

8 Diversity in the criminal justice system

James Pickles 0000-0001-6605-0631

Traditionally, the criminal justice system has recruited and empowered a monochromatic section of society to deliver and implement justice; typically carried out by White men. Meanwhile, minority communities and underrepresented groups such as black, Asian, and minority ethnic groups (BAME); lesbian, gay, bisexual, and trans communities (LGBT+); and women, have been historically over-policed, persecuted, or neglected by key criminal justice institutions. Issues of marginalisation in relation to race, gender, and sexuality have led to lasting tensions and mistrust between diverse groups and criminal justice agencies. Such tensions have raised questions over the validity and legitimacy of the criminal justice system's treatment of these groups. Key landmark events, such as the Wolfenden Report, the Stephen Lawrence Inquiry, and the Brixton Riots, have therefore led to changes in how justice is delivered to diverse groups. In response to these events, calls for diverse groups to be included in criminal justice agencies, practices, and policies have been made, in order to implement wider social change, build bridges with those who are marginalised, and improve the delivery of justice. Contemporary criminological evidence demonstrates that diversity within criminal justice agencies helps to implement appropriate organisational change and agility. This chapter examines how gender, race, and sexuality have been historically represented in the criminal justice system and explores contemporary modern mechanisms of diversity inclusion.

Introduction

Legislative and judicial state power has been the preserve of rich, elite, White men over centuries of patriarchal leadership. Consequently, the criminal justice system has a long history of recruiting and empowering a monochromatic section of society to deliver and implement justice, resulting in a system that is culturally and operationally both White and male. Such a lack of diversity within the criminal justice system has maintained institutional inequalities within its foundations and enforced and reinforced social and structural inequalities more generally.

According to McLaughlin and Muncie,¹ due process is a criminal justice model that

emphasises the need to administer justice according to legal rules and procedures which are publicly known, fair, and seen to be just ... Such procedures do not weight the process against the accused or in favour of those in power, but rather seek to guarantee a measure of judicial equality to all parties.

Whilst this model underpins legal practice within England and Wales, there is a wealth of criminological evidence to suggest that the criminal justice system rarely delivers in its principles of equality and fairness. Indeed, members of minoritized racial communities,² young

¹ Eugene McLaughlin and John Muncie, *The Sage Dictionary of Criminology* (4th ed, Sage Publications Ltd., 2019) 185

² Minoritized is used to acknowledge that Black and Asian people hold the global majority in their demographics and are not a minority but are minoritized in everyday Western contexts.

people, individuals who are economically deprived, women and girls, and LGBT+ people³ experience disadvantage and discrimination within the criminal justice system.

Institutional bias in favour of those with high social and economic status can be of benefit by shielding them from the consequences of justice. For example, Conservative Home Secretary Priti Patel received little accountability for the workplace harassment she perpetrated against her co-workers, despite an admission of guilt and a six-figure government pay-out as compensation for her victims.⁴ Contrastingly, members of minoritized racial communities, LGBT+ individuals, and individuals who are economically disadvantaged have seen historic over-policing and persecution from police forces.

Issues of marginalisation in relation to race, gender, and sexuality have led to lasting tensions and mistrust between diverse groups and criminal justice agencies. Such tensions have raised questions over the validity and legitimacy of the criminal justice system's treatment of these groups. Key landmark events, such as the Wolfenden Report,⁵ the Stephen Lawrence Inquiry,⁶ and the Brixton Riots,⁷ have therefore led to changes in how justice is delivered to diverse groups. In response to these events, calls for diverse groups to be included in criminal justice agencies, practices, and policies have been made, in order to implement wider social change, build bridges with those who are marginalised, and improve the delivery of justice. Contemporary criminological evidence demonstrates that diversity within criminal justice agencies helps to implement appropriate organisational change and agility.⁸ Previous work on diversity and policing emphasises an exploration of social class in determining police practice, specifically in persecuting working class groups. Thus, there is a large body of work already available for readers interested in these topics. There has been less said on how sexuality is responded to by the criminal justice system, or how this intersects with gendered and racial dynamics. This chapter therefore examines how gender, race, and sexuality have been historically represented in the criminal justice system and explores contemporary modern mechanisms of diversity inclusion.

³ Lesbian, gay, bisexual, and trans people.

⁴ Rajeev Syal, 'Priti Patel reaches £340,000 settlement with ex-Home Office chief Philip Rutnam' *The Guardian* (Online, 4th March 2021) <https://www.theguardian.com/politics/2021/mar/04/priti-patel-reaches-six-figure-settlement-with-ex-home-office-chief-philip-rutnam> accessed 10/03/2021

⁵ Scottish Home Department, *Report on the Committee on Homosexual Offences and Prostitution* (Home Office, 1957).

⁶ Sir William Macpherson, *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny* (Cm 4262, 1999).

⁷ BBC Newsround 'Brixton riots 1981: What happened 40 years ago in London?' (BBC, 21 April 2021) <https://www.bbc.co.uk/newsround/50035769> accessed 27/07/2021.

⁸ Amie Schuck, 'Female Officers and Community Policing: Examining the Connection between Gender Diversity and Organizational Change' (2017) *Women & Criminal Justice* 27, 341.

By way of introduction, this chapter emphasises the criminal justice as a socially responsive matrix of institutions which reflects the social inequalities and arrangements present within wider society. The criminal justice system should therefore not be seen as separate from the power structures that arrange society and advantage specific social groups over others. Thus, diversity within the criminal justice system cannot be examined in isolation, and hence in this chapter the criminal justice system is viewed as being reflective of wider social systems of power. Finally, in calling for greater diversity within its various agencies, the criminal justice systems must recognise its own role in reinforcing and replicating oppressive, violent, and unequal power structures.

Diversity, equality, and representation

The social landscape of contemporary British society has changed significantly due to decades of activism, protest, and resistance against hegemonic social orders. Attitudinal changes towards minority groups – although there is still a need for significant improvement – have put pressure on the State to remove legislation that reinforces inequality. The decriminalisation of homosexuality, protection from violence in the form of hate crime legislation, and anti-discrimination laws have led to significant changes to how minority groups are policed and to how justice is delivered. For instance, The Equality Act 2010 combined and replaced numerous individualised equality legislation and streamlined these into a single Act, with the aim to protect minority groups and those who may suffer discrimination. The Act established nine protected characteristics – age, disability, race, religion or belief, sex, sexual orientation, gender reassignment, marriage and civil partnership, and pregnancy and maternity – criminalising discrimination against them. Seven types of discrimination are currently outlawed through this Act – direct, associative, indirect, harassment, harassment by a third party, victimisation, and discrimination by perception – placing a duty on the public sector to challenge and eliminate discrimination.⁹

In addition, patterns of immigration, changing family dynamics and structures, and growing inequality brought about by austerity policies have influenced the economic and demographic positions of British society. Thus, major cultural and politics shifts have occurred within the public consciousness. Calls for increasing tolerance, diversity in workplace practice, institutional accountability, equality, acceptance, fairness, and individual autonomy has placed

⁹ The Equality Act 2010 c 15

greater responsibility on the criminal justice system to adopt and adapt its role within society to accommodate a greater level of diversity and representation.

The ideals of equality in law and order through due process are paramount, in that we expect all individuals to have their human rights maintained and that equal treatment is sustained when standing before the law or when navigating the criminal justice system, regardless of group affiliation or identity. In this respect, principles of due process are expected to be followed, so that our criminal justice system is above bias and prejudice. Increasing focus has been paid to this aspect of equality in relation to social and economic class. In England and Wales, several mechanisms have been put in place to ensure that people without the financial means to afford private legal representation are able to obtain appropriate recourse for defending themselves when accused of a crime. For example, The Police and Criminal Evidence Act 1984 made the right of advice and assistance from a qualified solicitor a statutory right. In addition, Legal Aid provisions, now provided by the Legal Aid Agency, sponsored by the Ministry of Justice, due to the 2012 Legal Aid, Punishment and Sentencing of Offenders Act, provide financial help for individuals who lack the means to attain legal support, family mediation, or representation in court. Despite these measures, negative biases and inequalities still occur when navigating the criminal justice process. As this chapter will demonstrate, as a social institution, criminal justice very much reflects and reinforces the biases and prejudices within society. When speaking of bias in this context, we are speaking of negative differential treatment based on individual characteristics, such as whether someone is Black, a woman, or gay, rather than the mitigating or specific circumstances of a crime.

One argument to combat this negative bias is to diversify the representation of those within the criminal justice system, such as increasing the quota of women within the court systems, encouraging LGBT+ people to work in the police force, and recruiting more Black and Brown prison staff members. As a social institution, the criminal justice system, arguably, should reflect the diversity present within society and increase the visibility of communities that are underrepresented in order to mirror the various demographics that experience criminal justice. If the criminal justice system remains unrepresentative, equal levels of justice may fail to deliver.

Gender and criminal justice

For decades, feminist criminologists have researched the gendered patterns of crime and affirmed the differential ways women are treated by and within the criminal justice process.¹⁰ Historically, the purveyors, gatekeepers, and enforcers of law, order, and justice have been the preserve of men who have been in charge of making legislation and laws, policing public spaces, and delivering judgments to those guilty of crimes. Thus, men have had significant political and legal power to determine what behaviours and activities are legal and illegal by way of maintaining authority over how and when justice is delivered. The criminal justice system is therefore a site of ‘gendered action’¹¹ whereby the perceptions, interactions, and micro-political activities proscribe specific criminal justice pursuits as either masculine or feminine. This section will therefore explore the gendered nature of the workforce within the police and the judiciary – focusing specifically on the treatment of women who work in key criminal justice agencies and examine how gendered crimes such as sexual violence are treated and processed within the criminal justice system.

Figure 8.1 Proportion of female police officers.

Source: ‘Police workforce, England and Wales, as at 31 March 2020’ (Home Office, 2020).

The latest workforce data for the police forces of England and Wales show that as of 31 March 2020, 31 per cent of police officers are women. As **Figure 8.1** demonstrates, this statistic has been increasing year-on-year, demonstrating slight improvements in the recruitment of women into the police force. Longitudinally however, there has only been a 5 per cent increase in women joining the police force between 2010–2020, suggesting that overall, minimal progress has been made in the past decade. Further, there is significant disparity in the levels of women who comprise police *staff* – who are civilians and often work as receptionists, HR, analysts, and custody nurses – of whom 61 per cent are women and police officers. Interestingly, unpaid police support volunteers are a cohort of police staff where equal numbers of men and women

¹⁰ For further reading see: Pamela Davies, ‘Gender, Victims and Crime’ in Pamela Davies, Peter Francis, and Chris Greer (eds.) *Victims, Crime and Society: An Introduction* (SAGE, 2017); Frances Heidensohn and Marissa Silvestri, ‘Gender and Crime’ in Alison Liebling, Shadd Maruna, and Lesley McAra (eds) *The Oxford Handbook of Criminology* (6th Ed, Oxford University Press, 2017); Sandra Walklate, ‘Gender, Crime and Criminal Justice’ (Routledge, 2013)

¹¹ SL Miller and Emily Bonistall, ‘Gender and Policing: Critical issues and analyses’ in WS DeKeseredy and Molly Dragiewicz (eds) *Routledge Handbook of Critical Criminology* (Routledge, 2012).

work, as the latest statistics show 51 per cent are women.¹² Although women seemingly dominate police staff civilian occupations, police officer roles are very much disproportionately male. Thus, as concluded by Prenzler and Sinclair, ‘despite a strong case for much greater female participation in policing, basic data on women’s progress are often lacking, and there is an apparent large gap in many departments between positive gender policies and less-than-optimal integration strategies’.¹³

When scrutinizing the gendered disparity in the level of police officers in comparison to the level of police staff who are women, much of this can be put down to the perception of police work, where both the public and the police officers themselves view policing as a masculine pursuit, exemplified by a machismo, aggressive crime fighting ethos.¹⁴ The very iconography – the uniform – of policing embodies large, threatening statures and presents a masculinised ‘hard’ image to the public. The tradition of police work being equated with male physicality implicitly establishes femininity and female bodies as a threat to this image. Several studies theorise that there is a perception in policing that women may be too emotional for the daily activities of police work, that they may show unfair leniency on criminals, or that offenders will not observe women’s authority due to the lack of male presence and physicality.¹⁵ The staff workforce data seemingly reflect this, as women dominate staff roles that are traditionally seen as feminine: receptionists, admin workers, secretaries, and support staff.

Similar patterns of gender division can be found within the judiciary. Despite large increases in women joining the legal profession and holding practicing certificates, there exists many gendered inequalities within the profession, particularly at senior level. For instance, as of 2019, 32 per cent of court judges were women,¹⁶ reflecting a similar ratio of women to men as is found in the police system. Further, although the proportion of women solicitors working in private practice increased to 49 per cent in 2019, the proportion of private practice partners that are women was 31 per cent. In addition, it is often the case that women tend to be part-time workers or be concentrated in specific areas of the law, such as family work, employment, and personal injury law – ‘feminising’ these professions and effectively making them ‘female

¹² Home Office, ‘Police workforce, England and Wales, as at 31 March 2020’ (Police workforce bulletin, Home Office, 2020).

¹³ Tim Prenzler and Georgina Sinclair, ‘The status of women police officers: An international review’ (2013) 44 *International Journal of Law, Crime and Justice* 115, 129.

¹⁴ SL Miller and Emily Bonistall, ‘Gender and Policing: Critical issues and analyses’ in WS DeKeseredy and Molly Dragiewicz (eds) *Routledge Handbook of Critical Criminology* (Routledge, 2012).

¹⁵ Janet Chan and Sally Doran and Christina Marel, ‘Doing and undoing gender in policing’ (2010) 14 *Theoretical Criminology* 425.

¹⁶ Courts and Tribunals Judiciary, ‘Judicial Diversity Statistics’ (Bulletin, 2019).

specialisms'.¹⁷ The criminal justice system, as a site of gendered action, therefore goes beyond male and female identity per se, but speaks of the structural and institutional disproportionality, culture, and micro-politics that disadvantage women both within and external to the criminal justice system.

For decades, the treatment of women within the criminal justice has been inexcusably disappointing. In the early 1990s, a Bar Council survey found evidence of sexual harassment and discrimination against women barristers, as well as disadvantageous treatment towards women through allocation of work, promotions, pay increases, and pupillage applications.¹⁸ Despite numerous legislations towards equality, including the Equality Act 2010, women remain under-represented in senior and higher ranks of both the police matrix and the judicial system. Further, studies have confirmed that discriminatory practices toward senior female police officers is still a significant issue. The Browne et al. study in 2018, for instance, highlighted that 34 per cent of senior women in the police experienced sexual harassment through unwanted jokes or comments, 41 per cent had witnessed this behaviour, 11 per cent had been subjected to unwanted sexual propositions, 56 per cent had been bullied by someone more senior, 63 per cent were subject to gender stereotypic work allocation, and 93 per cent of senior women knew of men applying for promotion to other senior positions without being fully qualified.¹⁹ Feminist criminologists have long argued that this internal discrimination of women is reflective of wider patriarchal powers that work to violently disadvantage women. The response to women victims by the criminal justice system is arguably even more disturbing than the treatment of women internally. For many years, the police did not take male violence against women seriously, viewing domestic abuse crimes as minor disputes that were often provoked by women and required little escalation. The Equality Act 2010, the Sexual Offences Act 2003, and the Domestic Violence, Crime and Victims Act 2004, recognised the problem of prejudicial biases held by police officers and the sceptical and lenient attitudes held by the courts and judiciary when faced with sexual violence cases²⁰ and outlawed discriminatory behaviour towards women in these cases. Updating the law to extend anti-discrimination protections, unfortunately, does not necessarily change practice or alter the attitudes and values

¹⁷ SC Bolton and Daniel Muzio, 'Can't Live with 'Em; Can't Live without 'Em: Gendered Segmentation in the Legal Profession' (2007) *41 Sociology* 47.

¹⁸ Bar Council and Lord Chancellor's Department, *Without Prejudice? Sex Equality at the Bar and in the Judiciary* (Bar Council of England and Lord Chancellor's Department, 1992).

¹⁹ Jennifer Brown and others, 'Implications of police occupational culture in discriminatory experiences of senior women in police forces in England and Wales' (2018) *29 Policing & Society* 121.

²⁰ Peter Joyce, *Criminal Justice: An Introduction* (3rd Ed, Routledge, 2017).

per se of those delivering justice. Recent attitudinal surveys of police officers demonstrate that police officers significantly lack an understanding of the nature of sexual violence, including rape, sexual assault, and revenge porn,²¹ as many believe the common myths surrounding violence against women, which have always been a long-standing historical issue within the police.²² Further, despite false rape allegations remaining very low – indeed there is no evidence that false allegations of rape or sexual violence are made more frequently than any other false crime allegation – research suggests that police believe they encounter high numbers of false rape allegations.²³

Police officers report that due to their training, they believe that they have the skill or ‘Coppers nose’ to tell if a case is true or not and sniff out a false allegation instinctively, despite also, contradictorily, acknowledging they must remain free from pre-judgments.²⁴ The reliance on suspicion that is embedded in police training can cause significant negative bias towards victims of sexual abuse, specifically women, and can cause secondary victimisation due to intrusive questioning, speaking to victims in an unsympathetic manner, appearing suspicious and verbalising doubt in the credibility of the victim, and disbelieving the victim’s testimony before due process has occurred. In fact, police officers may use persuasive questioning techniques to facilitate the withdrawal of an accusation; withdrawal of accusations in and of themselves are often viewed erroneously by officers as equating to a false allegation.²⁵ Such attitudes and behaviours support and reproduce gender inequality, especially in its manifestation as sexual violence and maintain the masculinised manner in which sexual violence is policed. Importantly, Javaid argues this hegemonic masculinity reinforces persistent rape myths that deny even men their justice, as he has found that male victims of sexual violence prefer speaking to women police officers, and experience insensitivity from officers who stereotype male rape victims as weaker, effeminate, gay, or as false due to the myth that men cannot get raped.²⁶ Thus, in order to change police culture and wider policing practice, arguably a greater level of diversity is required to embrace the role of women in policing and of prioritising violence against women. As argued by Brown et al.:

²¹ Emma Bond and Katie Tyrell, ‘Understanding Revenge Pornography: A National Survey of Police Officers and Staff in England and Wales’ (2018) 36 *Journal of Interpersonal Violence* 2166.

²² *ibid.*; Kayleigh Parratt and Afroditi Pina ‘From “real rape” to real justice: A systematic review of police officers’ rape myth beliefs’ (2017) 34 *Aggression and Violence Behavior* 68.

²³ Lesley Macmillan, ‘Police officers’ perceptions of false allegations of rape’ (2018) 27 *Journal of Gender Studies* 9, 13.

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ Aliraza Javaid, ‘The unheard victims: gender, policing and sexual violence’ (2020) 30 *Policing & Society* 412.

An understanding of identity dynamics has the potential for remedial measures focusing on reducing the sense of threat, experienced by some male police officers. This is especially the case under conditions where men hold onto and accentuate notions of traditional ‘cop’ culture in the face of the challenge of change. It is also imperative that remedial measures involve strengthening the occupational identity of women under conditions of a new professionalism.²⁷

Race and criminal justice

It would be remiss for any work that explores diversity in the criminal justice system to overlook the importance of racial diversity and inequality. This section will explore the disparities in the recruitment of Black and Asian people working internally within the criminal justice system and the profiling of Black and Asian members of the public who are profiled and processed by both the police and the judiciary.

Decades of criminological research has confirmed, in what was highlighted originally by Sir William Macpherson, that the criminal justice system is ‘institutionally racist’ in its practices.²⁸ However, the most recent review on race controversially found ‘no evidence of systemic or institutional racism’ in society,²⁹ contradicting decades of evidence suggesting the contrary.³⁰ This section will therefore briefly highlight the history of work looking into race disparities in the criminal justice system. Many studies on the criminal justice system organise data on race and ethnicity using acronyms such as BAME for Black, Asian and Minority Ethnic or BME for Black and Minority Ethnic. These acronyms are problematic in that they blanketise people who are ‘not White’ and invisibilise individual differences between diverse racial and ethnic groups. These acronyms will be utilised in this chapter only when referring to reports and scholarship that have categorised their data with these acronyms. The term ‘minoritized ethnicity’ will be used in replacement of minority ethnic to acknowledge that Black and Asian people belong to global majorities but are minoritized i.e., made to be the minority in Western contexts.

²⁷ Jennifer Brown and others, ‘Implications of police occupational culture in discriminatory experiences of senior women in police forces in England and Wales’ (2018) 29 *Policing & Society* 121, 133.

²⁸ Sir William Macpherson, *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny* (Cm 4262, 1999).

²⁹ Tony Sewell and others, *Commission on Race and Ethnic Disparities: The Report* (Commission on Race and Ethnic Disparities, 2021), 77.

³⁰ Tina Patel, *Race & Society* (SAGE, 2016).

A brief history of race and criminal justice

Policing relations with minoritised ethnic communities have a long history of prejudicial police methods, resulting in a hostile police–public relationship. Moral panics over Black people ‘mugging’ White people in the 70s and 80s³¹ mainstreamed the myth that Black individuals were inherently criminogenic, feeding into a wider public panic of how to deal with ‘the Black problem’. Police treatment of Black people was incredibly prejudicial, with empirical evidence showing cases of the police instigating ‘nigger hunting’ sprees,³² fostering a culture endemic with racism and discrimination. No formal investigation or acknowledgement of police racism had taken place however until the *Scarman* report.

After a period of disorder in Brixton, London which was experiencing disproportionate levels of stop-and-search towards Black young people, high levels of unemployment and poverty, and overzealous policing, Lord Scarman published his investigation³³ in 1981 that exposed the rationale behind many of the disorders that occurred after a police intervention and highlighted the tensions between Black people and the police in Brixton and elsewhere in the country. Although Scarman’s report scrutinised the police force specifically, it generated public debate as to the effectiveness of the criminal justice system generally in alienating certain groups in society.³⁴

Despite many of his recommendations, relations with the police barely improved in the decade following the Scarman Report; the public psyche continued to witness and observe racist police behaviour. Analyses in 1999 on stop and search practices continued to find that Black people were 7.5 times more likely to be stopped and searched by the police than White people,³⁵ whilst being rarely justified under the legal grounds of ‘reasonable’ suspicion. Furthermore, Black people were 4.4 times more likely to be arrested than White people,³⁶ and out of 1.3 million

³¹ Stuart Hall and others, *Policing the Crisis: Mugging, The State, and Law and Order* (Macmillan, 1978).

³² Benjamin Bowling and Coretta Phillips, *Racism, Crime and Justice* (Pearson Education, 2002).

³³ Lord Scarman, *The Brixton Disorders, Report of an Inquiry by the Rt. Hon. The Lord Scarman, OBE*, Cmnd 8427 (London, 1981).

³⁴ Scarman found that the police were ill-equipped to adapt to the needs of policing a multi-racial society and that training was needed to give police officers an awareness of issues faced by Black and other minoritised racial groups in order to promote positive community relations. Importantly, he emphasised that the police force itself should be more reflective of the wider society they served and encourage a greater level of diversity in its recruitment; although he rejected the idea of a quota system to do so. A key recommendation made was to establish specific offences for discriminatory behaviour based on race, holding police officers to greater accountability if found to be racially prejudiced or discriminatory.

³⁵ Statewatch, *The Cycle of UK Racism – Stop, Search, Arrest and Imprisonment* (Statewatch, 1999).

³⁶ Statewatch, *UK: Stop and Search and Arrest and Racism* (Statewatch 1998).

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arrests, 7 per cent were Black and 4 per cent were Asian despite making up 2 per cent and 3 per cent of the population, respectively.³⁷

Following publication of the Scarman Report, concerns were made about the police's ineffectiveness and ambivalence towards racially motivated violence. Arguably, 'the acceptance of the relationship between crime and the colour of a person's skin by the police service made it difficult for officers to view Black youths as the victims of crime'.³⁸ The murder of Stephen Lawrence became a landmark case to exemplify police attitudes toward racial violence against young Black men.

Lawrence was an 18-year-old Black student who was murdered in 1993, in what would now be called a racist hate crime. The Metropolitan Police Service were reluctant to secure a conviction for his perpetrators, leading Lawrence's family to seek a private prosecutorial team. The Labour Home Secretary at the time, Jack Straw, commissioned Sir William Macpherson to investigate the Metropolitan Police's handling of the case. The Macpherson Report,³⁹ published in 1999, found the police to be institutionally racist and accused them of failing to implement the recommendations of Scarman. Macpherson fiercely critiqued the Metropolitan Police Service and accused them of gross negligence, rooted in institutional racism and racist attitudes held by police officers. The Report concluded with 70 recommendations in total that were intended to engineer the criminal justice system into being fairer for Black and other minoritized ethnic groups.

Contemporary issues

In order to overcome these historic issues with minoritized ethnic communities, significant image management strategies have been employed to change the public image of the police as a racist institution. Endorsing positive police practice and increasing the representation of Black and Brown police officers has been one mechanism to increase confidence in the police. However, Bradford et al. argue that confidence in the police is often shaped by the quality of personal encounters and good effective communication between officers and the public⁴⁰ rather than the image work being performed. For example, the ethnic diversity of the police workforce has seen an annual increase over the past decade, which some may argue is commendable when

³⁷ Howard League for Penal Reform, *Ethnic Minorities in the Criminal Justice System* (Howard League for Penal Reform, 2000).

³⁸ Peter Joyce, *Criminal Justice: An Introduction* (3rd Ed, Routledge, 2017), 524.

³⁹ Sir William Macpherson, *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny* (Cm 4262, 1999).

⁴⁰ Ben Bradford and Elizabeth Stanko and Jonathan Jackson, 'Using Research to Inform Policy: The Role of Public Attitude Surveys in Understanding Public Confidence and Police Contact' (2009) *3 Policing* 139.

seeking to address the past harms caused. However, when examining official data, the number of BAME officers (sic) in the past decade has only marginally increased by 2.6 per cent, moving from 4.7 per cent in 2010 to 7.3 per cent in 2020. In addition, whilst figures as high as 15 per cent BAME officers (sic) are found in the Metropolitan Police Service, these are still significantly and disproportionately low when compared to the BAME (sic) population (40 per cent) in London.⁴¹ Similar figures are found in the Judiciary, where 7.4 per cent of court judges are BAME (sic), with only 1.1 per cent being Black,⁴² well below their demographics in the general population. However, improvements have been made at the Bar, where 13.2 per cent of barristers are found to be BAME (sic), with 7.2 per cent Asian and 3.2 per cent being Black,⁴³ which are on par with the general population demographic.

Due to the history of racist, persecutory, and neglectful encounters by the criminal justice system, contemporary relations with the police amongst minoritized communities are still strained and conflicting. Indeed, despite calls for greater diversity and accountability in the criminal justice system, the police still arguably police race in their daily practices. Collectively, BAME (sic) individuals were stopped at a rate 4.1 times higher than White people.⁴⁴ Arguably, this targeted policing of race communicates messages of difference, hostility, and discrimination to communities of colour, and in particular Black communities. Consequently, low levels of confidence in the police are found amongst young BME (sic) people, who are the most likely to experience negative stop and search behaviours, and who have a common awareness that they are disproportionately targeted by the criminal justice system.⁴⁵

Figure 8.2 Stop and search rate per 1000 people, by ethnicity.

Source: Police powers and procedures, England and Wales, year ending 31 March 2020 second edition. Ethnicity Facts and Figures. <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest#:~:text=Main%20facts%20and%20figures%201%20between%20April%202019,for%20every%201%>

In contrast, White people are disproportionately underrepresented in stop and search procedures in comparison to the general population. From first making contact with the police,

⁴¹ Home Office, 'Police workforce, England and Wales, as at 31 March 2020' (Police workforce bulletin, Home Office, 2020) 28.

⁴² Courts and Tribunals Judiciary, 'Judicial Diversity Statistics' (Bulletin, 2019)

⁴³ Bar Standards Board, *Diversity at the Bar, 2019* (Research Report, 2020)

⁴⁴ Home Office, *Police Powers and Procedures, England and Wales* (2nd Edition, Home Office, 2020).

⁴⁵ GA Barrett and Samantha MG Fletcher and Tina Patel, 'Black minority ethnic communities and levels of satisfaction with policing: Findings from a study in the north of England' (2014) *14 Criminology & Criminal Justice* 196.

moving through every single process of the criminal justice system – arrests, cautions, court involvement, convictions, custodial sentences, and the prison populations – Black and Brown people are starkly over-represented compared with the general population (see [Figure 8.3](#)).

Figure 8.3 The proportion of adults throughout the criminal justice system in each ethnic group, 2018.

Source: Ministry of Justice, *Statistics on Race and the Criminal Justice System* (Ministry of Justice, 2019).

When scrutinising data from the Ministry of Justice,⁴⁶ lamentably, this is even more pronounced in minoritized ethnic children. Data from 2018 show that Black children make up 20 per cent of all child victims, with a higher proportion of homicides being committed against Black children than any other ethnicity. In comparison to [Figure 8.3](#), which shows the disproportionality of Black and Asian adults within the criminal justice system, Ministry of Justice data show that Black children are even more over-represented than their adult counterparts, with 21 per cent of Black under 17-year-olds being prosecuted and convicted, 30 per cent being remanded in custody, eventually showing that 29 per cent of children in prison settings are Black. Further, in 2018/19 67 per cent of under 17s arrested in London were from a minoritized ethnic background – 52% were BAME (sic) adults – with Asian males receiving the longest custodial sentences (10 months longer on average than White males), and a higher proportion of prosecutions being given to Black and Mixed ethnicity children (13 per cent and 14 per cent respectively compared to 5 per cent of White children).⁴⁷ Although police officers must have ‘reasonable grounds’ of suspicion – in other words officers must be of the belief that the individual or group stopped may be, or may have been, or may be about to commit a crime – the problem seems to be the discretionary nature of stop-and-search, whereby police officers utilise their unconscious biases to derive ‘suspicion’ based on race and ethnicity. Increasing the level of diversity within the criminal justice system does not necessarily change how race is policed and attempts to do so can appear as tokenism if done without a full commitment to changing institutional practice. Rather, cultural and institutional change within the criminal justice system is required, by unlearning racist biases and rethinking the purpose of criminal justice when trying to protect diverse communities.

The racial disparities within the criminal justice system that are outlined so far have largely been in the consciousness of those communities who are most affected. In May 2020, George

⁴⁶ Ministry of Justice, *Statistics on Race and the Criminal Justice System, 2018* (Ministry of Justice, 2019).

⁴⁷ Ibid.

Floyd, a Black American man was killed by police officer Derek Chauvin, who knelt on his neck for over nine minutes, despite pleas from Floyd that he could not breathe, in an improper use of restraint methods. Floyd's murder was captured and recorded on video, which went viral, igniting #BlackLivesMatter (BLM) protests across the world and mainstreaming racialised policing into the global public consciousness. Originating as an American movement to challenge police officers shooting and killing Black Americans at a disproportionate rate, it has since evolved into a global movement:

#BlackLivesMatter was founded in 2013 in response to the acquittal of Trayvon Martin's murderer. Black Lives Matter Global Network Foundation, Inc. is a global organization in the US, UK, and Canada, whose mission is to eradicate white supremacy and build local power to intervene in violence inflicted on Black communities by the state and vigilantes. By combating and countering acts of violence, creating space for Black imagination and innovation, and centering Black joy, we are winning immediate improvements in our lives.⁴⁸

A key change in discourse pertaining to the criminal justice system arising from the BLM movements has been the recognition of social institutions not only being institutionally racist, as evidenced by nearly every metric indicating poorer outcomes for people of colour, but of being founded upon White supremacy. According to Dorothy Roberts, it is nigh-impossible to construct a criminal justice system free from racial bias, as in her view, it has always functioned to disenfranchise and subordinate Black people whilst maintaining racial social hierarchies and orders. She argues that 'racial bias does not rest only or even primarily in the minds of those who implement the system; racism is engrained in the very construction of the system and implicated in its every aspect – how crimes are defined, how suspects are identified, how charging decisions are made, how trials are conducted, and how punishments are imposed'.⁴⁹ Thus, it is not necessarily that criminal justice operations are imposed in a discriminatory fashion but that the very core of criminal 'justice' is to directly impose the maintenance of White supremacist structures, which seek to 'other' and oppress people of colour. At witnessing such systemic injustices, arguments calling for diversity have moved to more radical heights – in line with movements such as BlackLivesMatter and DefundThePolice – to call for the potential abolition of the criminal justice system as we know it.

⁴⁸ BlackLivesMatter, 'About' <https://blacklivesmatter.com/about/> (accessed 07/04/2021).

⁴⁹ Dorothy E Roberts, 'Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework' (2008) 39 *Columbia Human Rights Law Review* 261, 262.

Penal abolitionism has a long history within criminological discourse, with scholars such as Roberts arguing that this should occur through the redirection of funds to rebuild the neighbourhoods that have been overpoliced and decimated by the criminal justice system, and to infuse high poverty and low-income areas with resources. Such a framework seeks to envisage new alternatives to viewing criminal justice as the dominant way to address social inequalities and inequities.⁵⁰

LGBT+ people and criminal justice

The role of how sexuality, queer, and trans identity is embodied within the criminal justice system often goes neglected in diversity work. Academic, media, and political interest in this area is growing, however, particularly in relation to trans women's experiences of incarceration. This being said, criminological and criminal justice literature in the UK in relation to LGBT+ people is limited. LGBT+ experiences of the criminal justice system – as victims, offenders, or working within – is shaped by the historic realities of persecution. For centuries, the criminal justice system has systematically persecuted and criminalised LGBT+ people⁵¹ to protect heteronormative ideals and values. It is therefore important for this chapter to include this history and examine the experiences and treatment of LGBT+ people by the criminal justice system.

The first formal (legal) prohibition used to target same-sex activity came in the form of the Buggery Act 1533, outlawing anal and oral sex, and bestiality. Without a formal police presence – which was not created until the early 1800s – it is likely homosexuality was 'policed' and regulated through social opprobrium rather than any criminal justice intervention. The offence of gross indecency was introduced in 1885, however, specifically outlawing male sexual relationships with other men. This Act led to decades of police persecution and saw police officers entrap, abuse, blackmail, and degrade men engaging in same-sex relations for decades. This was exemplified more notably during a police raid on Stonewall Inn – an LGBT+ bar – which resulted in riots between the police and LGBT+ locals. After growing public concern over the incarceration of men who had sex with men, the Wolfenden Report⁵² was published in 1957, recommending the decriminalisation of homosexuality. The Sexual

⁵⁰ Ibid.

⁵¹ It should be noted here that legislation and legal structures have been used to directly target men who have sex with men rather than women who have sex with women. However, criminal justice agencies have no doubt persecuted other groups.

⁵² Scottish Home Department, *Report on the Committee on Homosexual Offences and Prostitution* (Home Office, 1957).

Offences Act 1967 subsequently decriminalised sex between men over the age of 21 when engaged in privately. However, despite this decriminalisation, the law continued to carry its centuries long legacy of actively discriminating against non-heterosexuals. Most notably, Conservative Prime Minister Margaret Thatcher introduced ‘Section 28’ of the Local Government Act 1988, outlawing local authorities and education establishments from ‘promoting’ homosexuality or teaching acceptability of homosexuality. Encouragingly, this was repealed in 2000 in Scotland, and in 2003 in Northern Ireland, England, and Wales.

The millennium marked a shift in the legal sphere where legal prohibitions were lifted, and protective legislation was created to benefit gender and sexual minorities. The age of consent was lowered and equalised to 16 for same-sex sexual relations. Same-sex couples were granted adopted rights in 2002⁵³ and were allowed to engage in civil partnerships in 2004⁵⁴ and civil marriages in 2013.⁵⁵ Section 146 of the Criminal Justice Act 2003 included sexuality, disability, and transgender identity within hate crime protections, allowing for an increase in sentences for crimes aggravated by these three categories. Since 2012, men who were historically prosecuted of same-sex relations have been able to remove this from their criminal record.⁵⁶ It was not until 2017, however, that thousands of men – estimated at 50,000 – who were cautioned and convicted under historic legislation outlawing homosexuality received a formal pardon from the Government, through what is informally known as the Alan Turing Law.⁵⁷ Many who were pardoned, including Alan Turing, had already died whilst criminalised by the State, resulting in posthumous pardons. This marked shift in treating LGBT+ people as victims has accumulated an extensive body of hate crime literature, including relations with the criminal justice system, especially with the police. However, LGBT+ representation within the criminal justice system, and the experiences of LGBT+ offenders has received minimal attention.

According to the Diversity and the Bar report,⁵⁸ sexual orientation ‘is the monitoring category with the second lowest response rate, with 47.4% providing some information’ pertaining to their sexuality. From these data, it was found that 0.8%, 0.5%, and 1.8% of respondents were bisexual, lesbian, or a gay man, respectively. It is difficult to discern the reasons why 52.6% of the Bar did not provide any details about their sexual orientation, but based on these data, it can be inferred that very few LGB people are working at the bar. Likewise, no demographic

⁵³ Adoption and Children Act 2002.

⁵⁴ Civil Partnership Act 2004.

⁵⁵ Marriage Equality (Same Sex) Act 2013.

⁵⁶ Protection of Freedoms Act 2012.

⁵⁷ Policing and Crime Act 2017.

⁵⁸ Bar Standards Board, *Diversity at the Bar, 2019* (Research Report, 2020) 22.

data are collected on police officer's sexuality or the number of trans people in the police. Thus, the picture of how diverse and representative the criminal justice system is in terms of LGBT+ people is very unclear, with understandings of the experiences of LGBT+ people working within the system being sketchy at best. However, in 2013 Jones and Williams carried out a survey on 836 LGB police officers – one of the largest to be conducted – and found that 20 per cent experienced discrimination from fellow officers, with BME (sic) gay men experiencing the highest levels of discrimination.⁵⁹ Although still an incredibly high level (one fifth) experienced discrimination, this is a marked shift from earlier studies conducted in the early 1990s, which found police occupational cultures significantly hostile to LGB police officers, who often suffered professional humiliation, with cases of straight officers refusing to work with them.⁶⁰ However, spurred on by equality workforce agendas prompted by Macpherson, significant improvements have been made to policing practice, such as the establishment of LGBT liaison officers to better engage with local LGBT communities.

Although these measures have been put in place to reframe LGBT+ people from criminals that needed to be prosecuted in order to keep traditional social values safe, towards victims that require criminal justice protection from violence, it is contestable that shifts in moral organisation efforts have had a substantial impact. For instance, from a survey of 242 LGBT people, Pickles found that 60 per cent of respondents believed that the police did not take anti-LGBT hate crime seriously, and only 4 per cent would report to the police if they were a victim of hate crime.⁶¹ Other studies similarly suggest that whilst small attitudinal shifts have occurred, in that younger generations of LGBT+ people view the police more favourably than older generations, in part due to the history of persecution directly experienced by older LGBT+ people, they generally still view the police with lower levels of legitimacy than non-LGBT+ people.⁶² Further, according to a recent survey of 593 LGBT people, trans people specifically, despite being 'more likely to experience heightened levels of threat, vulnerability, and anxiety compared with non-trans LGB people', have a profoundly negative view of the criminal justice system and feel that the police are ineffective in tackling anti-LGBT+ hate

⁵⁹ Matthew Jones and Matthew L. Williams, 'Twenty years on: lesbian, gay and bisexual officers' experiences of workplace discrimination in England and Wales' (2013) 25 *Policing & Society* 188.

⁶⁰ Marc Burke, *Coming out of the blue* (London, 1993); Marc Burke 'Homosexuality as deviance: the case of the gay police officer' (1994) 34 *British Journal of Criminology* 192.

⁶¹ James Pickles, 'Policing hate and bridging communities: a qualitative evaluation of relations between LGBT+ people and the police within the North East of England' (2020) 30 *Policing & Society* 741.

⁶² Lisa M Daria and others, 'Assessing LGBT People's Perceptions of Police Legitimacy' (2020) 67 *Journal of Homosexuality* 885.

crime and are not respectful to them as victims.⁶³ Consequentially, at present, there are significant issues in LGBT+ people achieving criminal justice within the current system.

The prison system is also ill-equipped to support and appropriately house LGBT+ offenders who are incarcerated. Mia Harris' thesis⁶⁴ explored this topic in comprehensive detail, finding that prisons were heteronormative and cisnormative institutions, resulting in LGBT+ prisoners facing significant issues when forming relationships, being accepted by other inmates, and being able to receive the adequate support required for their personal needs. Indeed, most prison establishments directly ban sexual relationships between inmates allowing officers to homophobically police contact between inmates by punishing them for physical forms of affection such as hugging.⁶⁵ Non-heterosexual men are at higher risk of experiencing sexual violence within the prison setting but are less likely to be believed due to the myth that gay and bi men are hypersexual and would consent to any sexual proposition.⁶⁶ Meanwhile, trans prisoners are often placed in greater risk of violence and exploitation due to housing them in inappropriate gender prisons. For instance, trans women being held in men's prisons are more likely to experience violence due to their gender non-conformity in such a highly masculinised setting, whilst trans men are highly vulnerable to physical and sexual abuse from other men, especially if they have vaginas. Trans prisoners are therefore segregated for their own protection, increasing the experience of isolation during incarceration. There are also cases of trans people being forced to adopt gender conforming clothes and to behave in gender normative ways, such as getting their hair cut and nails shortened. As such, there are serious equality and diversity issues facing the criminal justice system in terms of the representation and treatment of LGBT+ people.

At the time of writing, few prisons have the adequate means to provide and continue hormonal treatment for trans people, with many prisons requiring receipt of hormones obtained in the community.⁶⁷ Whilst facing these personal risks, trans prisoners – especially trans women – are perceived to be inherently *of risk* to other inmates due to the belief that they are more likely to

⁶³ Mark A Walters and others, 'Hate Crimes Against Trans People: Assessing Emotions, Behaviors, and Attitudes Toward Criminal Justice Agencies' (2020) 35 *Journal of Interpersonal Violence* 4583.

⁶⁴ Mia Harris, *Queer in the Prison? What Does it Mean to Be 'Out' Inside?* (Doctoral Thesis, University of Oxford, 2019).

⁶⁵ Joey L Mogul and Andrea J Ritchie and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Beacon Press, 2011).

⁶⁶ Chris Wakefield and Andrew L Spivak, 'Lesbian, Gay, Bisexual, Transgender, and Queer Offenders Sexual Orientation, Gender Identity, and Incarceration' in Kimberly D Dodson (ed) *Routledge Handbook on Offenders with Special Needs* (Routledge, 2018).

⁶⁷ Joey L Mogul and Andrea J Ritchie and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Beacon Press, 2011).

rape or retraumatise other inmates, despite little evidence to support this.⁶⁸ What is interesting is the lack of research on LGBT+ people within prisons, and even more scarce, data on the number of LGBT+ people working within the prison service. No official data are collected on sexuality and gender, reinforcing the idea that heterosexuality is the presumed standard default within prison settings, and emblematic of the heteronormative and cisnormative culture that exists in all of the agencies comprising the criminal justice system.

Conclusion

As a consequence of growing public scrutiny on the unethical maltreatment of minority groups at the hands of the criminal justice system, greater emphasis is placed on diversity measures and representation to ensure equitable and respectful treatment of those working within and standing before criminal justice. As a social institution, the criminal justice system and its agencies are reflective of wider social power dynamics, being premised upon the patriarchal, White-centric, and heteronormative structures that organise society. In this context, pressure to reform criminal justice practice and adapt its legal measures by adopting higher levels of diversity have been seen in the contemporary system. This chapter has questioned the extent to which this has been achieved and has highlighted the historic contexts from which issues facing minoritized and diverse groups emerged.

Improvements in the treatment of women, representation of Black and Asian people, and attitudes towards LGBT+ communities have been made in the past decade. In particular, there is at least an awareness by criminal justice agencies of the role diversity has to play in better policing and processing minoritized communities. However, it would be erroneous to assert that the criminal justice system is truly representative of the general population or that the improvements made have been radical. Many of the positive changes pertaining to recruitment have only seen marginal improvement and minoritized groups still continue to face prejudicial treatment and over-zealous policing from the criminal justice system. Contemporaneously, legitimacy of the current system is in serious question globally, as modern-day movements seek to address the prejudicial and sometime lethal treatment of minoritized social groups.

⁶⁸ Karen White is a trans prisoner who, despite having previous rape convictions, was placed in a woman's prison and subsequently sexually assaulted several inmates. This case arguably is emblematic of prison allocations overlooking appropriate safeguarding and risk assessment measures rather than being indicative of any inherent risk that trans people pose. Many prisons are reviewing their policies in light of this case.