law Review 2: 82-98*

— et al. 2020. *Criminal justice*. Oxford: Oxford University Press.

Standing, G. 2018. *The precariat: Today's transformative class? Great Transition Initiative*, October.

Taylor-Goodby, P. 2013. *The double crisis of the welfare state and what we can do about it*. London: Palgrave.

Tiratelli, M. et al. 2018. *Does stop and search deter crime? Evidence from ten years of policing of London-wide data. The British Journal of Criminology 58(5): 1212-1231*.

UK Government 2020. *Ethnicity facts and figures: Stop and Search*. Gov.UK. <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest>. March.

Wacquant, L. 2012. *The prison is an outlaw institution. The Howard Journal 52 (1): 1-15*.

Fig. 3. Ethnicity in London and among defendants

	Ethnicity in London (2011 Census)	Ethnicity of defendants in my study
Asian	18.5 %	24 %
Black	13.3 %	26 %
Mixed & other	8.4 %	1 %
White	44.9%	47 %
Other White ¹¹	14.9	
Total	100 %	98 %

Frequently ethnicity, poor mental health, substance abuse and poverty overlap and result in a 'guilty' plea and immediate sentencing.

For the above reasons, demands to eliminate structural racism in the police will not be effective without considering how the entire criminal justice system works. While it is certainly the case that the police arrest disproportionate numbers of individuals from BAME communities, the evidence from the courts shows that the 'precariat' – who are not necessarily from minority communities but may also be poor, homeless, lack employment and experience mental illness and substance abuse – are targeted by the police. Indeed, nearly all of those who are arrested for minor criminal offences are processed in lockstep by the CJS and are convicted.

Though the CJS is undergoing a severe financial squeeze – indicated by huge cuts in public funding for the police and courts, the closure of large numbers of courts, a sharp decline in the number of magistrates etc. – additional funding alone will not redress current injustices.¹² On the basis of my research, research on 'stop and search' policing (e.g. Tiratelli et al. 2018) and fundamental questions about the quality of justice raised by the 'Black Lives Matter' protests, it appears that the entire CJS needs to be restructured and the role played by state institutions should be reconsidered, beginning with redefining the primary purpose and responsibilities of the police (a task often called for, but yet to be realized – see House of Commons 2007/8).

In addition, the relation between the police and the CPS needs to be redefined with, on the one hand the CPS being granted more power to oversee police arrests and prosecutions and, on the other, the CPS becoming publicly accountable. Magistrates and district judges require much better legal training; as a general rule, they should ensure that police evidence is challenged and that defendants understand the offence they are being charged with. Furthermore, defence lawyers need much better training and must have adequate access to their clients to prepare the case in advance of the hearing.

Finally, probation services not only need to be brought back into the public sector, they also need to be reorganized and better funded to allow them and the prison service to provide offenders/prisoners with assistance in dealing with drug addiction, substance abuse and mental ill health which can cause repeat offending.¹³ In short, what is needed is a shift in thinking about the role of the CJS away from the controlling ideas of our times – such as 'justice' and mass incarceration – to broader concerns about 'fairness' of treatment, which can be reinforced by an educational system which helps us to understand our legal/human rights and which provides us with the requisite skills and knowledge to enable us to better succeed in life, thereby reducing social inequality. ●



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