

Inequalities in crime and criminal justice

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The 'crime' problem

The last twenty years have witnessed an intensification of the 'law and order' debate, which has been fuelled by the concern at the rise in recorded crime and the increase in levels of fear among the population. Crime has now surpassed health and education as an issue of major public concern (Jacobs and Worcester, 1991).

Labour politicians have successfully managed to present themselves as being 'tough on crime and tough on the causes of crime', ending the claim that that 'law and order' is a right-wing issue (Downes, 1983). The Crime and Disorder Bill is a clear reflection of this apparent toughness towards crime. It aims to combat crime and disorder considered to plague many of the worst local authority housing estates, and also the apparent growing nuisance of juveniles through the introduction of curfew orders and parenting orders which require parents to attend counselling sessions. In an attempt to deal with the causes of crime, the Social Exclusion Unit, launched in December 1997, aims to reduce social exclusion arising from unemployment, low income, poor housing, bad health, family breakdown, and high crime environments.

In the meantime, the average prison population soared to 61,000 in 1997, greater than in any previous year (NACRO, 1997a). England and Wales now has one of the highest rates of imprisonment amongst Western European countries, whilst the total prison population is projected to rise to 82,000 by the year 2005 (NACRO, 1997b).

Despite the rightward drift in the politics of 'law and order', there have been attempts to shift the debate towards issues of fairness and equality (Cook, 1997). One aspect of this debate has concerned inequalities in the criminal justice system, which is the focus of this paper.

Inequalities in the criminal justice system

Evidence suggests that very select groups of people are apprehended for criminal acts. A Home Office national survey of prisons carried out in 1991 reveals that the prison population consists mainly of young poorly educated men, many of whom will have an ethnic minority background (Walmsley et al., 1992). Below is a summary of the study's main results:

- Only about 4% of the prison population were female, whereas in the general population the proportions of men and women are nearly equal.
- Excluding juveniles (i.e. those under 17) about 40% of the population were under 25 compared to 16% of the general population.
- Excluding those who have never had a job, 41% of male prisoners were from partly skilled or unskilled occupations, compared with 18% of the general male population.
- Fifteen percent of male prisoners and 23% of females described themselves as black or Asian, but less than 5% of the general population come from these ethnic groups.
- Forty percent of male prisoners under the age of 25 left school before the age of 16, compared with only 11% of the general male population.

There is a good chance that prisoners would have spent some time in local authority care, or spent some time being homeless:

- As many as 38% of prisoners under 21 reported that they had experience of care, compared with only 2% of the general population.
- Thirteen percent of the prison population said that they had no permanent residence just before their imprisonment.

Other studies have highlighted the over-representation in the prison statistics of people with mental health problems and those with drug and alcohol dependencies. One study found that 25% of remand

prisoners were diagnosed as mentally disordered; 38% were of the disorders arising from substance abuse (cited in NACRO, 1997b).

The results of this survey show that the prison population is markedly different from the national population in a number of important respects. A critical issue is whether this is as a result of inequalities operating in the criminal justice system. One way of assessing whether the criminal justice system functions in a biased way is to examine the offending rates of these groups using self-report surveys.

Recent Home Office research into young people and crime found that involvement in offending amongst young people was widespread (Graham and Bowling, 1995). Using a self-report survey of 1,721 young people aged between 14 to 25 it was shown that the gender gap in offending was much smaller than demonstrated by conviction rates. For instance, 1 in 2 males and 1 in 3 females admitted that they had committed an offence at some time. Furthermore, Afro-Caribbeans had very similar rates of offending compared to whites, although those of Indian, Pakistani and Bangladeshi origin had significantly lower rates than either whites or Afro-Caribbean. In common with other self-report studies (and again in contrast to studies based on recorded crime data) the study found only a weak relationship between social class and offending and this relationship disappeared after controlling for family and school variables.

Thus, self-report studies suggest that official statistics may be an unreliable method of understanding the offending rates of different population groups. This has led some criminologists to argue that the criminal justice system operates in a biased way (Box, 1983; Cook, 1997). They suggest that this may be the result of law enforcement procedures, which serve to over-emphasise the activities of the more powerless in society. With the exception of women, who are as a group poorer and less powerful than men (Heidensohn, 1985), it is claimed that the more powerless are more likely to be caught and convicted than powerful individuals and organisations (Pearce, 1976; Levi, 1993). It is argued that not only are the crimes of the powerful under-emphasised by the criminal justice system, but their actual extent and impact is actually much more serious than the crimes committed by the types of people normally dealt with and punished by the criminal justice system.

The criminologist Steven Box attempted to ascertain the extent of some of the crimes of the powerful, and found that in 1979 there were seven times more deaths from occupational accidents or from occupational diseases, than there were from murder as conventionally defined (Box, 1983). Approximately 3,000 deaths were recorded as homicide, compared with 23,000 deaths from occupational accidents or occupational diseases. Thus, in this example, corporate murder far exceeded murder as occupationally defined.

Despite corporate crime, mainly of a financial, exceeding conventional crime in quantitative terms, a number of left-wing criminologists have argued that crimes committed by the powerless need to be taken seriously because their main victims are disproportionately other poor people (Lea and Young 1984; Jones et al., 1986).

Other criminologists have argued that looking at law enforcement only takes us so far, and that when we examine the social construction of criminal law categories it becomes even clearer why certain social groups are over-represented in the statistics for offending (Box, 1983; Chambliss and Seidman, 1971). The argument is that criminal law categories are ideological constructs:

Rather than being a fair reflection of those behaviours objectively causing us collectively the most suffering, criminal law categories are artful, creative constructs designed to criminalize only some victimizing behaviours, usually those more frequently committed by the powerless, and to exclude others, usually those frequently committed by the powerful against subordinates. (Box 1983, 7)

Thus, definitions of murder, rape, assault and theft are constructed so as to exclude acts with similar outcomes, and these are just the acts likely to be committed more frequently by powerful individuals. Take for instance, the criminal law involving rape, which only recognises forced or threatened physical coercion, and not economic power, deceit or misrepresentation.

The rest of this paper provides recent evidence on some of the main issues relating to law enforcement, which result in inequalities being reproduced in the criminal justice system. Whilst this paper focuses on law enforcement issues, it is not intended to undermine the importance of the social construction of the criminal and of crime categories in the argument about inequalities in the criminal justice system.

Bias in law enforcement procedures

There are many ways in which law enforcement produces a situation in which the powerless are over-represented in the criminal justice system, whilst the crimes of more powerful individuals and organisations are less visible. I will next examine three main ways this happens: 1) resource allocation; 2) prosecution vigour; and 3) the biased treatment of some social groups. Other reasons that may explain the disparity in the treatment of conventional crime and corporate crime, such as those concerning the letter of law, will not be discussed here but have been explored elsewhere (e.g. Croall, 1992; Pearce and Snider, 1995).

Looking at the issue of resource allocation, it is not difficult to see why the powerless are over-represented in crime statistics: more money is spent on dealing with the crimes of the powerless. Total expenditure on the criminal justice system increased from 7.5 billion in 1990/91 to 10.3 billion in 1995/96 and 66% was spent on the police in 1995/96 including the employment of 126,000 police officers. Compare this to the enforcement of health and safety in workplaces. The expenditure of the Health and Safety Executive for 1996/97 was approximately £213 million, involving only 4077 staff (Health and Safety Commission, 1997). Indeed over the 1980s there has been a fall in the number of health and safety inspectors, from 1850 in 1981 to 1442 in 1996/97 (Ibid.).

A second reason why the criminal justice system is overwhelmingly concerned with the powerless is that their crimes are more vigorously pursued by the prosecuting agencies. For the most part, crimes committed by corporations do not fall under the jurisdiction of the police, but under special regulatory bodies such as commissions, government departments, including inspectorates of factories, mines and quarries, explosives, railway, and agriculture, and the Monopolies and Mergers Commission. These bodies have powers either to initiate or recommend criminal prosecution. However, they are primarily designed to be regulatory bodies whose main weapon against corporate misbehaviour is administrative (e.g. occasional inspection). The regulatory process contributes to the way in which the activities of business corporations are not seen as criminal, since they frequently do not come before the criminal courts.

An illustration of how differential prosecuting policies serve to over-emphasise the activities of the poor and powerless whilst under-emphasising the actions of the rich and powerful, can be found in the comparison between Social Security Fraud and Inland Revenue Fraud. Table 1 shows the numbers prosecuted for tax and social security fraud.

Table 1 Prosecutions for tax and social security fraud

Year	DSS prosecutions	Inland Revenue prosecutions
1991/92	379	249
1992/93	5,239	217
1993/94	7,645	216
1994/95	9,546	357
1995/96	10,677	192

Source: Cook, 1997

Prosecutions for social security fraud are substantially greater than prosecutions for tax fraud. Whilst there were 10,677 prosecutions for social security fraud in 1995/96, there were only 192 prosecutions for tax fraud in the same year. Cook (1987; 1997) argues that it is the same crime that is committed: false statements are made to government departments in order to gain illegal financial advantage from the state.

She proposes that responses to benefit fraud should be seen in an ideological context which perceives 'the majority of claimants as idle, undeserving and lacking in moral fibre', whilst taxpayers and tax fraudsters are perceived as victims of the 'idle poor and victims of state bureaucracy itself'. This helps explain the reluctance to prosecute tax fraudsters despite the losses due to tax evasion far exceeding the losses of benefit fraud (see Table 2). Thus, in 1995/96 over 5.2 million in taxation was yielded as a result of the work of the Inland Revenue investigations compared with only 1.2 million of benefit savings made as a result of the investigations carried out by the DSS.

Table 2 Savings made from DSS and tax fraud investigations

Year	Benefit savings (in £ millions)	Yield from compliance (in £ millions)
1991/92	446	4,905
1992/93	558	4,575
1993/94	654	4,697
1994/95	717	6,118
1995/96	1,222	5,242

Source: Cook, 1997

Finally, an important reason for the existence of inequalities in the criminal justice system is the biased treatment of some people by agencies – in particular, the treatment of young black men by the police. A suspicion of young black men as potential criminals exists from the lower echelons of the police right to the top. This was clearly illustrated by statements made by the Metropolitan Commissioner Paul Condon in launching Operation Eagle Eye, which implied that young black men were disproportionately involved in mugging attacks across London.

Results from the two most recent British Crime Surveys show that the Black population has more contact with the police (Bucke 1997). For instance, according to the 1996 survey 23% of Afro-Caribbeans had been stopped in their vehicle or whilst on foot, compared with only 16% of whites. Afro-Caribbeans were also more likely to be stopped more than once (14%), compared with only 5% of whites. Once stopped, Afro-Caribbeans were more likely to be searched (20%), compared with only 8% whites. And they were also more likely to be arrested: 12% compared with only 3% of whites. In contrast, whites were more likely to be contacted by officers providing a service (e.g. returning lost property and dealing with ringing burglar alarms).

Given the extent of these findings, it is not surprising that a Home Office report on *Ethnic Monitoring in Police Forces* published in December 1997 should conclude:

The figures for black people may be inflated by the heightened police suspicion of black people and the more adversarial contact with them. These both reflect and reinforce negative perceptions which have built up over the decades. The 'race' and crime debate has taken insufficient account of the exercise of police discretion...in practice, the use of this discretion lies in the police not exercising their powers to the full; but this research indicates that black people may benefit to a lesser degree than whites and that the cumulative effect of police decisions which, technically, may be incontestable, may mean that black people are treated significantly more severely than whites.

Conclusion

In this paper, I have shown that the criminal justice system reproduces inequalities: certain groups of people selectively pass through the system – namely, young poorly educated males, many of whom have ethnic minority backgrounds, and who may have spent some time in care or living as homeless. The over-representation of these groups of people is the result of law enforcement procedures which serve to highlight the activities of these people, whilst simultaneously minimising the criminal actions of more powerful people and organisations.

Given the type of people who get caught in the criminal justice system, as well as the reasons for the disparity, we can see that the role of the criminal justice system is not a means for dealing with crime and dispensing justice. It is more about classifying harms – where the harms of the powerless are exaggerated, and the harms of the more powerful are minimised.

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