Entanglements of Life with the Law

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Precarity and Justice in London's Magistrates' Courts

By

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GLOSSARY

Allocation of case
A decision by magistrates and District Judges regarding the seriousness of the crime; serious and "either-way" offences are referred to a Crown court to be tried. It was formerly referred to as "mode of trial" decisions.

Bail
The temporary release of an accused person awaiting trial, sometimes on condition that a sum of money is lodged to guarantee their appearance in court.

Bench
Term used to describe two or more magistrates or a magistrate sitting with a District Judge who preside over a hearing/trial.

BME
Term used to describe individuals from black and ethnic minority communities.

Breach of bail
When a defendant does not comply with their bail conditions, they can be arrested and charged with failing to comply with bail.

Case management review
A pre-hearing of a case by a magistrate or a District Judge held to ensure that all the evidence will be available at the hearing.

Claimant
The victim. This person may also be a Crown Prosecution Witness called to give evidence at a contested trial.

Colloquial language
Ordinary spoken English as used by defendants.

Committal path
Ministry of Justice guidance outlining how individual police stations should refer criminal cases to specific magistrates' courts to be heard, and for magistrates to refer serious or either-way offences to specific crown courts for trial.

Contested trial
Convened to prosecute an individual who contests the evidence against him/her by pleading "not guilty"; in magistrates' courts these cases are decided by magistrates or District Judges, not by a jury.

Control order
Under the *Prevention of Terrorism Act (2005)* the SSHD could impose an order on a suspected terrorist to restrict his or her movement, activities, place of residence, ability to meet/converse with others, or any other activity deemed to be in the interest of protecting members of the public.

Court list
Lists—displayed at the entrance of each court and outside each courtroom—that state the names and case numbers of the defendants who are to be prosecuted.

Criminal Behaviour Order
A CBO can be issued by a court against an individual convicted for a criminal offence. An order is aimed at tackling the most serious and persistent offenders. CBOs include prohibitions to stop anti-social behaviour and may also include requirements imposed on the person that aim to address the underlying causes of the offender's behaviour.

Criminal Justice System (CJS)
Composed of the police, the CPS, magistrates' and Crown courts, and Her Majesty's Prison Service.

Criminal procedure rules
Rules set out by the Ministry of Justice that define the objectives of the criminal justice system, which is to ensure that cases/prosecutions are dealt with fairly and expeditiously.

Crown Prosecution Service
Created in 1985 to improve public confidence in the CJS by counter-balancing the power of the police; they are lawyers responsible for prosecuting cases in the courts.

Culpability
Magistrates and District Judges determine whether the alleged behaviour of a defendant was wrong.

District Judge (DJ)
A qualified lawyer who is appointed to decide cases in magistrates' courts in urban areas with large criminal case loads.

Dock
A specific place in the court where defendants are placed during their hearing or trial; the vast majority of docks are lockable, enclosed Perspex boxes.

Drug Rehabilitation Requirement
A court order requiring a convicted person to undergo a specified treatment for substance abuse.

Duty solicitors
Solicitors attached to a court who are paid on a pro-rata basis through legal aid to defend defendants who cannot afford to hire a legal representative

Either-way offence
An offence that may be tried either as an indictable offence in a crown court or as a summary offence by magistrates.

European Arrest Warrant
An arrest warrant valid throughout all member states of the European Union (EU). Once issued it requires another member state to arrest and transfer a criminal suspect or sentenced person to the issuing state so that the person can be put on trial or complete a detention period.

Extradition
Treaties linking countries that require them to arrest and handover/ extradite individuals for trial in the country where the crime was committed or to serve the remainder of their sentence in that country.

Her Majesty's Courts & Tribunal Service (HMCS)
An executive branch of the Ministry of Justice that manages the courts; staff include legal advisers, ushers, IT personnel, administrators, and security.

Indictable crime
A serious offence that can only be tried on indictment in a crown court.

Insurance Fraud Enforcement Department
Funded by large insurance companies and hosted by the City of London Police, it investigates large-scale insurance fraud; cases are referred to the CPS to be prosecuted.

Language of the law
As found in legislation, statute, and legal documents. See *legal discourse*.

Legal adviser
Formerly known as court clerks, these legally qualified barristers advise magistrates about the law and make a record of proceedings.

Legal Aid Agency
An executive agency of the Ministry of Justice that decides and allocates legal aid funds to counsel who represent defendants in civil and criminal hearings; it also runs the Public Defenders Service that prosecutes serious and complex cases in Crown courts.

Legal applications
A declaration made to the court to initiate legal action; these include statutory declarations, interest of justice applications, applications for a bad character reference and arrest warrants.

Legal discourse
Stylised, ritual language used by lawyers and judges characterised by a highly technical vocabulary which uses colloquial terms in specialised ways; it is replete with lengthy noun phrases, the use of the passive voice, multiple negatives, complex grammatical structures, and multiple, embedded clauses.

Legal procedure
The stages through which a remand hearing, trial, bail hearing, and extradition hearing proceed; each stage has a different purpose. The purpose of the procedure is to allow magistrates and District Judges to decide a case.

Magistrates
Unpaid laymen and women who decide cases in magistrates' courts.

Metropolitan Police
The police force responsible for policing Greater London.

Mitigation
An attempt, usually by solicitors representing a defendant, to make the offence appear less serious and reduce the sentence.

National Crime Agency
A national police agency that investigates serious and high-level crime.

Neoliberalism
Policies aimed at market-oriented reforms that are intended to shift responsibility, and the costs of the policies, on to citizens and away from the state.

OCGs
Organised criminal gangs.

Pleading bar
A designated place in a courtroom where the defendant stands to "plead" his/her case; this space was removed from the majority of courts in the 1970s and replaced by an encased, lockable, Plexiglas dock.

Public order offences
Offences defined in the *Public Order Act (1984)* that include riot, violent disorder, racial hatred, affray, harassment, and "threatening or abusive or insulting words or behaviour," that is, illegal speech acts. Many of these offences can be prosecuted on the word of a police officer.

Practice directions
Procedures issued by the Ministry of Justice setting out how District Judges and magistrates' should manage legal proceedings, hear evidence, pronounce sentence, and so on.

Practice Rules
Rules issued by the Ministry of Justice that are supposed to be used by magistrates and District Judges to ensure that hearings and trials progress to a just and fair conclusion.

Precariat
A social class formed by people suffering from precarity, which is a condition of existence without predictability or security, affecting material or psychological welfare.

Probation Service
Formerly a government department, most of which was privatised. Officers are responsible for identifying a defendant's criminal record and assessing his/her mental health and problems with substance abuse. They also make sentencing recommendations.

Remand
Defendants who have committed a serious offence or who are awaiting their hearing and who are unlikely to abide by his/her bail conditions are remanded into custody/prison to await their hearing/trial.

Remand hearing
The initial hearing of a criminal offence heard by a magistrate or District Judge

Sanction detection rates
A sanctioned detection occurs when (1) a notifiable offence has been committed and recorded; (2) a suspect has been identified and is aware of the detection; (3) the CPS evidential test is satisfied; (4) the victim has been informed that the offence has been detected; and (5) the suspect has been charged, reported for summons, or cautioned.

SSHD
The Secretary of State of the Home Department.

Sentencing hearing
A separate hearing at which magistrates or District Judges hear recommendations from the Probation Service and sentence a guilty defendant.

Sentencing guidelines
A requirement of the Ministry of Justice, formulated by the Sentencing Council, to ensure uniformity of judicial decisions for different crimes; magistrates and District Judges are required to follow the guidelines unless there is a substantial reason not to.

Serious Fraud Office
A national agency that prosecutes serious or complex fraud, bribery, and corruption.

Solicitors
Solicitors trained in criminal law who work for private law firms.

Statutory Declaration
A formal statement made affirming that something is true to the best knowledge of the person making the declaration. It must be signed in the presence of a magistrate. Statutory Declarations are generally used to satisfy a legal requirement or regulation when no other evidence is available. This means that if the declaration is granted by the court, the defendant will have the original decision set aside and a new trial for the offence will be scheduled.

Stop and search
A police officer has the power to stop individuals and ask their names, what they are doing in the area, and where they are going to. Officers can search a person if they have "reasonable grounds" to suspect that he/she is carrying illegal drugs, a weapon, stolen property, or something that could be used to commit a crime, such as a crowbar.

Summary offences
"Minor" offences that are prosecuted in magistrates' courts (see Box I.1).

Summary justice
Proceedings in a court of law carried out rapidly by the omission of certain formalities required by the common law. In the eighteenth century, it meant "performed or effected by a short method, done without delay."

Summons
An order issued by a magistrate or District Judge authorising the CPS/police to arrest an individual and/or to require a witness to attend a hearing to give evidence. It is sometimes referred to as a requisition.

TPIM
The Terrorism Prevention and Investigation Measures (TPIM) Act (2011) repealed earlier control orders and replaced them with new powers that allow the SSHD to impose more flexible overnight residence requirements, more limited power to impose tightly-defined exclusions from particular

areas; individuals subject to the measures must be permitted a landline and a mobile telephone, and a computer with internet connection.

Trial
Trials are convened in a crown court and decisions are decided by a jury.

PROLOGUE AND ACKNOWLEDGEMENTS

The initial purpose of the research that underpins this book was to understand the quality and nature of justice dispensed in London's magistrates' courts, and the impact that these courts have on Londoners. In the course of my research I came to see that the principle role of these courts—as in the past—is to discipline London's "dangerous classes." Indeed, a very large proportion of defendants appearing in London's magistrates' courts are young, if not destitute then poor, (educationally and legally) illiterate, and from black and ethnic minority communities who work in unstable occupations or are unemployed. Furthermore, a very large percentage of defendants have a long history of involvement with the Criminal Justice System (CJS) that "recycles" them through our jails, courts, and prisons. In short, many defendants live precariously.

The Shorter Oxford English Dictionary (1933) defines "precarious" as follows:

> 1. Held by the favour and at the pleasure of another; hence uncertain. 2. Question-begging; taken for granted; unfounded, doubtful 1659; 3. Dependent on circumstances or chance; unstable 1687; 4. Perilous 1727. +5. Suppliant; importunate 1697. 1. *tenure*, a tenure held during the pleasure of the superior. 3. A scanty and p. support 1794. 4. The p. track through the morass, Scott. Precariously adv.

There are two senses in which the term "precarious" is employed in this book. First, I use the term to identify a large class of defendants who are arrested and tried in magistrates' courts. In this sense, I adopt a modern version of the precariat. Standing (2011; 2018, 2) argues that the precariat is a growing class of people who are affected by the globalisation of the labour force and the growth of "big finance" and who are "characterized by unstable labour, low and instable incomes and loss of citizenship rights." He argues that the precariat is the new "dangerous class" that has arisen since the 1980s, which has been created by neo-liberal economics, rapid de-industrialisation, and the integration of China into the global economy. The precariat depend upon unpaid, non-wage work, they live in debt, have been gradually losing their cultural, civil, social, economic, and political rights and are supplicants to the state from which they must negotiate access to housing, welfare support, and health care (Grenier et al. 2017; Jivraj 2020).

According to McKeever, Simpson, and Fitzpatrick (2018, 3), in law "a person will only be considered destitute if [they are] unable to secure access through charitable or family donations . . . a person is destitute if unable to access two or more essential needs or if unable to afford all of his or her own resources." For citizens the income support provided by the government is £70 per week for a single adult, £100 per week for a couple, and £20 a week per child. It is important to note that the British state is not subject to a duty to prevent/relieve destitution as the cases discussed in this book amply illustrate. The lives of destitute individuals are truly precarious and uncertain and are made more so by their encounters with the law.

Alongside other, better-off citizens charged with an offence, the precariat appear in magistrates' courts as defendants who are characterised by their poverty, race, history of drug/substance abuse, high levels of criminal recidivism (i.e., as repeat offenders), and relative youth. Regardless of their conspicuous presence in court—and undoubtedly in prison—there is little research that looks at the intersection between justice and the precariat, and in particular how the police and the courts reinforce the insecurity and problems they face. As will become clear, a very high proportion of the precariat are arrested and convicted for loitering, begging, and sleeping rough, for committing public order offences, drug offences, assault, and fraud (cf., Pratt and Miao 2019). The full extent to which the courts discipline the precariat and others becomes clear in the cases examined in chapters 2–6.

The term "precarious" can also be applied to the quality of justice available to defendants being tried in a magistrates' court. In this sense, the term "precarious justice" has been used by Human Rights Watch (2008, 8) to describe the absence of due process rights in countries such as Saudi Arabia. As we shall see, summary justice in England and Wales is also notable for the absence of due process rights. Rather than drawing an invidious comparison between the UK and other societies, and to avoid arguments over legal ideology or ideal constructs such as the "rule of law," I address questions about the quality of justice through careful empirical research.

Research for the book is based largely on the observation and analysis of remand hearings and contested trials in London's magistrates' courts between 2016 and 2017. However, to understand the context in which these courts operate, I briefly outline the evolution of criminal policy and the work of the police. I draw upon David Garland's *The Culture of Control* (2002) in which he argued that a "punitive turn" towards a culture of crime control and criminal justice occurred in the United Kingdom and elsewhere. Magistrates' courts are situated between the Metropolitan Police and Her

Majesty's Prison Service, both of which are relatively well studied, whereas there is little contemporary ethnographic research on first-instance courts.

Garland's (2002) analysis of the dynamic driving penal reform in England and Wales from the late 1970s forward sets the scene for this study because he outlines the rise of a "new culture of crime control" that typifies penal policy in the United Kingdom. He provided

> . . . a series of detailed analyses that show how political actors and government agencies—police forces, prosecution agencies, courts, prisons, government departments, elected officials—were confronted by a new set of practical problems in their daily operations. These problems chiefly flowed from the prevalence of high rates of crime and disorder in late modern society and the growing realization that modern criminal justice is limited in its capacity to control crime and deliver security. (Garland 2002, x–ix)

Garland examined key "indices of change" which contributed to a pervasive sense of crisis about crime and crime prevention including: the decline of the rehabilitative ideal; the re-emergence of punitive sanctions and a desire for expressive justice; the return of the victim to the centre stage of criminal justice; a concern with protecting the public (largely by imprisoning criminals); the emergence of a politicised and populist political discourse on crime control; rising rates of incarceration (even as crime rates have declined); and a widespread shift in criminological thinking away from a concern about the links between crime and deprivation to an acceptance that there are insufficient ways to control crime. The net effect of these shifts led to the creation of a hugely expanded infrastructure of imprisonment, the commercialisation of certain aspects of crime control and new management styles and working practices that, for instance, portray the police as a "responsive public service" rather than a "crime-fighting force."

Garland (2002) also identified the political and structural processes driving changes in penal policy. First there are the ideological beliefs—sometimes referred to as neoliberalism or "zombie neo-liberalism" (Peck 2010; Wacquant 2014)—that have given rise to a crack-down on crime and the restructuring of the Criminal Justice System through a combination of extensive budget cuts and contracting out the management of prisons, probation, and other professional services to the private sector. Second, equally pervasive changes affecting the work of the courts has arisen from myriad changes in legal rules, the adoption of sentencing guidelines, the adoption of "retrospective"/hybrid legislation jettisoning due process safeguards, including reducing or reversing the burden of proof and so on as well as changes in the volume of prosecutions and sharp reductions in the number of court staff, judges, and court houses.

Regardless of changes in penal policy, the focus of "state-illegality" relations has not changed: politicians continue to criminalise "the dangerous classes" which is to say socially marginal groups whose presence is deemed to threaten social order, that is, hooligans, protestors, unemployed youth, rioters, "deviant" (black) males, drug dealers, addicts, and so on (Schneider and Schneider 2008, 352). In short, while claiming to act in defence of local communities, politicians selectively ignore[1] certain illegal activities while vigorously legislating against and prosecuting other actions. The process of labelling certain actions or behaviours "criminal" creates an arbitrary, ideological distinction between law and disorder and between law-abiding citizens and criminals.

Given my focus on magistrates' courts, it is important to briefly sketch out the work of the police who arrest and charge offenders and bring cases to court to be prosecuted. The police are predominately involved in public order policing and stop-and search operations (which are among their most widely used powers). The effect of deep cuts to police budgets has seen a sharp fall in the number of officers and a consequent reduction in the number of arrests and prosecutions.

As Sharp (2005) has argued, while policing has been subject to extensive public reviews and reforms and to growing central control by the Home Office, at no point has the effect of these reforms been properly evaluated nor has the primary purpose of policing been clearly articulated. While new forms of managerialism have introduced greater central control and financial discipline over the police, the police have failed to reduce crime.

The reason for this situation stems from the nature of police operations that focus on crime control, modified slightly by due process protections (Sanders, Young, and Burton 2010). Political protest occurs in public spaces and confronts established political order that deploys the police to restore order. Habermas (1991) has traced the genealogy of class protest from the early nineteenth century forward to the struggles of the bourgeoisie who claim the right to participate in political affairs on the basis that they constitute the "public sphere." However, access to political rights historically reflects differences of class, race, gender, sexuality, and age (Collier et al. 1995). Rights that are won can be set aside by the state in the name of protecting "the public" from unruly and undesirable social groups who are said to be intent on disrupting "public order."

[1] For example, white-collar crime, political/official corruption, and certain types of fraud.

As a result of earlier political struggles, ideas about the public sphere and indeed about who constitutes the "public" are, in part, ideological. Today "the notion of the public [is] understood as a sphere in which *everyone* is included, no matter what their position within existing power relations" (Belina 2011, 18, my emphasis). Indeed, as Belina (2011, 19) has argued, the idea of a "public/private distinction" is a normative categorisation that portrays social groups and their attempts to use public space as either good or bad, justified or unjustified. Ultimately this categorisation fails to explain why a group, at a particular time, has an entitlement to use/occupy public space whereas other groups do not have such an entitlement. The state responds to struggles over the use of public space by using the law to define the activities of particular groups as a threat to public disorder—as a social harm that justifies their exclusion from public spaces—and it authorises the police to contain disorder.

Conflict arises in part, as Jeffrey et al. (2015) have argued, because the police exercise a "dual function" as "a neutral arbiter of justice" *and* as a defender of "the propertied classes" through their efforts to "reproduce a particular kind of social order inflected by histories of imperialism and racism." Their examination of forty years of policing in Manchester concluded that the police do not spend a majority of their time on crime prevention. Rather they spend their time maintaining "a benign general order," a process in which the "dirty work" of "real policing" relies upon routine stop and search operations. The police manage public unrest in response to public policy decisions and changing socio-political conditions.

Stop and search operations[2] have a long history in England and Wales and are rooted in a differential policing of certain "publics" that the authorities believe require special attention, notably ethnic minorities and the poor. Stop and search is a form of ritual humiliation intended to remind members of these social groups of their place in society. "Stop and search" operations ensure that certain social groups are routinely searched and charged with criminal offences, whereas others are not.

Detailed studies of stop and search operations have arrived at two important conclusions. First, Bradford and Loader (2016, 242) found that,

> The evidence, in our view, invites the following conceptualisation: namely, that "stop and search" is not just about crime, nor simply about targeting

[2] The "SUS law" on stop and search is authorised in section 5 of the *Vagrancy Act of 1824*. However, general stop and search powers are also authorised in s.1 of *The Police and Criminal Evidence Act (1984)*, s.60 of *The Criminal Justice and Public Order Act (1994)*, s.23 of the *Misuse of Drugs Act (1971*), and s.47 of the *Firearms Act (1968*).

> ethnic minorities. Rather, it is about control and the assertion of order, and the effort to do this implicates not only "fighting crime" but also regulating and disciplining marginal populations defined not simply by ethnicity but also by other key socio-demographic characteristics.

Second, in their analysis of London-wide data for the period 2004 to 2014, Tiratelli, Quinton, and Bradford (2018, 2) concluded that "stop and search has only a very weak and inconsistent association with crime. While there is some correlation, most notably in relation to drug offences, we conclude that the deterrent effect of stop and search is likely to be small." Their conclusion is reinforced by Home Office (2016) statistics that provide clear evidence regarding the ongoing and discriminatory use of stop and search powers: many more black and Asian persons are disproportionally searched, prosecuted, and given custodial sentences compared with white persons.[3] The Lammy Review (2017) and the Race Disparity Audit (UK 2017) make it clear that a disproportionate number of defendants are poor, uneducated, and from black and ethnic minorities. It is also clear that many defendants suffer from serious mental health issues as well as from substance abuse (problems that the CJS does not address).

Public order policing requires the police to negotiate a minimal degree of "accommodation" with diverse social groups to ensure their ability to manage demonstrations; however, accommodation may also be "political." A good example comes from "reclaim the night" marches by women in English cities, which began in the late 1970s and which continue today as women respond to police efforts to get them off the street rather than to address the violence directed at women, that is, rape, domestic violence, robbery, and murder (Mackay 2014). "Reclaim the night" marches challenge the selective policing of communities and gendered assumptions about the subordinate position of women in society.

The contingent nature of policing in London is demonstrated by Waddington's (1994) analysis of Metropolitan Police efforts to contain, control, and accommodate the anti-poll tax marches of the early 1990s using the Public Order Act. Waddington demonstrates the very fine line between

[3] Black persons are eight times, mixed-race individuals are two to three times, and Asian persons are two times more likely to be stopped and searched than white persons. Black persons are three-and-a-half times, and mixed groups are twice as likely to be arrested as white persons. Relative to the population, black persons are four times and mixed groups are two times more likely to be prosecuted in court. Though white defendants are consistently convicted at a much higher rate than other groups, black and Asian offenders are consistently given longer sentences than white offenders (UK 2017).

police attempts to accommodate protest and their use of coercion. As the policing of the G20 and other recent protests indicates, this line is constantly blurred by police "assaults" on protesters and efforts to secure intelligence to permit greater control over public events (Home Affairs Committee 2008–9; House of Lords 2010–11; Gilmore et al. 2017). In these protests police tactics, which included "kettling," and violence directed against protesters was justified as "responsible" policing. In effect standard police operations result in the arrest and/or charge of individuals who are poor and/or who are from ethnic minorities or groups who publicly object to the police and who demonstrate against state policies.

It is also important to note that the police exercise considerable discretion in the way they deal with offenders (Sanders, Young, and Burton 2010, chaps. 2–6; Stuart 2015), which is evident in their decisions to arrest, detain, release, warn, fine, charge, or prosecute individuals for a variety of offences including, but not limited to, the Public Order Act (Chapter 3), domestic violence (chapter 4), and drug offences (chapter 5). As the cases examined in this book make clear, the police fail to investigate the vast majority of summary offences, a fact that is reflected in low crime "clear up" and police "sanction rates" for recorded offences. Regardless of discretionary decisions by the police, the number of individuals arrested and prosecuted in magistrates' courts has remained constant: in 1996/97 approximately 1.3 million persons were prosecuted, in 2005/6 the number of prosecutions rose to 1.36 million, and in 2016/17 the number of prosecutions was 1.38 million (NAO 1997, 52, fig. 20; MoJ 2015b, 2018).

Controversy over policing is not new. As the remit given the police by Parliament and the Home Office has grown, it has become apparent that there is no consensus about the primary purpose/responsibilities of the police. This problem was identified in 1996 by the Independent Committee of Inquiry (Police Federation 1996, xi–xii), which found that there was no consensus about the role and responsibilities of the police. Similarly, in 2008, the House of Commons Home Affairs Committee (2007–8, ¶17) found that:

> To ensure the police can fulfil their core roles effectively, there is a need for greater clarity as to their mission and the extent of their responsibilities. Recent reviews of different aspects of policing have not gone far enough. We recommend that an independent review, such as a Royal Commission, or similarly independent review, is established to review what the police do and how they are organised to do it. This review should be focussed and time-limited, in order to provide the police with the clarity about their role that they urgently need. The Government should exercise caution in future when classifying undesirable behaviour as criminal offences.

Despite the call to rethink the role, responsibility, and primary purpose of the police, no Royal Commission or review has been established. Instead the police continue to rely on the core principles set out by Robert Peel in 1829, which legitimated the creation of the Metropolitan Police specifically, and for a public police force generally.[4] Those principles are:

> 1. *The basic mission for which police exist is to prevent crime and disorder* as an alternative to the repression of crime and disorder by military force and severity of legal punishment. 2. *The ability of the police to perform their duties is dependent upon public approval* of police existence, actions, behaviours and the ability of the police to secure and maintain public respect. . . . 4. The degree of co-operation of the public that can be secured diminishes, proportionately, to the necessity for the use of physical force and compulsion in achieving police objectives. 5. *The police seek and preserve public favour,* not by catering to public opinion, but *by constantly demonstrating absolutely impartial service to the law*, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws; by ready offering of individual service and friendship to all members of society without regard to their race or social standing. . . . 6. The police should use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient to achieve police objectives; and *police should use only the minimum degree of physical force* which is necessary. . . . 8. The police should always direct their actions toward their functions and *never appear to usurp the powers of the judiciary* by avenging individuals or the state, or authoritatively judging guilt or punishing the guilty. 9. *The test of police efficiency is the absence of crime and disorder*, not the visible evidence of police action in dealing with them. (My emphases)

While the "Peel principles" supposedly inform policing today (College of Policing 2013), the police do not follow them. As recent research including this book demonstrates, the police no longer respect these principles and the conditions under which they operate have radically changed. As many have argued, the Government urgently needs to rethink and rearticulate new roles for the police fit for the twenty-first century.

Magistrates' courts are the lowest level of the CJS; they hear and decide about 94 per cent of all criminal offences in England and Wales. Curiously, the vast majority of defendants in magistrates' courts either plead guilty or are tried and convicted. As I hope to show, it would be incorrect to

[4] Source: Sir Robert Peel's "Principles of Law Enforcement, 1829," accessed 12 December 2019, https://www.durham.police.uk/About-Us/Documents/Peels_Principles_Of_Law_Enforcement.pdf.

assume that high numbers of guilty pleas and high conviction rates arise from good policing or incontrovertible evidence of wrongdoing. Rather this situation arises from the incomprehensible "language of the law" contained in statutes and legislation, from the fact that legislation provides few legal defences, and because pressure by the police and the poor quality of independent legal counsel lead many defendants to plead guilty to an offence without going to trial.

High conviction rates are also the product of a magistracy that relies heavily on the CPS for advice and that, as I hope to demonstrate, possesses a limited "judicial vision" of its role and responsibilities. By "judicial vision" I refer to the way that Magistrates (and to a lesser extent, District Judges) are trained, their dependence on the Criminal Practice Directions and the requirement placed on them to case-manage hearings, their unquestioned reliance on police evidence and on legal argument by the Crown, and the discursive practices they use to decide cases. Taken together and reinforced by the speed with which cases are heard, these factors decisively shape their professional vision (Goodwin 1994) and their view of criminality, the legitimacy of the police, and the prosecutor who transforms "evidence" into an argument that portrays defendants as criminals. Their training imbues magistrates with a perspective that focuses on individual culpability without seeing the wider social or cultural context in which an alleged crime takes place. As Good (2004, 129) has argued in respect of immigration law, lawyers and judges are "trained to think in radically different ways" than social scientists because the cases they deal with are "divested of contextual detail" and because they see the law as being primarily about the application of "purportedly neutral principles."

Furthermore, as Danet (1980, 540f) and others have argued, the "fact-oriented" genre of legal language—which is characterised by esoteric vocabulary, syntactic complexity, violations of rules of ordinary discourse, and reliance on elaborate legal rules—claims to determine the "truth" and relevant "facts." Quite the opposite is the case because the courts are preoccupied with "legal language" at the expense of considering the relation between "language and the world." A different way of putting this important point is that the language of law involves "a construal of the world"—a binary view between criminal and non-criminal behaviours—which is radically different to the view of non-lawyers, defendants, litigants, and the public (Gibbons 1999). As I will show, the law provides a problematic lens through which to assess "facts" and determine guilt.

Following on from this point, while the law requires magistrates to assess culpability, an effective and just decision also needs to consider the social and cultural context in each case. This task is necessary to account

for wrongdoing *if* the court wishes to arrive at a just decision that deals fairly with a specific offender, and *if* the court seeks to reduce repeat offending rather than merely recycle offenders in and out of the CJS. The requirement that individuals have a right to a fair trial is complicated by two further factors. First, case preparation and management depend upon the ability of the police, the CPS, and defence counsel to adequately prepare a case in advance of a hearing. Their ability to carry out this task includes assessing the evidence and deciding whether a defendant is "vulnerable" and in need of special measures to give their evidence or if the court should make "procedural adjustments" to accommodate vulnerable defendants (Gerry and Cooper 2017). Second, the pressure placed on magistrates/DJs to "case-manage" hearings to ensure that they are conducted "efficiently and expeditiously"[5] results in hearings/trials that can be very brief and that do not involve adequate oversight of the police and CPS. My observations of hearings and trials reveal that many cases are not adequately prepared in advance and that vulnerable defendants are not assessed and diverted from court. In short, there are serious questions regarding the safety of some convictions.

In 2016–17 magistrates sentenced 32 per cent of defendants to custody, 20 per cent were given a community sentence, 16 per cent were given a suspended sentence, 18 per cent were fined, and 14 per cent were dealt with by "other means" (probably a combination of fines, community orders, etc.; MoJ 2018). The fact that a relatively small but stable percentage of defendants are sent to prison for, comparatively speaking, relatively short sentences (which have increased from 12.4 months in 2007 to an average of 15.2 months in 2018) speaks to a belief among magistrates that non-custodial sentences are an effective deterrent (repeat offenders and individuals found guilty of robbery, sexual offences, violence, and possession of weapons are far more likely to be imprisoned [Cuthbertson 2017]). While the relatively small number of offenders who are imprisoned in the UK contrasts sharply with the situation in France and the USA, it is clear that once offenders are placed in custody they do not have access to adequate medical or other assistance to deal with problems responsible for their offending, such as addiction/substance abuse.

I was attracted to these courts to try to understand what they do—which partly reflected my ignorance about the CJS as a white, middle-class male—and was intrigued by what I found. This study seeks to show how the courts operate and how cases are tried, and to understand the "work" of

[5] See: Criminal Practice Directions 2015, Part 3A1 at: http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015.