



# A Critical Review of Injustices Faced by Ethnic Minority Communities and the Resulting Social Harms

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### **Abstract**

Disproportionality within the justice system in England and Wales is a very well-researched topic. While various groups are victims of unfair treatment, it is fair to argue that ethnic minority individuals suffer a great amount of injustice. Faced with stereotypical attitudes and prejudices from society, these attitudes influence how they are viewed and treated, by the justice system and vice versa. Faced with injustices at every stage of the justice system, from their first encounter to their last, it is inevitable that ethnic minority individuals who are brought into contact with the justice system, will inevitably become victims of social harms. By acknowledging the injustices faced by these individuals through the theoretical approach of social harms, this dissertation has explored various issues that contribute to the harms suffered by individuals, in the justice system. They are issues that should not be discussed separately, because they all lead to the same outcome – injustices that affect the most vulnerable communities.

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## **Introduction**

*“The legacies of the racist past exercise a powerful effect in structuring contemporary patterns of racial advantage” (Ansell, 2013: n.p.).*

A report recently published by the Commission on Race and Ethnic Disparities (2021) identified that organisations are aware of how historic racial attitudes have influenced behaviours today, with most refusing to accept that systems are fairer. Issues range from black people disproportionately being victims of hate crime (Robertson & Wainwright, 2020), to a lack of ethnic diversity of staff in criminal justice organisations, with 93.4% of police officers, 93.2% of judges, and 94% of prison staff being white (Byrne et al., 2020). Studies have shown this creates displeased attitudes within ethnic minority communities, due to widespread prejudice, discrimination and bias (Rogers & Shuter, 2017; Robertson & Wainwright, 2020). These negative feelings create a disharmonious relationship between the justice system and ethnic minority individuals. (Warde, 2013).

Bias within the justice system is rarely a one-off occurrence (Monk, 2018) and ethnic minority individuals are disproportionately represented in the justice system, due to institutionalised and individual racial bias and organisational norms (Parmar, 2016). If bias has existed for a long time, it is difficult for individuals to change their personal beliefs (Tate & Page, 2018). This suggests that racism will always exist within the justice system and if any changes are to be made, they cannot happen overnight and without acknowledgement of historical events. However, this should not be a widely accepted attitude, and efforts must be made to ensure that ethnic minority individuals do not become victims of a cruel system.

Whilst young men aged 10-17 are most affected by disproportionality (Uhrig, 2016), research shows that injustices affect people of all ethnicities, genders and age, not just black men. Ethnic minority youths in custody receive less support in Young Offender Institutions than white youths and are unlikely to report any issues they suffer (Barn et al., 2018). Black women are approximately 25% more likely than white women, to receive a custodial sentence at Crown Court (Cox & Jones, 2017). Stereotyped as loud and aggressive, they experience difficulty in accessing mental health support while imprisoned and are labelled as having anger issues (ibid).

Additionally, The Corston Report (2007) found that ethnic minority women faced the following issues in re-integrating into society; i) discrimination, ii) stigma, iii) isolation, iv) cultural differences, v) language barriers and vi) less employment skills. This creates obstacles for women trying to rebuild their lives. Statistics show that as of July 2020, 27% of the prison population were ethnic minority individuals, despite only accounting for 13% of the population in England and Wales (Sturge, 2020). There are also disparities between England and Wales as in 2017, Welsh prisons had higher levels of disproportionality than England, with 72 per 10,000 of the population being black compared to 15 per 10,000 being white (Jones, 2019). Disproportionality was also shown amongst other ethnic groups in Welsh prisons, with Asians making up 25 per 10,000 and mixed ethnicity making up 37 per 10,000 of the prison population (ibid).

Various reports have been published to expose disproportionality and improve the justice system's treatment of ethnic minority individuals. The Young Review (2014) reported that stereotypes are common for black people, portrayed as drug dealers and Muslim men, portrayed as extremists. It also found that disproportionality has worsened for Muslim men since 2002 (ibid). Additionally, the Lammy Review (2017) acknowledged that although the justice system's organisations are separated, the actions of one inevitably influences the other. Lammy (2017) recommended that one way of minimising disproportionality is removing ethnicity-identifying information from case files (ibid), which arguably would decrease the risk of the justice system operating based on bias. However, the report has been criticised for blaming disproportionality on bias rather than institutional racism, despite being highlighted as a key issue in the Macpherson Report (Fekete, 2017). Alternatively, Carr (2017) commended the report, for acknowledging that disproportionality within the justice system can be influenced by external factors such as social policy and welfare, education and housing issues. This dissertation discusses the injustices caused by disproportionality, from a social harms perspective.

According to Pemberton (2007: 33), a social harms perspective creates a 'discursive space where the marginalised can articulate their lived experience of harm without persistent reference to the notion of 'crime''. Scholars have previously criticised criminology's fascination with explaining crime, because crime possesses no ontological reality and we all just know what crime 'is' (Hillyard & Tombs, 2004; 2007) and therefore, criminology is allegedly not fully focused on the social, political and economic factors that lead to crime

(Hillyard and Tombs, 2004). It is likely that because we do not fully understand what crime is, the explanations of criminal theories are left incomplete and the full extent of its consequences are ignored (Ručman, 2019). This is where a social harms approach is beneficial, because it allows for a more holistic understanding of harms and better chances of successfully addressing them (Copson, 2016). Black men are commonly stereotyped as ‘dangerous, violent and volatile’ (Angiolini, 2017: 87) and it is vital to acknowledge how these attitudes contribute to injustices within the justice system and society. Lasslett (2010) disagrees with Hillyard and Tombs’ aforementioned claim that crime has no ontological reality, arguing that acts develop criminal characteristics depending on where they occur in society, despite no specific ‘thing’ making them criminal. This appears to show that even though it is important, the connection between crime and social harms is not straightforward.

Garside (2013: 255) describes social harms as ‘a threat to and attack on humans by structures and processes external to them, within which they are embedded’. While individuals are not directly involved with the justice system, organisational procedures affect individuals who may be vulnerable, if they are conducted unfairly. Hillyard and Tombs (2004) categorise social harms into physical, financial and psychological harms and cultural safety. Because harms do not solely fit into one category, it is fair to argue that it is impossible to clearly define every harm an individual may suffer in the justice system. While acknowledging cultural safety is important for improving feelings of empowerment and an individuals’ relationship with others (Williams, 1999), it is important that it is not used as a method of cultural appropriation, but is used to address power imbalances between individuals (Lokugamage et al., 2021). This dissertation covers a variety of harms suffered at the hands of the system and any possible action that can be taken, to minimise the consequences of injustices faced by ethnic minority individuals. As stated by Bempah (2016), associating criminality with race and ethnicity will always enhance inequalities faced by ethnic minorities, especially if steps are not taken to increase fairness in the justice system.

Chapter one discusses the long lasting problematic relationship between the police and ethnic minority communities in England and Wales, including a brief contextual discussion on the 1981 Brixton riots. The chapter then considers how the Stephen Lawrence murder and changes to stop and search regulations influenced how policing is conducted today. Previous objections against stop and search include how some feel it is used as social control against certain communities (Bradford & Tiratelli, 2019). The chapter will explore how these issues make

ethnic minorities vulnerable to excessive and unjustified attention from the justice system and its contribution to social harms.

Chapter two examines how stereotyping black people as gang members, causes injustice for those individuals and leads to social harms. It is fair to argue that most people have a ‘Hollywood style [image] of urban chaos and random violence’ (Alexander, 2008) of gangs, rather than accepting that realistically, it is socio-economic conditions that may force individuals into gangs (ibid). The discussion of this issue will briefly explore the impact of the 2011 London riots and any measures that have been put forward to address the issue. Additionally, the impact of the disproportionate use of Joint Enterprise against black individuals will also be evaluated.

Chapter three moves away from how earlier experiences in the justice system excessively criminalise ethnic minorities, to discuss how they later contribute to the harms and injustices faced by ethnic minority individuals because of cuts to Legal Aid. Harsh sentences and restrictions to Legal Aid make it increasingly difficult for many individuals to access the same opportunities for justice (Duque & McKnight, 2019). By discussing how this severely disadvantages ethnic minority individuals, the reader will understand how they are left exposed to a harsh justice system that is working against them and traps them in an endless cycle of injustices.

Chapter four addresses the consequences of injustice throughout the justice system by discussing miscarriages of justice. According to Wildeman et al. (2011), victims of miscarriages of justice become victims as a result of action, or a lack of action, that results in a conviction. An exploration of the Cardiff Three and M25 Three miscarriages of justice, involving black individuals, will demonstrate how the suffering endured by vulnerable individuals does not end after their encounter with the justice system has ended. Additionally, this chapter will demonstrate how, as shown by these specific cases, a great deal of the responsibility to reduce the risk of injustices, falls with the police (Poyser & Milne, 2015), as it is their actions that set the tone for the remainder of the experiences of ethnic minority individuals in the justice system. By ending the discussion with miscarriages of justice, the aim is to demonstrate how the cause of social harms is difficult to straightforwardly explain and the responsibility to minimise their effects also lies with the justice system, not just with society.

**Methodology**

Torraco (2016) states that literature reviews improve ones' knowledge on the topic they are discussing, by critiquing existing literature to identify strengths and weaknesses. It could be argued that presenting information to the reader makes them want to read more and discover where further research could be done but when people read statistics, they are often taken at face value. However, it is important not to dispute the importance of statistics because they are arguably important in measuring the significance of a specific issue. For example, this dissertation includes statistics from various government publications, but takes the form of a literature review rather than an empirical study. Although Nevo and Sidi (2012) argue that qualitative research is useful in researching those labelled as 'Other', they also emphasise that researchers must be wary of appearing dominant while unintentionally making the 'Other' seem inferior. It is already well understood that ethnic minority individuals are disproportionately mistreated by the criminal justice system. Through discussion in the context of the criminological theory of social harm, this dissertation will strive to discuss various seemingly isolated contributors to this issue, and bring them together to analyse how they collectively contribute to causing social harms. This will allow the reader to see that all themes in this dissertation cannot and should not be discussed separately from each other. By discussing findings through a theoretical lens, the dissertation aimed to develop an understanding of the social reality and harms suffered by individuals who share a social, cultural and historical background (Efron & Ravid, 2019).

Literature reviews can often be seen as a good approach to research because they allow for slightly broader research questions, which subsequently lead to broader discussions (Baumeister & Leary, 1997). However, because they discuss information already gathered by other people, the author of the literature review has less control over the findings presented in the dissertation (ibid). A literature review was the best approach for this dissertation, because there are many different contributors to social harm in this context and therefore, it would have been impossible to only discuss one aspect and address the question to an acceptable standard. According to Efron & Ravid (2019), the author can either provide answers to the stated question throughout the dissertation or present ideas for where future research may be conducted. This dissertation aimed to do both, with the hope of demonstrating an understanding of past and present issues within the topic, while also acknowledging the research discussed is not a final answer and future research should continue to explore this area. It is vital to acknowledge both historical and contemporary backgrounds in a literature review, because the

historical background sets the basis for the review by discussing what has preceded the topic, while the contemporary background justifies the topic by placing it in the context of current research (Ridley, 2012). However, attempts should be made to avoid being descriptive as this does not present any new arguments and risks invalidating a thesis. Rudestam and Newton (2015) state that literature reviews require an analytical approach when examining existing literature on the topic.

The literature review is only of a high standard if the research materials found for discussion are of a high standard (Bell & Waters, 2018) and therefore this process should not be rushed (Hart, 2001). In preparation for this literature review, the first step was to engage in wider reading around the topic, so that a specific research question could be identified. It is vital that this process is completed efficiently to maximise the use of the relevant search engines (ibid) and avoid the need for significant additional research at a later date. To do this, key words were chosen and some examples of this include; ‘disproportionality’, ‘zemiology’, ‘social harm’, ‘justice system’ and ‘institutionalised racism’. This eventually led to the discovery of a vast amount of peer reviewed journal articles, books, institutional publications, such as government statistics on the criminal justice system, and news articles. While books can be beneficial in providing background information, they can quickly become outdated and therefore, peer reviewed journal articles are preferred because they present stronger, more current arguments (Williams, 2018; Burton & Steane, 2004). Where books have been used in this dissertation, it has been ensured that they are only used to provide general facts and where some are dated, it is because they are relevant to the events under discussion in the relevant chapters.

To conduct research as effectively as possible, searches were conducted using Aberystwyth University’s online library ‘Primo’ and Google Scholar, with collection of articles initially taking place after reading abstracts and conclusions only. This sped up the research process by ensuring time was not wasted in reading articles that turned out to be irrelevant to the topic under discussion. A date restriction of 2015-2021 was set on some searches to ensure that sources found were contemporary and presented up-to-date discussions but in some chapters, older research has been used as it was suitable to the discussion. Additionally, research was geographically limited to the justice system in England and Wales. Once relevant materials had been identified, the process of critiquing their content began and this led to thematic analysis, as to successfully identify themes for the dissertation chapters (Braun & Clarke, 2008; Williams, 2018). Identifying these chapters through a critical lens set the precedent for

analysing the articles, because identifying strengths and weakness within the existing literature will help to further expand knowledge of the topic (Torraco, 2016; Oancea, 2016).

The minimal use of date restrictions on the conducted literature searches was a conscious choice, because using older information was helpful in setting key contextual events in the early chapters of the dissertation, and therefore helps the reader to understand why social harms continue to be important when discussing disproportionality. Due to the sensitive nature of the dissertation topic, it possibly would have been difficult for participants of a study to personally discuss the experiences of ethnic minority individuals with the justice system. Additionally, ongoing restrictions imposed by the COVID-19 pandemic at the time of conducting research, would have made it difficult to successfully collect sufficient data. These were the main reasons in deciding to conduct a literature review rather than an empirical study.

### **Ethical Considerations**

Ethics are an important part of research as they are ‘the study of what are good, right or virtuous courses of action’ (Oancea, 2016: 24). Research is generally guided by institutional guidelines (ibid) and in this case, this dissertation adheres to Aberystwyth University’s ethical guidelines. When collecting empirical data, it is expected that researchers get relevant consent and assure anonymity of participants to avoid conducting harmful research (Darlington & Scott, 2002). As this dissertation is a literature review, it does not include the collection and discussion of personal information given by participants and awareness of the sensitivity of information was not a significant issue (Suri, 2020). Therefore, ethical approval from the university’s ethics board was not required. Despite this, the topic of this dissertation may be considered sensitive by some, meaning it was still important to conduct research and discuss the findings in an ethical and objective manner (Bell & Waters, 2018). Subsequently, attempts have been made to be true to the existing literature as not to disregard the importance of findings that already contribute to knowledge of the topic. Although this dissertation involves writing about the harmful experiences of ethnic minority individuals in the justice system, this researcher does not personally identify as a member of these communities. Care has been taken to ensure that to remain culturally safe and respectful, this researcher has considered the nature of the research question and how the findings would benefit the population under discussion, as recommended by Lynam & Young (2000). Thus, efforts have been made to discuss the issues presented in existing research in a sensitive manner while providing unbiased arguments about a topic that is widely deemed important.

## **Chapter 1 – The broken relationship between ethnic minority communities and the police**

The relationship between the police and ethnic minority communities is fragile and lacks mutual trust. This first chapter will explore key moments in the history of this issue including the 1981 Brixton riots, the murder of Stephen Lawrence and issues regarding stop and search practices in England and Wales. These historical events profoundly affected how policing is conducted today, especially in relation to ethnic minority communities. The ramifications of police conduct during those events continue to cause doubt and mistrust today. Consequentially, the way the police treat these communities continues to contribute to social harms.

Hostilities between black individuals and the police grew in the 1970s, as they increasingly became associated with crime and an increase in stop and search against black people led to riots in Brixton, St Paul's and Toxteth in 1981 (Jefferson, 2012). The riots began after Operation Swamp, which saw a sudden increase in stop and search conducted by the Metropolitan Police (Jackson, 2015). It could be argued that as well as defining the relationship between black individuals and the police at the time, these events unwittingly established current tensions between ethnic minority communities and the police. Furthermore, it also emphasises that the police's automatic response of heavily policing these communities, only worsens the relationship and contributes to social harms. Despite these societies clearly demonstrating their dissatisfaction with their treatment at the hands of the police, the Government supported the police during the riots (Loader, 2016). This implies the police are a heavily politicised institution that is not there to support societies, which inevitably means that ethnic minority individuals will continuously suffer at the hands of an unfair system.

Another significant contributor to the tensions between the police and ethnic minority communities, was the failed handling of the Metropolitan Police's investigation into the murder of Stephen Lawrence, in 1993. Lawrence was a black man stabbed to death in an unprovoked attack by a gang of white men and although they were arrested and charged, charges were dropped due to the Crown Prosecution Service (CPS) claiming there was a lack of evidence (BBC News, 2018). This was despite two of the suspects being identified by Lawrence's friend, who survived the attack and the emergence of new evidence, yet the CPS refused to charge the

individuals (ibid). The Metropolitan Police were heavily criticised for refusing to call the murder a racially motivated attack, even attempting to blame Lawrence's friend, despite a significant lack of evidence (Hall, 1999). It could be argued that this was the police's attempt to blame violence between two black men (ibid), supporting the idea that black people are often victims of 'racially-inflected' (ibid: 188) police practices, stemming from conscious or unconscious bias. Further accusations of improper conduct were held against the Metropolitan Police when it was found that an officer went undercover within the Lawrence family's acquaintances, in an attempt to find information to discredit the family (BBC News, 2014). This could be seen as a huge contribution to the harms experienced by the family after the murder, as this possibly hindered the justice process.

Due to the severe police failures in this case, the Government called for a review into police conduct, which resulted in the Macpherson Report. The report concluded that institutional racism was a significant problem within the Metropolitan Police at the time of the murder investigation and urgently needed to be addressed (Home Office, 1999). The report defined institutional racism as;

*'The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin... detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping...'* (ibid, n.p.).

McLaughlin and Murji (1999) criticised this definition, claiming that it gave the Metropolitan Police an excuse for their failures in the case because of their biases, despite the fact that the report clearly exposed institutional racism. They also criticised the report's rejection of the existence of corruption within the police and its failure to discuss the case within the historical context of the area (ibid; Hall, 1999). Attempts to relieve the police of responsibility for racist attitudes against black individuals, arguably contributes to social harms because individuals feel failed by a justice system that is supposed to provide protection. Unconscious bias emerges within the police when they behave in a way that reflects the attitudes of society towards certain groups of individuals, even if they do not personally possess those views (Minhas & Walsh, 2021a), which leads them to produce bias that affects how they treat ethnic minority individuals (ibid). It is argued that as long as the police fail to remain impartial and fair in the way they

police ethnic minority communities, these communities will continue to be failed by the justice system, as Lawrence's family was after his murder.

Furthermore, Foster et al.'s (2005) mixed response to the inquiry makes it difficult to determine whether they found its recommendations helpful. They found that after the report's publication, there were improvements in how: i) the police monitored hate crimes, ii) managed murder investigations, iii) communicated with victims' families and communities and iv) made efforts to remove racist language from within the police (ibid). However, they also found that positive change was not consistent in every police force in England and Wales, as different forces were selective with which recommendations of the report they wished to improve (ibid). Due to the report's focus on the Metropolitan Police, forces outside London felt unaffected by the inquiry, claiming the Metropolitan Police's failings were not reflective of police forces across the country (ibid). There were also concerns that changes made according to the report's recommendations would only be superficial and lead forces to develop a 'checklist' for fulfilling minimal requirements to avoid being accused of racism (Hall et al., 2009). It is fair to assume that if police forces only superficially improve their attitudes towards ethnic minorities, innocent individuals will continue to become victims of an unfair justice system.

This chapter will now turn to the harmful legacy of stop and search. Police were briefly hesitant to use stop and search against ethnic minority individuals after Stephen Lawrence's murder, out of fear of being accused of racism (Quinton, 2011). Police should not act fairly out of fear of getting caught, they should do so because they believe in protecting all individuals, which would lead to improved relationships with ethnic minority communities. Rogers (2018) discovered that black individuals are disproportionately subjected to stop and search by the police. While stop and search rates have decreased for all ethnic groups since 2011 (Kalyan & Keeling, 2019), data released by the Home Office showed that from April 2019 to March 2020, stop and search rates for white individuals stood at 6 per 1,000, compared to 54 per 1,000 for black individuals (2021, n.p.). Stop and search rates also varied amongst different black ethnicities, with stop and searches against those identifying as black standing at 54 per 1,000, black African standing at 34 per 1,000 and black Caribbean standing at 39 per 1,000 (ibid, n.p.). This clearly shows that despite calls for reform, disproportionality caused by stop and search practices is still a worrying problem within the justice system.

The most commonly used form of stop and search is defined in PACE Code A as the '*[power] to stop and search [which] must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination*' (Home Office, 2015: 4). It acknowledges that misuse by the police can lead to harmful policing and consequently, mistrust of the police, therefore officers are required to form reasonable suspicion before conducting a stop and search (ibid). It could be argued that the continued disproportionate use of stop and search against ethnic minority individuals clearly breaches the regulations in Code A and therefore, contributes to social harms. The use of stop and search is usually increased by periods of heightened violence as it eases public anxiety about certain crimes (Murray et al., 2021). It is implied that police use this panic to justify excessive use of stop and search, because it appears that they are successfully tackling crime. However, this means that so-called offenders become victims and are subsequently ignored by the justice system, leaving them to be 'over-policed and under-protected' (Phillips & Bowling, 2017: 198). It would be fair to assume that fairer police practices would encourage people to cooperate with the police (ibid) and minimise the need for stop and search in the first place. Individuals may be inclined to demonstrate patience and respect when dealing with the police during stop and search, if they feel these attitudes are reciprocated (Keeling, 2017).

The effectiveness of stop and search has frequently been called into question, with some claiming it has inconsistent links to crime and can really only be associated with drug crimes (Tiratelli et al., 2018; Bradford & Tiratelli, 2019) and others arguing its success as a crime deterrent, is better monitored as a local rather than nationwide success (Keeling, 2017). The fact that it is only successful in some areas is concerning, because it could mean that some communities are unfairly targeted. Stop and search is a highly confrontational process which can leave people feeling 'victimised, humiliated and violated' (ibid: 3) and if an individual hears of someone else's negative experience with the police, it will likely affect the extent of their own trust towards the police (ibid). Furthermore, negative police encounters are remembered more often than positive ones (Miller & D'Souza, 2015) because they happen more. This supports the idea that the police's poor treatment of an individual not only affects that individual, but creates bad relationships with communities as a whole (ibid). The criminalisation of ethnic minority individuals by the police, affects how they are treated in the duration of their encounter with the police and the rest of the justice system (Bradford & Tiratelli, 2019; Rogers, 2018), therefore deciding the extent of any subsequent social harms.

Literature on this topic has established that it is common for officers' individual and institutional biases, personally held stereotypes and factors relating to the individual subjected to stop and search, to influence whether an officer will conduct a stop and search in the first place (Bradford & Tiratelli, 2019). Hillyard and Tombs acknowledge the unfortunate idea that;

*'the criminal will likely look like a young, male adult, disproportionately of black and minority ethnic (BAME) origin, dressed in one of several stereotypical ways, to be particularly feared in certain places at certain times'* (2017: 284).

Disproportionality in the justice system is strongly criticised by society, even though they initially contribute to the creation of stereotypes and attitudes towards ethnic minority individuals. The belief that ethnic minority individuals are more likely to offend because of their culture or background, immediately criminalises them and unnecessarily exposes them to the justice system. Valuing ethnic diversity leads to a better understanding of an individuals' ethnicity, education, socio-economic background and religion, while also improving understanding of personal attitudes towards stereotypes, prejudice and racism (Kai et al., 2002). Criminality involving black males is often considered under the harmful label of 'thug' (Long & Salisbury, 2018), which contributes to the harmful stereotype that all black men are violent. It has been claimed that police sometimes base their reasonable suspicion for a stop and search on contextual factors (Quinton, 2011), supporting the belief that stop and search is often conducted against innocent people based on stereotypes. Further demonstrations of how ethnic minority individuals' culture affects stop and search decisions is clear, as they are often targeted as they spend more time on the streets and are therefore more visible to police (Minhas & Walsh, 2021b). Stereotypes are harmful to individuals involved and can hinder the police's ability to protect communities, because they may only associate one specific group of people with a certain type of crime (ibid). This could lead to innocent people becoming criminalised while other perpetrators are free to cause more harm. This is demonstrated with the case of the Cardiff Three, to be discussed further in chapter four.

It is possible that the increased policing of marginalised communities based on stereotypes, contributes to 'hotspot' policing – the labelling of crime 'hotspots' based on historical criminal activity (Chainey et al., 2008). While it is allegedly successful in reducing crime (Braga et al., 2019), it also has negative social consequences as it risks repeatedly targeting the same communities (Mohler et al., 2020), which is supported with the disproportionate use of stop

and search resulting in broken relationships, with marginalised communities. It is possible that 'hotspot' policing attempts to predict where crime will happen, rather than target areas based on information, therefore assuming that some communities are more criminal than others. This results in social harms, as communities become targets of unrelenting punishment from the justice system. Issues with stereotyping ethnic minority individuals are discussed further in chapter two.

Finally, stop and search has been subjected to a great deal of criticism from various sources, with the Equality and Human Rights Commission (2010: 5) claiming that 'the current use of PACE stop and search powers may be unlawful, disproportionate, discriminatory and damaging to relations within and between communities'. This acknowledges how discriminatory stop and search practices can affect whole communities and not just individuals, as has been highlighted in this chapter. However, the Commission later acknowledged that disproportionality decreased in some police forces when clear goals were set, negative drug searches were reduced, officers were better trained in creating reasonable suspicion to improve decision-making and more effort was made to ensure stops were conducted based on information, not personal hunches (Equality and Human Rights Commission, 2013; Miller et al., 2020). Furthermore, they emphasised that disproportionality should not be accepted as a 'given' when policing ethnic minority communities (Equality and Human Rights Commission, 2013), because this would blame them for the harsh treatment they receive. A study by Bland et al. (2000) found that individuals were embarrassed to be stopped and searched in front of their friends or workplace and often felt that police officers' reasons for selecting them were ingenuine. It would be fair to argue that PACE has failed in regulating stop and search (Long & Salisbury, 2018). However, the 'Best Use of Stop & Search Scheme' (Home Office, 2014), suggested a community 'complaints trigger', that allows community members to complain about how stop and searches were conducted, should be considered to help regulate its use. It is possible that if relationships between vulnerable communities and the police improved, cooperation with the police when action is required would be more successful, as long as the police do not continue to use excessive tactics.

In conclusion, despite repeated promises of reform, ranging from the Scarman Report to the Macpherson Report, police treatment of ethnic minority individuals appears to have changed very little (Hall, 1999). However, those reports acknowledged that stop and search is sometimes vital in reducing crime (Keeling, 2017) and therefore, addressing stereotypical

attitudes within the police would inevitably improve the fairness of criminal investigations within vulnerable communities (Minhas & Walsh, 2018). Because of the repeated failure to minimise disproportionate treatment of marginalised communities by the police, it is likely that the extent of social harms already caused is irreparable, therefore trust may never be fully restored. Despite this, it is important to acknowledge that while it is impractical to expect the police to be a perfect institution, it is reasonable to expect them to act fairly and respect human rights for all individuals (Equality and Human Rights Commission, 2010), regardless of their ethnicity. Only by addressing disproportionality and bias within the police, will this improve issues throughout the justice system.

## **Chapter 2 – The harmful consequences of the ‘gang’ stereotype**

Chapter one introduced the tense relationship between the police and ethnic minority communities, while highlighting examples that contribute to the feelings of distrust shared by these individuals. This chapter will continue the discussion, by examining the affiliation of black people with gang culture. This will include a discussion on how Joint Enterprise disproportionately targets black men, and enhances the stereotype that all black men are highly likely to be gang members. This will also allow for a brief mention of the London riots in 2011 and how gangs were strongly linked by the government, to the violence that occurred. Finally, measures introduced to tackle gang violence will also be discussed.

Gang culture in England and Wales is strongly affiliated with disadvantaged and poor-socio economic areas (Smithson et al., 2012), with a significant amount of crime taking place in urban communities (Weisburd (2015). These individuals often live in a household with one parent, grow up in care, lack education and employment, live in areas with high levels of crime and social deprivation and have a very active ‘street’ life (Webster, 2012). These factors frequently associate these individuals with gang culture and crime (ibid). This has led to a stereotype that black men are criminals and that specific areas operate solely on gang activity. Subsequently, treating ethnic minority individuals as ‘others’ leads to increased frequency in interactions between these communities and the police (Williams & Clarke, 2018). It should not be assumed that people in these areas are more criminal, because it contributes to the injustices and social harms that they experience, by changing the way the justice system and society view them. It could be argued that the justice system is more focused on proving that these individuals commit crime, than addressing issues that could minimise the risk of offending in the first place. This means ethnic minority individuals are exposed to social harms before they even encounter the justice system.

Black people are often blamed for violent unrest, as seen with the response to the 2011 London riots. Following the fatal shooting of Mark Duggan by the Metropolitan Police in Tottenham, riots spread through London and the aftermath saw comparisons drawn between these riots and those that took place in 1981 (*BBC News*, 2011a; White, 2021). David Cameron and Boris Johnson, Prime Minister and Mayor of London at the time, blamed gangs but official reviews conducted after the riots found little evidence supporting these claims (Scott, 2018). Additionally, Home Office (2011) statistics showed that only 13% of arrests after the riots were

gang-affiliated. A joint study conducted by The Guardian and the London School of Economics found the biggest motivator for participation in the riots was feelings of anger and frustration towards the police by ethnic minority individuals, for their treatment of marginalised communities, and also the perceived lack of respect by the police (Lewis et al., 2011). The study found that 59% of the rioters came from the most deprived 20% of areas in the UK and 40% of those charged were black compared to 6% Asian and 37% white (ibid: 5, 13).

According to Lewis et al. (2011), debates around the causes of the riots were formed by assumptions rather than evidence and therefore, the Government and justice system were looking to quickly blame people for the riots, to make it appear that they were successfully punishing individuals. According to Scott (2018: 9), the Government's immediate reaction in placing the blame on ethnic minority communities was an attempt to "deny the undeniable" – the Government blamed gangs to draw public attention away from the socio-economic conditions that contributed to the riots (Boyce, 2013). This approach contributes to the social harms faced by ethnic minorities, because it causes injustices by failing to address socio-economic conditions. Furthermore, associating the gang stereotype with black individuals risks criminalising whole families and communities, not just the individual in question (Warde, 2013). While it is true that individuals cause harm when committing a crime, it is unfair to assume that responsibility only lies with these individuals. Ručman (2019) argues that societies must acknowledge harms are also caused by groups, organisations, corporations, governments, states and social structures. If more people understood this rather than only blaming offenders, not only would the justice system be forced to take responsibility for their disproportionate treatment of ethnic minority individuals, but it would force the Government to acknowledge their contribution to social harms, by accepting their continued failure to address socio-economic issues.

It is alleged that joining a gang is attractive to black individuals because of the strained upbringing they experience, especially as they often grow up in a single-parent household often run by women (Williams, 2014). This implies that some black individuals join gangs solely to provide for their family without demonstrating criminal intent, therefore it is unfair to assume that all black people affiliated with gangs, are criminals. However, the use of the Joint Enterprise (JE) doctrine does just that. The CPS states that 'when two or more parties are involved in an offence, the parties to the offence may be principals or secondary parties' (2019, n.p.). While common intent between offenders must be proven, JE has been heavily criticised

because it allows the justice system to convict individuals who are believed to be involved with gangs, even if they were not in the proximity of the offence (Williams & Clarke, 2018). In 2014, it was found that approximately 1,800 individuals had been convicted under JE (McClenaghan et al., 2014) and in 2016, 69% of JE cases involved ethnic minority defendants, compared to 30% involving white defendants (Williams & Clarke, 2016). Furthermore, 59% of ethnic minority defendants claimed the word 'gang' was used at trial (ibid). This suggests that JE has become racialised and is not used fairly by the law, as it appears to be disproportionately used against ethnic minority defendants. This is further supported by claims that JE cases are built against ethnic minority suspects, by using traits that are apparently linked to these communities, such as hip hop, rap music and tattoos shared by gang members (ibid).

While ethnic minority individuals are incorrectly affiliated with gangs, it is likely that their future prospects will be severely affected (Smithson et al., 2012) as they become haunted by the gang stereotype. This echoes the idea that unnecessarily criminalising innocent individuals can be just as harmful as being found guilty. This could encourage people to offend because if they believe the justice system already sees them as criminals, they may be less afraid of the consequences. This shows how the justice system contributes to social harms, because being incorrectly labelled as a criminal could lead to loss of employment for the individual, or difficulties in finding employment upon release from prison. Furthermore, being viewed as a criminal can lead to social isolation, which could arguably lead to extensive psychological harms for people who are already socially disadvantaged and powerless (Hillyard & Tombs, 2007). It is possible that this pushes ethnic minority individuals into gangs, so they can feel a sense of belonging (The Centre for Social Justice, 2018). Squires (2016: 941) argues that black people are assumed to be guilty of gang activity because they are the 'usual suspects' of violent crimes, implying that black people are punished for who they are, rather than criminal acts they may or may not have committed. This creates massive social harms, as being sent to prison can result in loss of employment and family income, while the true criminal is left to cause harm to more victims. Furthermore, JE has been accused of creating 'a substantial legacy of acutely radicalised injustice' (ibid: 940), which suggests the existence of biased attitudes towards ethnic minority individuals within the justice system.

Williams and Clarke (2018) argued that the use of the gang or 'other' label to describe ethnic minority individuals is highly politicised, because it is used to justify increasingly severe penal measures used against them. It is possible that this attitude contributes to social harms because

they use society's fear of gangs, to make the gang problem seem more severe. As a result, ethnic minority individuals are arguably ignored when they are victims of an unjust justice system, as they are subject to unfairly harsh punishments so the justice system can appear to successfully 'crack down' on gang crime. Efforts to tackle serious violence have so far been unsuccessful, because the Government attempts to tackle gangs because of their association with violence, without first addressing the crimes themselves (Young et al., 2020). This possibly drives the panic felt about gangs and risks causing further harms, by drawing attention away from other violent crimes that are not gang related. It is possible that the police are responsible for the negative stereotype surrounding gangs, due to their construction of events which place gangs in a negative light. By presenting an apparently true depiction of violent crimes and gangs, these ideas can be difficult to disprove, especially if they were formed from commonly shared stereotypes (ibid). Consequently, young people labelled as gang members are often the victims of social harms, because once they have been labelled a criminal, the image can be difficult to remove.

Gangs have developed in the UK as a result of an increased gap in social inequalities and current policies have been influenced by the USA's approach to gangs (Fraser et al., 2018). This has resulted in monitoring suspected gang members with civil gang injunctions, specific police gang units, multi-agency efforts and intelligence databases (ibid). The most prolific use of gang databases in England and Wales is arguably the Gang Violence Matrix (Matrix), used by the Metropolitan Police to identify people they believe are at risk of gang involvement, aiming to 'reduce gang-related violence, safeguard those exploited by gangs and prevent young lives being lost' (Metropolitan Police, 2021: n.p.). It was created following the 2011 riots, to monitor individuals suspected of gang activity (Amnesty International, 2018). While the Matrix appears to be intended to provide support to deprived communities, a closer look at statistics suggests otherwise.

As of March 31<sup>st</sup> 2021, there were 1,769 black people listed on the Matrix, compared to 259 white people and 114 Asian people (Metropolitan Police, n.d.). This only highlights some of the disproportionality within the justice system and could make researchers wonder, how this disparity in numbers affects black people throughout the justice system. The use of the Matrix against black people has been heavily criticised, with Bridges (2015) claiming racial bias that appears in the Matrix contributes to institutional bias, especially within the police. It is likely that if an increased number of black people are on the Matrix, police will inevitably develop

bias, as they may begin to excessively target black people for gang crime, even if they are innocent (Mayor of London Office for Policing and Crime, 2018). Consequentially, innocent individuals could be subjected to over-policing which can cause harms by unnecessarily bringing them into the justice system, and ignoring harms caused by actual offenders. However, the Mayor of London Office for Policing and Crime (2018) also supports the Matrix, claiming its use is vital for identifying those on the brink of gang involvement, to reduce the risk of more crime. This is a fair argument, because a reduction in crime would mean a reduction in social harms.

Amnesty International (2018) found that information about suspected gang members is shared with housing associations, job centres and schools, which they argue leads to a loss of housing opportunities, education and employment. This in turn contributes to social harms, as restricted access to these basic requirements can lead to an individual becoming isolated from society, leaving them unable to provide for themselves or their families. It is recommended that the Matrix is annually reviewed, to ensure people are on the Matrix based on evidence showing gang involvement and those that are removed can move on with their lives, without being followed by the gang label (Mayor of London Office for Policing and Crime, 2018). Densley & Pyrooz (2019) argue it is difficult to measure disproportionality within the Matrix, because its population is not evenly distributed across all 32 of London's boroughs. Some boroughs only have 3 people listed on the Matrix, whereas others have 300 people (ibid). Furthermore, the excessive numbers of black individuals on the Matrix affects how they view the police, as before being listed on the Matrix, they generally have a more positive relationship with police, despite some negative experiences (Williams, 2018). Placing individuals on the Matrix prematurely labels them as gang members and fails to address their needs, that could minimise the risk of gang involvement in the first place.

While efforts have been made to tackle gangs, it is possible that measures have been unsuccessful, because organisations that propose change only acknowledge those involved with gangs, as gang members (Joseph & Gunter, 2011). This supports the idea that black people are often viewed as offenders rather than victims and continue to suffer injustices within the justice system. A report published by the Government following the 2011 London riots found that the majority of participants had no interest in gang involvement (HM Government, 2011). The report suggested the following recommendations for addressing gang crime; a) provide support to local communities with a specific Ending Gang and Youth Violence team and

financial support, b) extend police powers over youths aged 14-17, c) work with more agencies to share information regarding youth violence, d) introduce measures that would stop gang involvement occurring in the first place and e) provide support for those leaving gangs (ibid). These measures were arguably not completely successful because today, 10 years after introducing them, black people are still disproportionately accused of gang involvement. Additionally, using gangs instead of violent crimes as the focus of policies is said to be ineffective, because the definition of 'gang' is so widely disputed (Boyce, 2013). Innocent people accused of gang involvement quickly become victims of a 'drag-net' approach (ibid: 193) and are punished for the behaviour of others, subsequently emphasising the justice system's contribution to social harms. This further exposes innocent people to the justice system, when they may need support from other organisations to address their socio-economic issues.

Boyce (2013) also criticises the 'Ending Gang and Youth Violence' report for failing to properly acknowledge how socio-economic factors, like poverty, may force young people into gang activity. Furthermore, critics have accused the Government of publishing the report in the 'febrile and disorientated aftermath' of the London riots (Shute & Medina, 2014: 26) and failed to support their claims with sufficient evidence. This supports the idea that the Government chooses to blame gangs for violence, because they see them as the obvious culprits. This arguably contributes to the feelings of distrust felt by ethnic minority communities towards the justice system. Efforts to tackle gangs also occurred earlier, with the Home Office (2008) publishing recommendations for minimising gang violence. As in 2011, they suggested using various organisations to intervene in gang culture, helping at-risk youth and developing exit strategies (Home Office, 2008). It could be argued that this report was more appropriate because it specifically highlighted how local agencies can address gangs rather than setting general guidelines, because each community has different experiences with gangs so approaches need to be tailored to individual communities (The Centre for Social Justice, 2009). Despite demonstrating some minimal success, attempts to reduce the criminalisation of gangs has so far been mostly unsuccessful and more must be done to protect black individuals from disproportionate treatment.

To conclude, this chapter has argued how the 'gang' label has become increasingly associated with the rise of modern crime-related moral panics, socio-economic problems and social harms (Williams, 2014). It could be argued that the current treatment of black people by the justice

system in some ways allows for the ‘legitimisation of racism’ (Nijjar, 2018: 150) and it is vital that the bias that currently exists within the justice system is addressed. As long as black people are associated with gangs and blamed for violent crimes, the true reasons for joining gangs – poor socio-economic conditions – will be ignored and the implication that black people have a compulsion to offend (ibid), will generate more victims. As a result, these victims will continue to be ignored by the justice system and any organisations that could address these issues to help black people live separately from the gang label, will be unsuccessful.

### **Chapter 3 – Disproportionate access to Legal Aid**

Criminalisation, bias and stereotypical attitudes demonstrated by the police can contribute to social harms faced by ethnic minority individuals, as discussed in previous chapters. Harsh treatment early in the ‘justice process’ influences the future experiences of these individuals in the justice system, further demonstrated in issues with accessing Legal Aid. This chapter will explore the issue in England and Wales by discussing how and why ethnic minority individuals struggle to access these resources and the problematic relationships that can arise between defendant and solicitor. It will demonstrate how this issue further contributes to social harms and the continued injustices faced by ethnic minority individuals within the justice system. It is important to mention that this author encountered some difficulties while researching this topic. As Legal Aid is a topic that originates in law, vast amounts of research regarding the effects of Legal Aid cuts only discusses the effects it has on the legal profession. Subsequently, there was limited research available which focused on the effect on individuals. However, efforts have been made to maintain the discussion through a criminological lens.

Scholars have defined Legal Aid as ‘funding provided by the state to enable defendants of limited means to access the service of lawyers’ (Young, 2016: 87). However, cuts to Legal Aid funding have made it more difficult to qualify for legal support, meaning that many are not fortunate enough to access the service and find themselves exposed to the full wrath of the justice system. Despite legislation outlining Legal Aid’s availability to those who risk suffering a severely damaged livelihood or reputation as the result of criminal proceedings (*Legal Aid, Sentencing and Punishment of Offenders Act 2012*), some communities do not have knowledge of existing organisations that could provide support. This can lead to a whole range of social harms, especially for vulnerable groups such as ethnic minority communities and therefore, they should have equal access to resources that allows them to fight for justice. This chapter will show that unfortunately, it is not straightforward.

It is highly likely that Legal Aid cuts result in organisations that are already overworked and lack adequate staff numbers, being forced to provide unsatisfactory service to those in need (Rhode & Cummings, 2017). A direct result of this is that people who cannot afford legal representation, are being left in the hands of a system that is denying access to basic human rights (ibid). Yet when individuals actually can access Legal Aid, it is found that white and ethnic minority defendants often lack confidence in their solicitors, because they believe they

are only motivated by money (Rogers & Shuter, 2017). In these situations, defendants often ignore their solicitor's legal advice and plead guilty (ibid). This could lead to some individuals receiving long prison sentences and being removed from communities for an extended period of time, which possibly contributes to social harms. It is often the case that people in ethnic minority communities are the individuals who mostly rely on Legal Aid, because poor socio-economic conditions mean they depend on the financial support (Campion & Taylor, 2017). People who offend may be forced to rely on Legal Aid for the same reason they engage in crime – being forced to live in a community with poor socio-economic conditions. This is another example of how the Government's continued failure to improve socio-economic conditions, while excessively exposing ethnic minority individuals to the justice system, leads to social harms.

It is well documented that high levels of poverty are commonly associated with increased levels of crime (Hipp & Yates, 2011). This was discussed in detail in chapter two, with the continued association of black individuals with gangs, by the justice system. This continued failure of the Government to adequately address social factors that lead to crime suggests that restricted access to education, employment and social activities can make crime appear like the only adequate option. This ultimately turns them into victims of the justice system, not just offenders. Dehaghani & Newman (2021: 241) claimed that the justice system and society often argue that those who commit an offence and require Legal Aid, or solicitors in general, are viewed as 'an underclass distinct from the good, law-abiding citizens of the general population... and a burden on the state'. It is possible that these individuals become isolated as other members of society gradually cease contact with so-called 'undesirable' communities (Hipp & Yates, 2011: 958). Restricting access to justice provisions implies that the Government and justice system, are blaming individuals for their socio-economic disadvantages, rather than acknowledging the actual cause – structural and social issues (Duque & McKnight, 2019). This is a clear example of the justice system's contribution to the creation of social harms for marginalised communities, as they refuse to take responsibility for the creation of socio-economic conditions that force vulnerable individuals into crime, but continue to deprive them of opportunities for justice. Consequentially, this leaves ethnic minority individuals in an endless cycle of injustice created by the justice system. Criminalisation of these individuals is also enhanced by society's views, which can be psychologically harmful to the communities in question.

As aforementioned, the justice system appears to blame ethnic minority individuals for injustices caused by their socio-economic failures. This could be because socio-economic bias automatically exists within the structure of organisations, as a result of discrimination based on individuals being identified as part of marginalised groups in society (Eijk, 2017). Despite this, ethnic minority individuals should not be deprived of justice, based on what community they come from. This supports Yar's (2012: 52) argument, that social harms are a production of 'patterns of inequality in an advanced capitalism'. In today's unequal society, it should be expected that the State's organisations have a responsibility to ensure that society's more privileged individuals do not have unfair advantage in accessing justice, compared to those who are less privileged (Dehaghani & Newman, 2017). Restricting access to Legal Aid for individuals who need it most, removes the opportunity for justice (ibid). However, acknowledging accessibility differences could facilitate the creation of a fairer justice system (ibid). It is inappropriate to imply that some individuals are more deserving of justice than others.

While statistics about Legal Aid are limited, those identified here paint a worrying picture of the disproportionate access for ethnic minority individuals. From January-March 2021, ethnic minority individuals accounted for just over 20% of clients seeking Legal Aid, despite only making up roughly 10% of the population (Ministry of Justice, 2021). While this clearly suggests the existence of disproportionality, it is impossible to see how Legal Aid issues affect each ethnicity group individually, because they have all been categorised under 'BAME' in these statistics. It would be beneficial to measure disproportionality regarding Legal Aid in more detail, by analysing how each ethnic group is separately affected. Other statistics show that in 2018, ethnic minority individuals had unequal access to Legal Aid in both the Magistrates Court and Crown Court. In Crown Court, 79% of white defendants had access to Legal Aid compared to 10% of black defendants, 7% of Asian defendants and 4% of mixed ethnicity defendants (Ministry of Justice, 2019). In the Magistrates Court, 79% of white defendants again had access to Legal Aid yet only 8% of black defendants, 7% of Asian defendants and 2% of mixed ethnicity defendants received Legal Aid (ibid).

Considering that more ethnic minority individuals (46% black, 40% Asian, 45% mixed ethnicity) are tried at Crown Court than white individuals (38%) (Ministry of Justice, 2019), it seems that restricted access to Legal Aid has clearly affected ethnic minority individuals more than white individuals. This could help explain why disproportionality continues later in the

justice system. Additionally, Crown Court trials are more expensive, but are often where most trials are held because of the severity of charges brought by the police or CPS (Edwards, 2011). Because ethnic minority individuals appear to be treated more punitively by the justice system, it is fair to assume that their cases will be tried in the Crown Court. Therefore, the fact that they are unable to receive equal access to Legal Aid increases their vulnerability, thus predisposing them to an unfair trial.

These claims are further supported in research conducted by Campbell (2020), where he found that in Magistrates Court cases in London, many Legal Aid solicitors did minimal work and failed to adequately prepare for their cases, therefore providing clients with a poor defence. However, it was found that access to Legal Aid was not the main problem – all ethnic groups had almost equal access to it (ibid). The issue was the effectiveness of the legal representation and the amount of effort solicitors would put into their client's case (ibid). This shows that because some Legal Aid solicitors feel they do not get paid fairly, they feel little empathy for their clients' fate and would rather leave it in the hands of their client or the justice system. This arguably leaves ethnic minority individuals feeling very isolated and exposed, to a system that is unlikely to treat them with the same fairness as they would white defendants, as previous chapters have demonstrated.

However, inadequate representation may not always be out of choice. Financial cuts to Legal Aid has meant that some law firms are forced to close, as they are not financially viable to operate, but this negatively impacts communities and leaves some areas with great difficulty in finding a solicitor (Dehaghani & Newman, 2021). It is possible that marginalised communities experiencing serious socio-economic issues, may not have resources to access Legal Aid outside of their area, but being left with no solicitor at all would arguably leave them exposed to further social harms caused by the justice system. It is noted that the creation of social harms cannot be located in one cause, because 'they are located in the domain of the inter-personal, the sphere of institutionalised action and also arise from the unintended consequences of macro-level processes' (Yar, 2012: 58). Because of the difficulties in identifying a singular cause of harms, addressing and rectifying them can be problematic, which is why the justice system should make every effort to avoid contributing to them at all.

The ability to fairly access justice is a basic human right that allows individuals opportunities to find a remedy, experience a fair trial and be treated equally (Amnesty International, 2016) and without it, an individuals' issues can quickly worsen and exacerbate the suffering inflicted on families and wider communities (ibid). Here, Amnesty International acknowledges that social harms often arise from an unjust justice system. Reducing access to Legal Aid arguably leads to unequal distribution of resources that are available across different communities (ibid). As aforementioned, those who can easily access Legal Aid must not do so excessively and at the misfortune of the more vulnerable. Legal Aid is also a way of discovering options that involve more community-involved rehabilitation and diversion including alternatives to custody, increasing community involvement in the justice system, minimising unnecessary imprisonment, making policies more rational and efficiently using State resources (United Nations Office on Drugs and Crime, 2013). However, financial strains have caused Legal Aid in England and Wales to become a very politicised issue and the Government's response is to reduce funds and access to legal representation for most people (Welsh, 2017). This contributes to social harms because it is incredibly damaging for the Government to create poor socio-economic conditions and ignore the consequences, only to deprive vulnerable communities of the right to access justice. This victimises these individuals as well as criminalising them.

Critics have previously considered Legal Aid workers to be the voice of the vulnerable (Dehaghani & Newman, 2017), so when people's access to resources is disrupted, the opportunity for solicitors to speak up for them is removed and their injustices are widely ignored. If Legal Aid solicitors feel that they must 'cut corners' when working on cases, they risk leaving innocent and guilty defendants extremely vulnerable to the justice system. The New Labour Government had intended to cut Legal Aid and redistribute the finances to social work (Edwards, 2011), which suggests an acknowledgement that improving social organisations would minimise risks and improve opportunities for vulnerable communities. If more attention had previously been given to improving socio-economic factors, it is possible that the distress caused by restricted access to Legal Aid may not be as severe, therefore showing that these changes have significantly contributed to social harms. Additionally, solicitors who undertake Legal Aid cases frequently feel conflicted as to whether they should prioritise business (their firm, the justice system etc.) or the needs of their client (Welsh, 2017). If the needs of individuals are not the sole priority of solicitors, the solicitor and defendant will be unable to fully understand the extent of stress and anxiety that may come with a trial (Tata, 2007). This could leave vulnerable defendants exposed to serious psychological harms after

being exposed to harsh treatment by the justice system and losing the opportunity to properly defend themselves.

The consequences of a lack of effort for legal representation for ethnic minority individuals is demonstrated in a study by Rogers (2018), who found that participants felt they would not be imprisoned if they had ability to pay for their legal representation. He argues that this could account for the increased number of guilty pleas undertaken by ethnic minority individuals (ibid). It is possible that if they feel as though their solicitor is not concerned with their fate, they may not want to fight for themselves either, as they do not feel they can beat the justice system. This suggests that treating ethnic minority individuals as though they do not deserve justice, contributes to social harms. Furthermore, in cases where the police are responsible for disproportionate treatment of ethnic minority individuals, Legal Aid cuts may mean that it is unlikely they will be held accountable, as there will be a lack of available resources to pursue the claims (Mehigan, 2016). As highlighted in chapters one and two, the police are commonly the cause of the unjust treatment of ethnic minority individuals and if there are failures in holding them accountable, their behaviour will continue to negatively affect these vulnerable communities.

To conclude, this chapter has attempted to pull issues with Legal Aid away from a legal context and place them in the context of social harms, to analyse how it disproportionately affects ethnic minority individuals. This has been difficult due to the majority of existing research being conducted through a legal lens. However, this author believes the research discussed has demonstrated how cuts in Legal Aid have led to restrictions in accessing justice for vulnerable individuals, therefore continuously contributing to social harms experienced by ethnic minority communities. After enduring unjust treatment earlier in the justice system at the hands of the police, the next stage of the process should be an opportunity for individuals to seek justice. However, as long as resources that should be available for all individuals, are only made available for those with more privilege, the justice system is supporting the idea that only those with favourable socio-economic backgrounds are entitled to fight for justice. As long as this idea is perpetuated, ethnic minority individuals will continue to suffer social harms at the hands of the justice system.

## **Chapter 4 – Miscarriages of Justice**

This final chapter will explore how ethnic minority individuals continue to suffer social harms, as victims of miscarriages of justice. This will include a discussion regarding two eminent miscarriages of justice – the Cardiff Three and the M25 Three. This will highlight how the victims suffered at the hands of the justice system and the consequences of their ordeals. Furthermore, the analysis will consider issues regarding false confessions and achieving compensation, to emphasise the extent of social harms suffered not only by victims of miscarriages of justice, but also the wider community.

Copson (2016: 75) states that the justice system ‘[dehumanises] and [inflicts] harm upon some of the most vulnerable members of society’. It is unacceptable to consider miscarriages of justice (miscarriages) purely through a legal lens, because the true extent of harms are ignored and the full consequences for the victim are not adequately considered (Naughton, 2007). However, a social harm approach would allow for a focus on how societal structures can cause harms, without ignoring how crimes also cause harms (Copson, 2016), while also considering the effects on the miscarriage victim. This would allow society and the justice system to appreciate that addressing the harms caused by one aspect, can minimise harms caused by the other. Described as a ‘failure to reach the desired end goal of ‘justice’’ (Poyser & Milne, 2015: 267), in order to avoid miscarriages, the way in which justice is reached is as important as actually getting justice for the individual (ibid). Failure to properly gain justice only unnecessarily extends the process and risks causing more harms, which go beyond the individual. Despite this, there is a lack of existing academic evidence on how victims of miscarriages cope after being released, as focus is on the miscarriage’s causes (Hoyle, 2016). As long as research continues to neglect this area, the true extent of harms suffered by victims will fail to be properly understood.

According to Nurse (2018), some of the common causes of miscarriages are poor defences, failures in disclosing evidence that could prove innocence, cuts to Legal Aid, excessive use of Joint Enterprise and issues with witnesses and DNA evidence. This dissertation has covered some of these factors, which emphasises earlier arguments – these issues cannot be discussed in isolation, as they all lead to the same injustices. One of the biggest misconceptions about miscarriages is that they are rare, so when they are exposed they are seen as the ‘tip of the iceberg’ of problems within the justice system (Naughton, 2003; Savage et al., 2007).

Subsequently, they are viewed in the same way as crime statistics, in that they do not represent every crime occurrence (Naughton, 2003), meaning that when statistics are viewed, society appreciates that there are likely to be existing crimes, that have not been recorded. In the context of miscarriages, it is reckless to assume that only the ones that are exposed, are the ones that occur.

The harms caused by miscarriages are measured on a 'as they happen' basis, therefore it is argued that the full extent of harms are not considered as a frequent, serious problem (Naughton, 2007). It is fair to assume that by treating them as such, the experiences of those who suffer miscarriages and their status as a victim are minimised, while their status as an offender is exacerbated. Scholars have claimed that it is futile to study a single miscarriage out of context of others, nor is it enough to focus on one cause, as it is better to look at how 'social forces, institutional logics and erroneous human judgements and decisions' (Leo, 2005: 211) collectively contribute to causing miscarriages. Only then will the full extent of the harms caused by miscarriages, be taken seriously by both the justice system and society.

Such as the harms caused by unjust treatment earlier in the justice system, the harms caused by miscarriages go beyond affecting the individual and encompass the victims' friends, family and wider community (Poyser & Milne, 2021). Furthermore, the harms caused by miscarriages are usually exacerbated because the justice system responds to them very slowly (Gudjonsson, 2011) and as argued by Poyser (2018), victims are established at society's discretion because the concept of a victim is socially constructed. This could mean that societies consciously or subconsciously choose who they believe is worthy of being labelled a victim, which is extremely damaging for those who are excluded. If society believes that an individual has committed an offence and has caused harm to others, they may be reluctant to view them as victims, even if innocence is later proven. As well as acknowledging the victims of miscarriages, it is vital that society understands why they occur, so they can help ensure their occurrence decreases in the future (Nurse, 2018). Subsequently, if the justice system is reluctant to admit they have convicted the wrong person, the responsibility to fight for a fairer justice system lies with society. It is also important to note how miscarriages are not a short-term experience and they often begin with a person's first encounter with the justice system and last long after their final encounter (ibid). Two of the worst miscarriages to have occurred in England and Wales are the Cardiff Three and the M25 Three, both involving the conviction of black individuals for crimes they did not commit.

In 1988, prostitute Lynette White was stabbed to death at the flat where she worked and initial evidence showed witnesses saw a white man in a distressed state, near the flat shortly after the murder (Campbell & Sekar, 1991a). However, eight suspects were arrested, seven of whom were black, in November 1988 and in 1990, Tony Parris, Yusef Abdullahi and Stephen Miller were convicted and given a life sentence (ibid). They later became known as the Cardiff Three. Police built the case around Miller's confession, who also happened to be the victim's boyfriend, despite the fact that he later retracted it (Campbell & Sekar, 1991b). Serious questions around the validity of the conviction were later raised at appeal, because recordings of the interview where Miller confessed showed he was subjected to police questioning that was verbally aggressive and amounted to bullying (Jackson, 2018). Additionally, Miller was put through 19 interviews in five days and eventually 'confessed', after denying his involvement 300 times. Miller also appeared to be a vulnerable suspect, as he had the IQ of an 11-year-old child (ibid).

A Home Office review of police conduct during the case found that the three witnesses who testified against the Cardiff Three, eventually admitted to lying during the trial, after police pressured them to testify to corroborate their version of events, not the suspects' (Horwell, 2017). However, the corruption case against the officers later collapsed due to missing evidence (ibid). Police were likely desperate to secure a conviction for the murder but because no officer was ever penalised for the miscarriage, the Cardiff Three have not received closure or justice, despite their convictions being quashed in 1992 (BBC News, 2011b). This was further highlighted by the fact that when their convictions were quashed, South Wales Police refused to re-open the investigation into the murder, or take action against the officers involved in the original case (Jackson, 2018). This case is an example of how social change is critical to miscarriages, but will only be successful if focus is placed on correcting harms caused by the justice system, which as this case has shown, can be just as harmful as the harms they are built to avoid (Copson, 2018).

In the case of the M25 Three, which also occurred in 1988, three men committed robberies in three different locations, where one man died of a heart attack and another was stabbed (Hopkins, 2000a). As with the Cardiff Three, victims and witnesses were adamant that at least two of the offenders were white, yet Raphael Rowe, Michael Davis and Randolph Johnson, who were all black, were wrongfully convicted (Naughton, 2007). All three had previous convictions for robbery (Davis), rape (Johnson) and malicious wounding (Rowe) (Hopkins,

2000a), therefore it is possible that this contributed to the police's certainty that they were guilty. What is perhaps most harmful about this case, is that they were only released after it was revealed that police had worked with an informant who had previously been a suspect (Hopkins, 2000b), as the informant had originally given the name 'Jason' rather than 'Johnson', but later received £10,000 to change his mind (ibid). When they were released after appeal, the judge refused to admit they could be innocent, because they were only being released on a legal technicality (ibid). Both of these miscarriages were extremely harmful to all individuals involved and some of these harms will now be explored.

The main cause of harm with the Cardiff Three was arguably Stephen Miller's false confession. False confessions are forced by the police and can arise in cases where suspects are psychologically vulnerable (Gudjonsson, 2002; Savage et al., 2007). As aforementioned, Miller had the IQ of an 11-year-old, therefore he possibly could not understand the consequences of confessing, especially if he was coerced. They can also arise from inappropriate police conduct (ibid), therefore Miller was arguably at a double disadvantage during his interview. Furthermore, innocent people are often questioned more harshly than guilty people and after being subjected to long police interviews, they are more likely to falsely confess (Meissner et al., 2015; Garrett, 2015). It is fair to assume that questioning innocent individuals as though they are guilty is a very intimidating experience, which will undoubtedly contribute to harms. The consequences of false confessions continue to affect the individual, because innocence can be hard to prove later, as the justice system view confessions as an undoubted confirmation of a person's guilt (Garrett, 2015). This is because they usually include very detailed information regarding the case (Gudjonsson, 2011). Additionally, police may accept them due to their urgency to close a case, which inevitably contributes to miscarriages and harms (Poyser & Grieve, 2018). In the absence of other evidence, the justice system may rely on confessions, however it is harmful to do so if it later emerges that the individual is clearly innocent, or the confession was made under duress, as in the Cardiff Three case. Furthermore, miscarriage victims are more likely to be viewed as guilty rather than innocent and are therefore criticised for 'lying' during police interviews (Kassin et al., 2010) and because they often reject the right to have a solicitor present, they are left exposed to pressure by the police and ultimately make a false confession (ibid). This implies that police would often rather prove guilt than innocence, which causes a great deal of harms for the individual, as it leads to their wrongful conviction.

There is usually a stigma surrounding those who are wrongfully convicted, which possibly interferes with their ability to access support resources upon release (Goldberg et al., 2019). This could be addressed by educating people to reduce hostility and make them more willing to help victims of miscarriages (ibid). Exonerees are further hindered in their recovery from harms, as they do not have the same access to resources such as counselling, treatment programs, help with employment and housing, as other inmates (Shlosberg et al., 2020). It would be fair to assume that individuals are entitled to compensation upon release, described by Goldberg et al. (2019: 829) as ‘atonement for loss, injury or suffering’. However, it is crucial to facilitate non-financial compensation (ibid), that comes in the form of support from family and the community. Chinn & Ratliff (2008) identified that because their lives are uprooted, it is vital that victims of miscarriages are supported when rebuilding their lives (Poyser, 2018). Compensation for miscarriage victims is not automatic, yet it should be due to the huge financial cost of proving innocence (Hoyle & Tilt, 2020). It could be argued that issues in gaining compensation for their wrongful conviction can be a very distressing experience for victims, as they have to further fight to prove their innocence despite having been released.

Finally, the psychological harms caused by miscarriages are extensive. To address these harms, it is vital to acknowledge individuals as victims, not offenders (Poyser, 2018). However, research is commonly focused on the causes of miscarriages, so victims are often ignored (Campbell & Denov, 2004) and forced to share their personal stories through the media (Poyser, 2018). While it is important that responsibility is taken for the victim’s suffering by the justice system, it should not be achieved at the expense of ignoring the victims. Grounds (2004) found that of a sample of 18 exonerees, 10 displayed symptoms of PTSD and most participants reported a negative change in their personality, stating they constantly felt under threat and had issues with re-adjusting to society. An American study found that black victims of miscarriages are significantly less likely to receive compensation after release, usually because of previous convictions, having made a false confession or because they are allegedly at higher risk of reoffending (Keith, 2016). This shows how the justice system not only victimises ethnic minority individuals by exposing them to injustices, but contributes to harms by failing to provide them with support upon release. Furthermore, Campbell and Denov (2004) found that individuals who maintained their innocence felt they were seen as high risk offenders and therefore, lost hope that they would be released. This emphasises the detrimental effects of miscarriages on individuals.

In conclusion, it is vital to acknowledge how harms caused by miscarriages extend beyond the victim, if there is any hope of future protection and improvement to the justice system's future practices (Norris et al., 2019). Miscarriage victims' stories must be heard, as they have experienced the flawed justice system first-hand (Goldberg et al., 2019) and society should participate in addressing miscarriages (ibid), if there is any hope of avoiding injustices like those experienced by the Cardiff Three and M25 Three. It is implied that like other issues in the justice system, miscarriages are often instigated by the actions of the police, yet mistakes during interview can be difficult to identify because they take place privately (Poyser & Grieve, 2018). Further complications arise by the fact that society believes a victim's experience is over after release (Poyser, 2018), yet the harms highlighted in this chapter clearly suggest otherwise. As the relationship between policing and miscarriages is described as an 'unhappy marriage' (Poyser & Milne, 2021), it is vital that there should be a significant effort made by the police, to avoid miscarriages. (Poyser & Milne, 2015). Without acknowledging this, it is highly likely that miscarriages will continue to be a dangerous occurrence in the justice system, which will cause more injustices to ethnic minority communities.

## **Conclusion**

Through an exploration of the injustices faced by ethnic minority individuals at the hands of the justice system, this dissertation has aimed to move the discussion away from viewing them as offenders, to viewing them as victims through a social harms approach. Furthermore, paying attention to the cultural safety of marginalised communities would ensure that ‘dominant’ groups are less free to control race relations (Smye et al., 2010), and restricted from viewing them as ‘other’. As discussed, some support the idea of separating crime and criminology, so that the harms suffered by victims are not overlooked. However, others argue that rather than separating them, we should acknowledge how harm is central to crime (Paoli & Greenfield, 2018) and therefore, they should not be discussed out of context. While the justice system’s purpose is to protect communities from harms caused by individuals (Pemberton, 2007), it would be fair to argue that it fails to stop people becoming victims of the justice system’s procedures and the harms that follow, as is shown with the injustice faced by ethnic minority individuals. What is most worrying about this, is that criminal justice organisations have the ability to hide harms that produce many victims (Davies et al., 2014). If the justice system ignores the fact that it contributes to harms, they are likely to avoid responsibility.

Chapter one highlighted the root cause of injustices faced by ethnic minority individuals – fractured relationships caused by disproportionate rates of arrest, criminalisation and severe lack of mutual trust between police and ethnic minority communities. To help address this, Kalyan & Keeling (2019) recently recommended that communities should be able to voice their opinions about how stop and search is used in their area, to create more transparent relationships with the police. Additionally, the chapter also discussed how ethnic minority individuals are disproportionately targeted by stop and search. Minhas & Walsh (2021b) recommend that future research should analyse whether the descriptions of individuals that police receive before conducting stop and search, also contributes to disproportionality. By taking these recommendations in to consideration to further understand why disproportionality occurs so frequently in police encounters, it is possible that relationships between police and ethnic minority communities would be more mutually respectful, which could ultimately minimise negative encounters with the justice system.

Chapter two's discussion on black people and gangs drew attention to previous measures introduced to tackle the issue, namely the 'Ending Gang and Youth Violence' report. The chapter highlighted various criticisms of the report surrounding failures to acknowledge the contribution of poor socio-economic factors, to gang involvement. Shute et al. (2012) noted that most gang research is focused in London, where gangs are allegedly more common, so less serious gang issues in areas outside London are exacerbated. Therefore, it is recommended that gang research is extended throughout England and Wales, to gain a clearer picture of how severe the issue is nationwide. Additionally, the process for labelling gang members needs urgent review, so that innocent individuals are not exposed to the justice system (Fraser & Atkinson, 2014).

Chapter three considered difficulties encountered by ethnic minority individuals when accessing Legal Aid. Whilst it is clear that no individual should face difficulties in fighting for justice, the literature shows that individuals from deprived backgrounds experience substantial inequalities. This is undoubtedly a topic that is recommended for future research. Criminological research on this area is extremely limited, as most research on the impact of Legal Aid cuts has been conducted in law. Subsequently, it is possible that the full extent of harms caused by these cuts has not been fully explored. Therefore, it is crucial that future research on the issue is undertaken within criminology, to comprehend how this contributes to social harms.

Chapter four discussed miscarriages of justice and how injustices in earlier stages of the justice system, contribute to social harms endured long after an individual's experience ends. Since 1997, the Criminal Cases Review Commission (CCRC) has received 27,810 applications for case appeals, but only 762 have been referred to the Court of Appeal (Criminal Cases Review Commission, 2021). Upon researching this area, it does not appear that the CCRC release statistics that measure whether there is a difference in the ethnicity of individuals whose cases they receive or refer for appeal. While it could be that disproportionality genuinely does not exist here as each case is viewed on an individual basis, it is recommended that some information on the diversity of appeal referrals be released. Gudjonsson (2011) recommended that the only way of addressing and minimising the risk of miscarriages of justice is to improve police interviewing and the recording of interviews, identify personal vulnerabilities of the individual and improve how the courts respond to and correct injustices. It is also likely that miscarriages of justice arise because it is the prosecution's job to prove guilt beyond a

reasonable doubt, so therefore all previous efforts have been focused on proving guilt (Nurse, 2018). It is therefore recommended that earlier efforts by the justice system should be made to prove innocence over guilt, so that as much effort as possible goes into avoiding inflicting harms on innocent individuals. The final recommendation from this chapter, is that more academic research should focus on the stories of individuals who suffer a miscarriage of justice, rather than leaving them to speak out through the media (Poyser, 2018). If more academic attention is paid to the personal stories of victims, they can be put in the context of social harms more securely and therefore, it is possible that more can be done to minimise their effects on vulnerable individuals.

This dissertation has demonstrated that although the whole justice system contributes to social harms, issues appear to begin with the police's treatment of ethnic minority individuals. Bradford (2016) argues that it is important that people feel seen and their social identity is acknowledged and respected by police, because if they feel like they are excessively targeted, it makes them feel excluded. Scholars have also credited critical criminologists, who advocate for a social harms approach, because they are responsible for drawing attention to the moral indifferences to harm that some people possess, by demonstrating concern for how certain groups are criminalised (Pemberton, 2004). Furthermore, it is widely acknowledged that due to unequal power distributions amongst various members of society, it would be fair to expect those of a higher power to protect marginalised groups from harm (ibid). However, because disproportionality is a recurring problem and ethnic minority individuals continue to face serious injustices from the justice system, it is highly likely that the powerful often pay little heed to the struggles of the powerless. As long as the vulnerable remain exposed to a system that has no regard for the injustices they cause, it is inevitable that social harms will continue to adversely affect ethnic minority communities. However, as Zedner (2011) has previously stated, the consequences of crime will excessively target marginalised groups, but this does not mean that reform is impossible.

While recent years have demonstrated heightened concerns for victims of criminal activity (Paoli & Greenfield, 2015), it could be argued that the same concern has been slowly distributed to victims of the justice system. Future research in this area is encouraged to be conducted via a social harm lens rather than a general criminological or legal one. Existing literature shows that injustices and social harms are intertwined and lead to disproportionality. However, a significant amount of research is focused on harms caused by ethnic minority

individuals as offenders, rather than the harms imposed upon them as victims. Some suggest that crime and its harms can only be addressed if social conditions improve and reflect society's values (Criger, 2011). Consequentially, it is inevitable that future research should explore how the Government can help societies improve socio-economic conditions, to minimise exposure to harms for vulnerable individuals. Additionally, the Commission on Race and Ethnic Disparities (2021) have suggested ceasing use of 'BAME' when discussing ethnic minority groups, as it generalises their experiences and if some are believed to 'suffer less' than others, the harms suffered may be ignored. Re-focusing research on each ethnic group separately, brings hope that marginalised communities may finally be given voices as victims and their suffering at the hands of an unjust justice system will decrease.

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